

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 206/2002

Friday, this the 3rd day of January, 2003.

CORAM :

HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI T.N.T. NAYAR, ADMINISTRATIVE MEMBER

M. Vasudevan Nair,
S/o Late Narayanan Nair,
Deputy Superintendent,
RMS, RMS 'TV' Division,
Trivandrum, residing at 'Vasitha',
Pappanamcode P.O., Trivandrum.

... Applicant

(By Advocate Mr. O.V. Radhakrishnan)

Vs

1. Chief Postmaster General,
Kerala Circle,
Trivandrum-33.
2. Deputy Director of Accounts(Postal),
Kerala Circle, Trivandrum-1.
3. Director of Accounts(Postal),
Maharashtra Circle,
Nagpur-440001.
4. Deputy Director of Accounts(P),
Karnataka Circle,
Bangalore-560001.
5. Director General,
Department of Posts,
Dak Bhavan, New Delhi.
6. Head Record Officer,
RMS 'TV' Division,
Thiruvananthapuram.
7. Union of India rep. by its
Secretary,
Ministry of Communications,
New Delhi.

... Respondents

(By Mr. M.R. Suresh, ACGSC)

The application having been heard on 3.1.2003, the Tribunal on the same day delivered the following :

ORDER

HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN

The applicant working as Deputy Superintendent, RMS, TV Division, Thiruvananthapuram has filed this application seeking to set aside Annexure A16, A17, A19 and A20 and to declare that the pay of the applicant in the post of HSG-I and PS Group B already fixed is not liable to be re-fixed and regularised as indicated in Annexure A16 and A20 and that they are issued on a wrong assumption of fact and law and for a direction to the respondents not to give effect to Annexure A16 and A20 and not to recover any amount alleged to be received by the applicant in excess on the basis of the calculations made in Annexure A16 and A20. The facts necessary for the disposal of the application are stated as follows :-


2. The pay scale of the post of ASRM was Rs.1640-2900/- before 1.1.1996 and HSG-I carried a pay scale of Rs.2000-3200/- till 1.1.1996. The applicant who was working as ASRM was promoted on adhoc basis as HSG-I by order dated 20.12.1995(A1). The adhoc promotion of the applicant has been ordered to be treated as regular w.e.f. 29.12.1995(AN) by order dated 24.6.1996(A2). Consequent on the regularisation of his promotion to HSG-I w.e.f. 29.12.1995 by Annexure A2 order, the applicant submitted his option for having his pay fixed and re-fixed under FR 22 (1) (a) (i). Accordingly, the applicant's pay as on 30.12.1995 was fixed at Rs.2450/- and his pay was fixed at Rs.2,600/- as on 1.3.1996. Thereafter, the applicant was promoted to the post of PS Group B. He exercised his option and his pay in the post of PS Group B was also fixed. The present grievance of the applicant is that all of a sudden without any notice, on the basis of the Internal Check Inspection Report of the Audit Party, Annexure A16 was issued re-fixing the

applicant's pay w.e.f 1.12.1996 ignoring the option of the applicant. The impugned orders Annexure A17, A19 and A20 have been issued proposing to recover the alleged over payment. Aggrieved by this, the applicant has filed this application seeking to set aside the above orders. It is alleged in the application that on the date of applicant's regular promotion from ASRM to HSG-I, these two posts are with different pay scales and the post of HSG-I having higher duties and responsibilities as also carried a higher pay scale. Under the circumstances, the fixation of pay of the applicant made under Annexure A3 was perfectly in tune with the rules and instructions contained in FR 22 (i) (a) (i) as also the instructions contained in Annexure A5 and A7.

3. The respondents in the reply statement contended that as the pay scale of ASRM and HSG-I have become one and same w.e.f. 1.1.1996, the applicant's pay could not have been fixed as per the provision under FR 22 (1) (a) (i).

4. We have gone through the entire pleadings and material placed on record.

5. Shri O.V. Radhakrishnan, the learned counsel for the applicant with considerable tenacity argued that the impugned orders were the result of a wrong assumption of fact and law. According to him, since the post of ASRM from which the applicant was promoted on regular basis w.e.f. 29.12.1995 carried a lower pay scale and carried lower level of duties and responsibilities in comparison to HSG-I which carried a higher pay scale and higher duties and responsibilities, the fixation of pay of the applicant by Annexure A3 was perfectly in order and the observations of the Internal Audit Party that the pay fixed was



wrong is without any basis. The counsel also invited our attention to Para 2 (iii) of Annexure A7 dated 23.4.1999 which read as follows :-

"In the promoted post, they will draw their next increments on completion of one year from the date the pay was re-fixed under (ii) supra subject to the satisfaction of other conditions."

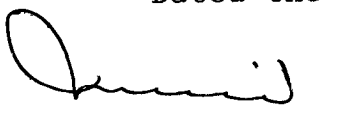
He also stated that it is not necessary to exercise option pursuant to Annexure A7 as he had already exercised his option and his pay fixed correctly under Annexure A3.

6. Shri M.R. Suresh, ACGSC, the counsel for the respondents argued that as the promotion of the applicant was only w.e.f. 30.12.1995 and as the pay scale of ASRM and HSG-I became identical w.e.f. 1.1.1996, the stand taken by the Audit Party in the Internal Check Report is justified.

7. We find considerable force in the argument of the learned counsel of the applicant while we find no force at all in the stand taken by the respondents. The applicant's pay was rightly fixed as per the provision under FR 22 (1) (a) (i) on his promotion from the post of ASRM to HSG-I. That after his promotion the pay scales got merged into one can have no effect on the applicant's pay fixation. Therefore the impugned orders are liable to be set aside.

8. In the light of what is stated above, the impugned orders are set aside and the respondents are directed to give the consequential benefits to the applicant. No costs.

Dated the 2nd January, 2003.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

- 5 -
A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the memo No.ST/18/5/93 dated 20.12.95 of the 1st respondent.
2. A-2: True copy of the memo No.S/18/5/93 dated 24.6.96 of the 1st respondent.
3. A-3: True copy of the memo No.B/51/94-95 dated 22.7.96 of the Superintendent of Post Offices, PSD, Trivandrum.
4. A-4: True copy of the memo No.ST/1/1/5/96 dated 21.4.97 of the 1st respondent.
5. A-5: True copy of the OM No.13/2/97-Estt (Pay-1) dated 12.12.97 of the Government of India Department of Per.Trng., New Delhi.
6. A-6: True copy of the Audit Objections raised by the 3rd respondent in the Local Internal Check Report for the year 1998.
7. A-7: True copy of the OM No.1/12/97-Estt (Pay-I) dated 23.4.99 of the Government of India, Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training).
8. A-8: True copy of the covering letter dated 28.6.99 alongwith the option statement of the applicant.
9. A-9: True copy of the letter No.1-9/99-PAP dated 22.4.99 conveyed under letter dated 26.5.99 of the 3rd respondent.
10. A-10: True copy of the letter No.209/Estt/SAI/MVN dated 1.9.1999 issued by the 4th respondent.
11. A-11: True copy of the letter No.389/Estt/SAI/MVN dated 4.1.2000 of the 4th respondent addressed to the Superintendent, PSD Bangalore.
12. A-12: True copy of the representation dated 4.4.2000 addressed to the Senior Account Officer establishment in the office of the 4th respondent.
13. A-13: True copy of the letter No.7/Estt/SAI/MVN dated 7.4.2000 of the 4th respondent addressed to the Senior Postmaster, Basavangudi H.O.
14. A-14: True copy of the representation dated 20.4.2000 of the applicant to the 4th respondent's office.
15. A-15: True copy of the letter No.42/Estt/SAI/MVN dated 1.5.2000 of the 4th respondent.
16. A-16: True copy of the letter No.CIS/ICI/F.Mail/Sept'98/2001-2002/1148 dated 7.8.2001 of the 3rd respondent.
17. A-17: True copy of the letter No.750/Admn.II/GE/PF.353 dated 19.9.2001 of the 2nd respondent.
18. A-18: True copy of the representation dated 21.9.2001 of the applicant to the 5th respondent.
19. A-19: True copy of the letter No.1464/Admn.II/GE/PF.353 dated 30.1.2002 of the 2nd respondent.
20. A-20: True copy of the letter No.1504/Admn.II/GE/PF.353 dated 5.2.2002 of the 2nd respondent.
21. A-21: True copy of the representation dated 20.2.2002 of the applicant to the 5th respondent.
22. A-22: True copy of the representation dated 20.2.2002 of the applicant to the 1st respondent.
23. A-23: True copy of the letter No.B/Sr.PM/dlgs/2000 dated 8.2.2000 of the Senior Postmaster Basavanagudi H.O., Bangalore to the 3rd respondent.

Respondents' Annexures:

1. R-1: Directorate letter No.23-8-97 PE-I(PCC) dated 17.10.1997.
2. R-2: Director General, Posts Lr.No.2-20-95 PAP dated 31.5.95.
3. R-3: Department of Posts, New Delhi Lr.No.1-13-98 PAP dated 5.2.2002.
4. R-4: Copy of the Supreme Court Judgement AIR 1998 SCP 2102 Civil Appeal No.1699/97.
5. R-5: Photo copy of the Service Book entries on Option 1 from 1.1.96.
6. R-6: Copy of the Option 2 dated 15.7.96.
7. R-7: True copy of the Ministry of Personnel, Public Grievances & Pensions (Department of Personnel & Training), New Delhi, O.M.No.1/12/97 -Estt. (Pay.I) dated 23rd April 1999 and Corrigendum No.1/12/97-Estt.(Pay.I) dated 10th August, 1999.
8. R-8: True copy of the order No.25-18/2000-PE-I dated 11.7.2002 and 26.6.2002 issued by the Ministry of Communications & Information Technology, Department of Posts, New Delhi.
