

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 461 of 2011

Friday, this the 25th day of November, 2011

CORAM:

**Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member**

Boban Thomas, aged 51 years,
S/o. V.J. Thomas,
Lower Division Clerk,
Office of the Executive Engineer,
Central Public Works Department (CPWD),
Cochin Central Division, II Floor,
Kendriya Bhavan, Kakkanad, Kochi-682 037,
Residing at : Thiruvadi House, Karuka Ward,
Thathampalli P.O., Alappuzha.

Applicant

(By Advocate – Mr. T.C.G. Swamy)

V e r s u s

1. Union of India, represented by
The Secretary to the Government of India,
Ministry of Urban Development &
Poverty Alleviation, Nirman Bhavan,
New Delhi – 110 001.
2. The Director General of Works,
Office of the Directorate General,
Central Public Works Department,
Nirman Bhavan, New Delhi – 110 001.
3. The Director of Administration,
Office of the Director General,
Central Public Works Department,
Nirman Bhavan, New Delhi – 110 001.
4. The Chief Engineer (South Zone),
Central Public Works Department,
"D" Wing, VI Floor, Kendriya Bhavan,
Koramangala, Bengaluru – 560 034.
5. The Executive Engineer, Central Public Works
Department (CPWD), Kendriya Bhavan,
Kakkanad, Kochi-682 037.

6. The Secretary to the Government of India,
 Ministry of Personnel, Public Grievances and Pensions,
 Department of Personnel & Training (Estt.),
 New Delhi – 110 001. Respondents

(By Advocate – Mr. Pradeep Krishna)

This application having been heard on 16.11.2011, the Tribunal on 25-11-11 delivered the following:

O R D E R

By Hon'ble Mr. K. George Joseph, Administrative Member -

The applicant in this O.A. while working as Upper Division Clerk (UDC) in the Central Public Works Department (CPWD), New Delhi, had requested for inter regional transfer to the lower grade of Lower Division Clerk (LDC) by expressing his willingness to forfeit the claim of his service seniority on account of his personal problem. His request was approved vide Office Memorandum dated 08.04.2009. After obtaining an undertaking from the applicant, office order No. 63/2009 dated 20.05.2009 was issued posting him as LDC in the Cochin Central Division, CPWD, Cochin. He joined the post of LDC at Cochin on 08.06.2009. His previous office vide order dated 12.08.2009 granted him the 2nd financial upgradation under the ACP Scheme with effect from 25.08.2008. Consequently, his pay was fixed at Rs. 10800/- (PB Rs. 9300-34800) with Grade Pay of Rs. 4200/- with effect from that date. The same was protected in the transferred office. The audit officer of the Principal Accountant General (Civil & Commercial Audit) objected to the pay protection given to the applicant on the ground that as per clarification vide O.M. dated 21.10.2009 (Annexure A-9) in case of appointment of Government servants to posts carrying lower Grade Pay under F.R. 15(a), on their own request, the pay in the Pay Band of the Government servant will be



fixed at a stage equal to the pay in the Pay Band drawn by him prior to his appointment against the lower post and that he will be granted the grade pay of lower post and he will continue to draw increments based on his pay in the Pay Band plus Grade Pay (lower). Aggrieved by the proposed reduction, this O.A has been filed praying for a direction to the respondents No. 2 and 3 to continue the Pay Band of Rs. 9300-34800 plus Grade Pay of Rs. 4200/- drawn by the applicant by way of financial upgradation under the ACP Scheme.

2. The applicant submits that the financial benefits derived by the applicant by way of grant of financial upgradation cannot be taken away merely because the applicant has been transferred from one seniority unit to another. The impugned Annexure A-1 order dated 24.03.2011 based on the audit note is arbitrary and discriminatory. Neither Annexure A-1 order nor the Audit Note was preceded by an opportunity to show cause. Annexure A-14 order dated 07.07.2011, which is issued as a consequence of Annexure A-1 order during the pendency of the O.A is unconstitutional as once an O.A is admitted all further proceedings relating to the subject matter are deemed to have been abated in the light of Section 19(4) of the Administrative Tribunals Act, 1985.

3. In the reply statement filed by the respondents, it was submitted that the scale of pay allowed to the applicant on 25.08.2008 upon the 2nd financial upgradation was Rs. 5000-150-6000 as per the pre revised scale. In the revised scale, the pay would be Rs. 10800 + GP of Rs. 4200/-. Thus, as on the date of his reversion, the applicant was working as UDC and drawing a



pay of Rs. 10800/- plus GP of Rs. 4200/-. From this higher post and pay, the applicant has agreed for reversion to a lower post, i.e. LDC. After his reversion from UDC to LDC his pay is to be regulated as envisaged in F.R.15 (a) and the same has been implemented.

4. We have heard Mr. T.C. Govindaswamy, learned counsel for the applicant and Mr. Pradeep Krishna, learned counsel for the respondents and perused the records.

5. The issue to be determined is whether the applicant is entitled to the protection of the last pay drawn by him upon his inter regional transfer to Cochin or not. For the sake of convenience, office order dated 63/09 dated 20.05.2009 at Annexure A-5 by which he was transferred to Cochin is reproduced as under :

"Government of India
 Central Public Works Department
 Office of the Superintending Engineer (Coord)
 Southern Region, CPWD, Rajaji Bhawan, Besant Nagar,
 Chennai-600090, Telefax-24910531

No.9/5/I/Coord/SR/2009/351

Dated: 20.05.2009

Consequent upon the approval of the Directorate General of Works, CPWD, New Delhi vide his Office Memorandum No. 9/16/2008-EC-IV(SC) 449 dated 8th April 2009, the following UDC from the Northern Region to Southern Region as Lower Division Clerk on Inter Regional transfer, the transfer and posting is hereby ordered with immediate effect as under:-

Sl. No.	Name of the official S/Shri/Smt.	Office to which Attached	Office to which posted	Remarks
1.	Boban Thomas	PWD, CRMD-M-312, New Delhi, Northern Region	Cochin Central Division, CPWD, Cochin	In the existing vacancy



The above Posting order is subject to the following conditions:-

- 1) He will be eligible to count his seniority in the post of LDC in the Region 'D' only from the date he assumes his duty under the office stated above.
- 2) He will not be entitled to claim TA/DA/Joining time to join duty in the respective office as mentioned above.
- 3) He will not be eligible for the pay during the period of transit from his present station to the new station for taking up the new posting unless covered by leave due to his and granted by the competent authority.
- 4) He will be treated as a fresh recruit in the post of LDC in Region 'D' and junior Most in the grade. However, the pay last drawn by him will be protected as per existing rules and his services will also be counted for pensionary benefits. etc.

Superintending Engineer (Coord) SR
CPWD, Rajaji Bhawan, Chennai 90"

Condition No. 4 states that the applicant will be treated as a fresh recruit in the post of LDC, but the pay last drawn by him will be protected as per the existing rules and his services will also be counted for pensionary benefits. As against this, O.M. Dated 21.10.2009 (Annexure A-9) reads as under:

"F. No. 13/9/2009-Estt(Pay-I)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel & Training
Estt(Pay-I) Section

North Block,
New Delhi, dated the 21st October, 2009

OFFICE MEMORANDUM

Subject: Fixation of pay in case of employees who seek transfer to a lower post under FR 15(a) - clarification regarding.

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The undersigned is directed to refer to instructions issued vide this Department's OM No. 16/6/2001-Estt(Pay-I) dated 14.2.2006 on the above subject. It was clarified therein that on transfer to the lower post/scale under FR 15(a), the pay of a Government servant holding a post on regular basis will be fixed at a stage equal to the pay drawn by him in the higher grade. If no such stage is available, the pay will be fixed at the stage next below the pay drawn by him in the higher post and the difference may be granted as personal pay to be absorbed in future increments. If the maximum of the pay scale of the lower post is less than the pay drawn by him in the higher post, his pay may be restricted to the maximum under FR-22(1)(a)(3).

2. Consequent upon implementation of the revised pay structure comprising grade pays and running Pay Bands, w.e.f. 1.1.2006 in cases of appointment of Government servants to posts carrying lower Grade Pay under FR 15(a) on their own request, the pay in the band of the Government servant will be fixed at a stage equal to the pay in the pay band drawn by him prior to his appointment against the lower post. However, he will be granted grade pay of lower post. Further, in all cases, he will continue to draw his increments based on his pay in the pay band + grade pay (lower).

3. Where transfer to a lower post is made subject to certain terms and conditions then the pay may be fixed according to such terms and conditions.

4. In so far as persons serving in the Indian Audit & Accounts Department are concerned, these orders issue after consultation with the Comptroller & Auditor General of India.

5. This order takes effect from 1.1.2006.

6. Hindi versions follows.

(B.K. Mukhopadhyay)
Director (Pay)"

(emphasis supplied)

6. The Executive Engineer, CPWD, Cochin Central Division, Kochi, in his letter dated 05.06.2010 addressed to the Principal Accountant General (Civil and Commercial Audit) in reply to the audit objection against the applicant



had stated that according to the Revised Pay Rules, 2008, "Pay" in the revised pay structure means the pay drawn in the prescribed pay band plus the applicable grade pay but does not include any other type of pay like special pay etc. As per para 3 of the letter of DoP&T dated 21.10.2009, where transfer to a lower post is made subject to certain terms and conditions then the pay may be fixed according to such terms and conditions. Therefore, in the present case of the applicant, he had held that his pay has been fixed as per the terms and conditions of his transfer order dated 20.05.2009 and is in order. However, the audit party did not drop the audit para stating that even though the pay is protected, the person who is transferred to a lower post will be granted the Grade Pay of the lower post. Again as per Annexure A-12, the Executive Engineer, CPWD, Cochin Central Division, Kochi, pointed out that the Government officials who had opted for transfer under FR-15(a) during the period between 01.01.2006 to 21.10.2009 were denied the opportunity to study the order and take appropriate decisions accordingly. The reduction of grade pay of the official at this stage is a major penalty without any fault/offence of the official. Further, he submitted that the benefit of ACP granted vide order dated 12.08.2009 cannot be withdrawn as the applicant has not refused any promotion subsequently. But the respondents stick to the earlier stand as evident by Annexure A-1 order dated 24.03.2011. It is true that the respondents have inherent power to regulate the inter regional transfer. The employees, like the applicant, have the freedom to accept the conditions proposed in the inter regional transfer order or to reject it. Once the transfer is effected on mutually agreed conditions, no unilateral or arbitrary changes in the conditions on the part of the respondents as in the instant case, is fair, just or tenable in the eyes of law. The protection of pay



last drawn by the applicant that was guaranteed by the respondents as per the existing rules, was the protection of the basic pay on which DA was based. As per Rule 3(8) of the Revised Pay Rules, 2008, "basic pay" means pay in the Pay band plus Grade Pay. Therefore, the Grade Pay last drawn by the applicant is also protected. If the Grade Pay is not protected, the financial loss suffered by the applicant will be substantial and there is no whiff of such loss in the conditions of inter regional transfer of the applicant, over and above, the loss of seniority and the reversion to the post of LDC and loss of TA/DA and joining time and pay for the transit period etc. Therefore, the inter regional transfer agreement cannot be violated to the disadvantage of the applicant by taking out the Grade Pay from the protection guaranteed by the respondents. The definition of basic pay as per the Revised Pay Rules, 2008 cannot be altered by an O.A.

7. The CCS (RP) Rules, 2008 have overriding effect over the provisions of the Fundamental Rules. Rule 15 of the said Rules reads as under:

"15. The provisions of the Fundamental rules, ..xxxxxxxxx.. shall not, save as otherwise provided in these rules, apply to cases where pay is regulated under these rules, to the extent they are inconsistent with these rules."

Therefore, the basic pay of the applicant as per CCS (RP) Rules, 2008 cannot be reduced under F.R. 15(a).

8. Further, the 3rd para of O.M. dated 21.10.2009, which read as "where transfer to a lower post is made subject to certain terms and conditions then the pay may be fixed according to such terms and conditions", saves the

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agreement concluded before issuing the O.M. Therefore, in our considered view, there is no justification for the audit note in the eyes of law. The question of fairness in changing the conditions of inter regional transfer also arises. As a model employer, a Government should not act illegally and unfairly in the name of public interest in saving money at the cost of a distressed employee who accepted in good faith the conditions of inter regional transfer on account of his family problems. The stand taken by the Executive Engineer, CPWD, Cochin Central Division, Kochi in the matter is fair and just. It is unfortunate that the respondents could not appreciate the fairness and justice in honouring the commitment made to the applicant as he proposed.

9. The purpose of imposing certain conditions on inter-regional transfer is to protect the interests of the employees in the transferred office, rather than saving some money for the Government by squeezing out as much as possible from a hapless employee. Forgetting this aspect, the insistence on saving some amount over and above what has been agreed to by the applicant is not befitting a Government wedded to justice and fair play. The respondents are not entitled to unintended advantage, in the facts and circumstances of the case, from the revision of pay as per recommendation of the VI CPC.

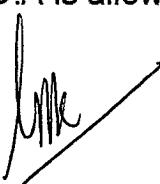
10. As per Section 19(4) of Administrative Tribunals Act, 1985, once the O.A is admitted, all further proceedings relating to the subject matter must be deemed to have been abated. Therefore, Annexure A-14 order is illegal.



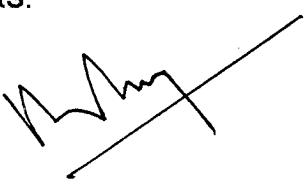
11. Principles of natural justice demand that before reducing the pay of an employee, he should be given notice and what he has to say on the matter should be considered before taking a final decision. In the instant case, the respondents have reduced the pay of the applicant without giving him an opportunity of being heard, which is illegal.

12. In the light of the above discussion, the O.A deserves to be allowed. Annexure A-1 dated 24.03.2011 and Annexure A-14 dated 07.07.2011 are set aside. The respondents are directed to strictly adhere to the conditions of inter regional transfer of the applicant as per office order dated 63/09 dated 20.05.2009 and protect the last pay drawn by him as per the then existing rules.

13. The O.A is allowed as above with no order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

cvr.