

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

Original Application No.162/2013

...*Tuesday*... this the *8<sup>th</sup>* day of December 2015

**C O R A M :**

**HON'BLE Mr.JUSTICE N.K.BALAKRISHNAN, JUDICIAL MEMBER  
HON'BLE Mrs.P.GOPINATH, ADMINISTRATIVE MEMBER**

Y.Amminikutty,  
W/o.late G.Mamachan,  
(Retired Deputy Postmaster, HSG-I),  
Kollam H.O.  
Residing at Cheppallil House,  
Kanjavelly P.O., Kollam – 691 602.

...Applicant

(By Advocate Mr.V.Sajithkumar)

**V e r s u s**

1. Union of India,  
represented by Secretary to Government,  
Department of Posts, Government of India,  
New Delhi – 110 001.
2. The Chief Postmaster General,  
Kerala Circle, Trivandrum – 695 001.
3. The Superintendent of Post Office,  
Kollam Postal Division,  
Kollam – 691 001.
4. The Post Master,  
Head Post Office,  
Kollam – 691 001.

...Respondents

(By Advocate Mr.Brijesh.A.S.,ACGSC)

This application having been heard on 23<sup>rd</sup> November 2015 this Tribunal on *8<sup>th</sup>* December 2015 delivered the following :



**ORDER**

**HON'BLE Mrs.P.GOPINATH, ADMINISTRATIVE MEMBER**

The applicant, wife of late G.Mamchan, Deputy Postmaster, Kollam is aggrieved by the inaction on the part of the respondents to sanction and disburse retiral benefits taking into account the last pay drawn by him. The husband of the applicant was paid salary in the HSG I Grade but retiral benefits were paid without taking note of the benefits of officiating promotion. The recovery from salary after retirement is not permissible in law. Late Mr.G.Mamachan had officiated as Deputy Postmaster on several occasions in the last few years. He was placed in charge of Deputy Postmaster under the orders of Post Master, Kollam HO on local officiating basis in July and was paid salary in the higher grade in which he officiated. The deceased employee had officiated for the period from 17.10.2012 to 31.10.2012 in the post of Deputy Postmaster and retired on 31.10.2012. The officiating arrangement was made on the orders of Postmaster. The respondents effected recovery from some other benefits due to the employee after disbursing the last month salary (details not provided). After effecting recovery, they have issued revised pay bill without following the procedure established by law. There is no provision empowering the 3<sup>rd</sup> and 4<sup>th</sup> respondents to carry out recovery of any amount from salary after retirement. It is submitted that the applicant had submitted representation to the higher authority. But the same was rejected by the 3<sup>rd</sup> respondent stating that he was ordered to look after the duties of Deputy Postmaster without



3.

any extra remuneration, as all other eligible persons had declined adhoc promotions as the duration was only 15 days. Applicant points out that as per Rule 50(1) of P&T Manual Vol.IV, officiating arrangements for vacancies not more than one month duration may be confined to the officials in the office where vacancy occurs even if that involves supersession of senior officials somewhere else. As per DO letter No.ST/18/1/DIG/03-04/PO dated 13.7.2006 officiating arrangement in HSG I can be made in the order of preference viz. (a) HSG II, LSG (C), BCR, officials respectively by granting fixation of pay in HSG I by applying FR 35. Thus even the orders of the respondents permitting officiating arrangements against HSG I post by a BCR official was in order. Therefore, there is no justification in the action taken by the Divisional Authorities in disallowing the HSG I pay which was already paid. Deceased employee had worked with higher responsibilities in the post of Deputy Postmaster. After extracting the work, the respondents are estopped from refusing the fixation benefits through subsequent orders. The reliefs sought by the applicant is to declare that Late Mamachan, retired Dy.PM under the respondents was entitled to fixation of pay on his officiating arrangement in HSG-1 grade and consequential retiral benefits by counting the HSG-1 salary paid to the husband of applicant for the month of October, 2012.

2. Respondents in their reply state that the late husband of the applicant was granted third financial upgradation under Modified Assured Career

Progression (MACP for short) scheme with effect from 1.9.2008 with grade pay of Rs.4200/- in Pay Band-II. The pay scale in PB-II is Rs.9300-34800 + Grade Pay of Rs.4200/-. The official was posted as PA, Kollam HO on 9.6.2010 as per his request and he continued to work at Kollam HO till his retirement on 31.10.2013. Deputy Postmaster, Kollam HO is a Higher Selection Grade-I post. The pay of HSG-I cadre is Rs.9300-34800 + Grade Pay of Rs.4600/-. The appointing authority of HSG-I cadre is Director of Postal Services working in the office of the 2<sup>nd</sup> respondent. When the regular incumbent of the post of DPM, Kollam HO proceeded on leave, late Shri.G.Mamachan, worked as DPM, Kollam HO under office arrangement from 17.10.2012 to 31.10.2012 as per the instructions of the Postmaster, Kollam HO and retired on superannuation on 31.10.2012. He then submitted a representation to this respondent to grant him retiral benefits counting his HSG-I officiating service during the last 15 days of his service. After careful examination of the case, this respondent intimated the ex-official that his prayer cannot be considered as he worked as DPM, Kollam HO without the orders from the competent authority ie. DPS (HQ). Respondents aver that according to the departmental promotion scheme, there are three regular promotions from Postal Assistant to supervisory posts ie. Lower Selection Grade (LSG for short), HSG-II and HSG-I. All these promotions are based on the position of the official in the circle gradation list and the availability of vacancies in the supervisory cadre. TBOP and BCR are only financial upgradations and not promotions. Hence, the



avermment of the applicant that her husband was enjoying BCR which was treated equivalent to HSG-II is not correct. Any PA who has successfully completed 26 years of service will be given financial upgradation under BCR scheme but HSG-II promotion is given only from among the eligible LSG officials and further HSG-I promotion is given only from among the eligible HSG-II officials. DPS (HQ) working under the 2<sup>nd</sup> respondent is the competent authority to appoint a person in HSG-I cadre even on adhoc basis. To officiate in the leave vacancy of HSG-I post, the order of preference is from officials of HSG-II, LSG, MACP-III (Grade Pay Rs.4600 in PB-II) and lastly BCR officials. As the HSG-II, LSG, MACP-III officials in Kollam HO declined the officiating arrangement when the DPM proceeded on leave, late G.Mamachan was ordered to look after the current duties of DPM without any extra remuneration under local arrangement made by Postmaster, Kollam HO. It is submitted that late Shri.G.Mamachan received his last pay on 31.10.2012 in the eligible scale ie. Grade Pay of Rs.4200/- only. He was erroneously paid Grade Pay as Rs.4600/- instead of Rs.4200/- for working as DPM, Kollam HO for 15 days. When it came to the knowledge of this respondent that late G.Mamachan was not appointed by the competent authority, Annexure A-6 was issued by the respondent and the excess amount paid to the ex-official is yet to be recovered. The averment of the applicant that the recovery was made from other amounts due to the employee is hereby denied. The eligible pay and allowances were extended to the ex-official. It is submitted that this has no connection with



the sudden demise of the applicant's husband who had undergone major treatment for serious ailments two years before his retirement and was claiming reimbursement of medical expenses from the department continuously.

3. Heard the counsel for the parties and considered the written submissions made. This is a simple case of an official having discharged and performed higher responsibilities of a HSG-I post for a period of 15 days which is not denied by the respondents, the payment given is sought to be withdrawn. Going by the presumption that the deceased employee was performing some mandatory functions which can be performed only by a person holding the post of Dy.PM, it would then be immaterial as to who made the working arrangement orders, as without this working arrangement the work of the post office would be adversely affected. The issue that comes up is whether there is a provision in the service rules to provide the husband of the applicant the benefit of officiating in the Dy.PM's post for a period of 15 days. Applicant makes a reference to FR 35 without elucidating the same. GoI orders dated 5.8.1981 under FR 35 reads as follows :

“(1) No restriction of officiating pay in cases of regular cadre promotion – Under the existing orders, provisions of FR 35 operate only in respect of appointments by transfer on deputation. Recently, a question was raised as to whether the said provisions of FR 35 would also apply to cases of promotions within the cadre.




The matter has been considered. It has been decided that the restrictions of officiating pay under FR 35 should not be invoked in respect of regular cadre promotions where the employee becomes due for promotion, falls within the zone of consideration and fulfills all qualifications prescribed for promotion."

The rule by its above definition as laid down in the latter part is not applicable to the applicant's husband as the reference is to regular cadre promotion where employee becomes due for promotion. However, FR 49 may come to the aid of the applicant by stretching its intended definition :

"FR 49 (i) where a Government servant is formally appointed to hold full charge of the duties of a higher post in the same office as his own and in the same cadre/line of promotion, in addition to his ordinary duties, he shall be allowed the pay admissible to him, if he is appointed to officiate in the higher post, unless the Competent Authority reduces his officiating pay under Rule 35; but no additional pay shall, however, be allowed for performing the duties of a lower post."

4. The only drawback is that the applicant's husband was not performing the duties of lower and higher post as defined above, but he did perform the duties of the higher post. Applicant's husband has merely obeyed his superior's orders and had no choice in refusing the same. He may have also accepted the arrangement with the expectation of the same providing him some additional pensionary benefit on the basis of last pay drawn. Be that as it may, after extracting work, a postmortem as to who is the competent authority to have issued his working/officiating orders is not appropriate at this belated stage. Further as per Supreme Court judgment in **State of Punjab and others vs. Rafiq Masih (White Washer) and others (2015) 4 SCC 334** recovery from retired persons is not permissible.



5. It has been held by the Apex Court that when person is directed to discharge the duties of a particular post, he was at least entitled to the pay and allowances attributable to that post during the period he carried out such duties.

6. A reference has also been made by applicant to Rule 50 (1) of P&T Manual Volume IV wherein officiating arrangements for vacancies not more than one month duration may be confined to officials in the office where vacancy occurs even if that involves supercession of senior officials somewhere else. The applicant does not, however, amplify whether the said arrangement is accompanied by sanction of higher officiating post pay. The respondent in his reply statement has conveniently not made a reference to the above point. As a special case and only applicable to husband of applicant in the O.A and not to be quoted as a precedent in any other case, the pay of the husband of the applicant be fixed in HSG-I grade for the period he held the post ie. 17.10.2012 to 31.10.2012 and to fix the retiral benefits accordingly. O.A is disposed of accordingly. No order as to costs.

(Dated this the 8<sup>th</sup> day of December 2015)



**R.GOPINATH**  
**ADMINISTRATIVE MEMBER**

  
**N.K.BALAKRISHNAN**  
**JUDICIAL MEMBER**