

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.84/2005

Tuesday this the 6th day of September, 2005.

CORAM:

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

G.Pavithran, S/o late Sri. Govindan,
Retired Sr.Suptd. Of Post Offices, Thrissur,
Residing at Solemn House,
Palayamkundu P.O., Pin.-695 146. Applicant

(By Advocate Shri P.C.Sebastian)

Vs.

The Director of Accounts (Postal)
Kerala Circle, Thiruvananthapuram.

The Chief Postmaster general,
Kerala circle, Thiruvananthapuram.

The Director General,
Department of Posts,
Dak Bhavan, New Delhi. Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC)

The application having been heard on 6.9.2005,
the Tribunal on the same day delivered the following:

ORDER (Oral)

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant was retired from service (under voluntary retirement scheme) on 1.3.2004 after having completed more than 33 years of service and one month ahead of his superannuation. His request for voluntary retirement was accepted vide order dated 26.2.2004. Annexure A-4 letter was issued by the 1st respondent authorizing to pay a sum of Rs.2,29,808/- being balance of DCRG due to the applicant after withholding a sum of Rs.45,000/- without assigning any reason against his entitlement to get a sum of Rs. 2,82,034/- being DCRG under Rule 50

(1)(b) of Pension Rules. Finally the Ist respondent issued letter dated 17.1.05 (A-7) authorizing pension, DCRG and commutation value to be paid to the applicant as per A-6 to A-8 and the applicant has not been sanctioned his due entitlements under the rules and has ordered to recover a sum of Rs.31,784/- from his DCRG. Counsel states that, the attempt on the part of the respondents to recover the huge amount against DCRG without any rhyme or reason is arbitrary, illegal and violative of principles of natural justice. Aggrieved by the reduction of pay and the consequential benefits, the applicant has filed this O.A. seeking the following main reliefs:

- i) To call for the records leading to Annexure A-4, A-6, A-7 and A-8 and quash them to the extent they do not reflect the entitlements actually due to the applicant under the provisions of the Pension Rules.
- ii) To declare that applicant is entitled to get pension, DCRG and commutation value of pension computed with reference to the pay and allowances he was actually drawing at the time of retirement and to direct the Ist respondent to issue raised orders accordingly.
- iii) To issue appropriate orders directing the respondents to pay interest to the applicant for the delayed payment of DCRG at the rate as prescribed and for the delayed payment of pension and commutation value at rate as deemed reasonable to this Hon'ble Tribunal.
- iv) To direct the Ist respondent to refund Rs.41,784/- recovered from the applicant as per Annexure A-6 with interest at prescribed rates.

2. The respondents have filed a reply statement contending that, the impugned orders reflect the entitlements actually due to the applicant under the provisions of the Pension Rules and DCRG and commuted value of pension, and other benefits have been correctly assessed. The amount actually due to the applicant as per rules has been sanctioned and the overpayment as admitted, has to be recovered by the impugned order. A letter dated 27.5.2004 has been issued to the Postal Accounts, Nagpur for the settlement of objection due to irregular drawal of

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one increment w.e.f.5.5.98, and the reply was also received on 13.7.2004 and action has been taken without any lapse of time. As per AE No.179 dated 15.4.2004 item No.14, an objection has been raised for an irregular drawal of an increment to the stage of Rs.8,750/- instead of Rs.8500/- w.e.f. 5.5.98. The applicant has accepted the irregular excess payment instead of pointing out irregularity for years from 1998 till his retirement resulting in an excess payment of pay and allowances of Rs.31,784/-.As per A7 and A8 Memos sanctioning Pension and Commuted value of pension respectively to the applicant which are computed as per relevant rules of CCS(Pension) Rules 1972 and same cannot be faulted. The irregular drawal of one increment w.e.f.5.5.1998 resulted in an excess payment of pay and allowances of Rs.31,784/- and this was ordered to be recovered from his balance of DCRG sanctioned. Since the applicant was a pay drawing officer at the time of drawal of one increment irregularly w.e.f.5.5.98, he should have known that he was drawing excess pay during the period under reference. In the case of voluntary retirement, normally the pension papers and connected papers were sent to the concerned Postal Accounts Office after the date of retirement. The applicant retired on 1.3.2004 F/N. After due correspondence with the Nagpur Accounts Department it is found that there was an irregular drawal of one increment w.e.f.5.5.98 This was regularised by the Postal Accounts Nagpur. So the pay last drawn is Rs.10,475/- and not Rs. 10,750/- as declared by the applicant. The officer had accepted irregular excess payment instead of pointing out the irregularity and settling the mistake for years. The over paid amount was later worked out and the applicant's pay was regulated accordingly. Balance of DCRG was immediately sanctioned on 10.3.04. As soon as the objections in AE were cleared action has been taken for release of pension. So, there was no inordinate delay on the part of the respondents.

3. The applicant has filed a rejoinder contending that, prior to joining as



Supdt. Of POs' New Bombay Division Panvel on 3.6.97, the applicant had officiated in Group 'B' Cadre in Kerala Circle from 27.5.96 to 30.11.96 on pay at the rate of Rs.2675/- (in the pre-revised scale). On 1.12.96 he joined his substantive post. (HSG I Postmaster Kollam) and worked upto 10.12.96 at Rs.2600/- (Pre-revised). Again he was promoted in the officiating capacity in Group B cadre and worked as Supdt. of POs Cannanore w.e.f. 1.12.96 and his pay was fixed at the stage of Rs.2750/- (Pre-revised) which was followed by regular promotion as Supdt. Of POs., New Bombay Division Panvel and he continued to draw pay @ of Rs.2750/-. Consequent on the introduction of the revised pay scales as per the recommendations of the Vth Central Pay Commission, based on his option, his pay was fixed at Rs.8500/- in the revised pay scale corresponding to the stage of pre-revised scale with effect from 12.12.1996 with his date of next increment due on 1.12.97. Accordingly he was granted the pay at the stage of Rs.8750/- on 1.12.97 and he continued to draw pay accordingly. The allegation that the applicant had accepted the irregular excess payment, instead of pointing out this irregularity, is highhanded. He has also produced Annexure A-10 and A-11 letters to substantiate his contention that the alleged mistake/irregularity has been set right.

4. I have heard Shri P.C. Sebastian, learned counsel appearing for the applicant and Shri TPM Ibrahim Khan, SCGSC appearing for the respondents.

5. Counsel for applicant submits that, the alleged irregularity (drawal of one increment) on the part of the applicant as claimed by the respondents is not correct, which is evidenced by A-11. If that concept is accepted and his pay was fixed at Rs.2750/- on 11.12.96, such an impugned action would not come from the side of the respondents.

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6. The respondents on the other hand persuasively argued that, on going through the records it is found that, there was an irregular drawal of increment w.e.f. from 5.5.98 which has been worked out later and his pay and pension has been fixed accordingly and the impugned order for recovery of over-payment, cannot be faulted.

7. Heard the counsel on both sides and perused the pleadings and material and evidence on record. The short question for consideration in this O.A. is, whether any irregular overpayment was made to the applicant at the appropriate time or not? My attention has been drawn to Annexure A-3 order dated 6.2.2004, in which the fixation of pay has been made at Rs.10,750/- and declared that he is entitled to draw pay and allowances at a monthly rate shown in the said document. The case of the respondents is that this order has never been reviewed or set aside by the respondents. Therefore, that order still subsists. The applicant has taken me to Rule 73 of CCS (Pension) Rules, which is reproduced as under.

**“73. Adjustment and recovery of dues other than dues
pertaining to government accommodation.”**

For the dues other than the dues pertaining to occupation of government accommodation as referred to in clause (b) of sub-rule(3) of Rule 71, the Head of Office shall take steps to assess the dues two years before the date on which a Government servant is due to retire on superannuation; or on the date on which he proceeds on leave preparatory to retirement, whichever is earlier.

The assessment to Government dues referred to in sub-rule (1) shall be completed by the head of office eight months prior to the date of the retirement of the government servant.

The dues as assessed under sub-rule (2) including those dues which come to notice subsequently and which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of (retirement gratuity) becoming payable to the Government servant on his retirement.”

On the basis of the above provision it is contended that, the assessment of the

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Government dues of a retiring employee shall be completed by the head of office, eight months prior to the retirement of the Government servant, and according to him this was done as per A-3 and he should have been granted the benefit as per the said document. Whereas the counsel for respondents has taken me to Rule 73 (3) and canvassed the position that, they were entitled to adjust the excess drawn amount of a retiring employee, which came to the notice of the respondents subsequently, and it remains as outstanding till the retirement of the Government servant. The question is whether the assessment made by the respondents are correct or not? The main contention of the respondents is that, there was an irregular drawal of one increment w.e.f. 5.5.98 and an overpayment was occurred for an amount of Rs.31,784/- and after working out the exact amount, it was decided to adjust the amount from the balance of Retirement Gratuity and the authority issued the impugned order. Therefore, it is pertinent to adjudicate on the point that, whether there is any irregularity in drawal of increments or not? The applicant's counsel has stoutly denied this allegation in his rejoinder and contended that there is no irregularity and his pay should have been fixed at Rs.8750/- instead of Rs.8500/- w.e.f.5.5.98. The entire aspect wherein the respondents has made up their case is on the basis that there was an irregular fixation of increment as on 5.5.98.

8. My attention has drawn to A-10 document which is exclusively on the point and the correspondence relied back on 10.9.97 on the subject. For better elucidation the said letter is reproduced as follows:

OFFICE OF THE DIRETOR OF ACCOUNTS (POSTAL) NAGPUR:440001

No.GE/Moh.I/G.P./542

Nagpur, the

To,

The Sr.Accounts Officer, Admn.,
O/o The Director of Accounts(P),
Trivandrum-695010.

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Sub:- Drawal of Increment case of Sh.Pavithran the then
SPO's Alapuzha Dn. and now SPO, New Mumbai, Panvel.

Ref: Your Office letter No.346/Admn.II/P.F.308 dt.3.7.97.

Kindly refer to your office letter cited above. It is noticed while verifying the service book of Sh.G.Pavithran the then SPO's Alapuzha Dn, tht the officer was promoted as SPO(Gr'B') w.e.f 27.5.96 and his pay was fixed @Rs.2675/- hence his DNI should be 1.5.97 but as per the service book entries increment @Rs.2750/- has been allowed w.e.f. 11.12.96 which is irregular and results in overpayment to the officer from 11.12.96 onwards. Please confirm and arrange to furnish revised transfer LPC duly countersigned and also arrange to a copy of promotion order in Gr'B' cadre as the furnish. Note of the same is not available in service book. Issue of pay slip is held up.

Sd/-
Sr.Accounts Officer/GE
Postal (Nagpur).

No.GE/Mah-I/GP/543 to 545

Nagpur the, 10.9.97.

9. The reply that has been sent by the concerned authority to the Director of Accounts, Nagpur is to the effect that, there is no irregularity and his pay was correctly fixed at Rs.2750/- w.e.f 11.12.96 and he has become eligible for his annual increment to the substantive cadre w.e.f. 1.12.96 raising his pay to Rs.2600/-. The said letter (A-11) is also re-produced as under.

DEPARTMENT OF POSTS, INDIA

From

O/o the Dy. Director of Accounts (Postal)
Kerala Circle, Trivandrum - 1.

To

The Director of Accounts (Postal),
Nagpur -440 001.

No.1182 Admn.II/GE/PF/308 Dated at 18-12-97.

Subject: Drawal of increment - case of Shri G.Pavithran,
SPO,
New Mumbai Division at Panaval.

Ref: Your letter No.GE/Mah.I/GP/1173 dated 12.11.97.

Service book of Shri G Pavithran, SPO, New Mumbai Dn. Is returned herewith with the remark that the pay of the Officer was correctly

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increment in the substantive cadre with effect from 1.12.96 raising his pay to Rs.2600/-. He has been working as Postmaster, Kollam (HSG) from 30.11.96 to 10.12.96 as per the verification memo.

Sd/-
(C.P.JOHN)
Sr.Accounts Officer /GE

10. From the above, it is very clear that, this issue was in the notice of the respondents as back as in 1997, and it has already been settled once for all by A-11 letter. The respondents also did not file any explanation to A-11 letter which was issued as back as 18.12.97. Therefore, I am of the view that the issue which has been already settled in 1997, cannot be allowed to reopen by the respondents, under the pretext of irregular fixation, at this juncture. In this view of the matter, I have no hesitation in setting aside the impugned orders, since they were not issued in terms of the actual facts and the rule position.

11. Accordingly, I set aside and quash A-4, A-6, A-7 & A-8 orders and direct the respondents to grant the reliefs viz., pension, DCRG and Commutation value of pension to the applicant by refixing the pay actually drawn by him at the time of retirement and also refund the excess amount recovered, if any, from the applicant. Considering the entire aspects the claim for interest to the applicant is not sustainable and hence rejected.

12. O.A. is allowed. In the circumstances, no order as to costs.

Tuesday this the 6th day of September, 2005.



K.V.SACHIDANANDAN
JUDICIAL MEMBER