

Central Administrative Tribunal  
Madras Bench

Original Application No.468/86

V.K. Samuel, Accountant,  
Office of the Accountant General(A&E), -- Applicant  
Kerala, Trivandrum.

Versus

1. Secretary to Government,  
Ministry of Finance,  
Govt. of India, New Delhi.
2. The Comptroller and Auditor  
General, Govt. of India,  
New Delhi.
3. The Accountant General (A&E),  
Kerala, Trivandrum.

Respondents

Shri M. Rajagopal - Counsel for the Applicant.  
Shri P.A. Mohammad, ACGSC - Counsel for the Respondents

CORAM

Hon'ble Shri Birbal Nath - Administrative Member  
&  
Hon'ble Shri G.Sreedharan Nair - Judicial Member

ORDER

(Pronounced by Shri Birbal Nath, Administrative Member)

Shri V.K. Samuel, Accountant in the office  
of the Accountant General (A&E) Kerala, Trivandrum  
has filed application No.468/1986 before the Tribunal  
against re-fixation of his pay vide impugned order  
No.OE/BILLS/I/M Fix/Tr.119 of 19th May, 1986.

2. The facts leading to the application are  
that the applicant is a military pensioner. He was

re-employed as Auditor under the Accountant General Haryana on 1.8.1979. He was transferred to Accountant General, Tamil Nadu in February, 1980 on his own request. He was transferred under Accountant General Kerala on 8th March, 1982 on unilateral basis. Consequent on the restructuring of cadres in I.A. & A.D. and on the basis of the preference exercised by him he was transferred to the office of the Accountant General (Audit) Kerala with effect from 30th June, 1986. He was appointed in the scale of Rs. 330-560. His first increment had become due in August, 1980 when he was serving under Accountant General, Tamil Nadu. However he was allowed his increments in 1984 by the Accountant General, Kerala. The allowing of these increments has been objected by the Comptroller and Auditor General of India, New Delhi and he has been reduced to the basic grade of Rs.330 in the scale.

3. It has been averred by the respondents in their counter affidavit that in the case of re-employed pensioners who are officiating in re-employed post, their transfer or promotion to another post is treated as fresh re-employment and the pay in the new

post is fixed accordingly under the orders subsisting on the date of such transfer or promotion. Since the applicant had not been confirmed in the office of the Accountant General, Haryana and Tamil Nadu his pay on re-employment was not fixed by the Accountant General, Haryana and Tamil Nadu because details of his military service were not available. It was further averred that the pay of the applicant on his appointment in the office of the Accountant General, Kerala was erroneously regulated taking into account the entire service from the date of appointment in the office of the Accountant General, Haryana in contravention of the instructions that the re-employed pensioners who were officiating in re-employed posts are to be treated as fresh re-employment in case of transfer or promotion to another post. This error was detected by the Comptroller and Auditor General of India when the case was sent to them for ex-post facto approval. Resultantly the excess payment on account of the erroneous fixation amounting to Rs. 2,307.35 was proposed to be recovered in instalments under the impugned order of 19th May, 1986. challenged in this application.

4. The respondents have also filed Exbt.R.1 which states that the post of Auditors in each of the Accountant General Office constitute a separate cadre and transfer from one cadre to another cannot be construed as transfer of an employee from one station to another in the same post under the department without any change in the post held by them. The contention of the respondents that the post of Auditors in each of the Accountant General Office constitute a separate cadre cannot be faulted because of its factual basis. At the same time it has been made out by the applicant that he has been denied his increments on the basis of Government of India, Ministry of Finance O.M.No. F5(10) Est 111/B/64 dated 4-6-1964 as amended by AO 5(21)-E/111/B/64 dated 31-3-1965 which lays down that in the case of re-employed pensioners who are officiating in re-employed post, the President was pleased to decide that their transfer or promotion to another post should be treated as a fresh re-employment and that the pay should be fixed under the orders subsisting on the date of such transfer or promotion.

5. The short question to be decided is <sup>whether</sup> that when a <sup>re-employed</sup> person holding a post in one cadre is transferred to another cadre, should this transfer be treated as fresh re-employment or a continuing re-employment?

The Government of India Orders referred to above pertain to "another post". These orders cannot apply in the case of a transfer to the same post though in different cadre. Where an employee seeks transfer on his own request, he may suffer disadvantage in the matter of seniority, travelling allowance etc., as <sup>in</sup> the case with <sup>the</sup> Railways and other services. But deprivation of increments of an employee when he is transferred on the same post to another cadre would amount to a violation of his service conditions. When the applicant was transferred from one cadre to another, the word 'transfer' was <sup>used</sup> as per the averments. If each transfer entailed fresh employment or re-employment the word 'fresh employment' or 'fresh re-employment' ought to have been used. Averments made do not show that such words were used in the orders of transfers which have not been placed before us by either party. In the given circumstances we have to treat it as a case of transfer only. A transfer on the same post from one cadre to another cannot entail, on grounds of equity, deprivation of their legitimate increments. Such deprivation of increments is inequitable and amounts to miscarriage of justice. As such the

impugned order No.OE/BILLS/I/M Fix/Tr.119 of  
19.5.1986 is legally unsustainable and is hereby  
quashed.

*[Signature]*  
19-6-1987

(G.Sreedharan Nair)  
Judicial Member  
19-6-1987

*[Signature]*  
19/6/87

(Birbal Nath)  
Administrative Member  
19-6-1987

Index: ~~Yes~~/No

Su.