

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 536 199 2.

DATE OF DECISION 14.12.92

P.K. Mohanan Applicant (s)

Mr. P. Sivan Pillai Advocate for the Applicant (s)

Versus

Union of India through the Respondent (s)  
Secretary, M/o Agriculture, Deptt. of Agriculture,  
New Delhi and another

Mr. K.A. Cherian Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P. Mukerji, Vice Chairman

The Hon'ble Mr. N. Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *M*
3. Whether their Lordships wish to see the fair copy of the Judgement? *M*
4. To be circulated to all Benches of the Tribunal? *M*

## JUDGEMENT

Mr. S.P. Mukerji, Vice Chairman

The facts of this application lie within a narrow compass and can be narrated as follows. The applicant while working as UDC was promoted as Accountant on an adhoc basis in the pay scale of Rs. 1640-2900 w.e.f. 20.4.91 (Annexure A-1) as he did pass Cash and Accounts training examination and thus qualified himself for the post. He was appointed on an adhoc basis because in accordance with the Recruitment Rules, the post of Accountant can be filled only by transfer on deputation. Since he belongs to the same department, the question of his being on transfer on deputation to the post of Accountant did not arise. In accordance with the instructions of the Department of Personnel, Annexure R-2(b) and (c), adhoc appointments are to be discouraged. In the

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face of these instructions as also the provisions of the Recruitment Rules, the respondents found it difficult to continue the applicant any further as Accountant. Since there was no other eligible person to hold the post, the respondents took recourse to the devious method of downgrading the post of Accountant in the scale of Rs. 1640-2900 which was being allowed to the applicant, to that of Head Clerk in the pay scale of Rs. 1400-2300 w.e.f. 1.4.92 vide Annexure A-4 and concurrently reverting the applicant as also one more person from the post of Accountant in the pay scale of Rs. 1640-2900 to that of UDC vide Annexure A-5. The applicant was re-promoted on the same day to the post of Head Clerk which was the post downgraded vide Annexure A-4 from the post of Accountant. The applicant however, was even on promotion as Head Clerk <sup>held the post</sup> on an adhoc basis. The applicant's main contention is that even though his designation had been changed as Head Clerk, for all intents and purposes, he has been discharging his erstwhile duties of Accountant on a hundred percent basis as before. He has claimed that so long as he is required to do the work of an Accountant, he should be paid in the pay scale of Accountant which he was getting till 1.4.92.

2. We have heard learned counsel for both parties and gone through the documents carefully. The learned counsel for respondents Shri K.A. Cherian, ACGSC indicated that due to ban on adhoc appointments, the applicant could not be continued on an adhoc basis as Accountant and it is for helping him that the post was downgraded as Head Clerk and the applicant allowed to draw the pay scale of Head Clerk. He has not seriously rebutted the claim of the applicant that in the downgraded post of Head Clerk he still continues to discharge the duties of the Accountant which he was doing

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earlier. The learned counsel for the respondents further stated that the Recruitment Rules have been proposed to be amended to benefit the applicant so that he can be regularly appointed as Accountant though <sup>he</sup> belongs to the same Department.

3. It is now established law that persons doing the duties of a post with the same quality as of regular appointee has to be paid the pay of the post. In the case before us, the principle of equal pay for equal work is transparently applicable. The applicant has been discharging the duties of Accountant before and after 1.4.92 though designated as Head Clerk after 1.4.92. It is not the case of the respondents that while discharging the normal duties of Head Clerk, the applicant is also made in charge of the Accountant's work. There has not been any qualitative or quantitative change in his duties as Accountant which he was doing before 1.4.92 and after 1.4.92. It is correct that the respondents have sovereign right to downgrade the post but the question is whether that right has been exercised to extract the work of a higher post while paying the incumbent the pay of the lower post. Such an action cannot be sustained as it is tantamount to <sup>exploitation by</sup> violating the principle of equal pay for equal work and cannot be held to be in public interest. The argument of the learned counsel for respondents that in order to avoid further continuance of the applicant on adhoc basis the impugned order had to be passed is also not very convincing because even as Head Clerk in the downgraded post, the applicant is still being continued only on an adhoc basis.

4. The learned counsel for respondents' contention that the applicant cannot be allowed to continue in the post of Accountant in view of the Recruitment Rules is also not convincing because the respondents are allowing the applicant to continue as Accountant not on a regular basis but on adhoc basis. In case the applicant is not eligible

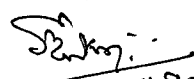
to be appointed to the post, the best course open to them is not to appoint<sup>ment</sup> him to the post but so long as the duties of the Accountant are being extracted from him, the principle of equal pay for equal work shall apply. Even adhoc appoint<sup>ment</sup> in accordance with established law are entitled to the benefit of principle of equal pay for equal work.

5. In the impugned order at Annexure A-4, reference has been made to Rule 11 of D.F.P.Rs. under which orders have been passed. We have perused the rules and it is clear to us that the Rule has been framed for the purpose of creation of posts and not for depriving the applicant of what is legitimately due to him. As we have stated earlier, the downgrading of the post which in this case has been done under Rule 11 of the D.F.P.Rs. does not appear to have been done <sup>so much</sup> in the public interest as to deny the pay<sup>scale</sup> of the Accountant while taking from him the duties of Accountant.

6. In the conspectus of the facts and circumstances, we allow the application and set aside the impugned orders at Annexures A-4 <sup>and A-5</sup>, so far as the applicant is concerned and direct that so long as the applicant discharges the duties of Accountant as he has been doing till 31.3.92, he should be continued to be paid the pay in the prescribed scale of Rs. 1640-2900. It is immaterial whether he is working on an adhoc basis or not. We make it clear that this will not prevent the respondents from amending the Recruitment Rules <sup>or downgrading</sup> and ~~deleting~~ the applicant's post in the pay scale appropriately in accordance with law if they are so advised.

7. The application is allowed. There shall be no order as to costs.

  
(N. Dharmadan)  
Judicial Member

  
(S. P. Mukerji)  
Vice Chairman

14.12.92