

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.64/2001

Friday this the 13th day of September, 2002.

CORAM

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

V.M.Mohammed Ibrahim
Higher Selection Grade-II(BCR)
Sorting Assistant
Head Recoord Office
Trivandrum.

Applicant.

(By advocate Mr.Thomas Mathew)

Versus

1. Senior Superintendent
R.M.S.TV Division,
Trivandrum - 695 033.
2. Director of Postal Services
(HQ), Trivandrum.
3. Chief Postmaster General
Kerala Circle
Trivandrum.
4. Director General
Department of Posts
New Delhi.
5. Union of India rep. by
its Secretary
Department of Posts
New Delhi.

Respondents.

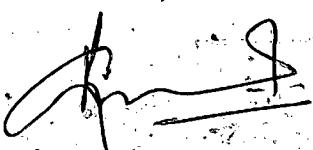
(By advocate Mr.T.C.Krishna,ACGSC)

The application having been heard on 13th September, 2002, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant aggrieved by A-5 order dated 22.12.2000 and A-3 memorandum dated 15.5.98 both issued by first respondent proposing to recover alleged excess pay and allowances disbursed to the applicant with effect from 30.11.1983 as a result of stepping up of the pay as per the order No.Vig/16-1-1-97 dated 10.2.98 and proposing torefix applicant's pay filed this Original Application seeking the following reliefs:



- (a) To call for the records leading to Annexure A3 and A5 and quash the same.
- (b) To declare that the applicant's pay fixed as per A-2 order is not liable to be reduced to his detriment and not to make any recovery from applicant's pay or pensionary benefits and direct the respondents accordingly.
- (c) To grant such other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
- (d) To grant the costs of this Original Application to the applicant.

2. Applicant submitted in the OA that he along with another approached this Tribunal through OA No.2114/93 praying for a declaration that their pay was liable to be stepped up to the level of pay drawn by one K.Sreedharan Nair, their junior, the 5th respondent therein. This Tribunal by A-1 order dated 7.12.93 disposed of the OA directing the 3rd respondent in the OA to consider applicant's representation at A-4 therein and to pass appropriate orders within three months thereof. 3rd respondent herein by A-2 memo dated 22.8.95 accorded sanction for stepping up of pay of the applicant to the stage of Rs.485/- with effect from 30.11.83 with date of next increment @ Rs.500/- on 1.9.84 (Pre-revised) on par with his junior. Subsequently by A-3 memo dated 15.5.98 first respondent intimated the applicant that it was proposed to refix applicant's pay and recover Rs.5333 paid to him as over payment as on 31.3.98. He was given an opportunity to make a representation against the said proposal within 10 days. Applicant submitted A-4 representation dated 28.5.98 to the first and second respondents for which he did not get any reply. Finally by A-5 order issued by the first respondent dated 22.12.2000 first respondent ordered to recover excess pay and allowances disbursed to the applicant with effect from 30.11.83 as a result of stepping up of the pay. Aggrieved, applicant

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filed this OA seeking the above reliefs. According to the applicant, the judgement of the Hon'ble Supreme Court in Civil Appeal No.8658/96 relied on in A-3 and A-5 had no application in his case as he was not party in the above civil appeal.

3. Respondents filed reply statement resisting the claim of the applicant. They admitted that applicant's pay had been stepped upto Rs.485 with effect from 30.11.83 on par with that of his junior who was drawing the same pay on account of his local officiation in the Lower Selection Grade (LSG) while working regularly in the Sorting Assistants Cadre. They submitted that A-2 was passed in compliance with A-1 order of this Tribunal. It was submitted that later the Hon'ble Supreme Court had considered the question in similar cases and held that the employees in question were not entitled to have their pay stepped up because the difference in the pay drawn by them and the higher pay drawn by their juniors was not as a result of any anomaly nor was it a result of the application of FR 22(I(a)(1). Relying on R1 judgement dated 12.9.97 and R2 circular dated 19.1.98 issued by the Directorate, they had proposed to refix applicant's pay and recover the amount of over payment already paid. They submitted that no A4 representation from the applicant was received by them. According to them, there was nothing wrong in refixing the applicant's pay and recovering the amount over paid from the applicant as the same was made irregularly.

4. Applicant filed rejoinder.



5. Heard learned counsel for the parties. Learned counsel for the applicant Mr.Thomas Mathew after taking us through the factual aspects contained in the OA submitted that the order of this Tribunal in OA 2114/93 had become final and pursuant to the said order dated 7.12.93 respondents had considered the applicant's representation and had decided to step up his pay on par with that of his junior. His case having reached its finality, respondents could go back from the same and arrange to recover the alleged over payment made to the applicant. He also cited the judgement of this Tribunal in OA 780/98 where second applicant in OA 2114/93 had approached this Tribunal against the proposed recovery and this Tribunal had allowed the OA by order dated 19.1.2001. He also cited the judgement of the Hon'ble Supreme Court in Authorized Officer (Land Reforms) Vs. M.M.Krishnamurthy Chetty (1998) 9 SCC 138 in support of his submissions.

6. Learned counsel for the respondents Shri T.C.Krishna took us through the factual aspects and submitted that as the Hon'ble Supreme Court in R.Swaminathan Vs. Union of India & Another in Civil Appeal No.8658/96 held that stepping up of pay in such cases were not permissible, the respondents were justified in recovering the over payment made. He also submitted that the order of this Tribunal in OA 780/98 would not be applicable in this case as the applicant therein was a retired employee and in consideration of his being a retired employee, this Tribunal had allowed the OA.



7. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have perused the documents brought on record.

8. From A-1 order of this Tribunal in OA 2114/93 dated 7th Dec. 1993, we find that this Tribunal did not adjudicate the dispute between the applicant and the respondents but had only directed the respondents to consider the representation of the applicant for stepping up of his pay on par with that of his junior. The respondents on their own considered the representation and issued A2 order. The said A2 order dated 10.10.95 reads as under:

"Department of Posts
Office of the Senior Superintendent, RMS 'TV' Division
Thiruvananthapuram-695003.

Copy of the Memo No.A&P/90-505/1/93 dated 22.8.95 of the Chief Postmaster General, Kerala Circle.

In supersession of this office sanction Memo. No.A&P/90-505/6/90 dated 4.3.94, sanction of the Chief PMG, Kerala Circle, Trivandrum is hereby accorded under FR 22 for stepping up of pay of Shri V.M.Mohammed Ibrahim, HSG-II Supervisor RRO Thiruvananthapuram, to the stage of Rs.485 w.e.f. 30.11.83 with DNI @ Rs.500 on 1.9.84 (pre-revised) if otherwise admissible on par with that of his junior Shri K.Sreedharan Nair, HSG II SA of the same Division.

This sanction is issued in compliance of the Court's Verdict in OA No.2114/93 dated 7.12.93 of the Hon'ble CAT, Ernakulam Bench.

This has concurrence of IFA vide his No.403/IFA/93-94 dated 18-2-94.

Sd/-
P.C.Baburaj
Director of Postal Service(HQ)

No.J/52-6/93 dated at Trivandrum-3, the 10/10/1995."



9. It is evident from a reading of the above order that it is unconditional and it was a decision of the sanctioning authority viz. the Chief PMG, Kerala Circle on the basis of the relevant rules as existing then. The above order did not indicate that it was based on an order of this Tribunal in some other OA where this Tribunal had laid down a law which had been taken up in appeal by the respondents which eventually culminated in the judgement contained in R1. Thus we find considerable force in the applicant's submission that A2 order had been issued by the respondents on the basis of the rules existing then and once the said order had been issued in pursuance to the order of this Tribunal in OA 2114/93, the same reached its finality, the order in OA 2114/93 having not been taken up at any higher forum by the respondents. This Tribunal in OA 780/98 filed by the second applicant in OA 2114/93, who also got the benefit of stepping up of pay and whose pay was also sought to be lowered and over payment sought to be recovered by the respondents, when approached this Tribunal, this Tribunal held as follows:

"3. On a careful consideration of the facts and circumstances contained in the pleadings and materials brought on record, we find that the applicant is bound to succeed. Though in the order in OA 2114/93 the Tribunal did not adjudicate and decide the entitlement of the applicant on the basis of the direction given in that judgement, the respondents themselves considered and gave the applicant benefit of stepping up in the year 1994 and 1995. The monetary benefits flowing therefrom was also made available to the applicant. The fact that the Hon'ble Supreme Court has in Civil Appeal Nos. 8658/96 and connected cases declared that in cases where juniors were getting higher pay on account of local officiation on higher posts, the seniors are not entitled to get their pay stepped up has not been disputed and is also borne out from the judgement, a copy of which is available at Annexure R1. A declaration of law by the Apex Court is binding on all courts under Article 141 of the Constitution, which means that when a similar case comes up for consideration, the courts and tribunals are bound to follow the dictum laid down. It does not mean that all cases which has become final or all matters which had been

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concluded prior to the decision of Apex Court have got to be reopened on the basis of the judgement. In the case of the applicant, who is a pensioner, the respondents themselves considered his representation and made available to him a sum of Rs.8727 and revised his pay as also the pension. Under provisions of Rule 70 of the Central Civil Services (Pension) Rules after the finalization of the pension unless for rectification of clerical error, the respondents cannot revise the pension to his detriment. There is no case for the respondents that in fixation of the pay and pension of the applicant, there has been any clerical error. Further, since the applicant is a pensioner, it is unduly harsh if an amount of Rs.8727 paid to him in the year 1995 by the respondents on their own decision is permitted to be recovered.

10. Learned counsel for the respondents, referring to the latter portion of the above paragraph submitted that this Tribunal only out of consideration that the applicant therein was a pensioner had not proposed to recover the over payment and allowed the OA. We do not find that this was ~~the~~ the only consideration from the first portion of the above para. Moreover the respondents had given stepping up of pay to the applicant not on the basis of any order of this Tribunal. They on their own had granted the benefit. Having granted the same, on the basis of subsequent judgement given by the Hon'ble Supreme Court, they cannot undo the decision taken by them. R-2 letter dated 19.1.98 issued by respondent Directorate in para 3 states as follows:

"3. You are also requested to refix the pay and work out the amount already paid to the applicants in cases of this nature decided by the CATs subject to outcome of this SLP. The amounts thus found to have been over paid should be recovered immediately and particulars thereof may be sent to this Dte."

11. We are of the considered view that the applicant's case does not fall in the type of cases referred to by the Directorate in the above paragraph because the applicant did not get the benefit on the basis of any adjudication done by this Tribunal.

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Applicant got the benefit on the basis of an order issued by the respondents on their own. In Authorized Officer (Land Reforms) Vs. M.M.Krishnamurthy Chetty, the Hon'ble Supreme Court held as follows:-

"2. According to the appellant once the judgement on the basis of which the High Court had directed to dispose of the dispute relating to the excess land had been reversed by this Court, the Authorized Officer was justified in following the judgement of this Court instead of the judgement of the High Court. It need not be pointed out that the order passed by the High Court attained finality as it was not challenged for the Supreme Court. The order passed by the High Court directing the Authorized Officer to examine the dispute in the light of the judgement of the High Court in the case of Naganatha Ayyar V. Authorised Officer became final although the judgement on which the grievance had to be examined itself was reversed later by this Court. We find no fault with the reasoning of the High Court. It is well settled that even orders which may not be strictly legal become final and are binding between the parties if they are not challenged before the superior courts. In the result the appeal fails and it is dismissed. No costs."

12. In the light of the foregoing, this OA succeeds. Accordingly, we quash and set aside A-3 memorandum dated 15.5.98 issued by the first respondent and A-5 order dated 22.12.2000 issued by the first respondent. We declare that the applicant's pay fixed as per A-2 order is not liable to be reduced to his detriment and the respondents are directed not to make any recovery from the applicant's pay or pensionary benefits.

13. The OA stands allowed as above. No order as to costs.

Dated 13.9.2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER

aa.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of order dated 7th December, 1993 passed by the Hon'ble Tribunal in O.A.No.2114/93
2. A-2: True copy of Memo No.A&P/90-505/1/93 dated 22.8.95 of the Chief Postmaster General, Kerala Circle.
3. A-3: True copy of Memo No.K-Disc/SLP/1/98 dated 15.5.98 issued by the 1st respondent.
4. A-4: True copy of applicant's representation dated 28.5.98.
5. A-5: True copy of order No.K-Disc/SLP-1/98 dated 22.12.2000 issued by the 1st respondent.

Respondents' Annexures:

1. R-1: True copy of judgement of Hon'ble Supreme Court in Civil Appeal No.8658/96 dated 12.9.97.
2. R-2: True copy of Directorate Circular No.2-36/94-PAP dated 19.1.98.

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