

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.490/98

Friday the 3rd day of April 1998.

CORAM

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR S.K. GHOSAL, ADMINISTRATIVE MEMBER

1. T.R.Santhosh Kumar
Sorting Assistant
Sub Record Office, Shornur.
2. P.T.George
Sorting Assistant
Sub Record Office
Cannanore.
3. K. Chandukutty
Sorting Assistant
Sub Record Office
Tellicherry
4. K.P.Rameshan
Sorting Assistant
Sub Record Office
Tellicherry
5. K. Rameshan
Sorting Assistant
Sub Record Office
Tellicherry
6. Subramanian Chully
Sorting Assistant
Sub Record Office
Tirur
7. Gracy Thomas
Sorting Assistant
Sub Record Office
Shornur
8. Johnson John
Sorting Assistant
Sub Record Office
Palghat.
9. M. Ravindrakumar
Sorting Assistant
Sub Record Office
Palghat.
10. P.B.Alikoya
-do-
11. V. Velayudhan
Sorting Assistant
Sub Record Office
Calicut.

12. N.M. Ramadasan
Sorting Assistant
Sub Record Office
Calicut.

13. A.M. Sajitha
-do-

14. V.G. Kesavan
-do-

15. N.K. Baburajan
-do-

16. M.T.Zavier
-do-

17. P. Vijayakumar
Railway Mail Service
Trivandrum Division

18. S. Ramachandran
-do-

19. C. Jayakumar
-do-

20. G. Vaidyanathan
-do-

21. P. Vasu
Sorting Assistant
Head Record Office
Calicut

...Applicants.

(By advocate Mr Siby J Monippally)

Versus

1. Post Master General
Northern Region
Calicut.
2. The Supdt., Railway Main Service
Calicut Division, Calicut
3. The Senior Superintendent, Railway Mail
Service, Trivandrum Division, Trivandrum. Respondents.
(By advocate Mr Thomas Mathew Nellimoottil)

The application having been heard on 3rd April, 1998 the Tribunal on the same day delivered the following:

A B D E R

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

Applicants commenced their service as Reserved Trained Pool (RTP for short) Sorting Assistants and were later regularly absorbed in service. They filed OA No.680/91

claiming productivity linked bonus for the period they served as RTP Sorting Assistants. Though the claim was resisted by the respondents, the Tribunal by it's order dated 5.8.91 allowed the claim and directed the respondents to disburse to the applicants the productivity linked bonus in terms of the directions contained in the order within a period of three months. In obedience to the directions of the Tribunal contained in the said order (Annexure A-1), payments were made to the applicants. However, the Union of India took up the matter before the Hon'ble Supreme Court in an SLP. The SLP filed alongwith many other cases was jointly disposed off by a combined order of the Supreme Court reported in AIR 1997 SC 3100, holding that the directions of the Tribunal granting bonus and other benefits were wholly unwarranted. Nothing was mentioned in the judgement of the Supreme Court as to whether payment if any made during the pendency of the SLP was to be recovered or not. After the judgement of the Supreme Court, the respondents issued notices to the applicants (Annexure A-2) calling upon them to refund the amount paid pursuant to the orders of the Tribunal or to state if they had anything to say against the proposed recovery. Though the applicants made representations, the respondents passed the impugned order dated 26.2.98 holding that the applicants are liable to refund the amount of productivity linked bonus paid to them and stating that the amount due from each of the applicants would be adjusted from the arrears due to them on account of the implementation of the Vth Pay Commission Report and if anything remained in instalments of not exceeding Rs. 100/- per month. Aggrieved by this order that the applicants have jointly filed this application for setting aside the impugned order at

Annexure A-4 and for a declaration that the respondents are not legally entitled to recover the money paid towards the productivity linked bonus.

2. In the application, the applicants have stated that the payment made to them was unconditional, that they expended it in the respective months itself and that being low paid employees, if they are asked to refund the amount, they would be put to great hardship.

3. We have heard the learned counsel for the applicants and the respondents and have carefully gone through the pleadings in the case and the facts and circumstances brought out in the annexures appended thereto.

4. The learned counsel for the applicant argued that recovery of overpayments made over a period of time would be highly inequitable and should not be permitted. He sought support from some rulings of the Apex Court. The first ruling referred to by the learned counsel is reported in 1995 (Suppl) 4 SCC 593 Administrator of Union Territory of Daman & Diu Vs. R.D. Valand. In that case, the Tribunal entertained the stale claim of the applicant for promotion without considering the question of limitation. The Supreme Court reversed the order of the Tribunal holding that the Tribunal did not consider the question of limitation and specifically ordered that in the facts and circumstances of the case, if any payment had been made as arrears consequent on the decision of the Tribunal, the same shall not be recovered.

The facts and circumstances of that case are not identical with the facts and circumstances of this case. In this case, the sole issue before the Tribunal in OA 680/91 was whether the applicants who were already regularised as Sorting Assistants were entitled to get the productivity linked bonus for the period they had worked as RTP Sorting Assistants. The Tribunal held that as RTP Sorting Assistants, they were entitled to the benefit of productivity linked bonus and directed the respondents to disburse to each of the applicants the arrears of productivity linked bonus found due.

5. In the SLP, the Supreme Court found that the decision of the Tribunal was wrong and the RTP Sorting Assistants were not entitled to the benefit of productivity linked bonus, if the Hon'ble Supreme Court felt that recovery of the amount which had already been paid to the applicants during the pendency of the SLP, in the circumstances of the case, would cause undue hardship to the applicants, as in the case under citation the Court would have stated that recovery should not be made. No such observation was made in the order.

6. The next ruling relied on by the applicant is State of Orissa Vs. Adit Charan Mohanty, reported in 1995 (Suppl) 1 SCC 470. In that case, the applicant claimed that he was entitled to continue in service upto the age of 60 years and challenged the action of the Government in retiring him at the age of 58 years. On the basis of an interim order of the Tribunal, the applicant was allowed to continue

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in service. Though the Hon'ble Supreme Court reversed the orders of the Tribunal, it was observed that no recovery should be made of the money paid to the applicant as pay and allowances for the period he worked on the basis of the interim order of the Tribunal beyond 58 years of age. This also does not advance the cause of the applicant because the payment made to the applicant in that case was in consideration for the service rendered though he had no right to continue till the age of 60 years. Learned counsel for the applicant has also referred to the ruling of the Hon'ble Supreme Court in Shyam Babu Varma Vs. UOI reported in 1994 (2) SCC 521. In that case, over payments were made to government servants for a number of years without any fault on their part and after lapse of a long period, the amount was sought to be recovered. The Hon'ble Supreme Court held that it would be inequitable and unjust. In this case payment was made on the basis of the court order during the pendency of appeal. Thus the above ruling also does not fit in with the facts of the case on hand. Learned counsel for the applicant further relied on the ruling in UOI Vs. P.N. Menon 1994 (4) SCC 69 which related to the claim of a retired employee for family pension. The facts do not bear any comparison at all with the facts of this case. Reliance was also placed on a ruling of the Kerala High Court in Mohanan Vs. State of Kerala 1991 (2) KLT P.22. That was a case of recovery of arrears on account of wrong increments granted, after a lapse of long time. In all these cases, the facts and circumstances were totally different from the case on hand. In this case, the applicants claimed productivity linked bonus for the period they worked

as RTP Sorting Assistants on the basis of the order of the Tribunal probably to avoid action for contempt, payment was made implementing the order. Once the Supreme Court reversed the order, the payment received on the basis of the order of the Tribunal has to be refunded on the principle of restitution. Otherwise the order of the Supreme Court reversing the Tribunal's order would be rendered ineffective. No hardship at all would be caused to the applicants as they received the amount in a lumpsum and recovery is being made from arrears due to them and the balance if any in easy monthly instalments.

7. In the light of what is stated above, we do not find anything which needs further consideration. Therefore, we reject this application under Section 19 (3) of the Administrative Tribunals Act, 1985.

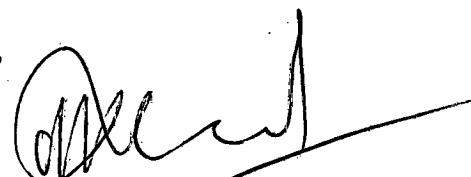
No order as to costs.

Dated the 3rd day of April 1998.

(S.K. GHOSAL)
ADMINISTRATIVE MEMBER

aa.

(A.V. HARIDASAN)
VICE CHAIRMAN



LIST OF ANNEXURES

1. Annexure A1: Judgment of the Hon'ble Central Administrative Tribunal, Ernakulam Bench in OA 680/91 dated 5.8.1991.
2. Annexure A2: Notice issued by the respondent No.2 to the applicants dated 9.12.97 (OS/OA.200 & 237/97)
3. Annexure A4: Order Memo O.S./RTP/Bonus dated 26.2.1998 of the Superintendent Railway Mail Service, Calicut Division, Calicut.

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