

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 462 of 2000

Wednesday, this the 21st day of March, 2001

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. T.C. Sarojini Amma,
W/o late R. Raghavan Pillai,
Higher Selection Grade,
Postal Assistant
(Savings Bank Control Organisation),
Mavelikkara Head Post Office,
Kuttuvelil House, Kavumbhagam,
Thiruvalla.Applicant

[By Advocate Mr. M.R. Rajendran Nair (represented)]

Versus

1. Union of India represented by the
Secretary to Government,
Ministry of Communications,
Department of Posts, New Delhi.
2. The Director General of Posts,
New Delhi.
3. The Chief Post Master General,
Kerala Circle, Trivandrum.Respondents

[By Advocate Mr. M. Rajendrakumar, ACGSC]

The application having been heard on 21-3-2001, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks to quash A4, to declare that she is entitled to retain the time bound promotion and BCR promotions granted to her counting her service in Danda Karunya Project with all consequential monetary benefits and to direct the respondents to disburse the amount recovered from her on the basis of A4 with interest at 18% per annum.

..2..

2. The applicant commenced service as Lower Division Clerk in Danda Karunya Project on 25-3-1964. She became a surplus and was brought on the strength of Central (surplus staff) cell. She was redeployed as Upper Division Clerk in Postal Department with effect from 1-1-1985. She was granted time bound one promotion (TBOP) and biennial cadre review (BCR) promotions counting her service in the Danda Karunya Project. Thereafter the 2nd respondent took a decision that the service rendered by surplus staff like the applicant prior to the redeployment to the Postal Department would not count for computing the 16/26 years of service for promotion under TBOP/BCR schemes. Accordingly promotion granted to her was proposed to be cancelled. She approached this Bench of the Tribunal by filing OA 657/95. That OA was disposed of permitting her to submit a representation to the 1st respondent. She submitted a representation to the 1st respondent. The Senior Audit Officer, Head Post Office, Changanacherry, as per memo dated 6-4-1999, directed that the financial benefit given to the applicant and similarly placed persons for their promotions under TBOP/BCR schemes may be recovered and their pay be revised. A4 is the copy of the memo dated 6-4-1999. A4 is liable to be quashed in the light of the ruling in Dwigen Chandra Sarkar & Another vs. Union of India & Others.

3. Respondents resist the OA contending that the earlier rulings of the Hon'ble Courts including the Supreme Court appear to have been implemented for respective applicants only and the general policy in this regard remains unchanged. The accepted legal position is that two similar things need not be identical and a case is authority for what it decides and not what logically follows from it.

..3.

4. It has been held by the Apex Court that when a dictum is laid down it is to be extended to all those who are identically placed. But, it seems that the respondents are laying down certain new rules of their own. It cannot be a case that the respondents have got any immunity to the dictum laid down by the Apex Court. They are bound by that. When a dictum has been laid down, respondents are bound to apply not only to those who are parties to that particular ruling in which the dictum was laid down, but also to those who are identically placed. The department should not have taken a stand as taken in this matter.

5. Learned counsel on both sides submitted that the order of a division bench of this Bench of the Tribunal in OA 1165/97 squarely applies to the facts of this case and this Original Application is to be disposed of in the light of the finding therein.

6. It is interesting noting that the order in OA 1165/97 was pronounced on the 3rd of March, 2000 and the reply statement in this OA was filed on the 29th of August, 2000. In spite of the respondents being fully aware of the same have taken a stand in the reply statement which they ought not have taken.

7. A4 is the objection raised by the audit party. It seems that for respondents what the audit party says is gospel truth. It is a matter of common knowledge that when an audit objection is raised it is for the concerned office to give the explanation and when the audit objection is not sustainable to get the objection dropped. But, instead of it, the respondents have simply taken it as - gospel truth.

8. It is stated in the OA that recovery is effected from the pay of the applicant on the basis of A4. Here it is a case that simply based on A4, which is only an audit objection, in a most mechanical way recovery is effected from the pay of the applicant. There is no order it seems to have been issued by the authority concerned to effect recovery from the pay of the applicant. This is a case where the respondents have acted in a most mechanical way without any application of mind. It seems that the respondents have not even cared to read and understand A4 for the reason that on the right hand side of A4 it is specifically stated thus:

"Replies of the Officer in Charge of the Office Inspected."

The reply cannot be simply making recovery from the pay of the applicant without even an order to that effect. The conduct of the respondents in this case is only to be deprecated.

9. The reply statement is filed by the Superintendent of Post Offices, Changanacherry Division. In the verification portion of the reply statement it is stated thus:

"I am filing this reply statement on behalf of other respondents in the above Original Application as I am duly authorised for the same."

So, it means that the Superintendent of Post Offices, Changanacherry Division is one of the respondents. He is not a party to this Original Application. This shows the way in which the reply statement is filed.

10. Accordingly, A4 is quashed. It is declared that the applicant is entitled to retain the time bound promotion and BCR promotion granted to her counting her service in Danda Karunya Project with all consequential monetary benefits.

Whatever amount is due to the applicant by virtue of this order including the amount recovered from her shall be paid to her by the respondents within a period of one month from the date of receipt of a copy of this order.

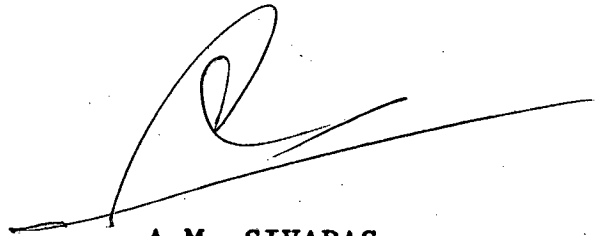
11. The Registry is directed to forward a copy of this order to the 2nd respondent.

12. The Original Application is disposed of as above. No costs.

Wednesday, this the 21st day of March, 2001



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

ak.

List of Annexure referred to in this order:

1. A4 True copy of the memo No. R.M. No. 60/LAP VI/HPO CHRY dated 6-4-1999 issued by the Sr. Audit Officer, Audit Party, HPO, Changanacherry.