

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.580/2009

Thursday this, the *4th* day of November, 2010

CORAM:

HON'BLE MR.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE MR.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

P.Vijayakumaran Nair, Aged 60 years,
S/o Parameswaran Nair,
Retired A.S.P.(vig),
O/o The Postmaster General, Kochi,
Residing at Pranavam House, Palliamattom Compound,
Thalayolaparambu P.O.,
Pin-686 605.
.. Applicant

By Advocate: Shri P.C.Sebastian

vs.

1. The Union of India, Represented by its Secretary,
Ministry of Communications,
Department of Posts, New Delhi.
 2. The Director General, Posts,
Department of Posts, Dak Bhavan,
New Delhi.
 3. The Postmaster General, Central Region,
Kochi-682 018.
 4. The Director Accounts (Postal),
Kerala Circle, Thiruvananthapuram.
- .. Respondents

By Advocate: Mr.C.M.Nazar, ACGSC

The Application having been heard on 29.10.2010, the Tribunal on delivered the following:

ORDER

HON'BLE MR.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

The applicant a retired Postal employee has filed this Original Application, aggrieved by the orders dated 28.08.08 and 11.11.2008 of the Accounts Officer of the Pension Section of the Department of Posts, Office of the Director of Accounts(Postal),Kerala Circle, Trivandrum. The applicant prayed that the said orders may be quashed and the amount ordered to be



recovered from him, i.e, an amount of Rs.58140/- shall be returned to him with interest. The facts which are relevant for a decision of the Application are as follows.

2. While the applicant was working as Postal Assistant with TOBP, the applicant appeared for a Departmental competitive examination for promotion to the cadre of Inspector of Post Offices and he was promoted as Inspector of Post Offices on 2.5.1988. On the promotion to the cadre of Inspector which carried higher responsibilities the pay of the applicant was refixed as per FR 22(C) (now amended as FR 22(1)(a)(1)). At the time of the applicant's promotion the applicant was getting a pay scale of Rs.1400-2300 which was subsequently revised to Rs.5500-9000 with effect from 1.1.1996. He was again promoted to the next higher cadre, namely as Assistant Superintendent of Post Offices with effect from 1.3.2001 and he retired from service on 31.10.2008. During his promotion period, the third respondent, namely the Post Master General, Central Region, Kochi issued a memo on 16.11.2004 informing the applicant that his pay on promotion to the cadre of Inspector was wrongly fixed under FR 22(C) since he was holding the post of LSG PA with identical pay scale with that of Inspector and therefore the applicant was not entitled to get the benefit of FR 22(C). Against the said memo the applicant has filed representations and finally a representation to the Director of Postal Services. As an answer to the representations, the applicant received a letter dated 28.8.2008 ordering the recovery of Rs.56,935/- from his salary by monthly instalments, a copy of which is produced as Annexure A7. Against Annexure A7 the applicant further represented for which the Accounts Officer (Pension) of the office of the Director of Accounts, Postal, Kerala Circle issued a letter dated 11.11.2008 ordering the recovery of the balance amount of



Rs.41,935/- from the DCRG amount of the applicant. A copy of which is produced in the O.A. as Annexure A9. Aggrieved by the above orders/letters, the applicant has filed the present O.A

3. The Application has been admitted by this Tribunal and the notice ordered. In pursuance to the receipt of the notice, a reply statement has been filed for and on behalf of the respondents. The stand taken in the reply statement is that though the applicant appeared in the Departmental examination for promotion to the cadre of Inspector of Post Offices and he was promoted to Inspector of Post Offices with effect from 2.5.1988, the further fixation of the pay of the applicant done by the Post Master, Head Office, Palai under FR 22(C) was an inflation of his pay by two increments in the pay scale of Rs.1400-2300 which was subsequently revised accordingly. It is the further case contained in the reply statement that though the applicant was promoted to the cadre of Inspector of Post Offices carrying identical pay scale of Rs.1400-2300 his pay fixed under FR 22(C) is irregular as it is pointed out by the internal check inspection party from the office of the 4th respondent in the year 2004. That is why the applicant was informed by the letter dated 15.7.2008 that the fixation of pay scale of the applicant under FR 22(C) was irregular and the payment made thereon has to be recovered. A copy of this letter has been also produced by the respondents as Annexure R4. The further stand taken in the reply statement is that as it is informed by the internal check inspection party that after the amendment brought to the Fundamental Rules in 1989, the pay of the applicant ought not have been continued which was fixed under FR 22(C). It is also of the case stated in the reply statement that as FR 22(C) has been taken away and introduced FR 22(1)a (i) restricting the refixation of any pay of an employee only on carrying the same job and only



because of the reason of promotion, the pay ought not have been fixed . It is further stated in paragraphs 5 and 6 of the reply statement as follows:-

"5. However, the recovery of the overpayments was kept in abeyance, on the request of the applicant, till receipt of the Directorate letter No.2-27/2008-PAP dated 26.6.2008 wherein the RO was advised to settle the case in the light of its order dated 31.5.1995. Copy of the Directorate letter dated 26.6.08 is produced herewith and marked as Annexure R-3. Consequently the overpayment from 2.5.1988 to 30.6.2008 was calculated as Rs.56,935/-. A sum of Rs.15,000/- was recovered from the pay and allowance of the applicant for the months from August, 2008 to October 2008 @ Rs.5,000/- per month, and the balance of Rs.41,935/- was recovered from the DCRG payment on his retirement from service on superannuation on 31.10.2008. The applicant has filed this Original Application for refund of Rs.58,140/-(i.e. the amount recovered from his with interest thereof).

6. It is submitted that the applicant passed the Departmental Examination for promotion to the cadre of Inspector(Posts) and was promoted as Inspector Posts (Sub Divisional Inspector) wef 2.5.2008 carrying the identical scale of pay 1400-2300. But by mistake, his pay was fixed under FR 22(C) (Now FR 22(1)a(i). Later the internal check inspection party from the office of the 4th respondent Director of Accounts(Postal), Kerala Circle, Thiruvanthapuram found out the same in the year 2004, and complying with the objection made by them in this regard, Annexure R1 memo was issued from the office of the 3rd respondent refixing his pay at Rs.1560/- w.e.f 2.5.1988 with Date of Next Increment as 1.4.1989 to the stage of Rs.1600 in the scale of pay of Rs.1400-2300. A copy of the same was also sent to the



applicant. However, the applicant submitted a representation with some points requesting that recovery may be stopped till a clarification from Postal Directorate is received on the points raised by him. Subsequently Directorate clarified vide Annexure R3 that the Annexure R1 memo is correct. Accordingly the applicant was informed of the fact by letter No.A&P/20-4/2004 dated 15.7.2008."

4. We have heard the learned counsel appearing for the applicant Mr.P.C.Sebastian and Mr. C.M.Nazar, ACGSC appearing for the respondents.
5. The learned counsel appearing for the applicant Mr. P.C.Sebastian contended that as per FR 22(C) stood at that time when the applicant was promoted as Inspector of Posts on the pay scale of Rs.1400-2300 his pay has been rightly fixed by the authorities as the Fundamental Rules permits for such a fixation of the pay on promotion. Even if FR 22(C) has been amended by inserting FR 22 (1)(a)(1) with effect from 1989, any pay fixed under the earlier rule could not be changed. Apart from that the pay of the applicant was fixed by the authorities on the basis of the Fundamental Rules stood at the time of his promotion. Even if any amendment was brought to FR 22(C) it is not applicable to the case of the applicant. Even if it is not permissible for such a pay fixation after 1989 on finding of the wrong fixation as evidenced from Annexure A4, cannot be taken as a ground to recover any amount from the applicant as the authorities have not given any ground for non-fixation of his pay under FR 22(C). The introduction of FR 22 (1)(a)(1) is only prospective and it has no retrospective effect and after 2.5.1988, the applicant's pay has not been refixed in the cadre of Inspector. Hence the finding of the internal check inspection party that the pay fixed by the authorities under FR 22(C) cannot be



approved as wrong as the pay fixation was on the basis of the rules stood on that day of his promotion. Apart from that the recovery ordered is after a lapse of several years, namely during 2004. The counsel further submits that as per the judgment of the Apex Court reported in *Aleyamma Varghese v. Secretary, General Education Department*; 2007(3) KLT 700(SC), the recovery from the pay on account of audit objection after long period of time is not proper. Further the learned counsel also brought to the notice of this Tribunal the latest judgment of the Apex Court reported in *Syed Abdul Qadir and Others v. State of Bihar and Others*; (2009)1 SCC (L&S) 744.

6. The above contentions of the learned counsel of the applicant has been answered by the learned counsel appearing for the respondents relying on the reply statement and further contended that as the applicant was promoted to the post of Inspector of Post Offices and his pay was fixed on 2.5.88 under FR 22(C) that pay fixation would not have been done in the light of the amendment brought to the Fundamental Rules on 1.4.1989. Since the provision of FR 22(C) has been amended on the basis of the report of the recommendation of the Administrative Committee, the same provision has to be applied to the applicant. The counsel further submits that as per the judgment of the Hon'ble High Court of Kerala reported in 2006(1)ATJ 321; *Shanthakumari P.J. vs. State of Kerala and Others*, the recovery of the excess payment on the basis of the wrong pay fixation done by the authorities, can be recovered. The counsel further submits that as per Annexure R4 the matter has been found by the internal audit party and the applicant was informed about the irregular fixation of his pay. Hence the recovery is justifiable.

7. On considering the contentions of the counsel appearing for the parties and the legal position argued before us, the question to be



considered is that whether Annexures A7 and A9 are justifiable or not and the applicant is entitled for any relief which he claimed. It is an admitted fact before us that the applicant appeared in the Departmental examination for promotion to the post of Inspector of Post Offices and he was promoted on passing such test on 2.5.1988. If a promotion is ordered by the Department in the existing cadre to the higher cadre, it is incumbent on the part of the authorities to fix the pay of the applicant in the promoted post. It is not denied before us that the applicant was promoted on 2.5.1988 and his pay was fixed as per FR 22(C) which stood at the relevant time of his promotion and it is also noted by us that the applicant was entitled for fixation of his pay on his promotion. Any subsequent change brought to the rule for fixation of the pay scale can be pressed into service of such cases which are applicable to the promotions effected after the introduction of the amended rules. It is also brought to our notice that after 2.5.1988 the pay scale of the applicant has not been refixed whereas his pay was fixed prior to the introduction of FR 22(1)(a)(1) and if so, as FR 22 (1)(a)(1) has no retrospective application, the pay fixed by the authorities cannot be considered as a wrong fixation but the continuous fixation of the pay under FR 22(C) may be wrong. That apart it is found that the re-fixation of the pay fixed prior to 1989, after a lapse of several years namely about 16 years, is not sustainable. Even if the pay fixed could be considered as wrong, the recovery ordered with this distance of time cannot be adjudged as permissible. In this context the judgment of the Apex Court in the case of Aleyamma Varghese (cited supra) the Apex Court categorically held that "a mistake apparent on the face of the record may be rectified, but in a matter of this nature, we would expect the State to react more magnanimously and not resort to recovery proceedings after a period of 17 years. We, therefore, in the peculiar facts and



circumstances of this case, are of the opinion that with a view to do complete justice to the parties, the amount sought to be recovered may not be recovered from the appellant and we direct accordingly". Further we have to note that in the judgment of the Apex Court in Syed Abdul Qadir(cited supra), the Apex Court considered the equity of recovery of any amount which was paid in excess on the result of a wrong interpretation of the rule that was applicable to the employees. The Apex Court while considering the application of FR 22 (1)(a)(1) and FR 22(C) held that the pay ought to have been fixed under the amended rule but "the excess that has been paid to the appellant teachers, was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. The Finance Department of the respondent State has admitted that it was a bona fide mistake. The excess payment made was a result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible"

8. In the light of the findings entered and the views expressed by us, we are of the view that the Original Application has to be allowed and we direct the respondents to refund the entire amount recovered from the applicant within two months from the date of receipt of a copy of this order. If the amount is not so paid within the stipulated time, the entire amount shall carry 6% interest till its refund. Ordered accordingly. There is no order as to costs.


(K. GEORGE JOSEPH)
MEMBER(A)


(JUSTICE K. THANKAPPAN)
MEMBER(J/