

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 490 of 2008

Thursday, this the 2nd day of April, 2009

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

M. V. Sreedharan,
S/o. Velu, (Retd. Supdt. RMS),
Residing at 1/307, Sreyas,
Kalpathy, Palakkad. Applicant.

(By Advocate Mr. U. Balagangadharan)

v e r s u s

1. The Director of Accounts (Postal),
Department of Posts,
Thiruvananthapuram.
2. The Chief Postmaster General,
Thiruvananthapuram.
3. The Postmaster General,
Northern Region, Calicut Respondents.

(By Advocate Mr. Subhash Syriac, ACGSC)

The Original Application having been heard on 26.03.09, this Tribunal on the same day delivered the following :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The issue in this O.A. is very short. The applicant, earlier working as Asst. Superintendent of Post Offices (RMS) at Shornur was drawing a basic of Rs 9,100/- in the scale of pay of Rs 6500 – 10500 (pre revised) and while so working in that capacity, he was promoted as Superintendent in the Railway



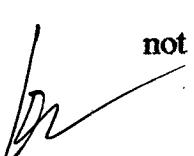
Mail Services in the pay scale of Rs 7500 – 13500, on provisional basis w.e.f. 01-05-2006, vide Annexure A-1. The said order administered a caution that the promotion is purely on temporary and ad hoc basis for a period not exceeding 180 days. During his service as Superintendent on ad hoc basis, the applicant proceeded on leave w.e.f. 18th December 2006 and returned to duty 28th June 2007. After sanctioning the leave for the above period, the respondents have also certified that but for his proceeding on leave, the applicant would have continued in the post of Superintendent of Post Offices (RMS), vide Annexure A-3. By Annexure A-2 order dated 29th June 2007, the applicant was permitted by the competent authority to join the old post (officiating Superintendent, Railway Mails, R.M.S.) The applicant continued in the said post and superannuated on 30th June 2007. According to the applicant, his pay during the month he superannuated ought to have been fixed in the pay scale of Rs 7,500 – 1300/-, annual increment granted, and pension and terminal benefits ought to have been worked out on the basis of the last ten months average pay, whereas, the respondents have, ignoring the fact that the applicant had functioned till the last day of his career as Superintendent Railway Mail Service in the scale of pay of Rs 7500 –13500/-, fixed all the terminal benefits on the basis of his pay drawn at RS 9100/-. The applicant has, therefore, claimed the following: -

- (a) Direct the first respondent to revise pension, Gratuity, Pension Commutation, Leave salary and such other other terminal benefits taking the basic pay of Rs. 9750/- in the pay scale of Rs. 7500-12000 at the time of retirement and grant arrears thereto with interest on the current rate.
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(b) Direct the first respondent to grant interest for one year the delayed payment of leave salary.

(c) Declare that the applicant is entitled to get his pension, gratuity, commutation of pension, leave salary and such other terminal benefits calculated and fixed taking into account his basic pay as Rs. 9750/- in the pay scale of Rs. 7500-12000 in the post of Supdt. RMS.

2. Respondents have contested the O.A. According to them, the applicant is certainly entitled to the higher pay for the period he had worked in the higher post on ad hoc basis and for leave period, he is entitled to the leave salary on the basis of last pay drawn. Accordingly, as he had worked in the higher post for the period from 01-05-2006 to 17-12-2006, his entitlement to higher pay is confirmed and the leave salary for the period from 18-12-2006 to 27-06-2007 is admissible on the basis of last pay drawn prior to proceeding on leave. However, during the period he was on leave, some other temporary arrangements were made and another individual was promoted on temporary basis, followed by appointment of a regular Superintendent. As regards the certificate issued, confirming that but for the leave, the applicant would have continued in the higher post, the same had been issued to meet certain audit objection and that for the period from 28th June 2007 to 30th June 2007, the applicant was only asked to perform the duties of Superintendent, but he was not promoted to the higher post during that period.



3. The applicant filed his rejoinder in which he had asserted that after the issue of the promotion order on the basis of which he functioned in the higher post from May 2006, there has been no order of reversion. Had there been any regular incumbent to the higher post, the applicant would have been asked to function as Sr. Postmaster for which vacancy existed.

4. Additional reply had also been filed by the respondents reiterating ~~the~~ their version contained in the counter.

5. Counsel for the applicant submitted that the rules on the subject are very clear –

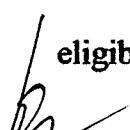
- (a) That a person on promotion to a higher post on ad hoc basis is entitled to pay and allowances attached to the higher post.
- (b) That when there is an ad hoc promotion, the tenure is as provided for in the said order and on reversion, the incumbent should be asked to perform the duties in the reverted post.
- (c) In case the applicant is asked to perform duties attached to the higher post, notwithstanding the absence of formal extension order, the fact remains that he has functioned in the higher post.
- (d) Certificate to the effect that had the individual not proceeded on leave, he would have continued in a particular post is not an empty formality or to meet only audit objection. Such a certificate is rendered taking into account the actual situation.
- (e) During leave, the individual is entitled to leave salary as per the last pay drawn.



(f) When the competent authority has directed the individual to function in a particular post, which is in continuation of the earlier order, the direction is a confirmation that the individual has not been reverted.

6. Counsel for the respondents reiterated the stand as contained in the counter.

7. Arguments were heard and documents perused. The fact that the applicant was promoted on ad hoc basis on the strength of which he started functioning in the higher post from 01-05-2006 has been confirmed by the respondents. Again, the fact that he had at no point of time formally reverted to the post of Sr. Postmaster had not been denied by the respondents. The certificate issued vide annexure A-3 reveals that it was the Postmaster General who had certified that the applicant would have continued to officiate in the higher post, had not proceeded on leave. As such, the competent authority had certified so. Further, after the expiry of leave, the applicant functioned in the higher post on the direction of 'the competent authority'. Thus, it can be safely stated that the applicant continued to be in the higher post right from 01-05-2006 until the date of his superannuation on 30th June 2007, and, of course, he was on leave for some time during the intermediate period, for which he was entitled to leave salary on the basis of the last pay drawn prior to his proceeding on leave. This situation readily enables him to earn increment in accordance with the provisions of F.R. during that period and also makes the applicant eligible to have the terminal benefits worked out on the basis of ten months'



average pay. The claim of the applicant is thus, fully justified and in denying the above, the applicant is seriously prejudiced as his vested rights have been hampered.

8. In view of the above, the O.A. is allowed. It is declared that the applicant is entitled to have his pay and allowances in the higher scale of pay attached to the Superintendent of Post Offices (RMS) from 01-05-2006 till the date of his superannuation and in addition, he is entitled to annual increment in accordance with law during the said period. He is also entitled to reckon his last 10 months average pay for working out the terminal benefits. Respondents are directed to work out the aforesaid entitlement of the applicant and pay the difference, within a period of four months from the date of communication of this order.

9. No costs.

(Dated, the 2nd April, 2009)



(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.