

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 245 of 1998

Tuesday, this the 2nd day of January, 2001

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

1. E. Satheesh, S/o. P. Narayanan Nair,
Senior Accountant, Office of the
General Manager, Telecommunication,
Calicut-1, residing at Block IV,
Flat 2231-A, Bilathikulam Housing Colony,
Calicut-6 ...Applicant

[By Advocate Mr. M.R. Rajendran Nair]

Versus

1. General Manager, Telecom, Calicut.
2. Chief General Manager, Telecom,
Kerala Circle, Trivandrum.
3. Chairman, Telecom Commission, New Delhi.
4. Union of India, represented by
Secretary to Govt. of India,
Ministry of Communications, New Delhi. ...Respondents

[By Advocate Mr. K.V. Sachidanandan (rep.)]

The application having been heard on 2nd of January, 2001,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

In the light of divergence of views by the two Members
of the Division Bench, this matter is placed before me for
resolving the point:

"Whether in the facts and circumstances of the case,
the application has to be allowed holding that the
applicant is entitled to the reliefs sought or is it to
be dismissed."

2. The sole question to be considered is that whether the applicant is entitled to the revised honorarium at the rate of Rs.272/- per month in the light of A1.

3. There is no dispute as to the fact that the applicant was working during the years 1993-94 and 1994-95 and was doing the work of posting and closing of monthly accounts. It is also not under dispute that he was paid at the rate of Rs.150/- per month by way of honorarium during the said period as that was the rate applicable at that time.

4. Subsequently, as per A1 dated 18th of June, 1996, honorarium was raised to Rs.272/- per month with effect from the 1st of June, 1993. So, A1 takes in a major portion of the period during which the applicant had drawn honorarium at the pre-revised rate.

5. In the OA, it is stated that A1 letter was circulated by the Chief General Manager's office as per letter dated 10-7-1996. This is not specifically denied in the reply statement. It is true that the reply statement says that all the averments made in the OA except those which are specifically admitted are denied. That is only an omnibus denial. Denial should be specific. A fact which is not specifically denied has to be taken as admitted and what is admitted need not be proved.

6. The learned counsel appearing for the respondents relying on paragraph-2 of A1 submitted that it should be ensured and verified before making payment that the total work for which honorarium is being paid has actually been done and according to her, 'actually been done' is to be understood as having been done manually.

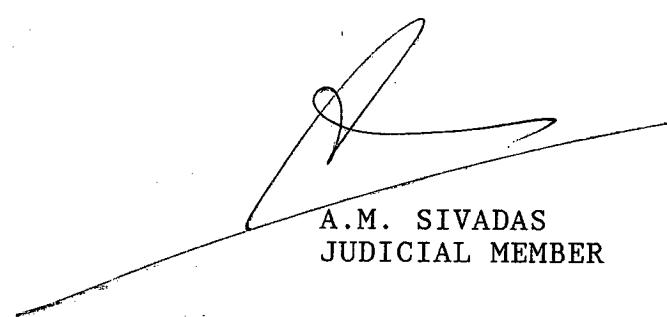
7. It is undisputed that the office wherein the applicant was posted was computerised as early as in the year 1989. It was after the computerization the applicant was posted for doing the work of posting and closing of monthly accounts and was paid admittedly honorarium at the rate of Rs.150/- per month. Now a stand is taken that only when the work is done manually, this enhanced rate of honorarium could be paid and in offices where the work is done with the aid of computer the enhanced rate of honorarium cannot be paid. I do not find any justification for taking such a view. From a careful reading of A1, I am unable to reach at the conclusion that only when the work is done manually the enhanced rate of honorarium could be paid and it could not be paid in the offices where the work is done with the aid of computers. If that was the intention, it could have been made clear in A1 that the enhanced rate of honorarium cannot be paid to those who are working in computerised offices. There is no necessity to add something to A1, which is not actually therein. What paragraph-2 of A1 says is that the honorarium could be paid only when the work has actually been done. There is no case for the respondents that the work has not been done by the applicant. But, the case is only that it is done with the aid of the computer. If there was nothing to be done manually, it is not known why the applicant was posted there and paid honorarium at the rate of Rs.150/- per month.

8. I am in full agreement with the view expressed by the learned Vice Chairman.

9. I hold that in the facts and circumstances of the case, the application has to be allowed holding that the applicant is entitled to the reliefs sought.

10. Accordingly, the Original Application is allowed quashing A4, declaring that the applicant is entitled to receive honorarium at the revised rate as prescribed in A1 for the work done by him in relation to the posting and closing of monthly accounts with effect from 1-6-1993 and directing respondents to pay arrears to him with interest at 12% per annum from the due date till the date of payment in terms of A1.

Tuesday, this the 2nd day of January, 2001



A.M. SIVADAS
JUDICIAL MEMBER

ak.

List of Annexure referred to in this order:

1. A1 True copy of the letter dated 18-6-96 issued by the Government of India, Ministry of Finance, Department of Expenditure, Controller General of Accounts, 7th Floor, Lok Nayak Bhavan, Khan Market, New Delhi-110 008
2. A4 True copy of the order No.271/43/97-STN-I dated 28.8.97 issued on behalf of the 3rd respondent.

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 245/98

Dated this 29th day of November, 2000

CORAM

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

E.Satheesh
S/o P.Narayanan Nair
Senior Accountant
Office of the General Manager
Telecommunication, Calicut-1
Residing at Block IV, Flat 2231 A,
Bilathikulam Housing Colony,
Calicut.

Applicant

By advocate Mr.M.R.Rajendran Nair

Versus

1. General Manager
Telecom, Calicut.
2. Chief Genmral Manager
Telecom, Kerala Circle
Trivandrum.
3. Chairman, Telecom Commission
New Delhi.
4. Union of India, represented by
Secretary, Ministry of
Communications, New Delhi.

Respondents.

By advocate Mr.K.V.,Sachidanandan

The application having been heard on 14th November, 2000, this Tribunal delivered the following on 29.11.2000

O R D E R

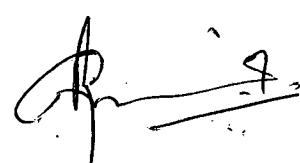
HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

This Original Application was filed by the applicant, Senior Accountant, Office of the General Manager, Telecommunications, Calicut seeking to quash A4 order dated 28.8.97 and for a declaration that he was entitled to receive honorarium at the revised rates as prescribed in A-1 order dated 18th June, 1996 issued by the Government of India, Ministry of Finance, Department of Expenditure for the work done by him in relation to posting and closing of monthly accounts with effect from 1.6.93 and for a direction to the respondents to pay him the arrears with 18% interest per annum.

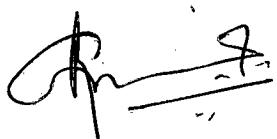
2. According to the applicant's statement in the OA, he while working as Senior Accountant in the office of the General Manager, Calicut, besides his normal duties, performed additional work relating to posting and closing of monthly accounts during the years 1993-94 and 94-95. According to him, he had received a lumpsum amount of Rs. 150/- per month for the additional work done by him. According to the applicant, A1 letter of the Ministry of Finance was circulated by the Chief General Manager's Office as per letter dated 10.7.96. Referring to item 1 of A1 "Posting and closing of monthly accounts", applicant claimed that he was eligible to get the revised rates from 1.6.93 and accordingly he put up his claim for payment before the Deputy General Manager, Telecom, Calicut on 23.8.96 but the said claim was returned without taking any action on it. His meeting with the Director of Finance and the first respondent and representation to the first respondent did not yield any results and accordingly he filed A-2 representation dated 7.12.96 to the 3rd respondent. When he did not receive any reply to A-2, he approached this Tribunal in OA 216/97 seeking a declaration that he was entitled to receive honorarium at the revised rates as prescribed in A1 for the work done by him in relation to posting and closing of monthly accounts with effect from 1.6.93 and to direct the respondents to pay him the arrears with 18% interest per annum. The said OA was disposed of by this Tribunal by A3 order dated 10.3.97 with a direction to the 3rd respondent to consider the claim of the applicant properly keeping in view the provisions contained in para 2 of the order of the Ministry of Finance, Department of Expenditure dated 18.6.96 and to give the applicant consequential benefits if any within a period of 3 months from the date of receipt of a copy of that order. 3rd respondent by A-4 order dated 28.8.97 considered the representation of the

applicant and rejected his claim on the ground that the work relating to GPF account in Calicut SSA had been computerised from 1989 and A-1 was not applicable in cases where the work of annual closing of GPF accounts had been computerised. According to the applicant, A4 order was arbitrary, unjust, unreasonable and irrational. According to him, the ground on which A2 representation was rejected was extraneous and was alien to A1 letter and that it was not based on any relevant material, that nowhere in A-1 it was stated that it was not applicable to cases where computerization had taken place and such a restriction could not be put by Telecom Department unilaterally. It was further submitted that by A1 order the rates of honorarium were revised with retrospective effect and when he was in receipt of monthly lumpsum of Rs. 150/- for the additional duties performed pertaining to posting and closing of monthly accounts, denying the benefit of A1 to him without any good reason was illegal, arbitrary, unjust and unreasonable.

3. Respondents filed reply statement resisting the claim of the applicant. They denied all the averments and allegations contained in the OA. According to them, the claim of the applicant could not be acceded to as the work relating to GPF accounts in Calicut SSA where the applicant was working had been computerised from 1989. They further submitted that the order of the Ministry of Finance, Department of Expenditure dated 18.6.96 (Annexure A-1) was a general order applicable to almost all the Ministries under the Govt. of India. The method of maintaining the accounts of GPF under various Ministries could vary depending upon the fact whether the work was computerised or not. The Dept. of Telecom especially Kerala Telecom Circle had taken an early lead in computerization of the pay billing and GPF accounting work.



A-1 order of the Ministry of Finance could be applicable to only those offices where the entire work was carried on manual operations as could be seen from the order of the Ministry of Finance. According to the respondents, the rates mentioned in item 1 of A-1 related to posting and closing of monthly accounts which involved posting of individual subscription and recovery of advances in individual ledger accounts of each official and transcribing the same into a combined broadsheet of all subscribers and agreement with the monthly credit and debit schedules received from Pay Billing Section. As the Pay Billing work was computerised in Calicut SSA from 1989 onwards and the GPF accounting was also computerised, no manual work of opening of individual ledger cards and manual posting of credits and debits were involved as these works were done on computer through separate software programs. Further as the Pay Billing and GPF accounting programs were interlinked through a separate program, all the recoveries made through pay bills were updated in the individual accounts involving insignificant manual interaction. Referring to item 2 of A-1 regarding honorarium for annual closing of accounts, they submitted that the same would clearly show that the work involved was manual and that the honorarium was fixed for manual work involved in these items. No honorarium was admissible for any of these works as the same was done by computer without any significant manual interaction. Referring to item 3 in A-1 i.e. opening of new ledger cards, they submitted that no honorarium was payable as no ledger card was prepared manually. It was further averred that even the feeding of a few additional credits/debits into computer would not qualify for consideration of honorarium as this work could be done during normal working hours and that such items of work were considerably very few in numbers. They submitted that applicant's representation was rejected on the ground that



honorarium could not be granted to the applicant who had not performed the work. Further, according to them, the order under which the applicant had taken refuge had no relevance in his case in view of the duties and work allotted to him. The demand of the applicant was undue and unreasonable and that the applicant was not entitled to the reliefs. The OA was devoid of merits and liable to be dismissed with costs.

4. We heard the learned counsel for the parties.

5. We have given careful consideration to the submissions made by the learned counsel for the parties as well as the rival claims and have perused the documents brought on record. According to the applicant, A1 letter of the Ministry of Finance was circulated by the Chief General Manager's office as per letter dated 10.7.96. But the letter dated 10.7.96 has not been produced along with the OA. Respondents in the reply statement had denied all the averments made in the OA except those which were specifically admitted in the reply statement. In A4 reply, 3rd respondent has specifically stated thus:

"I am directed to refer to your letter No.LC/II/AP/9-76/96 dated 23.7.97 on the above subject and to say that in pursuance of the CAT, Ernakulam Bench order dated 10.3.97 given in OA No.216/97, the Chairman (TC) has carefully examined the representation of Shri E. Satheesh, Senior Accountant regarding payment of honorarium w.e.f. 1.6.93 at the revised/enhanced rates as per provisions of Ministry of Finance, Department of Expenditure (Controller General of Accounts) orders dated 18.6.96 for doing the work of posting and closing of GPF Accounts over and above his prescribed monthly quota. After careful examination, the Chairman (TC) has decided that Shri Satheesh is not entitled to draw honorarium at the revised/enhanced rates on the grounds:

(a) that work relating to GPF account in Calicut SSA, where the applicant is working, has been computerised from 1989; and

(b) that the Ministry of Finance, Department of Expenditure (Controller General of Accounts) orders dated 18.6.96 on the basis of which Shri Satheesh is claiming for payment of honorarium at the enhanced



rates are not applicable in cases where the work of annual closing of GPF accounts has been computerised. The official concerned may please be informed suitably.

Sd/-
Asst. Director General (SEA)"

6. Admittedly applicant is working in the Department of Telecommunications and A-1 letter was issued by the Ministry of Finance, Department of Expenditure. Even though it has been stated by the applicant that the said letter was circulated by the Chief General Manager, Telecommunications as per letter dated 10.7.76, in the absence of said letter, we are not in a position to see whether the Ministry of Finance's letter had been adopted by the Department of Telecommunications and had been made applicable to the employees therein and if so under what circumstances. Moreover, in the reply statement, respondents had specifically averred that the applicant had taken refuge in an order which had no relevance in his case in view of the duties and work allotted to him. Applicant had not filed any rejoinder to the reply statement and the contentions raised therein. We further find from the OA that the applicant had stated that he was receiving Rs. 150/- per month for the additional work done by him during the years 93-94 and 94-95 and that he had put in his claim for the revised rates introduced by the Ministry of Finance, Department of Expenditure by A-1 order dated 18.6.96 and he asked for the enhanced rate of payment in his A2 representation dated 7.12.96. But from A2 representation we find that no such plea had been raised therein. The said representation reads as under:

"May I bring the following few lines for your kind consideration.

As per the directions of MOF contained in the order No.S-11015/10/95/MF CGA/GP/Vol.III/PL/71 dated 18.6.96, rates of honorarium for various items of work relating to General Provident Fund has been modified. The modified rates pertaining to annual closing of GPF has been implemented in this office, whereas Part I

pertaining to posting and closing of monthly accounts (for the GPF accounts handled by me over and above the normal quota) has not been implemented so far.

The claim for honoraria as per the modified rates for the extra work done by me was submitted vide ATG-2015/93-94/45 on 23rd August, 1996. As the revised rates take effect from 1.6.93, the above submitted claim pertains to the extra work done during 93-94, 94-95 and 95-96.

Already 3 months have elapsed ever since the submission of my claim. So far no decision has been taken on the claim. You would appreciate that one portion of the order of MOF/DOT has already been implemented and payment made to concerned officials, whereas the portion pertaining to extra work over and above the normal quota is still pending disposal. I am sure, Sir, you will appreciate that it is a matter of discrimination that instead of implementing the order in toto, only certain part has been implemented.

Under the circumstances, explained above, I humbly request you to look into the matter and expedite settlement of my claim at your earliest.

Yours faithfully,

Sd/-"

It is evident from the above that the applicant had not stated anything to the effect that he had received Rs.150/- and he was claiming only the difference.

7. The second ground advanced by the applicant in para 5 (B) of the OA reads as follows:

"Admittedly applicant had performed additional duties pertaining to posting and closing of monthly accounts. He was in receipt of a monthly lumpsum of Rs. 150/also. Now by A-1 the rate of honorarium were revised with retrospective effect. A-1 is very much applicable to the work done by him, because the work done by him relates to posting and closing of monthly accounts. Yet for no good reason he is denied the benefit of A-1. The refusal to implement A-1 is illegal, arbitrary, unjust and unreasonable."

8. Though the applicant is using the word "admittedly," nothing has been brought out in the OA to show that the applicant had performed additional duties pertaining to posting and closing of monthly accounts. Nothing had also been produced to show that the statement of the applicant has been



...8/-

admitted by the respondents. Further in his representation which is reproduced above, there is no such statement that he had received Rs. 150/- per month. Further no copy of the claim preferred by him is produced with the OA. Thus, we are not persuaded to disbelieve the statement of the respondents in the reply statement that the applicant's representation was rejected on the ground that honorarium could not be granted for work which the applicant had not performed. Applicant has also not contradicted the statement made by the respondents that monthly Pay Billing and GPF accounts of Calicut SSA had been computerised and there is no manual work of opening of individual ledger cards and manual posting of credits and debits. Applicant has also not shown how the Ministry of Finance, Department of Expenditure letter dated 18.6.96 would be applicable to him, an employee of the Telecommunication Department.

9. In view of the foregoing, we do not find any merit in the claim of the applicant and accordingly we hold that the applicant is not entitled to the reliefs sought. Accordingly we dismiss this Original Application with no order as to costs.

Dated this the 29th day of November, 2000.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

A.V. HARIDASAN
VICE CHAIRMAN

aa.

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

I am not able to agree with the findings and conclusions reached by the learned Administrative Member in his draft opinion. The reasons for my disagreement are set out below.

2. The respondents have not in the reply statement specifically denied the averment in the O.A. that Annexure A1 letter of the Ministry of Finance, Department of Expenditure, was circulated by the Chief General Manager, Telecommunications as per letter dated 10.7.96. A general statement in reply statement on para 1:

"All the averments and allegations contained in the above OM are denied save those that are specifically admitted or otherwise dealt with hereunder."

(emphasis supplied)

does not amount to specific denial of specific allegations made in the Original Application. According to the rules of pleading, those which are not specifically denied or disputed are to be treated as admitted. Whether the Chief General Manager, Telecommunication had issued a letter dated 10.7.1996 is within the knowledge of the second respondent who is bound to specifically deny it, if no such letter has been issued. In the absence of such denial, the applicant is not bound to produce that letter. Since Annexure A1 is of general application to all Ministries and Departments unless Telecommunication Department is specifically excluded



from its purview, the presumption is that it applies to that Department also. The respondents also have no case that the Telecommunication Department has been excluded from the purview of Annexure A1 or that it needs to be adopted by that department by any order to make the A1 order applicable to the department. Therefore it has got to be held that Annexure A1 letter applies to the Telecommunication Department also.

3. In the applicant's representation he has specifically stated that the modified rates of honorarium has not been implemented as far as his work was concerned and has claimed settlement of his claim. As his claim was for the modified honorarium, it need not be said that he had already received the unmodified and pre-existing honorarium. The specific allegation in the O.A. that the applicant had been paid honorarium at the rate of Rs.150/- per month has not been denied any where in the O.A. If the applicant had not performed the additional work, then why was he paid at the rate of Rs.150/- p.m ?. Respondents have no case that no such payment was made or that the payment made was either by mistake or as ex-gratia. The fact that the applicant was paid honorarium at the rate of Rs.150/- p.m. as stated in the O.A. establish that he had performed the additional work of "posting and closing of monthly accounts" during 1993-94 and 1994-95.

m

4. The reasons for denying the claim of the applicant stated in the impugned order are:

"(a) that work relating to GPF account in Calicut SSA, where the applicant is working, has been computerised from 1989; and

(b) that the Ministry of Finance, Department of Expenditure (Controller General of Accounts) orders dated 18.6.1996, on the basis of which Shri Sathesh is claiming for payment of honorarium at the enhanced rates, are not applicable in cases where the work of annual closing of GPF accounts has been computerised. The official concerned may please be informed suitably."

Though the work relating to GPF account in Calicut SSA is claimed to have been computerised since 1989, honorarium at the rate of Rs.150/- per month was being paid even during 1994-95. Nowhere in the O.M. (Annexure A1), it is seen stated that the revised rate of honorarium would not be applicable in cases where the work of annual closing of GPF accounts has been computerised. No other order of any competent authority to that effect also has been relied on in support of the case of the respondents.

5. It can be seen from the totality of pleadings and documents which are annexed that for the period 1993-94 and

M

1994-95, the applicant was in receipt of the honorarium at the rate of Rs.150/- per month although it is claimed that even from 1989 onwards the pay billing and the GPF accounting in Calicut SSA where computerised and no manual work of opening of individual ledger cards is involved. Since the applicant was paid honorarium at the rate of Rs.150/- per month for the period in question and in view of the absence of any administrative instructions to the effect that where computerisation is done and the work is not done wholly manually, the revised honorarium would not be payable, the contention of the respondents, that:

"Even the feeding of a few additional credits/debits into computer will not qualify for consideration of honorarium as this work could be done during normal working hours and that such items of work are considerably very few in numbers."

to deny the claim of the applicant, has only to be rejected, because what is instructed in the Annexure A1 order is only "it should be ensured and verified before making payment that the total work for which honorarium is being paid has actually been done" and not that it should have been done manually without the help of computers.

6. In the light of what is stated above, I am firmly of

A handwritten mark or signature consisting of a stylized 'S' shape above a horizontal line.

the view that the contention of the respondents have to be rejected and the application has to be allowed.

7. In the result, the O.A. is to be allowed setting aside Annexure A4 declaring that the applicant is entitled to receive honorarum at the revised rates as prescribed in Annexure-A1 for the work done by him in relation to posting and closing of monthly accounts with effect from 1.6.93 and directing the respondents to pay him the arrears with 12% interest per annum with effect from the due date as per Annexure A1 order.



(A.V.HARIDASAN)
VICE CHAIRMAN

/njj/

In view of the divergent views, the matter is to be placed before the Hon'ble Chairman for resolution. The points of difference is :

"Whether in the facts and circumstances of the case, the application has to be allowed holding that the applicant is entitled to the reliefs sought or is it to be dismissed."

2. Registry is directed to place the matter before the Hon'ble Chairman for action under Section 26 of the Administrative Tribunals Act.

Dated the 29th day of November, 2000.



(G. RAMAKRISHNAN)
MEMBER (A)



(A.V. HARIDASAN)
VICE CHAIRMAN

/njj/

List of Annexures referred to in the Order:

1. Annexure A1 True copy of the letter dated 18.6.96 issued by the Govt. of India, Ministry of Finance, Department of Expenditure, Controller General of Accounts, 7th Floor, Lok Nayak Bhavan, Khan Market, New Delhi-110 008.
2. Annexure A2 True copy of the representation dated 4.12.96 submitted by the applicant to the 3rd respondent.
3. Annexure A3 True copy of the final order dated 10.3.97 in O.A.216/97 of the Hon'ble Tribunal.
4. Annexure A4 True copy of the Order No.271/43/97-STN-1 dated 28.8.97 issued on behalf of the 3rd respondent.