

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.480/2002.

Friday this the 29th day of November 2002.

CORAM:

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

P.D.Sukumaran,
Inspector of Post Offices (PG),
Kottayam Division, Kottayam.
residing at C.III/6 P&T Quarters,
Muttambalam P.O., Kottayam-4.

Applicant

(By Advocate Shri P.C.Sebastian)

Vs.

1. The Senior Superintendent of Post Offices,
Kottayam Division, Kottayam.
 2. The Post Master General, Central Region,
Kochi-682 016.
 3. The Union of India represented by the Secretary,
Ministry of Communications,
Department of Posts,
New Delhi-110 001.
- Respondents

(By Advocate Shri M.R.Suresh, ACGSC)

The application having been heard on 29th November, 2002, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

The applicant, Inspector of Post Offices, Kottayam was by A-1 order dated 22.11.2001 granted an advance of Rs.24000/- for purchase of a motorcycle. Clause 9 of A-1 reads as follows:

"9. Failure to comply with the conditions at paras 3 to 8 of this memo will render the loanees liable to refund the advance in one lump along with penal interest over and above the prescribed rate of interest forthwith."

Clauses 3 to 8 of A-1 are as follows:

"3. The conveyance should be purchased within one month from the date on which advance is drawn failing which advance with penal interest over and above the prescribed rate of interest will be recovered.

4. In case 80% of the actual cost of the vehicle purchased is less than the advance drawn the difference would be credited forthwith.

5. After purchasing the conveyance a mortgage bond in Form GFR-24 should be executed within one month of drawal of the advance and forwarded to the concerned divisional head.

6. The conveyance should be ab initio be comprehensively insured with any National Insurance Company inserting in the policy the clause "Hypothecated to the President of India" and the first policy submitted to concerned divisional head for verification.

7. Certificate of Registration of the vehicle and the cash receipt towards cost of vehicle purchased should also be submitted within one month from the date of drawal of the advance.

8. The conveyance purchased with the advance will be considered as property of Government till the advance with interest thereon is fully repaid."

2. The applicant had complied with the conditions in the order but he was served with A-3 order dated 22.3.2002 informing him that Postmaster General, Kottayam had ordered that the entire Motorcycle Advance (MCA for short) given to the applicant should be refunded by him forthwith with penal interest without prejudice to the authorities right to take a disciplinary action against the applicant. The applicant submitted a representation to the Postmaster General stating that he has not violated any of the conditions in reply to which the applicant was given A-5 order informing him that the Postmaster General has ordered that there was no ground to treat the advance given as legal and that the amount should be refunded by him in a lump. Aggrieved by these two orders, the applicant has filed this O.A. challenging A-3 and A-5. It is alleged in the application that the applicant has not committed any breach of the conditions and the decision contained in A-3 and A-5 directing the applicant to refund the entire MCA in lump with penal interest is wholly unsustainable.

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3. The respondents in their reply statement seek to justify the order on the ground that the applicant having purchased a motorcycle from his dependant son, 18 years old, the advance granted was not legal and therefore, the decision taken is perfectly valid.

4. I have gone through the entire material placed on record and heard the learned counsel on either side. There is no case for the respondents that the applicant has failed to comply with any of the directions contained in paragraph 3 to 8 by A-1 order justifying the recovery of the MCA in lump with penal interest. The only reason for the respondents to insist on the applicant to refund the entire MCA in lump with penal interest is that the motorcycle was purchased from the applicant's son who was his dependant. The learned counsel of the applicant argued that there is no rule or instruction which forbids purchase of a motorcycle from a son or near relatives and therefore, the impugned order is unsustainable. Learned counsel for the respondents is not in a position to show any rule or instruction which states that the motor vehicle should not be purchased by Government servant from any one of his dependants. Under these circumstances, since the applicant has not failed to fulfil any of the conditions in A-1 order and as there is no rule which prevented the applicant from purchasing a motorcycle from one of his dependants I find that the impugned order is unsustainable in law.

5. In the result, the application is allowed. The impugned order is set aside. No costs.

Dated the 29th November, 2002.



A.V. HARIDASAN
VICE CHAIRMAN

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of Memo No.A&P/45-1/2001-02 dated 22.11.2001 issued by the 2nd respondent.
2. A-2: True photo copy of the relevant pages of Certificate of Registration book in respect of the Motor Cycle bearing Registration No.KL-r/K 6382.
3. A-3: True copy of letter No.B1/27A dated 22.3.2002 issued by the 1st respondent to the applicant.
4. A-4: True copy of the representation dated 18.4.02 submitted by applicant to the 2nd respondent.
5. A-5: True copy of the letter No.B1/27A dated 4.6.2002 issued by the 1st respondent to applicant.
6. A-6: True extract of relevant rules governing the grant of advance or purchase of conveyances reproduced in chapter 54 of Swamys complete Manual on Establishment and Administration 3rd edition.

Respondents' Annexure:

1. R-1: True copy of letter NO.B1/27A dated at Kottayam-686001 dated 4.6.2002 issued by Sr. Supdt. of Post Offices, Kottayam Division, Kottayam-686001.

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