

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 122/2005

MONDAY THIS THE 29th DAY OF MAY, 2006.

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

T.M. Chandy
Senior Public Prosecutor (Retired)
Residing at 35/3046
Samskara Junction
Palarivattom
Kochi-682 025

.. **Applicant**

Vs

- 1 Union of India represented by its Secretary
to Government of India
Ministry of Personnel, Public Grievances
and Pension, Department of Personnel
& Training, North Block
New Delhi-110 001
- 2 The Deputy Director (Administration)
Central Bureau of Investigation
CGO Complex, Lodhi Road,
Block NO. 3, New Delhi-110 003
- 3 The Superintendent of Police
CBI, Special Police Establishment
Kerala Branch, Cochin-127
- 4 The Superintendent of Police (Admn)
SIC-III, CBI, New Delhi.
- 5 State of Kerala represented by the
Secretary to Government
Home Department,
Govt. Secretariat,
Trivandrum. .. **Respondents.**

By Advocate Mr. TPM Ibrahim Khan, SCGSC for R 1-4
Advocate Mr. A. Renjith, GP (R-5)

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant is a retired Senior Public Prosecutor and is aggrieved by the impugned order revising his pay retrospectively with reference to his notional pay in the cadre of Additional Public Prosecutor in Kerala State taking away the benefit of protection of actual pay as personal pay and consequent recovery issued in Annexure A-11. He has sought the following reliefs:

- (i)To call for the files leading to the issue of Annexure A-6, A-9, A-11 and A-17 and quash them
- (ii)To declare that applicant on his permanent absorption as Senior Public Prosecutor, CBI was entitled to have his pay fixed at the stage of Rs. 11950/- as reflected in Annexure A-4 and A-5 orders and continue to draw pay on that basis in the scale of Rs. 1000-15200 and to get all retirement benefits accordingly and that the action of the respondents in refixing pay to his disadvantage as reflected in the impugned orders is unjust arbitrary and illegal.
- (iii)To issue appropriate orders/directions to the respondents to pay to the applicant salary arrears and attendant consequential entitlements due to him; pursuant to Annexure A-4 and A-5 fixation orders and to refund the amount recovered from him as alleged overpayments and to revise his pensionary benefits accordingly.
- (iv)To direct the respondents to pay interest for the delayed payment of his salary dues and consequential retirement benefits at prescribed/reasonable rates.
- (v)To grant such other relief which may be prayed for and which this Hon'ble Tribunal may deem fit and proper to grant in the facts and circumstances of the case.
- (vi)To award costs in favour of the applicant.

2 The facts as explained by the applicant can be briefly summarised as under. The applicant was appointed as Assistant Public Prosecutor Grade-II on 15.4.1974 in Kerala State and his services were regularised w.e.f. 12.8.1977. The applicant was sent

on deputation as Public Prosecutor in the CBI in the scale of Rs. 2375-3500 vide order dated 12.8.1992 (Annexure A-1). While working as Public Prosecutor his basic pay was revised and as on 1.12.1996 he was drawing a pay of Rs. 3500, the maximum of the scale of pay of that post. While so, he was appointed as Senior Public Prosecutor which is a Group-A Gazetted post in the CBI in the scale of pay of Rs. 2200-4000 on selection by the UPSC. The respondents issued Annexure A-4 and A-5 orders fixing his pay in the scale of Rs. 2200-4000 under FR 22 1(a)(i) and given the benefit of pay revision as per the recommendations of the Fifth CPC. The applicant continued to draw the pay according to the office order with periodical increments. While he was drawing the pay of Rs. 11300 in the revised scale of Rs. 8000-13500 by Annexure A-6 the respondents refixed his pay retrospectively reducing his pay to Rs. 8000 which is the minimum of the scale of Senior Public Prosecutor and treating the balance amount of Rs. 2825/- as personal pay. Though the applicant submitted representation at Annexure A-7, approached the Tribunal in O.A. 166/99 which had directed consideration of his representation the impugned order at Annexure A-11 was issued purportedly to be in compliance of the orders of the Tribunal. Though the applicant submitted a review petition by Annexure A-12, there was no action by the respondents and they finally issued Annexure A-15 order stating that his review petition has been decided in consultation with the DOPT and that the earlier orders stand by virtue of having been issued in accordance with the

rules. The main ground taken by the applicant is that his appointment as Senior Public Prosecutor by CBI was on transfer basis while holding the post of Public Prosecutor on deputation basis without reversion to his parent department. As such he is entitled to have the period of deputation treated as regular service and pay fixed under FR 22 1(a)(i) with reference to his pay in the post of Public Prosecutor in the CBI. It is also alleged that several other persons who came on deputation were given all benefits from the initial date of deputation. The applicant's appointment as Senior Public Prosecutor in the CBI cannot be construed as a fresh appointment but it is a continuation of the original appointment as Public Prosecutor with all rights and liabilities attached to it. The post carried duties and responsibilities of greater importance and higher scale of pay than the post already held by him at the time of absorption and therefore his initial pay in the cadre of Senior Public Prosecutor has to be fixed in accordance with the provisions of FR 22 1(a)(i) and grave miscarriage of justice is done by the respondents by recovery of alleged over payment and he has also forfeited the benefits that he would have derived in his parent department but for his deputation.

2 The respondents in the reply statement have contended that the applicant is not entitled to get the above benefits for the sole reason that at the time of his absorption he was holding the substantive post of Assistant Public Prosecutor Grade-I in the State Government and only the pay of the substantive post can be

reckoned for the purpose of fixation of pay at the time of permanent absorption and deputation period to CBI cannot be considered for this purpose. The pay of the applicant had been fixed at Rs. 10600 in the revised scale of Rs. 7450-225-11500 in the deputation post w.e.f. 1.1.1996 in pursuance of rule 7(1)(A) of CCS (Revised Pay) Rules, 1997 on the basis of recommendations of the Vth CPC. He was granted increment of Rs. 225 in the scale of Rs. 7450-11500 raising his pay from Rs. 10625 to 10825 as he was stagnating in the maximum of Rs. 3500 in the pre-revised scale of Rs. 2375-3500. The applicant who was working on deputation basis was appointed as Senior Public Prosecutor in the CBI on transfer basis w.e.f. 12.12.1996 in the pay scale of Rs. 8000-325-13500. On the said appointment the pay of the applicant was required to be fixed in the central scale in terms of DOPT OM dated 18.6.2001 (Annexure R-1). Accordingly, his pay was fixed at Rs. 8378. The pay scale of Senior Public Prosecutor in the CBI was revised from Rs.8000-13500 to Rs. 10000-15200 and his pay was again revised to Rs. 10000 at the minimum of the pay scale. The above fixation was done in consultation with the DOPT and the OM referred applies retrospectively w.e.f. 1.1.1996 and is applicable in all cases of State Government employees on their appointment to Central Government on or after 1.1.1996. The DOPT OM dated 29.4.1988 referred to by the applicant lays down the general terms and conditions on deputation to the central Government and is applicable only during the currency of deputation period and has no applicability once the

employee is absorbed in the department or repatriated to the parent department. Because the applicant was working as Public Prosecutor in the same organisation on deputation basis his pay as Senior Public Prosecutor cannot be fixed with reference to the pay drawn in the deputation post but only with reference to the substantive post held by him in the Government of Kerala. Hence the fixation done as per Annexures A-6 and A-9 orders cannot be revised. No discrimination has been shown against the applicant and his case is different from the cases of those who have been referred to by him who have been absorbed permanently in the Central Government with effect from the date of their initial appointment. The applicant cannot take advantage of the period he served as Public Prosecutor in the CBI on deputation for pay fixation in the higher post and hence his claim for fixation of higher basic pay at Rs. 11950 is without any legal basis.

3 The applicant filed a rejoinder more or less reiterating his earlier contentions and that the impugned action of the respondents has resulted in heavy loss to him thereby wiping out all the benefits of deputation and relegating him to a disadvantageous position.

4 The applicant appeared in person to present his case. He has also filed list of rulings, rules and notifications relied upon by him.

5 The respondents have filed an additional reply statement submitting that the case of Shri Kasha J K Malayan, Senior Public Prosecutor referred to by the applicant who was absorbed in CBI w.e.f. 28.9.1993 was on a different footing as he was absorbed prior

to 1.1.1996 and the OM dated 18.6.2001 was not applicable to him. They have also filed copies of instructions and judgments relied on by them containing the rulings of the Apex Court relating to deputation/absorption and transfer and the rules/notifications relied upon by them, have been taken note of by us.

6 Though a list of 14 cases had been produced by the applicant he relied mainly on the rulings of the Apex Court at Sl. No. 9, 10, 11 and 14 of the list produced by him. i.e. Union of India Vs. Kuldip Singh Permer and another (2003) 9 SCC 472, Food Corporation of India Vs. FCI Deputationist Association (1996) 6 SCC 90, Rajasthan Agricultural University Vs. M.L. Kothari and another (1999) 7 SCC 638, Govind Prasad Vs. R.G. Prasad and another (1994) 1 SCC 437, S.I. Roopal and another Vs. Lt. Governor, Delhi (2000) 1 SCC 644. The applicant's argument was mainly based on the above rulings and that the OM dated 2001 is not applicable to him as his appointment as Senior Public Prosecutor was not a fresh appointment as contended by the respondents.

7 The respondents pleaded that the action taken was strictly in accordance with the rules.

8 We have carefully gone through the documents and examined the judgments and notifications, etc. referred to by the parties. The first question agitated by the applicant is regarding the exact nature of his appointment as Senior Public Prosecutor in the CBI as the pay fixation would normally depend on the nature of the appointment. He submitted that he was appointed as Senior Public Prosecutor on

transfer basis by the UPSC in pursuance of the notification issued by them for filling up the post of Senior Public Prosecutors and Law Officers bearing No. 202 dated 12.5.1995. The notification clearly states that applications were called for deputation/transfer from suitable State/Central Government employees possessing the requisite qualifications. Para 4 of the notification states that the officers selected for appointment will be governed by the general terms of deputation as contained in DOPT OM NO. 2/29/91-Estt. (Pay.II) dated 5.1.1984 and will have the option to draw (i) the grade pay plus deputation (duty) allowance or (ii) to have their pay fixed in the Central scale of pay of the post or as per normal rules. The Recruitment Rules governing the post of Senior Public Prosecutor issued by the CBI dated 22.3.2001 provided for the mode of recruitment to the post as 50% by promotion failing which by transfer on deputation, 25% by direct recruitment and 25% by transfer on deputation/transfer. It also stipulates in the note in col. 12 thereon that deputationists shall not be eligible for consideration for appointment by promotion. After selection by the UPSC, the applicant was appointed on transfer basis as seen from the various orders issued. The actual order of his appointment as Senior Public Prosecutor has not been produced for reference. It is however to be construed that the wording of the notification that the selection was under the third method of recruitment which is 25% by transfer on deputation/transfer. Since the applicant was holding the deputation post of Public Prosecutor working in the same department, according

to the note referred to above in the rules, he could not have been eligible for consideration by promotion. It is not the contention of the applicant that since he was in the direct line of promotion being a Public Prosecutor working in the same department his appointment should be construed as promotion has to be rejected at this stage itself. The applicant also contends that his appointment cannot be treated as deputation. If it is treated as a deputation to a higher post in the same organisation then the pay fixation should be governed by provisions of the DOPT No. 2/12/87-Estt. dated 29.4.1998 regarding payment of deputation pay and allowance to an employee transferred on deputation to an ex-cadre post. If the appointment of the applicant is not on promotion or on deputation, it has to be treated as appointment by transfer under the Central Government. Then the question that arises is whether it is a continuation of the earlier appointment on deputation basis as contended by the applicant. He has invited our attention to DOPT order dated 5.1.1995 regarding the permanent appointment made by transfer will not be treated as deputation/foreign service. Hence the appointment of the applicant as Senior Public Prosecutor in accordance with the Recruitment Rules and after the selection made by the UPSC has to be treated as a fresh appointment in the Central Government by transfer from State Service and cannot be treated as a continuation of the earlier assignment on deputation.

9 Coming to pay fixation, the OM dated 18.6.2001 governs the question of pay fixation of State Government employees under the

Central Government on or after 1.1.1996 and the OM dated 4.10.1998 in the case of appointments on deputation. The OM dated 18.6.2001 prescribes the manner in which the pay will be fixed as follows.

- (a) Where the State Government have revised the pay scale of their employees on the pattern of V Central Pay Commission at CPI 1510 w.e.f. 1.1.1996 the pay of these State Government employees on their appointment under the Central Government would be fixed directly under normal rules i.e. F.R. 22(1)(a)(2) or FR 22.1(a)(1) as the case may be
- (b) Where the State Government have revised the pay scales of their employees after 1.1.1996 beyond CPI 1510, basic pay of the employees is to be determined first in the Central Scale by reducing the element of DA, ADA, IR etc. granted by the State Government after 1.1.1996 (beyond CPI 1510) and thereafter the pay would be fixed under normal rules i.e. FR 22(1)(a)(1) or F.R. 22(1)(a)(2) as the case maybe
- © Where the State Government have either not revised or revised the pay scale of their employees on or after 1.1.1996 below CPI 1510 basic pay of these employees shall be determined first in the Central scale by adding the element of DA, ADA upto CPI 1510 granted by the State Government and thereafter their pay would be fixed under the normal rules.

10 Para 5.3 of the OM dated 29.4.1988 prescribes the manner of pay fixation in the case of second or subsequent ex-cadre posting which is extracted below :

5.3 In cases of appointments to a second or subsequent ex-cadre post (s) in a higher pay scale than that of the previous ex-cadre post, the pay may be fixed with reference to the pay draw in in the cadre post and if the pay so fixed happens to be less than the pay drawn in the cadre post and if the pay so fixed happens to be less than the pay drawn in the previous ex cadre post, the difference may be allowed as personal pay to be absorbed in future increases in pay. This is subject to the condition that on both the occasions the employee should have opted to draw pay in the scales of the pay attached to the ex-cadre posts.

11 It is obvious from a reading of the above provisions that whether it is a case of fresh appointment or deputation, the pay has

to be fixed with reference to the pay drawn in the parent cadre and not with reference to the pay scale of the deputation post. Therefore whether the applicant is to be treated as appointed on transfer or on deputation, there is no doubt that his pay has to be fixed with reference to the pay drawn by him in the parent cadre. It is an admitted fact that the substantive post of the applicant is the cadre of Assistant Public Prosecutor Grade-II in the State Government. None of the above orders/rules/instructions referred to by the applicant provide for giving the benefit of pay fixation on the basis of the deputation pay. The judgments quoted by the applicant supra are seen to relate to mainly the questions of seniority, whether the deputation period can be treated as qualifying service, etc. In this connection only, the observation has been made in the judgment in K. Madhavan and Another Vs. Union of India and Others (1987) 4 SCC 566 that 'transfer cannot wipe out the lengthy service' and this ruling cannot be extended to cases of pay fixation as made out by the applicant. In fact in para 21 of the same judgment it is observed that "if a deputationist is permanently absorbed in the CBI he is under the rules appointed on transfer." This observation therefore clinches the issue raised by the applicant that his appointment is an absorption on transfer basis. All the rulings referred to by the applicant relate to counting of service relating to seniority on absorption and for regularisation and none of these judgments have dealt with the issue of pay fixation. Therefore only the general principles and guidelines issued by the Central

Government have to be applied in this case. As pointed out earlier, the general instructions in the case of appointment on deputations/transfers provide for fixation of pay on the basis of the substantive pay in the cadre post. Hence the action of the respondents is perfectly in order.

12 The applicant also contends that the fixation of his pay at Rs. 8,000 in the scale of pay of Rs. 8000-14500 is much less than the prescribed pay he would have drawn had he continued in the State Service and that enforcing a lower rate of pay in the higher scale than the presumptive pay of an employee who has been transferred from a State service to Central service is illegal. According to him had he continued in the Kerala State his pay would have been fixed at Rs. 10475 w.e.f. 1.3.97 and 10725 and 10975 w.e.f. 1.12.1997 and 1.12.1998 respectively. Therefore on account of transfer to the Central Government post there is not only a monetary loss but would also affect his pensionery benefits and the applicant has computed the loss to Rupees one lakh on that account. On examination of the impugned order at Annexure A-11 it is seen that his pay has been fixed in the Central Government scale of Rs. 8000-13500 as on 12.12.1996 his date of appointment considering his presumptive pay in the State service as on 1.1.1996 and the pay has been computed as Rs. 8250. The State Government had revised the pay scales of its employees as per GO NO. 300/98 dated 25.11.98 on recommendations of the Pay Commission. The revised scales of pay came into force w.e.f. 1.3.1997. According to this revision the

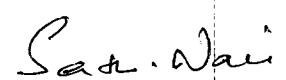
pay scale for Rs. 250-4000 which has been taken for computation by the respondents has been revised to Rs. 2610-3680 or even higher as the details of Annexures indicating the revised scales are not available with the GO produced by the applicant. However, the fact remains that the scales have been upwardly revised but they have come into force only w.e.f. 1.3.1997. The respondents while applying the instructions in OM dated 18.7.2001 have not taken into account his revised pay scales presumably as the revision was not made w.e.f. 1.1.1996 on line with the Central Government pay revision which took place from 1.1.1996. This has resulted in some injustice to the applicant. The OM dated 18.7.01 was issued consequent upon revision of pay scales by the State Governments and its main purpose was to extend the benefits of pay revision in the States in the case of appointments under the Central Government also. Just because the State Government of Kerala had given the benefit of pay revision only from 1997, it should not stand in the way of giving this benefit for appointment in the Central Government as the intention of the Central Government was to extend ~~them~~ benefits of revision to the employees who were appointed on or after 1.1.1996. The applicant having been appointed after 1.1.1996 should not have been deprived of the benefit of the higher pay scales given by the State Government solely for the reason that the revision had not been made effective w.e.f. 1.1.1996. In fact as seen from clause © and (d) of the OM it does provide for taking into account the revised pay scale on or after 1.1.1996.

13 Therefore we are of the view that the applicant's presumptive pay may be worked out on the basis of the revised pay scales applicable to Assistant Public Prosecutor Grade-I under the State Government for fixing his pay in the Central Government in accordance with OM dated 18.6.2001. To that extent the orders issued at Annexure A-11 shall be modified and his pensionary benefits shall also be revised accordingly. If on account of such re-fixation the applicant becomes entitled to a higher pay it shall also entitle him to payment of arrears. In which event, the amount recovered from him as over payment shall be adjusted and balance if any shall be refunded. This action shall be completed within a period of four months from receipt of this order. The Original Application is disposed of with the above orders. No costs.

Dated 29.5.2006.


GEORGE PARACKEN
JUDICIAL MEMBER

kmn


SATHI NAIR
VICE CHAIRMAN