

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 134/2000

TUESDAY, THIS THE 2nd DAY OF APRIL, 2002.

C O R A M

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

AMS Narayanan S/o ACN Namboothiri
TOA(G), Office of the A.E(Electrical)
Telecom Sub division, Manjeri
residing at Ashtathuman
P.O. Chalvara, Ottappalam, Palakkad.

Applicant

By Advocate Mr. M.R. Rajendran Nair

Vs.

1. Union of India represented by the Secretary to the Government of India Ministry of Communications, New Delhi.
2. Accounts Officer Teleco Electrical Division Kozhikode
3. Chief General Manager Telecom, Kerala Circle Trivandrum.

Respondents

By Advocate Mr. P. Vijayakumar, ACGSC

The Application having been heard on 14.2.2002 the Tribunal delivered the following on 2.4.2002.

O R D E R

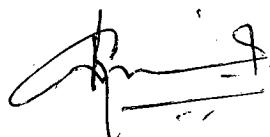
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant a TOA(G) under the respondents aggrieved by A-1 order dated 27.4.99 issued by the first respondent has filed this Original Application seeking the following reliefs:

(i) To quash Annexure A1

(ii) To declare that the applicant pay on reversion from the post of Sr. TOA(G) is to be fixed in accordance with Annexure A-7 giving the benefit of pay protection and to direct the respondents to fix the pay of the applicant on reversion in accordance with Annexure A-7 clarifications granting pay protection.

(iii) Grant such other reliefs as may be prayed for and the court may deem fit to grant, and



(iv) Grant the costs of this Original Application.

2. The applicant commenced service as Mazdoor in 1988 and became TOA(G) passing the departmental Examination in 1991. He was promoted as Senior TOA(G) w.e.f. 29.3.1994. He requested for a transfer to Kerala Circle under Rule 38 of P & T Manual Vol. IV. The third respondent by A2 order dated 12.2.1988 approved the transfer on certain conditions. By A3 order dated 22.4.98 issued by the Assistant General Manager (AIV) MTN Ltd., Mumbai, the applicant was transferred to the Telecom Electrical Sub Division, Manjeri with a direction to the Controlling Unit that after reverting him to the basic cadre of TOA(G) he should be relieved. The applicant joined Manjeri Sub Division on 1.6.98 in the post of TOA(G). His pay was not fixed and he continued to draw his pay on the basis of Last Basic pay drawn before his reversion. Thereafter, A-1 order dated 27.4.99 was issued wherein his pay was fixed at Rs. 3455/- as on 30.5.98 on reversion to TAO(G). The applicant filed A-5 representation dated 5.5.99 to the third respondent requesting him to fix his pay in TAO(G) with pay protection. By A-6 letter dated 22.6.99 by the Assistant Engineer, Telecom, Electrical Sub Division, Manjeri his representation was rejected. He relied on A-7 circular dated 30.11.98 issued by the Ministry of Finance, CBDT and submitted that in the said circular it was clarified that under the provisions of FR 22(I)(a)(1) when an individual is transferred from a higher post which he had been holding in a regular basis to a lower post on his own request his basic pay on the higher post is to be protected and his pay in the lower post should be fixed at the same stage or the next higher stage subject to condition that if the pay drawn in the higher post is more than the maximum of the pay in the lower post, his pay shall be restricted to the maximum of the pay in the lower post. The applicant claimed



that on the basis of the fixation granted to him by A1 an amount of Rs. 1,000/- was being recovered from him from June, 1999 onwards and submitted that no order of recovery had ever been issued to the applicant. In support of this he produced A-8 pay slip for the month of July, 1999. The applicant submitted that his pay on reversion as TOA(G) was to be fixed under FR 22(I)(a)(1). According to FR 22(I)(a)(1) when the appointment to a new post did not involve such assumption of duties and responsibilities of greater importance one would draw as initial pay the stage of the time scale which was equal to his pay in respect of his old post held by him on regular basis or if there was no such stage next above his pay in respect of his old post held by him on regular basis. The only stipulation was that when appointment to the new post was made on his own request under Sub Rule (a) of Rule 15 of the said rules and the maximum pay in the time scale of that post was lower than his pay in respect of his old post held regularly, he would draw that maximum as his initial pay. According to him there was no provision to fix the pay of the official on reversion as if he had not been promoted. It is submitted that Annexure A-7 dated 30.11.98 was in tune with the statutory rules and supported his case. He further submitted that recovery was being made without any order of recovery and hence it was against the principles of natural justice. A-6 was arbitrary, unjust and unreasonable against the law. The overpayment was not due to any misrepresentation by the applicant and the recovery was illegal and the same was against the dictum laid down by the Hon'ble Supreme Court. Hence he sought the above reliefs through this O.A.



3. Respondents filed reply statement resisting the claim of the applicant. They submitted that a transfer under Rule 38 presupposed that one would have to be reverted to the post of TOA(G) at his parent Circle before transfer and his pay would have to be fixed at the reverted post before he was actually transferred. On such refixation of pay on reversion at the parent circle his pay had to be fixed at the reverted post counting his service in the reverted post and as if he had never been officiating in the higher post held before his reversion. They claimed that this was a special provision made under Rule 38 transfer made on ones own request. Since the applicant had availed of intercircle transfer under Rule 38 he was subjected to the above provision and he was not entitled to protection of FR 22(I)(a)(1) or FR 22(A) or FR 22(I)(a)(3) and submitted that the regularisation of pay of the applicant as per A1 was absolutely legitimate, proper and justified. The reliance placed on A7 was misplaced and misconceived as the operation of A-7 stood suspended as the directions contained there in were legally incompetent, incorrect and impermissible. The applicant was reverted as TAO(G) and later his pay was fixed at Rs. 3455/- in the post of TOA(G) as contemplated under Rule 38 in the pay scale of Rs. 3200-85-4900 on such reversion. After reversion the applicant was transferred to Kerala Circle and posted as TOA(G) at Telecom Electrical Sub Division Manjeri. But in the case of the applicant even though he was reverted by the MTN Ltd. Bombay his salary was not fixed by the said authority. Under such circumstances on account of the non-receipt of his service book his basic pay was wrongly fixed at Rs. 4500 based on his last pay drawn as Sr. TOA(G) at MTNL under the mistaken notion that the applicant deserved protection of his pay under FR 22(I)(a)(2) which was not actually permissible. They referred to R-3(a) letter dated



14.10.98 . Subsequently during 3.2.99 to 9.2.99 when the Senior Accounts Officer, Internal Check attached to the office of the third respondent conducted an internal inspection of the office of the Telecom Electrical Division, Calicut it was detected that applicant's pay had not been correctly fixed on reversion. Also it was discovered that the applicant was being over paid. Accordingly it was required to regularise the pay and recover the excess amount paid. In this context R-3 spot memo was issued by the auditing officer pointing out the above objections. It was under these circumstances that A-1 order was issued. The reliance placed by the applicant on A-7 was misconceived and amounted to suppression and misrepresentation of material facts. In view of the above position it was not possible to accede to the request of the applicant as made in A-5 and hence A-6 was issued. It was further submitted that R-3(a) did not lay down any new ruling or law but only clarified the then existing provisions regarding pay fixation under Rule 38 transfer.

4. Heard learned counsel for the parties.

5. The learned counsel for the applicant submitted that this O.A. is similar to O.A. No. 1187/99 decided on 26.11.2001 by this Tribunal and as no notice was issued in this case the impugned order was liable to be cancelled and respondents directed to take further action following the principles of natural justice.

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

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7. From the materials placed before us we find that it was made known to the applicant that he would get reverted as TOA(G) before he was transferred on inter Circle transfer to Kerala Circle. As a matter of fact from A-3 order dated 22.4.98 we find that the applicant was directed to be relieved to Kerala Circle after reversion to the basic cadre as TOA(G). Applicant had admitted in the OA that his pay as TOA(G) was not fixed in Kerala Circle and he continued to draw the pay on the basis of the basic pay drawn before reversion. Respondents admit that the pay was erroneously fixed protecting the pay drawn as Sr. TOA(G) and the same was corrected by issuing A-1 order. This A-1 order is under challenge in this O.A.

8. The method of fixation of pay in such cases of transfer after reversion had been gone in to by this Tribunal in OA 120/2000. After analysing similar grounds as raised in this OA this Tribunal held as follows:

"For all the above reasons we hold that the pay fixation done in the case of the applicant on her transfer from MTN Ltd. to Kerala circle after reversion as TAO(G) cannot be faulted and no interference in A-8 is called for."

9. We find from A-3 order dated 22.4.98 that the applicant in this O.A. is one of the employees listed along with the applicant in O.A. No. 120/2000 transferred from MTN Ltd. to Kerala Circle. In the light of what is held by us in O.A. No. 120/2000 the fixation of pay done by the respondents by A-1 order in the case of the applicant on his transfer from MTN Ltd. to Kerala Circle after reversion from the post of Sr. TOA to the post of TAO(G) cannot be faulted.

10. Another ground raised in this OA by the applicant was that the recovery had been made without any order of recovery and without giving notice to the applicant and hearing him

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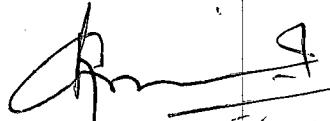
and hence the same was against the principles of natural justice. We do find this to be factual. But the fact also is that A1 order was issued on 27.4.99 and the applicant filed A-5 representation on 5.5.99. In that representation the applicant had not asked for the details of the proposed recovery. However, respondents are directed to furnish a statement to the applicant showing therein the detailed calculation of the over-payment made to him and recoveries made so that the applicant could check the correctness or otherwise of the same. In case it is established that any excess recovery had been made, the respondents shall promptly refund the same.

11. In the light of the above, the applicant is not entitled to any of the reliefs sought for. Accordingly, we dismiss this Original Application with no order as to costs.

Dated the 2nd April, 2002.



K. V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the order No.0A (3)/EE/TED/KDE/99 /1237, dated 27.4.1999 issued by the 2nd respondent.
2. A-2: True copy of the order No.STB/43-11/96, dated 12.2.1998 issued by the 3rd respondent.
3. A-3: True copy of the order No.ST/15-67/R,38 TFR(583/584/484) dated 22.4.1998.
4. A-4: True copy of 1the pay slip for 1the month of March 1999 is showing applicant's basic salary Rs.4500/-
5. A-5: True copy of the representation dated 5.5.1999 submitted by the applicant to the 3rd respondent.
6. A-6: True copy of 1the letter No.10(80)/EE/TED/KDE/99 /1862, dated 22.6.1999 issued by the Executive Engineer, Telecom Electrical Division, Kozhikode.
7. A-7: True copy of the GIMF (CBDT) Circular A 26017/14/98, dated 13.11.1998, pay drawn in higher post on regular basis is to be protected, even on transfer to a lower post at one's own request.
8. A-8: True copy of the pay slip for the month July 1999, issued to the applicant showing the Recovery made.

Respondents' Annexures:

1. R-3(a): True copy of letter No.19-20/89-SEA dt.14.10.98 issued by Department of Telecom, New Delhi.
2. R-3(b): Spot memo dt.8.2.99 issued by Sr.Accounts Officer (Internal Check), O/o GMT, Trivandrum.
3. R-3(c): True copy of proceedings dated 7.5.99 of Dept of Personnel & Trg. with covering letter and proceedings queries of Principal Chief Controller of Accounts, CBDT, New Delhi.

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