

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 138/2004

Wednesday, this the 23rd day of August, 2006.

CORAM:

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER

S.Ushakumari,
Group'D',
O/o the Superintendent,
Postal Stores Depot,
Trivandrum-23. Applicant

By Advocate Mr Thomas Mathew

v.

1. Superintendent,
Postal Stores Depot,
Trivandrum-23.
2. Chief Postmaster General,
Kerala Circle,
Trivandrum.
3. Director General,
Department of Posts,
New Delhi.
4. Union of India represented by
its Secretary,
Department of Posts,
New Delhi. Respondents

By Advocate Mr P Parameswaran Nair, ACGSC

The application having been heard on 26.7.2006, the Tribunal on 23.8.2006 delivered the following:

ORDER

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Smt.S.Usha Kumari has filed this application against the proposed reduction in pay and consequential recovery of over payment.



2. As regards the facts , the applicant entered service as casual laborer-sweeper in 1976 and was conferred the temporary status with effect from 01.10.1989. Vide A-1 order (PSD/42/Vol.I dated 12.10.1992, she was regularized to Group D cadre in the pay scale of Rs.750-12-870-EB-14-940. Her pay was fixed at Rs.786 based upon the last pay drawn as a temporary status Group D employee. Following the V Pay Commission recommendations, her pay was fixed at Rs. 2660/- as on 01.01.1996 with the date of next increment as 01.10.1996. In pursuance of Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training) O.M.No.49014/4/97-Estt -(C) dated 29.01.1998, communicated by the Postal Directorate letter No.1/3-96-PAP dated 24.03.1998, (R-1) on the subject of fixation of pay of casual labourers with temporary status on regularisation against Group D posts, it was prescribed that pay should be fixed at the minimum of the scale of pay of Group D posts. Such minimum being Rs.750/- and the fixation in her case being Rs.786/-, her pay was refixed at Rs.750/- with effect from 12.10.1992 and consequential overpayment of Rs.9186/- ordered to be recovered in installments. As on 31.01.2004, a sum of Rs.5355/- had been recovered. The applicant made A-3 representation dated 14.02.2004 alleging that such illegal recovery was against the principles of natural justice and requesting for stoppage of such recovery and restoration of the original pay. Finding no response to the representation, she has moved this Original Application.

3. The main reliefs requested are the following:-

- i) A declaration that the said reduction is illegal, arbitrary and in violation of principles of natural justice
- ii) A direction to the respondents to restore the applicant's basic pay at Rs.3020/- with effect from 01.05.2002 with all consequential benefits including arrears.
- iii) A direction to the respondents to repay the entire amount recovered from her pay



4. The reliefs sought rest on the following grounds:-

i, The recovery having been ordered unilaterally without any notice is violative of the principles of natural justice.

ii, The pay fixation given to her with effect from 12.10.1992 was in full accordance to the extant rules.

As part of the material papers, the applicant has filed a copy of the orders of this Tribunal in OA 294/01 dated 26.11.2002 (A-4). Therein, this Tribunal had set aside, inter-alia, A-12 orders which is the same as R-1 document herein, based upon the orders of this Tribunal in the Hyderabad Bench. She has also filed the orders of this Tribunal in an earlier O.A No.1373/99 dated 01.01.2001 containing the same rationale(A-5). The respondents in the latter O.A had challenged these orders before the Hon'ble High Court of Kerala in O.P.No. 13244 of 2001-S. The Hon'ble High Court dismissed the O.P vide orders dated 04.01.2002, the operative portion of which reads as follows:-

"The official respondents before the Tribunal filed the present original petition. We find that the order of the Tribunal is a well considered decision. The stand taken by the writ petitioners that the increments earned by the employees as temporary status mazdoors cannot be reckoned while fixing their pay on regularisation is plainly perverse. The Tribunal has rightly interfered with the impugned orders. If the contention of the writ petitioners are accepted, the same will result in reduction of pay of the employees on their regularisation. So, we find no merit in the writ petition and the same is hereby dismissed."

5. The respondents oppose the application on the sole ground that the recovery was made in pursuance of the directions of the R-1 document .

6. Heard the parties and perused the documents. There are certain important points worth mentioning in this application. First, no opportunity was given to the applicant before the reduction and recovery were ordered, This is clearly in violation of principles of natural justice. Secondly, her representation was not responded to, which is also not fair. Thirdly, the R-1 document (O.M. dated 29.01.1998 from the Department of Personnel could at best be operative



prospectively in view of absence of any reference to retrospective application and date of such application. Fourthly, in view of the preceding point and of the fact that the regularization was done with effect from 12.10.1992, a clean six years earlier to the said O.M., the applicant has correctly argued that her pay fixation was done as per the rules and regulations existing at the time of such fixation. Fifth and the most important point is that the orders passed by this Tribunal in the two earlier O.As referred to above and the orders passed in appeal by the Hon'ble High Court against the orders in one of the two O.As clinch the issue in the applicant's favour. Besides, it is worth referring the law settled by the Hon'ble Supreme Court in (1994) 2 SCC 521 in Shyam Babu Varma & ors Vs. Union of India against the recovery of overpayment's which was not due to any fault of the persons who suffered such recovery.

7. Under these circumstances, the OA is allowed and the respondents are directed to restore the pay and allowances at the level prior to 01.05.2002, to accord all consequential benefits including arrears and to repay the entire amount recovered as on date within a period of three months from the date of receipt of a copy of this order. No costs.

Dated, the 23rd August, 2006.


GEORGE PARACKEN
JUDICIAL MEMBER


N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

trs