

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.555 of 1998.

Thursday this the 14th day of December, 2000.

CORAM:

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

1. All India Postal Extra Departmental Employees Union, Kerala Circle, P&T House, Thiruvananthapuram-695 001 Represented by its Circle Treasurer, Shri K Divakaran Nair, Extra Departmental Mail Man, Head Record Office, Trivandrum Division, Trivandrum.
2. S.Ashok Kumar, Officiating as Post Man, Trivandrum General Post Office, Trivandrum. - Applicants

By Advocate Mr TC Govindaswamy

Vs

1. Union of India represented by the Secretary to the Government of India, Ministry of Communications, (Department of Posts), Dak Bhavan, Sansad Marg, New Delhi.
2. The Director General of Posts, Ministry of Communications, Department of Posts, New Delhi.
3. The Chief Post Master General, Kerala Circle, Trivandrum-33. - Respondents

By Advocate Mr MR Suresh, ACGSC

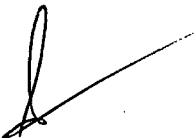
The application having been heard on 14.12.2000, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

Applicants seek to declare that A-1 to the extent it applies to them is arbitrary, discriminatory and unconstitutional, that the proposed action of the respondents to reduce and grant the applicants the scale of pay of the post against which they officiate, only based on 4th Pay Commission's scale of pay on and with effect from April 1998 is arbitrary, discriminatory and contrary to law, that the applicants who are Extra Departmental Agents officiating against Group 'C'/'D' posts are entitled to the scale of pay of the post against which they officiate based on the recommendations of the Fifth Pay Commission and to direct the respondents to grant them arrears of pay being the difference between the Fifth Pay Commission Scales of pay of the post against which the applicants were officiating and the pay granted to them based on the IVth Pay Commissions Scales of pay while officiating in the higher post from 1.1.96 to 31.10.97 or to such other date from which they were being granted the pay at the rates as recommended by the Vth Pay Commission.

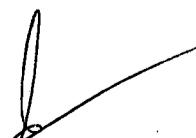
2. The first applicant is the All India Postal Extra Departmental Employees' Union represented by its Circle Treasurer who is also an Extra Departmental Agent(ED Agent for short). The 2nd applicant is officiating as Postman. Applicants were paid at the rate as recommended by the Fifth Pay Commission and accepted by the Government on and with effect from 1.11.97. As per A-1 the Chief Postmaster General Kerala Circle has addressed to the Post Masters General indicating inter alia that the casual labourers are not entitled to wages at the rate as recommended by the 5th Pay



Commission. They are informed that on and with effect from the salary for the period ending 31.3.98 on the strength of A-1 they would not be paid the scale of pay as recommended by the Fifth Pay Commission. They are entitled to arrears of pay for period from 1.1.96 based on the scale of pay as recommended by the Fifth Pay Commission for the post against which they have been officiating.

3. Respondents say that as per the Director General Posts letter No.14/8/85-PAP dated 15.6.87 a particular formula was prescribed for the purpose of calculation of daily wages, that it was excluding HRA and CCA and that subsequently, as per letter of the Directorate letter 14/8/85-PAP dated 17.12.1987 it was clarified that HRA and CCA would also be taken into account for calculation of wages to the substitutes. Even though orders were issued in the month of October 1997 for implementing the revised pay scale as per Vth Pay Commission's recommendations retrospectively w.e.f. 1.1.96 in the case of regular departmental officials , payment to such substitutes and casual labourers etc. in the department could not be made straight away based on the minimum of the relevant revised and separate orders from Directorate were required for this. The 3rd respondent was waiting for the orders in this regard from the 2nd respondent.

4. A-1 the impugned order says that the revised Gr.D pay scales are not applicable to casual labourers /part time casual labourers/substitutes, that the Directorate is considering the payment of the revised wages to these categories of casual mazdoors and substitutes based on the revised Group'D' pay scales and the required orders in this behalf is anticipated shortly, that before receipt of specific orders in this connection, payment of wages calculated at the



rate of revised Group 'D' pay scale is irregular, that the Chief Post Master General has ordered to issue suitable instructions to all concerned not to effect payment of wages based on the revised Gr.D pay scale to casual labourers/part time casual labourers etc. till receipt of the required orders from the Directorate.

5. The stand of the respondents is that the applicants are working as substitutes. A-1 order covers substitutes also.

6. The defence of the respondents is based on Annexure R-6. R-6 is the O.M. issued by the Ministry of Communications dated 17.7.1998. It says that it has been decided that notwithstanding that the CCS(Revised pay) Rules, 1997 do not apply to unapproved candidates working as paid substitutes in the short-term vacancies of Postmen, Mailguards and Group 'D', the remuneration of the aforesaid unapproved candidates working as paid substitutes in short-term vacancies may be calculated on the basis of the minimum of the revised scales of pay of the post concerned (Postmen, Mailguard & Group 'D', as the case may be) as shown in the CCS (Revised pay) Rules, 1997 plus admissible Dearness Allowances thereon only excluding House Rent Allowance & CCA.

7. It is the admitted case of the respondents that as per the letter of the Directorate dated 17.12.1987 it was clarified that HRA and CCA would also be taken into account for calculation of wages to the substitutes. So, the position is that, prior to the said letter emoluments were taken into account excluding HRA and CCA. By virtue of R-6, the position that was prevailing prior to the letter dated 17.12.87 is restored.



8. What is the position prior to the letter dated 17.12.97 is borne out by Annexure R-5. R-5 is issued by the Department of Posts New Delhi dated 15.6.87. It says that unapproved candidates engaged in short term vacancies, are to be paid at the daily rate taking the total emoluments based on the minimum of the scale (excluding HRA and CCA) multiplied by the number of actual working days and divided by the number of days in the month. So the effect is that R-5 is holding the field now. Then the question is how R-5 is to be understood. The respondents would say that the R-5 is to be understood with reference to the minimum scale as per the recommendations of the Fourth Pay Commission. On a careful reading of R-5, we are unable to accept this view. What is stated therein is "the emoluments based on the minimum of the scale". It does not say that "the scale as prescribed by the Fourth Pay Commission". "The scale" is to be read and understood as the prevailing scale and not confining to the Fourth Pay Commission's recommendation or any earlier period. The minimum of the scale is to be understood as the minimum of the scale prevailing.

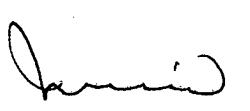
9. We do not find any reason to enter into a narrow interpretation to R-5 to understand the minimum scale mentioned therein as the minimum of the scale, as prescribed or granted as per recommendations of the Fourth Pay Commission. Such an interpretation according to us is totally unwarranted.

10. A-1 is based on the interpretation that the minimum of the scale stated in R-5 is to be read and understood with reference to the minimum of the scale of pay as per the recommendation of the 4th Pay Commission.

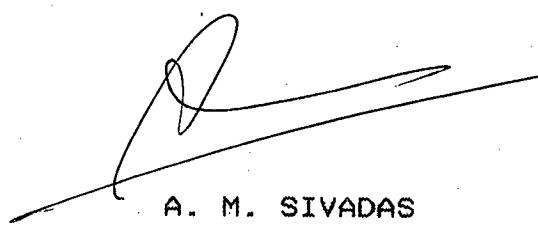


11. Accordingly, the O.A. is allowed declaring that A-1 is not sustainable to the extent it relates to the applicants that the proposed action of the respondents to reduce and grant the applicants the scale of pay of the post against which they officiate, only based on 4th Pay Commission's scale of pay on and with effect from April, 1998 is contrary to law and that applicants ED Agents officiating against Group 'C'/Group'D' posts are entitled to the scale of pay of the post against which they officiate based on the orders passed by the Government on the basis of the recommendations of the 5th Pay Commission and also directing the respondents to grant the applicants arrears of pay being the difference between the 5th Pay Commission's Scales of pay of the post against which they were officiating and the pay granted to the applicants based on the Fourth Pay Commission's Scales of pay by officiating in the higher post from 1.1.1996 or the actual date subsequent to that they started officiating in the higher post. This exercise shall be done by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.

Dated the 14th December 2000.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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A. M. SIVADAS
JUDICIAL MEMBER

LIST OF ANNEXURES REFERRED TO IN THE ORDER:

1. A-1: True copy of the order No.A&P/110-CS/Allce/92 dated 11.3.98 from the 3rd respondent.
2. R-5: True copy of letr. No.14/8/85-PAP dated 15.6.87 issued by Directorate, Department of Posts, New Delhi.
3. R-6: True copy of Memorandum No.1-3/97-PAP dated 17.7.98 issued by the Department of Posts, New Delhi.