

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

O.A. No.174/93

Wednesday, this the third day of November, 1993

SHRI N.DHARMADAN, MEMBER (J)

1. C.K.Varghese,
Senior Accountant,
O/o. Dy. Director of Accounts
(Postal), Kerala Circle,
Thiruvananthapuram-10.

2. P.J.Aleykutty,
-do-

.. Applicants

By Advocate Shri G.Sasidharan Chempazhanthiyil

V/s

1. The Deputy Director of
Accounts Postal, Kerala
Circle, Trivandrum.
2. Chief Postmaster General Kerala,
Circle, Trivandrum.
3. Director General, Deptt. of
Posts, Dak Tar Bhavan,
New Delhi - 1.
4. Union of India, rep. by
Secretary, Min. of Communi-
cations, New Delhi.

.. Respondents

By Advocate Shri George C.P.Tharakan,
Senior Central Govt. Standing Counsel.

ORDER

N.DHARMADAN

A question pertaining to fixation of pay in the cadre of Senior Accountant taking into account the qualification pay at the rate of Rs.30/- p.m. with effect from 22.7.1989 arises for consideration in this case.

2. The applicants are Senior Accountants in the office of the Deputy Director of Accounts (Postal), Kerala Circle, Trivandrum. Both of them came to Postal Accounts from

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Savings Bank Control Organisation' (SBCO for short), as Junior Accountants on mutual transfer under Rule 38 of P&T Manual. They joined as Junior Accountants in the Postal Accounts Section in August 1980. They were given confirmation as per Annexure-VI order dated 14.6.1983 with effect from 1.3.1982. According to the applicants, UDC in SBCO and Junior Accountant in Postal Accounts are similar in every respect including the pay and nature of work. They were also given appropriate placings in the gradation list of confirmed Junior Accountants in the Postal Accounts. After the restructuring as per Annexure-VII, 80% of the posts in the cadre of Junior Accountants including non-functional selection grade senior Accountants were upgraded to the higher functional grade of Rs.1400-40-1600-50-2300-EB-60-2600 with effect from 1.4.87. The upgraded posts were decided to be filled up cent percent by promotion on the basis of seniority-cum-fitness by posting junior Accountants having three years of regular service who have passed the departmental/confirmatory examination/depart-mental examination for promotion. Applicants have already rendered seven yearsof service as junior Accountants in the Postal Accounts out of which five years service was rendered by them as permanent junior Accountants. Hence, they were fully qualified to be promoted as Senior Accountants. Though the first respondent promoted 131 junior Accountants as senior Accountants in the Postal Accounts with effect from 1.4.87, the applicants were not promoted presumably because they have not passed the departmental/confirmatory examination/depart-mental examination for promotion of LDCs. According to the applicants, since they have already passed the departmental examination for promotion as UDCs, it is not necessary for them to again sit for the examination. They have also filed

representations for getting promotion without passing the departmental examination. The first respondent rejected the representations. Thereupon the applicants appeared for the examination and they were successful in the year 1989. Accordingly, the applicants were promoted as Senior Accountants on regular basis with effect from 1.4.87, as per order dated 25.9.1989. Applicants were also asked to give their option for fixation of pay on regular promotion. They have exercised their option for fixation of their pay in the scale of Rs.1400-2600. Accordingly, their pay was fixed as follows:-

"1st applicant:

Pay on 1.5.87 : 1600
Date of next increment : 1.5.88 (Rs.1650)

2nd Applicant:

Pay on 1.4.87 : 1560
D.N.I. : 1.4.88 (Rs.1600)"

All the officials who have passed the confirmation examination are eligible for qualification pay of Rs.30/- p.m. as a separate element. Since the applicants have passed the confirmation examination, they were granted the benefit of qualification pay with effect from 22.7.89. An office order was issued in this behalf by the Assistant Chief Accounts Officer (Admin) on 26.2.90, which is marked as Annexure-XII. While they were getting this qualification pay, which will be merged with their pay in the event of their next promotion as JAO, contrary to the statement in Annexure-XII order, the qualification pay was abruptly and arbitrarily stopped by the first respondent without any notice, as per Annexure-XIII order dated 18.8.92. Both applicants have filed representations against the same, one of the copies of the same is marked as

Annexure-XIV. A further memo, Annexure-XV dated 23.9.92 was issued directing the applicants to exercise their option for refixation of their pay in the cadre of Senior Accountants, within a month. Since the attempt of the respondents was to recover from the applicants the benefit of qualification pay already received and reduce⁴ their pay by refixation, the applicants exercised Annexures-XVI and XVII, conditional option, stating that no recovery shall be made on the basis of refixation. But as per Annexure-XVIII, the Deputy Director has decided to recover the qualification pay already received by the applicants alleging that the same is overpayment. Since there is substantial monetary loss on account of the impugned orders proposing refixation of pay and recovery, the applicants have jointly filed this application under Section 19 of the Administrative Tribunal's Act, for quashing Annexures-XIII, XV and XVIII to the extent they relate to the applicants.

3. Respondents in the reply are admitting the basic facts and the service details of the applicants. But they stated that the applicants were promoted as Senior Accountants on ad-hoc basis with effect from 1.4.87 on the condition that they will pass the Departmental Confirmation Examination within the next four chances commencing from May 1988, for regularising their promotion as Senior Accountants. They were drawing Rs.30/- as qualification pay with effect from the date they passed the Departmental Examination. Subsequently, the Ministry of Finance, as per OM dated 22.3.1990 (Annexure-R1) clarified that the qualification pay of Rs.30/- will be taken into account for the purpose of fixation of pay in the event of promotion to the post of Senior Accountant. Even after this clarification, the applicants were drawing qualification

pay as a separate element in addition to the pay admissible to Senior Accountants, which is against the letter Annexure-R1. Their case was taken up with the Postal Directorate, which by further letter dated 14.9.92 clarified that the pay of the applicants may be refixed in the cadre of Senior Accountants as a special case from the day they became entitled to the qualification pay, with reference to the pay they would have drawn in Junior Accountants' cadre had they continued as Junior Accountants on that date. The impugned orders were issued on the basis of the above clarification. The applicants' conditional option cannot be accepted. According to the respondents there would not be any drop in pay had the applicants exercised their option without condition of waiver of overpayment from 23.3.90. If the first applicant exercised the option without any condition, he would have drawn increment two months in advance from 90-91 onwards every year in May instead of July. Similarly, the second applicant would have drawn increment every year in March instead of July from 90-91 onwards. However, the overpayment of Rs.30/- p.m. towards qualification pay drawn as a separate element has to be recovered with effect from 22.3.90 to 31.7.92 as there was no Government order to waive this overpayment. According to the respondents the O.A. is devoid of any substance and it is to be rejected.

4. Applicants have filed a detailed rejoinder also denying the various statements contained in the reply.

5. Having heard the ^{learned} counsel on both sides, the important question to be decided in this case is whether the applicants are entitled to retain the qualification pay granted to them as per special order after their pass in the departmental qualifying examination as per Annexure-XII office order dated 26.2.90. The order reads as follows:-

" In accordance with the Dept. of Posts, New Delhi letter No.37/27/88-PA-Admn I/644 dated 2.2.90, the following officers as Junior Accountants and who have passed the departmental confirmation examination for direct recruit Jr. Accountants and promoted as Sr. Accountants are now eligible for the enhanced qualification pay @ Rs.30/- p.m. with effect from the date following the last day of the confirmation exam as noted below:-

1. Smt. Sophiamma thomas : 20.5.88
2. Shri C.K.Varghese : 22.7.89
3. Smt. P.J.Aleykutty : 22.7.89

Smt. Sohiamma Thomas who is already drawing the qualification pay of Rs.15/- w.e.f. 20.5.88 vide O.O. No.31/Admn/E I/3B dated 19.8.88 will now draw the qualification pay in the enhanced rate from 20.5.88.

The qualification pay will be drawn as a separate element in the cadre of Sr. Accountant and the same will be taken into account for fixation of pay on their promotion for a further higher post as JAO."

In so far as the applicants are concerned, it has been specifically stated in the above order that they shall draw the qualification pay as a separate element in the cadre of Senior Accountant and the same will be taken into account "for fixation of pay only on their promotion for a further higher post as JAO". The wording in this order is very clear and unequivocal. This order has not been superseded or cancelled so far. The respondents have no case that this order is not in force. Whatever right that has accrued in favour of the applicans on the basis of this order cannot be taken away without any legal authority. The contention of the learned counsel for the respondents is that if the applicants' case is accepted it will have all India effect and others similarly situated also raise such claim. In fact, according to the respondents, the clarification, Annedure-R1, has been enforced against all other similarly situated persons, but they have not made any complaint against the same.

6. The statement of the respondents that others have not challenged the action is no reason for denying the legal benefit accrued in favour of a Government employee on the basis of orders issued in his favour. Annexure-XII made it clear that the applicants are entitled to special qualification pay and it will be merged with the pay for fixation on their promotion to the post of JAO. Annexure-R1 clarification relied on by the respondents appears to be prospective and does not give any right for the respondents to reopen cases ^{closed} arising prior to 1.4.87. Applicants have been given promotion as Senior Accountants with effect from 1.4.87, and they were also given fixation of pay as stated earlier. Hence, it cannot be said that there is an overpayment to be proceeded against for recovering the same from the applicants. The applicants' case can be treated as a special case as admitted by the respondents in para 15. It is to be treated as a special case particularly when Annexure-XII order has been passed in their favour; the apprehension of the respondents that the acceptance of the contentions of the applicants will adversely affect the respondents, is unfounded and there is no substance in the same.

7. However, the applicants have given Annexure-XVI and XVII conditional option, particularly in the light of protection of their right as per Annexure-XII. The respondents are free to consider their option in Annexures-XVI and XVII notwithstanding the impugned orders, for issuing fixation order in accordance with law protecting their right as covered by Annexure-XII.

8. The application is disposed of with the abovesaid directions making it clear that this decision is not to be

treated as a precedent for it has been decided only considering the facts presented by the applicants and covered by the documents produced in this case. No costs.

N. Dharmadan
3.11.93.

(N.DHARMADAN)
JUDICIAL MEMBER

v/-