

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.217/06

Tuesday this the 4th day of December 2007

C O R A M :

**HON'BLE Mrs.SATHI NAIR, VICE CHAIRMAN
HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER**

C. Manmadhan Pillai,
S/o.Chellappan Pillai,
Senior Accountant,
O/o.the Director of Accounts (Postal),
Kerala Circle, Trivandrum.
Residing at "Kedaram",
Sreenagar, Manikanteswaram P.O.,
Vattiyoorkavu P.O., Trivandrum – 11.

...Applicant

(By Advocate Mr.Shafik M.A.)

Versus

1. Union of India represented by Secretary,
Department of Posts, Ministry of Communication,
Dak Bhavan, New Delhi – 1.
2. The Director General,
Department of Posts,
Postal Accounts Wing,
Dak Bhavan, New Delhi – 1.
3. The Director of Accounts (Postal),
Kerala Circle, Trivandrum – 1.
4. The Chief Post Master General,
Kerala Circle, Trivandrum – 33.

...Respondents

(By Advocate Mr.George Joseph,ACGSC)

.2.

This application having been heard on 4th December 2007 the Tribunal on the same day delivered the following :-

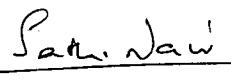
ORDER

HON'BLE Mrs.SATHI NAIR, VICE CHAIRMAN

When the matter came up for hearing today, representing counsel for the applicant seeks a short adjournment of the case. The case was admitted in April, 2006. Pleadings were completed in December, 2006. It is seen that the counsel for the applicant had been seeking adjournments in the case for the past so many occasions. It appears that the applicant's side is not interested in prosecuting the matter. The O.A is, therefore, dismissed for default.

(Dated the 4th day of December 2007)


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 217 / 2006

Friday, the 7th March, 2008..

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE DR K.S.SUGATHAN, ADMINISTRATIVE MEMBER

C. Manmadhan Pillai,
S/o Chellappan Pillai,
Senior Accountant,
O/o the Director of Accounts (Postal),
Kerala Circle,
Trivandrum

(By Advocate Mr Shafik M.A)

1. Union of India represented by
Secretary,
Department of Posts,
Ministry of Communication,
Dak Bhavan,
New Delhi – 1.
2. The Director General,
Department of Posts,
Postal Accounts Wing,
Dak Bhavan, New Delhi – 1.
3. The Director of Accounts (Postal),
Kerala Circle,
Trivandrum – 1.
4. The Chief Post Master General,
Kerala Circle,
Trivandrum – 33.

(By Advocate Mr George Joseph, ACGSC.)

This application having been finally heard on 13.2.2008, the Tribunal on 7.3.2008 delivered the following:



**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 217 / 2006

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE DR K.S.SUGATHAN, ADMINISTRATIVE MEMBER

C. Manmadhan Pillai,
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(By Advocate Mr Shafik M.A)

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Kerala Circle.
Trivandrum – 1.
4. The Chief Post Master General,
Kerala Circle,
Trivandrum – 33.Respondents

(By Advocate Mr George Joseph, ACGSC.)

This application having been finally heard on 13.2.2008, the Tribunal on delivered the following:

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ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Applicant's grievance is against the refusal of the respondents to reckon the period from 1.10.2002 to 31.10.2003 for the purpose of annual increment in the post of Senior Accountant against which he was officiated during the aforesaid period. He is also aggrieved by the denial of opportunity by the respondents in exercising option for fixation of pay under FR 22(1)(a)(1) upon appointing him as Senior Accountant on regular basis with effect from 1.11.2003.

2. The applicant while working as Junior Accountant in the scale of pay Rs.4000-6000 was promoted as Senior Accountant on ad hoc basis in the scale of pay Rs.5500-9000 on ad hoc basis for the following spells:

- 1) 1.10.2002 to 18.2.2003
- 2) 19.2.2003 to 29.4.2003
- 3) 1.5.2003 to 28.10.2003
- 4) 29.10.2003 to 31.10.2003.

In the Annexure A-7 representation dated 19.11.2003, the applicants submitted that his reversion on 28.10.2003 was unwarranted as he was not the juniormost officer who was officiating as Senior Accountant on that date and he should have been adjusted against one of the regular deputation vacancies rather than reverting him and allowing his juniors to continue against regular vacancies. In reply to the said representation respondents informed him vide Annexure A-9 memo dated 9.3.2004 that he has to be reverted on completion of 120 days as per the instructions contained in the Department's order No.37(3)/92/PA-Admn.I/651 to 666 dated 30.3.1998. Having not satisfied with the aforesaid reply, he made a further Annexure A-10 representation dated 15.3.2004 to the



respondent No.4, the CPMG, Kerala Circle stating that the aforementioned departmental instructions issued vide the aforementioned letter dated 30.10.1998 was never implemented in the case of so many other officials who were given ad hoc promotions to the cadre of Senior Accountants. He has specifically cited the cases of Shri R.S.Narayanan, Shri Varghese Chacko, Smt G Radhamany and Smt Geetha Sreekumar who have been promoted on ad hoc basis for a period ranging from 12 months to 24 months and not reverted. He has made a further representation (Annexure A-11) dated 20.10.2004 to the 2nd respondent. In this representation, in addition to the points already raised by him in the earlier representations, he has also submitted that he was not granted increments for the last 14 months covering the period of his ad hoc promotions as Senior Accountant in different spells. He has also made the complaint that he was not given an opportunity to avail himself of the option under FR 22(1)(a)(1) when he was given regular promotion with effect from 1.11.2003. The applicant has also submitted that the present O.A is covered by the earlier decision of this Tribunal in O.A.689/2005 in **C.A.Paul v. Union of India and others** decided on 20.6.2006 and O.A. 297/2004 in **K.Jose Thomas v. Union of India and others** decided on 13.4.2007. In O.A.689/2005, the relief sought by the applicant therein was to declare that the applicant therein was entitled to be granted annual increments for the period of officiation as Senior Technical Assistant from 3.4.1995 to 30.9.1998 ignoring the period of artificial break and to treat the period as continuous as per FR 26(A) and to direct the respondents to refix the pay of the applicant in the light of the declaration above. Respondents in the said case followed the DOPT's advice in matter that

“... when the pay fixed in case of promotion is less than the pay drawn during the last spell of officiation against the same post, the pay drawn during the last spell of officiation can be allowed. The benefit of broken period of officiation is admissible only if on re-promotion the pay is fixed at the same stage as fixed during last officiation period(s). If fixed on higher stage the benefit of previous officiation period is not admissible.”



The prayer of the applicant in O.A.297/2007 was again to declare that he was entitled to the pay in the post of JTA ignoring the artificial breaks imposed on him, with all increments for the period he has worked as JTA and to direct the respondents to consider the post of UDC held by the applicant after reversion of two days notionally as a post of UDC with special pay. Taking note of the submission made by the respondents in the earlier O.A.689/2005, this Tribunal declared that the applicant in O.A. 297/2007 was also entitled to the pay in the post of JTA ignoring the artificial breaks imposed on him with all increments for the period he has worked as JTA. He has sought the following reliefs in this O.A:

- i) To declare that the applicant is entitled to be granted annual increment for the period of officiation as Senior Accountant from 1.10.2002 to 31.10.2003 ignoring the periods of artificial break and to direct the respondents to refix the pay of the applicant accordingly.
- ii) To declare that the applicant is entitled to an opportunity of exercising option for fixation of pay under FR 22 1(A)(I) upon appointing the applicant as Senior Accountant on regular basis with effect from 1.11.2003.
- iii) To direct the respondents to grant the consequential monetary benefits arising out of the above declarations with interest at 18%.

OR

- iv) To direct the 2nd respondent to consider Annexure A-11 representation and pass appropriate orders within a time frame as may be fixed by this Tribunal.

3. The respondents in the reply stated that though it was not explicitly asked to exercise option for fixation of pay in the order of regular promotion, the applicant was expected to know that the option for fixation of pay is in-built in every order of promotion and he should have exercised it within a period of one month from the date of promotion. However, they have submitted that the Head of Office was willing to accept his option for fixation of pay even at this belated

stage.

4. As regards the reckoning of the period from 1.10.2002 to 31.10.2003, ignoring artificial breaks for the period of granting annual increments, the respondents have admitted that the applicant was not paid any increment in the scale of pay of Junior Accountant while he was officiating in a higher cadre of Senior Accountant. According to them, increment is drawn when official is paid the same pay continuously for a period of 12 months. They have also submitted that on receipt of Annexure A-II representation dated 20.10.2004 of the applicant, his pay was fixed on 21.11.2004. They have also submitted that the breaks in service was given between the different spells of ad hoc appointment in terms of Annexure R-2 letter of the 1st respondent dated 5.1.1998 according to which local officiating arrangement in the cadre of Assistant Accounts Officer was permitted for a maximum period of 180 days and while making such arrangement in AAOs it has to be ensured that the number of officers promoted as AAOs on regular basis, plus the number of officers promoted under local officiating arrangement by circles should not exceed the number of posts placed in the grade of AAOs under 80:20 scheme.

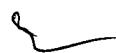
5. We have heard Shri Shafik M.A counsel for applicant and Shri George Joseph, ACGSC for respondents. We have also perused the departmental records made available by the respondents regarding fixation of pay of the applicant. Vide pay fixation Memo dated 26.5.2003, the respondents fixed the pay of the applicant after he has been promoted as Senior Accountant with effect from 1.10.2002 to 29.4.2003 and with effect from 1.5.2003 till reversion in the following manner:



- I. 1.10.2002 to 18.2.2003 @ Rs.5,450/-
- II. 19.2.2003 to 29.4.2003 @ Rs.6,025/-
- III.30.4.2003 (Reversion) as J.A Rs.5,750/-
- IV.1.5.2003 onwards @ Rs.6,025/-

He was reverted as Junior Accountant with effect from 28.10.2003 in the scale of Rs.4500-125-8000 and his pay was fixed at Rs.5875/-. Again, on promotion as Senior Accountant on ad hoc basis with effect from 29.10.2003, his pay was fixed at Rs.6200/- in the scale of Rs.5500-175-9000. The applicant continued as Senior Accountant on ad hoc basis till he was promoted on regular basis with effect from 1.11.2003. Again, consequent upon his regular promotion as Senior Accountant with effect from 1.11.2003, his pay was fixed at the stage of Rs.6025/- in the scale of Rs.5500-175-9000 and his date of next increment to the stage of Rs.,6200/- is fixed on 1.2.2004 taking into account his previous officiating spells from 19.2.2003to 29.4.2003 and 1.5.2003 to 27.10.2003. Finally vide pay fixation memo dated 22.1.2004, the applicant's pay was fixed as under:

- (i) With effect from 1.5.2003 at Rs.6025/- in the scale of Rs.5500-175-9000 with date of next increment to the stage of Rs.6200/- on 1.9.2003, taking into account of his previous officiating spells from 10.6.2002 to 12.7.2002, 1.10.2002 to 29.3.2003 at 5.4.2003 to 29.4.2003 at the same stage of pay of Rs.6025/-.
- (ii)With effect from 29.10.2003 on ad hoc promotion as Senior Accountant followed by regular promotion with effect from 1.11.2003, his pay in the scale of Rs.5500-175-9000 was fixed at Rs.6200/- with date of next increment to the stage of Rs.6375/- on 1.9.2004 taking into account the previous officiating spells from 1.9.2003 to 27.10.2003 at the same stage of Rs.6200/-.



In a nutshell, his pay fixation from 1.10.2002 was as under:

<u>Period</u>	<u>Cadre</u>	<u>Pay</u>
1.10.2002 to 29.3.2003	SA(Officiating)	5450/6025 Paritu scale 19.2.2003
30.3.2003 to 4.4.2003	JA	5750
5.4.2003 to 29.4.2003	SA(Oftg.)	6025
30.4.2003	JA	5750
1.5.2003 to 27.10.2003	SA(Oftg.)	6025
28.10.2003 20.10.2003	JA	5875
29.10.03 31.10.03	SA(Oftg.)	6200
1.11.03	SA(Regular)	6200

Pay fixed with DNI on 1.9.04.

6. In the above facts and circumstances of the case, we are of the considered opinion that the advice of the aforesaid DOPT is squarely applicable in this case also. Accordingly we allow the first relief sought by the applicant and direct the respondents to examine his case and to grant him the annual increment for the period of officiation as Senior Accountant from 1.10.2002 to 31.10.2003 ignoring the period of artificial break and to refix his pay. In view of the statement of the respondents that the respondents are prepared to accept his option for fixation of pay even at this belated time, the second prayer of the applicant has become infructuous. Respondents shall consider the option to be given by the applicant, if not already given, in accordance with the rules. The applicant shall also be paid interest @ 9% to the arrears of pay and allowances arising out of the first relief from 1.11.2003 till the date of actual payment. The



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above exercise shall be completed within a period of maximum two months from the date of receipt of copy of this order. There is no order as to costs.

Dated, the 7th March, 2008.



DR K.S. SUGATHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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