

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No 151 / 2004

Thursday, - this the 31st day of August, 2006

CORAM :

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE Mr. K.B.S.RAJAN, JUDICIAL MEMBER**

V.Georgekutty
Senior System Analyst
Office of Chief General Manager
IT Project Circle, Pune
Residing at : Vilayi 'Savannah',
Pada South, Karunagappally - 695 518

Applicant

(By Advocate Mr. M.R.Hariraj)

Versus

1. Chairman and Managing Director
Bharat Sanchar Nigam Limited
New Delhi
2. The Chief General Manager,
Kerala Telecom Circle
Thiruvananthapuram, Kerala
3. The General Manager
Kollam Telecom District
Kollam - 691 001
4. Union of India represented by the
Secretary to Government
Ministry of Communications
New Delhi

Respondents

(By Advocate Mr. T.C.Krishna (R1-3)
Mr.TPM Ibrahim Khan, SCGSC (R-4))

The application having been heard on 10.08.2006, the
Tribunal on ~~31-8-06~~ delivered the following :

ORDER

HON'BLE Mr. K.B.S.RAJAN, JUDICIAL MEMBER


The applicant through this Original Application has
prayed for the following reliefs:-



(a) Quashing of Annexure A-1 order dated 27.01.2004 whereby it was inter-alia intimated that the applicant was paid upto 30.09.2003 at the rate of Rs.12,600/- per month whereas pay authorised beyond the period 25.04.2003 was Rs.12,400/- per month and thus there was overpayment.

(b) To declare that the applicant had continued in the post of Chief Accounts Officer, Kollam till his relief pursuant to transfer to Pune and also to direct the respondents to grant him the annual increments due to him for the month of May, 2003 with all consequential benefits and not to make any recovery from the pay in respect of alleged over payment.

2. (a) The applicant while working as Sr. Accounts Officer was asked to officiate as Chief Accounts Officer in May, 2000 and with a technical break at a frequency of 90 days, for a day, he continued to function as Chief Accounts Officer. In January, 2003 the applicant was posted to Western Telecom Region, Mumbai. But according to the applicant this transfer was never communicated to him and he could know about it only through Telecom Accounts news of February, 2003. The applicant represented in respect of above transfer and requested that since he was associated with the IT Research and Development he could be considered for posting at an appropriate place.

 (b) The applicant's tenure as Chief Accounts Officer under the officiating arrangement was to come to an end on 25.04.2003.

As no further extension for officiation was received by him the applicant penned a representation dated 19.05.2003 requesting that he be allowed to continue till a final decision is taken by the Department in regard to his transfer. However, by order dated 07.08.2003 the respondents have informed the applicant that in accordance with the instructions contained in transfer orders issued by corporate office the Accounts Officers/Senior Accounts Officers who are transferred to other circle are to be reverted to their parent cadre if they are officiating in higher post and that in the case of the applicant he was permitted to continue to officiate as Chief Accounts Officer after 25.04.2003. Beyond the same the applicant was not considered for further officiating promotion as Chief Accounts Officer Annexure A-4 refers.

(c) The applicant approached this Tribunal against the aforesaid order Annexure A-4 as well as earlier transfer order to Western Region (Annexure A-2) by filing OA 699/03. When the above OA came up for consideration, by order dated 19.08.2003 rendered the following observation :-

" When the matter came up for hearing, Shri Sunil Jose, ACGSC took notice on behalf of the respondents. Counsel on either side agree that since the applicant has not been relieved or reverted pursuant to Annexure A-1 order and since it is stated in Annexure A-2 that his representation dated 19.05.2003 seeking retention in Kerala Circle has been forwarded to the 1st respondent. It would be appropriate if the application is disposed of with a direction to the 1st respondent to consider the request for retention in Kerala in the post which he is holding at present within a reasonable time and permitting the applicant to continue in the present post till the 1st respondent gives the applicant a reply to the representation. Learned counsel of the applicant states that the applicant may be permitted to make a



supplementary representation within a week which may also be considered.

In the light of what is stated above, and as agreed to by the counsel on either side without going into the material averments we dispose of this application permitting the applicant to make a supplementary representation to the 1st respondent and directing the 1st respondent to consider the representations of the applicant and to give him an appropriate reply as expeditiously as possible. We also direct that till the applicant's representations is disposed of with an appropriate reply by the 1st respondent, the applicant shall be permitted to continue in the present post. No order as to costs."

(d) The applicant was served with a transfer order posting him to Pune and on being relieved on 06.10.2003 he had joined Pune office on 14.10.2003.

(e) The respondents by the impugned order dated 22.01.2004 issued the LPC in which they have mentioned that the applicant was over paid his salary beyond 24.04.2003 upto 30.09.2003 in as much as, whereas his pay should have been Rs.12,400/-, he was paid at the rate of Rs.12,600/-. It is this order (Annexure A-1) that is under challenge in this O.A.


3. The respondents have contested the O.A. In their reply statement they have contended that after issuance of transfer order there was no necessity to retain the applicant in the higher post and as such he was reverted back to Senior Accounts Officer with effect from 26.04.2003. As such, the applicant was working in the post of Senior Accounts Officer at the time of filing of the OA No. 699/03. After reverting the applicant the respondents had not taken



immediate action to reduce the pay of the applicant. As such, the applicant is liable to refund the amount in excess of his pay as Senior Accounts Officer. The respondents are thus entitled to recover the overpayment made to the applicant.

4. Arguments were heard and documents perused. The applicant contented that as observed in the earlier order of this Tribunal even as on 19.08.2003 (date of order in OA 699/03), he was not reverted. Again on the basis of the aforesaid order of this Tribunal the applicant continued to function as Chief Accounts Officer as there was an embargo inflicted upon the respondents from reverting the applicant from the post he held till his representation was considered. Consideration of his representation is implied when the respondents transferred the applicant to IT Unit, Pune in October, 2003. The applicant was on leave at that time. (02.10.2003 to 05.10.2003 were holidays).

5. For the parties to ascertain as to in what capacity the applicant was functioning after 25.04.2003, respondents were directed to produce documentary evidence if any, to substantiate their contention that the applicant was indeed reverted on 26.04.2003. In response thereto vide memo dated 21.08.2006 respondents have furnished only copies of leave application preferred by the applicant on two occasions in May, 2003 and June, 2003 wherein he himself had written " **Senior Accounts Officer** " in the leave application. That the applicant has said so cannot be a proof that he was functioning and performing the duties only as of a



Sr.AO. Perusal of the records shows that even the earlier representation dated 19.05.2003 reflects his designation as Senior Accounts Officer but in the Court even the respondents had conceded that the applicant was not reverted as on 19.08.2003 and the same had been recorded in the earlier order dated 19.08.2003.. Thus, the indication by the applicant as Senior Accounts Officer in his representation or leave application should be taken only as the confirmed post while the matter under consideration is about his functioning as Chief Accounts Officer, on officiating basis. Thus, by virtue of the direction of this Tribunal vide order dated 19.08.2003 the applicant had remained, being without reverted from the post of Chief Accounts Officer, till he was transferred to Pune. Hence he becomes entitled to the pay and allowance as of Chief Accounts Officer upto 05.10.2003.

6. Under the circumstances, the applicant has been correctly paid his salary at the rate of Rs.12,600/- upto September, 2003. There is, therefore, no necessity to reduce his pay to Rs.12,400/- and to that extent the impugned order dated 27.01.2004 cannot be sustained.

7. In view of the above, **OA is allowed.** Order dated 27.01.2004 is quashed in so far as it related to reduction of pay of the applicant for the period 25.04.2003 upto 30.09.2003. The respondents are directed not to recover any amount on this score and if any amount has already been deducted, the same shall be refunded to the applicant. The applicant is entitled to annual

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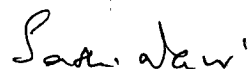
increments which will be worked out and paid to him in accordance with law.

8. The above order shall be complied with within a period of three months from the date of this order. The OA is disposed of as above. No costs.

Dated, the 31st August, 2006.



K.B.S. RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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