

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHORIGINAL APPLICATION NO. 84 of 2012CORAM*Today this the 13th day of November, 2015*

**Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member**

- 1 M.Sukumaran Nair, aged 55 years, S/o G.Madhavan Pillai
Head Sorting Assistant, Sub Record Office,
Railway Mail Service, TV Division,
Kottayam-686001.
Residing at Thundil House, Kizhavoor
Mukhathala PO, Kollam-691577.
- 2 S.Kanakaraj, aged 57 years
S/o P.Chempaka Perumal,
Sorting Assistant, Head Record Office,
Railway Mail Service, TV Division,
Thiruvananthapuram-1 residing at
Anu Bhavan, Ammakudi Villai, Kodamkulam,
Marthandam.
- 3 G.N.Mohan, aged 57 years
S/o Narayanan Nair, Sub Record Officer,
Railway Mail Service, TV Division,
Kottayam-1 residing at Thripathi, SSRA-13
Parassala, Thiruvananthapuram District.
- 4 E.N.Sugathan, aged 56 years
S/o M.Neelakandan Pillai,
Office Assistant, HRO Accounts,
Railway Mail Service, TV Division,
Thiruvananthapuram-1.
Residing at Rohini, TC No. 50/1678(1)
Kalady, Karamana PO, Thiruvananthapuram.

...Applicants

(By Advocate Mr. Vishnu S.Chempazhanthiyil)

Versus

1. The Senior Superintendent, RMS TV Division,
Thiruvananthapuram.1.

2. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.33.

3 Union of India, represented by the Director General &
Secretary, Department of Posts, Dak Bhavan,
New Delhi-1. ...Respondents

(By Advocate Mr.Thoams Mathew Nellimootil, Sr.Panel Central
Govt.Counsel)

This application having been finally heard on 06.11.2015, the
Tribunal on 13.11.2015 delivered the following

O R D E R

Per: Justice N.K.Balakrishnan, Judicial Member

The four applicants have filed this application to set aside Annexures A6 to A9 and for a direction to be given to the respondents not to effect any modification in Annexure A2. A further direction is sought to restrain the respondents from effecting any recoveries pursuant to the impugned orders.

2. The case of the applicants is stated in brief as follows.

The applicants are Postal Assistants/Office Assistant working under the Senior Superintendent of Post Offices, RMS, TV Division. They had undergone induction training for the period from 17.11.1975 to 16.2.1976 (so far as three applicants are concerned). The 4th applicant had undergone induction training from 1.9.1975 to 30.11.1975. Orders were issued by the Directorate of Posts in the year 2000 for counting period of induction training for the benefit of financial upgradation under TBOP/BCR Scheme. Thus taking into account the period of training the applicants were granted financial upgradation under BCR Scheme with



effect from 1.1.2002. But on 19.5.2011 the applicants were issued with the impugned notices intimating that the Director General had intimated that period of Induction Training before 1.1.1986 cannot be counted for placement in higher scheme. Accordingly the respondents proposes to modify the effect of financial upgradation granted to the applicants under BCR scheme from 1.1.2002 to 1.7.2002. Though representations were made, the respondents did not heed to the same but recovery of the amount from the pensionary benefits of the applicants has been ordered.

3. The respondents resisted the application contending as follows.

Action was taken by the respondents as per the instructions issued by the Postal Directorate; it was done not only with respect to the applicants but with respect to all other similarly placed persons also. It was an action bonafide taken throughout the circle based on the clarification issued by the Directorate. BCR Scheme was introduced by the department on 1.10.1991 according to which Postal Assistant/Sorting Assistant who had completed 26 years of service were to be placed in the higher scale of pay applicable to Higher Selection Grade II in order to avoid stagnation of pay. The BCR placements were given w.e.f. the 1st day of January or 1st day of July every year on completion of 26 years of service in the basic cadre of Postal Assistant or Sorting Assistant as the case may be. The period spent for training was not counted for determining the length of service. Since the induction training was had before 1.1.1986, the applicants are not entitled to get that period counted towards grant of increment. In view of the specific instructions dated 3.4.2010 issued by the



Directorate vide Annexure R1, there was no option for the respondents but to proceed with the issue of the impugned notice.

4. The points for consideration are (i) whether the period of induction training undergone by the applicants should be counted for completing the period of 26 years for getting the benefit of BCR Scheme (ii) whether the applicants are entitled to get the benefit of financial upgradation under BCR Scheme on actual completion of 26 years or from 1st January or 1st July, as the case may be and (iii) whether the order directing recovery of amounts from the applicants is sustainable in view of the decision of Hon'ble Supreme Court in **State of Punjab Vs. Rafique Masih (White Washer)** – (2015) 4 SCC 334.

5. We have heard the learned counsel appearing for both the parties and have gone through the annexures/documents produced by them.

6. It is pointed out by the learned counsel for the Respondents that though the applicants are contending that the period of induction training of three months should be counted for computing the period of 26 years for getting the benefit under the BCR Scheme, that is not sustainable in view of Annexure R1 order dated 3.4.2010 issued by the Ministry of Communications and IT, Department of Posts, New Delhi. The relevant portion of the order reads:

"(a) Induction training period in respect of departmental candidates is not counted for increment in the promoted scale but in the lower scale and therefore, there is no benefit to the departmental candidates from the orders dated 3.8.2000 and all such cases may strictly be processed accordingly; and

(b) Training period in respect of direct recruits would be counted for benefit towards TBOP/BCR only if such training period were counted for increment in that scale. As per DOPT's instructions, all induction training period completed prior to 1.1.1986 is not counted towards grant of increment. Therefore, such training period would also not count towards TBOP/BCR. "

7. Annexure A4(a) is the order dated 5.5.2004 issued by the Ministry of Communications and IT, Department of Posts, New Delhi on the subject; namely counting of the period of Induction Training for benefit of promotion under TBOP/BCR Scheme. It was clarified:

"that the training period in respect of direct recruits would be counted for benefit towards TBOP/BCR only if such training period were counted for increment in that scale. As per DOPT instructions, all induction training completed before 1.1.1986 is not counted towards grant of increment. Therefore, such training period would also not count towards TBOP/BCR. All cases may strictly be processed accordingly."

Therefore in the light of Annexure R1 order the applicants are not entitled to count the period of induction training for computing the length of service enabling them to claim the benefit of BCR Scheme.

8. It is submitted by the learned counsel for the respondents that Annexure R1 has not been challenged by the applicants; as such, so long as Annexure R1 is in force it cannot be contended that the period of induction training should be counted for getting the benefit of BCR scheme.

9. It is submitted by learned counsel for applicants that similar cases were dealt with by this Tribunal where it was held that the benefit of BCR Scheme would be allowable on actual completion of 26 years of service and it need not be rationalized day; ie., 1st January or 1st July, as the case may be, vide orders passed by this Tribunal in OA 1051/2010 and

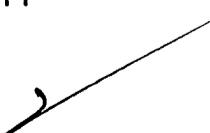


OA 1008/2011 dated 27.1.2012 Similar view was taken by the CAT Chandigarh Bench in OA 1143/PB/2013 dated 13.11.2014. As such we have no hesitation to hold that the applicants would be entitled to get the benefit under the BCR Scheme on actual completion of 26 years and not on the rationalized day ie., 1st January or 1st July, as the case may be.

10. It is submitted by the learned counsel for the applicant that pursuant to Annexure R1 order issued by the Directorate, the respondents are attempting to recover the amount from the applicants. Though the applicants cannot count the period of Induction training for computing the period of 26 years for getting the benefit of BCR Scheme, the order passed by the respondents that the benefit will be available only with effect from the rationalized date; is unsustainable. It is held that the applicants are entitled to get the benefit of BCR Scheme on the actual date of completion of 26 years and not on the rationalized date as mentioned above.

11. It is contended by the applicants that by Annexures A6 to A9 orders, the applicants would be liable to repay certain amount as there was postponement of the period of completion of 26 years for getting the BCR scheme benefit. But at the same time such recovery cannot be effected from the applicants as they are Group C employees, in the light of decision of the Hon'ble Supreme Court in White Washers case (supra). Therefore, the action initiated, if any, for recovery of the amount from the applicant is also found unsustainable as such to that extent also the applicants are entitled to succeed.

12. In the result the application is allowed in part declaring that the



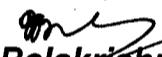
applicants are entitled to get the period of 26 years of service counted from the date of their actual service. It is also ordered that the "induction training period" shall not be counted for computing the total period of 26 years for getting the BCR Scheme benefit. Completion of "26 years period" would be on the actual date of completion of 26 years; and not on the rationalized day; ie., 1st of January or 1st of July as contended by the respondents.

13. The excess amount if any which were to be recovered from the applicants consequent to Annexures A6 to A9 shall not be recovered in the light of the decision of Apex Court in *White Washers's case* (supra). No order as to costs.



(P.Gopinath)
Administrative Member

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(N.K. Balakrishnan)
Judicial Member