

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.508/94

Thursday, this the 25th day of August, 1994

CORAM:

HON'BLE MR S KASIPANDIAN, ADMINISTRATIVE MEMBER

S Savarimuthu,
Retired Postmaster,
F2/12 CPW Quarter,
K.K.Nagar
Madras-78.

- Applicant

By Advocate Mr PC Sebastian

Vs.

1. The Superintendent of Post Offices,
Idukki Division, Thodupuzha.

2. The Deputy Director,
Postal Accounts, Kerala Circle,
Thiruvananthapuram-695 010.

3. The Director General,
Department of Posts,
Dak Bhavan, New Delhi.

4. The Postmaster,
Theyagarajanagar.H.O.
Madras.

- Respondents

By Advocate Mr George Joseph, ACGSC

O_R_D_E_R

Applicant while working as Sub Post Master, Munnar, Kerala, retired from service on 30.6.1993 on superannuation. While in service he officiated in the Lower Selection Grade Postal Assistant for a period of 12 months in different spells during the period from 1.12.1980 to 14.11.1984 and for a further

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period of six months from 15.11.1983 to 30.4.1984. Taking into account the officiating service of the applicant in the L.S.G. his pay was fixed at Rs.440/- as on 9.7.1985 with the date of next increment on 1.2.1986 to the stage of Rs.445/-. Based on the recommendation of the IVth Central Pay Commission the pay scale of Rs.425-680 was revised as Rs.1400-2300 with effect from 1.1.1986. Applicant's pay was therefore revised and fixed at the stage of Rs.1480/- and he continued to draw the increments accordingly. After the lapse of about four years in 1989, the Audit party pointed out that the spell of officiating service during the period from 25.5.1982 to 19.6.1982 had not been taken into account while fixing the pay of the officer and therefore the applicant's pay of next increment should have been fixed as 1.1.1987 instead of 1.2.1986. This has resulted in over payment of pay to the applicant from 1.2.1986. On this, the respondents recovered this over payment to the extent of Rs.3,686/- from the applicant. Since the several representations made by the applicant against the recovery order were not responded to by the respondents, applicant approached this Tribunal in O.A.1643/91 and obtained a judgement, the operative portion of which is furnished below:

"5. The judgement in O.A.307/88 applies to the facts of this case and it is not necessary to go into the merits because of the admission in the reply statement that action in regard to the fixation of the applicant's pay will be taken in the light of the observations of this Tribunal in O.A.307/88.

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6. Accordingly, this application is disposed of with the direction to the respondents to pass orders re-fixing the pay of the applicant as on 1.1.1986 in the light of the observations in the judgement referred to above."

2. In pursuance of the judgement of this Tribunal, the third respondent issued the order at Annexure-A2 which is impugned in this case. Subsequently, through Annexure-A8 order dated 28.9.1993 the respondents ordered recovery of the balance amount from the applicant deducting whatever amount was already recovered as per their order at Annexure-A1. In the present application the applicant has challenged all the three orders at Annexure-A1, A2 and A8. Learned counsel for the applicant argued that since the recovery of the amount has been made without following the directions given by this Tribunal in O.A.1643/91, the respondents may be directed to refund Rs.3,686/- which has been recovered from the applicant with interest @12% from the date of recovery to the date of refund. He also cited the case of Shyam Babu Verma Vs. Union of India, (1994) 2 SCC, 521, in support of his contention that even if the pay had been erroneously fixed, it would not be recovered after a considerable lapse of time.

3. Learned counsel for respondents argued that the third respondent had followed the direction of the Tribunal given in the judgement in O.A.1643/91 and as such there is compliance of the judgement. He pointed out that in Annexure-A2 order, the third respondent has mentioned as follows:

"CAT, Ernakulam Bench in their judgement dated 10.4.1992 has stated that it will be proper to give an opportunity to the third respondent i.e. Department of Posts to pass appropriate order taking into consideration the observations in the judgement in O.A.1014/91 filed by Shri KK Dharmajan while disposing the representation of the petitioner and CAT directed disposal of the representation of Shri Savarimuthu in accordance with law, within a period of one month from the date of judgement."

4. After hearing the learned counsel on both sides, it is felt that though the third respondent has referred to the judgement of this Tribunal in Annexure-A2 order passed by him the spirit of the judgement has obviously not been followed by the third respondent since he has not taken any pains to explain in what way the case of the applicant differs from the precedent cases quoted in the judgement, namely, O.A.-1014/91 and O.A.307/88. Even in the reply filed by the respondents, there is simply an assertion in para-8 of the reply statement that: "...with regard to the contentions raised in ground No.(b) of the O.A. it is submitted that orders issued in O.A.307/88 and 1014/91 are not applicable in this case."

It is nowhere discussed by the respondents why and how the judgements delivered by the Tribunal in the aforesaid cases are not applicable to applicant's case. Learned counsel for respondents has also no answer to the precedent quoted by the learned counsel for applicant in the case of Shyam Babu Verma V. Union of India cited by him. For the reasons abovementioned, I hold that the orders at Annexures-A1, A2 and A8 cannot be sustained and they are therefore hereby quashed. Respondents are directed to arrange repayment of the amount of Rs.3,686/- recovered from the applicant along with interest due thereon within a period of four months from the date of receipt of the judgement.

5. The application is allowed as above. No costs.
Dated, the 25th August, 1994.

S. Kasi Pandian
25-8-94
(S KASIPANDIAN)
ADMINISTRATIVE MEMBER

List of Annexures

1. Annexure-A1 : True copy of Lr.No.E.19-2-1/91-92 dt.11.10.91 sent by 1st respondent
2. Annexure-A2 : True copy of Lr.No.2-49/92-PAP dt.29.8.93 sent by 3rd respondent
3. Annexure-A3 : True copy of Lr.No.3300/DGR&G-450/Pen-5/C299/91-92 dt.28.9.1993 sent by 2nd respondent.