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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.558/04

Thursday this the 17th day of March 2005

C O R A M :

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

P.N.Sankaran Kutty Nair,
S/o.Narayanan Nair,
Assistant Director of Postal Services,
O/o.the Postmaster General,
Central Region, Kochi – 682 018.
Residing at Preetha Bhavan,
Ettumanoor P.O., Kottayam.

..Applicant

(By Advocate Mr.P.C.Sebastian)

Versus

1. The Director General,
Department of Posts,
Dak Bhavan, New Delhi.
 2. The Director of Postal Services,
Central Region, Kochi – 682 018.
 3. The Postmaster General,
Central Region, Kochi – 682 018.
 4. The Director of Accounts (Postal),
Nagpur – 4400.
 5. Union of India represented by Secretary,
Ministry of Communications,
Department of Posts, New Delhi.
- ..Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

This application having been heard on 17th March 2005 the Tribunal on the same day delivered the following :-

ORDER

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

While the applicant was working as Assistant Superintendent of Post offices (ASPOs for short), Idukki Division in scale of Rs.1640-2900/- drawing a pay of Rs.2360/-, he was by order dated 22.12.1995 promoted

on adhoc basis as Higher Selection Grade I (HSG – I for short) in the pre-revised scale of pay of Rs.2000-3200/- Pursuant to the said order (Annexure A-3) the applicant took over as HSG I on 1.2.1996 and his pay on promotion in the scale of Rs.2000-3200/- was fixed at Rs.2450/- giving the benefit of fixation under FR 22 (I) (a) (i). He was later promoted to Group B and was allotted to Maharashtra Circle and posted as Deputy Superintendent, Mumbai West Division, where he joined duty on 21.4.1997 and his pay was fixed invoking the provision of FR 22 (I) (a) (i). While so on implementation of the report of the Vth Central Pay Commission by notification dated 30.9.1997 the pay scales of the post of ASPOs as also HSG I was brought into one i.e. Rs.6500-200-10500 with effect from 1.1.1996. While revising the pay of the applicant with effect from 1.1.1996 and disbursement of arrears the Postmaster Mahim Head Post Office, who was applicant's drawing and disbursing officer, did not take into account the fixation granted to the applicant under FR 22 (I) (a) (i) at the time of his promotion ASPOs to HSG I on the plea that the said fixation became void in view of the fact that the pay scales of ASPOs and HSG I became identical with effect from 1.1.1996. However the benefit was given to the applicant on his representation to the Chief Postmaster General, Maharashtra. The applicant's pay was accordingly revised with effect from 1.2.1996 and fixed at Rs.7700/- in HSG I and his pay in Group B was accordingly revised. Subsequently in connection with the claim for stepping up of pay of another Group B officer Shri.A.A.Nair the Director of Postal Accounts (4th respondent) opined that fixation of pay of the applicant on 1.2.1996 applying FR 22 (I) (a) (i) was not in order and his pay was required to be refixed and recovery was to be made of overpayment. Annexure A-5 is the letter of the 4th respondent. Coming to know of Annexure A-5 the applicant submitted Annexure A-6 representation stating

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that there was no occasion to reopen the fixation of the applicant's pay because it was done in accordance with rules then in existence. However the applicant was served with Annexure A-10 notice dated 4.6.2004 stating that the fixation of pay under FR 22 (I) (a) (i) with effect from 1.2.1996 was wrongly made as pay scale for the post of ASPOs and HSG I became identical with effect from that date and that a sum of Rs.12025/- being overpayment was required to be recovered from his pay and allowances in 11 equal installments of Rs.1000/- and one installments of Rs.1025/- from June 2004 onwards. The applicant submitted Annexure A-11 representation stating that the recovery be kept in abeyance. Ultimately Annexure A-1 and Annexure A-2 orders have been issued rejecting his contention and stating that the recovery proposed has got to be made.

2. Aggrieved the applicant has filed this application seeking to set aside Annexure A-1, Annexure A-2 and Annexure A-5 orders, declaring that the refixation of applicant's pay pursuant to Annexure A-5 and thereby withdrawing the benefits of pay fixation granted to the applicant under FR 22 (I) (a) (i) at the time of his promotion to HSG I in the year 1996 and to Group B in the year 1997 is unjust and illegal and for a direction to the respondents not to recover any amount from the pay and allowances of the applicant.

3. The respondents in their reply statement seek to justify the impugned action on the ground that since the pay scale of ASPOs and HSG I have become one with effect from 1.1.1996 on account of the implementation of the report of Vth Central Pay Commission fixation of pay invoking FR 22 (I) (a) (i) made on 1.2.1996 is erroneous in view of the clarification contained in letter of Directorate dated 22.4.1999 produced as Annexure R-4.

4. I have carefully gone through the materials on record and have heard the learned counsel on either side. The question that arises for consideration is on account of the common pay scales for ASPOs and HSG I introduced with effect from 1.1.1996 by notification dated 30.9.1997 whether the fixation of pay made on promotion from the post of ASPOs to HSG I invoking of FR 22 (I) (a) (i) prior to 30.9.1997 became erroneous requiring refixation.

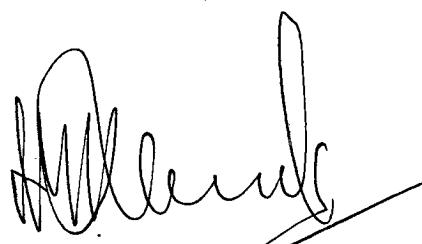
5. It is an undisputed fact that at the time when the applicant was promoted from the post of ASPOs to HSG I, the HSG I was a higher post with a higher pay scale and with higher degrees of responsibility than the post of ASPOs. The applicant when he was promoted by order dated 22.12.1995 as also when he took over as HSG I with effect from 1.2.1996 has really moved from a post carrying a lower pay scale to a post carrying a higher pay scale and had taken up a post which involved higher duties and responsibilities than the post of ASPOs. The fixation of pay under FR 22 (I) (a) (i) with effect from 1.2.1996 therefore was perfectly in order and justified by Rules. The promotion of the applicant from HSG I to Postal Services Group B also involved movement from lower pay scale to higher pay scale and from lower responsibilities to higher responsibilities and fixation of pay under FR 22 (I) (a) (i) at that stage was in order. Just because the pay scale of HSG I and ASPOs happened to be merged into one with effect from 1.1.1996 by an order subsequently issued i.e. 30.9.1997 it cannot be held that the fixation of pay made as on 1.2.1996 invoking FR 22 (I) (a) (i) was either wrong or against rules. The clarification contained in letter dated 22.4.1999 of the Directorate stating that the fixation of pay on promotion to HSG I from ASPOs was to be

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regulated not under FR 22 (I) (a) (i) was only prospective in operation and cannot be treated retrospective. It is pertinent to note that in Government of India, Ministry of Communications, Department of Posts letter dated 26th June 2001 (Annexure A-9) what is stated in paragraph 2 was that the posting from ASPOs/ASRMs against HSG I posts should be by "Transfer" and not by "Appointment" or "Promotion" "henceforth". This also makes it clear that the intention was not to make the posting as by transfer prospectively.

6. In the result, I am of the considered view that the action taken in this case to reopen the case of fixation of pay of the applicant with effect from 1.2.1996 and thereafter was not warranted by any rules and is ill-advised. In the result, in the light of what is stated above the application is allowed. The impugned orders are set aside with consequential benefits. No order as to costs.

(Dated the 17th day of March 2005)



A.V.HARIDASAN
VICE CHAIRMAN

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