

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 25
T. A. No.

1991

DATE OF DECISION 24.9.91

R. N. Pillai

Applicant (s)

Mr. M R Rajendran Nair

Advocate for the Applicant (s)

Versus

Chief General Manager, Telecom Respondent (s)
Trivandrum and others

Mr. George Joseph, ACGSC

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicant who is working as Lower Division Clerk in the Telecom Civil Division at Ernakulam filed this application mainly for grant of protection of his pay at the stage of Rs. 1230/- in the scale of Rs. 950-1500 with all consequential benefits. He also seeks to quash Annexure-I and III passed by the Respondents in this connection.

2. The applicant was initially appointed as LDC on 13.10.1981 in the Bombay Telephones after his selection

for the competitive exam. through the Staff Selection Commission. He appeared for the next promotion held on 18.8.1987 and he was declared successful as per D.G.' letter No. 3-7/87-ED dated 28.12.87 (Annexure-I) Even before getting his promotion as UDC he ~~xxx~~ submitted application under Rule 38 of the P & T Manual for transfer to Kerala Telecom Circle on compassionate ground. His request was granted as per Annexure-II order of the Deputy General Manager (Admn), M.T.N. Ltd., Bombay dated 29.3.1989 with certain conditions. One of the conditions is that his pay shall be fixed under FR 22. This order also indicates that the applicant has been transferred to join as LDC though he was at the relevant time working as UDC. Annexure-IV is the Last Pay Certificate issued to the applicant. Relevant portion of Annexure-IV is extracted below:

"Particulars

Substantive pay	pay 1230.00	CCA 45.00
Officiating pay	DA 283.00	HRA 250.00"

3. At the time when/joined Telecom Civil Division, Ernakulam as LDC the applicant was getting a substantive pay of Rs. 1230/- but it was re-fixed as per the impugned order Annexure A-III dated 27.1.1990. According to this order, the pay of the applicant was fixed at Rs.1110/- on 12.4.1989 with next date of increment to Rs. 1130/- on 1.10.1989 in the scale of pay of Rs. 950-20-1150-EB-25-1500/-. The applicant

produced Annexure-IV certificate and submitted Annexure-VII representation before the Chief General Manager, Telecom.

Trivandrum in which it is specifically stated that his basic pay at the time of transfer to Kerala Circle was Rs. 1230/- in the UDC pay scale of Rs. 1200-2040. This representation has not been disposed of so far.

4. The case of the applicant is based on FR 22(a) (iii).

It reads as follows:

"F.R. 22. The initial substantive pay of a Govt. servant who is appointed substantively to a post on a time-scale of pay is regulated as follows:

(a) If he holds a lien on a permanent post, other than a tenure post, or would hold a lien on such a post had his lien not been suspended-

X X

(iii) when appointment to the new post is made on his own request under Rule 15(a) and the maximum pay in the time-scale of that post is less than his substantive pay in respect of the old post, he will draw that maximum as initial pay."

5. The respondents have filed a counter affidavit in which they have stated that the applicant's transfer under Rule 38 of the P & T Manual is subject to the conditions contained in Annexure-II. One of the conditions is that his pay will be fixed under FR 22. According to FR 22 his pay can be fixed at the minimum of the time scale to which he is transferred vide FR 22(b). The service already rendered by him as UDC in Bombay Telephones is counted for

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..

increment under FR 26 (a). He has also been allowed two increments in LDC cadre under FR 26 (b) (i). Accordingly, his pay has been fixed at Rs. 1110/- on 12.4.89 with the date of next increment to Rs. 1130/- on 1.10.1989 which would have been admissible in the LDC cadre. They further submitted that FR 22 (a) (iii) wrongly mentioned in the O.A. applies only in a case where the appointment to the new post is made on his own request and when he holds a lien on a permanent post from which he was transferred. The applicant does not hold a lien on UDC post and also the maximum pay in the LDC cadre is not less than his officiating pay. Hence the contention of the applicant for making FR 22 (a) (iii) applicable is untenable. Therefore, according to the respondents the application is liable to be dismissed.

6. The applicant filed a rejoinder dated 15.3.91 stating that he was a confirmed UDC getting a substantive pay of Rs. 1230/- as on 12.4.89 and hence the question of completing probation in the promoted post is irrelevant for consideration of fixation of his pay in the new post when he joined that post in Kerala Circle as per Annexure-II order. According to the applicant, as per Govt. of India, Ministry of Personnel and Training O.M.No. 18011/1/86-Estt (D)

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dated 28.3.1988, the benefits of having a 'lien' in a grade will thus be enjoyed by all officers who are confirmed in the grade of entry or who have been promoted to a higher post declared as having completed the probation.

7. Having heard the matter, I am of the view that the substantive pay of Rs. 1230/- as shown in Annexure-II L.P.C., is an amount earned by the applicant on account of his working at Bombay. By submitting an application under Rule 38 of the P & T Manual Vol. IV, for getting a compassionate transfer to Kerala Circle, he did not agree that this substantive pay should be reduced in fixing his pay in the post of LDC. According to the learned counsel for the applicant the applicant has only agreed for reducing the status from that of a UDC to an LDC so as to enable him to get a compassionate transfer to Kerala Circle under the provisions of the Rule 38 of the P & T Manual Vol. IV. This being the position, there is no legal justification for reducing the substantive pay which was drawn by the applicant, by passing the impugned order Annexure-III.

8. The argument advanced by the learned counsel for the applicant in support of his contention to sustain the basic pay of Rs. 1230/- is based on PR 23 (a) (iii) which is extracted above. Under these provisions the applicant

is entitled to protection of substantive pay in respect of the old post. This is opposed by the respondents on the ground that the said provision does not apply to the facts of this case. According to the respondents the provision which applies is FR 22 (b) which reads as follows:

" F.R. 22. The initial substantive pay of a Govt. servant who is appointed substantively to a post on a time scale of pay is regulated as follows:

X X X X X

(b) If the conditions prescribed in clause (a) are not fulfilled he will draw as initial pay the minimum of the time scale."

9. They have further submitted that the applicant does not hold lien on the UDC post and also denied that his pay in the UDC cadre is more than the maximum of the pay in the LDC grade. Hence he is not entitled to fixation of the pay as claimed in this application.

10. On a perusal of FR 22(a)(iii) the relevancy of lien claim of the applicant for fixation of pay would not defeat the as contended by the learned counsel for the respondents. When a person is appointed to a new post on his request and the maximum pay in the time scale of that post is less than his substantive pay in respect of the old pay which he was drawing before the transfer, he is entitled to draw the maximum as the

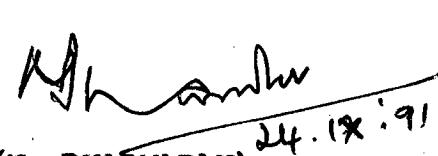
the applicant relied on initial pay. In the instant case,

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O.M. No. 18011/1/86-Est (D) dated 28.3.88 and submitted that he is enjoying the benefit of lien in the grade and he satisfies the requirements of the above rule. This is not denied by the respondents. Moreover, Annexure-IV LPC issued by the Bombay office clearly shows that the substantive pay drawn by the applicant is Rs. 1230/- which ^{and by} he is entitled ^{to be} protected even though he has been transferred to Kerala Circle in a lower post on a compassionate ground at least as a personal benefit accrued in his favour on account of working at Bombay.

11. In the result, having considered the matter in detail I am of the view that the impugned orders are unsustainable and they are quashed and the application is disposed of with a direction to the respondents to grant protection of the pay of the applicant at the stage of Rs. 1230/- in the scale of Rs. 950-1500/- with all consequential benefits. It is further directed that the amount, if any, recovered from the applicant in this behalf shall also be refunded without any further delay.

12. The application is allowed as above. There will be no order as to costs.


(N. DHARMADAN)
JUDICIAL MEMBER
24.9.91

kmn

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

R.A. 63 of 1991 in

O.A. No. 25/91

T.A. No.

199

DATE OF DECISION 8.1.92

The Chief General Manager Applicant (s)
Telecommunications, Trivandrum and others

Mr. George Joseph, AS CSC Advocate for the Applicant (s)

Versus

R.N. Pillai Respondent (s)

Mr. M. R. Rajendran Nair Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? NO
3. Whether their Lordships wish to see the fair copy of the Judgement? NO
4. To be circulated to all Benches of the Tribunal? NO

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

This review application has been filed by the respondents in the original application. The learned counsel for the review applicant raised two contentions:

i) the substantive pay of the applicant in the O.A. is only Rs. 1110 and Rs. 120 officiating pay ~~which~~ does not ~~form~~ part of the substantive pay. In the judgment dated 24.9.91 in the O.A. 25/91 a mistake has been crept in while mentioning the substantive pay of the applicant.

ii) The applicant has not completed the probation in the post ~~on~~ which he has been holding in Bombay before seeking transfer under Rule 38 of the P & T Manual and there is apparent contradiction in the statement in paragraphs 6 & 10 of the judgment.

2. The learned counsel appearing on both sides were heard on the R.A. After hearing the parties, I am of the

view that there is no mistake in the judgment. Annexure -IV which is extracted in the judgment is the "last pay certificate" issued by the Bombay authorities. It clearly states that substantive pay of the applicant was 1240. It does not disclose any break up as contended by the review applicant. In the judgment, I have only clarified that the pay which the applicant was drawing and earned by him by rendering his service is to be protected, whether it is substantive or otherwise. I see no mistake in the judgment regarding mention of substantive pay given to the applicant.

3. Regarding the other contention that the applicant has not completed the probation and there is some contradiction in the statements contained in paragraphs 6 and 10, I see no force. The questions regarding the completion of probation and the lien of the applicant have been examined and discussed by me in the judgment. There is no contradiction statement in para 6 and 10 as contended by the learned counsel for the review applicant. The R.A. is only to be dismissed.

4. The review application is accordingly dismissed.

5. The M.P. 1485/91 for stay of the operation of the judgment dated 24.9.91 is also dismissed.


N. Dharmadani
8. 1. 92
Judicial Member

knn

CEP 124/92 m
GTA 25791

(16)

PSHM dwd

Mr. MRR Nair
Sease by Pmg.

At the request of the parties

post on 1.10.92

b
(25)
24/9

(PSHM)
24/9

1-10-92
(23)

Mr. MRR Nair
Mr. George Joseph

The Learned Counsel for the
respondents seeks 2 weeks time to
file a reply to the C.C.P.

List for further directions on

23.10.92

M
(AV/H)

b
(PSHM)

1-10-92

b
1/P

~~SDM~~

ND

(7)

Mr. MRR Nair
Sease by Pmg.

At the request of learned counsel
for respondent post on 3.11.92

b
(25)
23/10.

3.11.92 Mr. MRR Nair
(16) None for respondents.

At the request of the petitioner's counsel,
list on 19.11.92.

b
ND

SDM
SPM

pw

Rejoinder filed
on 3.11.92

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ND

on M.R.R.Nair

arrears for respondents

post for fresh hearing/further
directions on 20.11.92

(ND)
19/11

ND

on M.R.R.Nair

~~arrears for~~ Mr George Joseph by Pay

At the request of learned counsel
for applicant respondents post for
further hearing on 23.11.92

(ND)
20/11

ND

Mr. M.R.R.Nair

Mr. George Joseph, ACGSC

In this Contempt Petition, the petitioner
submits that the respondents have not complied with
the direction of this Tribunal in the judgment in
O.A. 25/91. The directions in the judgment are
as follows:

- "i) to grant protection of the pay of the
applicant at the stage of Rs. 1230/- in the
scale of Rs. 950-1500/- with all consequential
benefits;
- ii) the amount if any recovered from the applicant
in this behalf shall also be refunded without
any further delay.

2. At the time when the CP(C) was taken for final
hearing, a representation was made on behalf of the
ACGSC. Later Shri George Joseph appeared and
submitted that the respondents have complied with
the orders of the Tribunal in letter and spirit.
After going through the reply affidavit, I am not
satisfied that the ^{above directions in the} ~~statement in the~~ judgment of the

Tribunal have been complied with as contended by the learned counsel for respondents. Unnecessary statements are given in the reply. They only indicate that the officer has not taken the matter seriously and complied with the directions earnestly and diligently.

Hence, having regard to the facts and circumstances, I think it would be proper to direct the respondents to produce documents to support the statement that they have complied with the directions in the judgment as stated by the learned ACGSC at the bar. Accordingly, I direct the Accounts Officer Shri M.P. Yoyak who filed the reply to appear in person before me on the next posting with all documents and orders passed in compliance with the directions of this Tribunal in O.A. 25/91 to satisfy me that the directions in the judgment have been duly complied with. Post the CP(C) on 30.11.92.

Serve copy of the order through the ACGSC on Shri M.P. Yoyak, Accounts Officer today itself.


(N. Dharmanandan)
Judicial Member

23.11.92

6,
Mr. Dharmanandan
S.C.O.R. by P.M.

Learned Counsel for respondents

submitted that he got instructions only today and the order of the Tribunal has been complied with. Shri M.P. Yoyak, Accounts Officer is present today. Post the case for further hearing on 10.12.92. Shri M.P. Yoyak to be present on that day. He need not be present on that day. He may verify whether CP(C) can be heard by such member under Rule 6 of the Conduct of Court Rules 1992

(N.Dharmanandan) 30.11.92
JM

DRG may kindly
see the Re
30.11.92

On verification it is found
that CP(C) cannot be heard by
a single Member except under
proviso to Rule 6 which relates
to ex-facie proceedings. Hence
this CP(C) should have been
posted before a DB. By an
inadvertent error this happened
to be posted before a Single
Member, which is very much
regretted. The concerned officials
have been advised to be more
careful in future.
If approved this may be
posted before a DB on 10.12.92

Post on 10.12.92
in case no. 575
Post before 10.12.92
by 2/12 PM A.R.P. 21
in U.P. by 7.12.92

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Mr. M.R. Rajendran Nair for applicant

Mr. George C.P. Tharakan, SCGSC for Resp.

It has been brought to my notice that the CP(C) is to be heard by a Division Bench under proviso to Rule 6 of Contempt of Court Rules 1992. Hence

Registry may post the case before Division Bench.

5
(N.D.)

10-12-92

Mr. M.R.R. Nair
Mr. George Joseph

Learned counsel for respondents wishes to withdraw the reply dated 23.10.92 and file a fresh reply indicating in clear terms how they have implemented the judgment in O.A. 25/91. He should do so within 2 weeks with a copy to learned counsel for petitioner, who may file rejoinder, if any, within one week thereafter. List for further direction on 19.1.93.

M.P.1736/92 is disposed of.

Copy by hand.

A. Dharmadan

(N.Dharmadan)
J.M.

S.P. Mukerji

(S.P. Mukerji)
V. C.

15-12-92

A 10/12/92

SCGSC To be listed
on 15.12.92

Show V.RAVI 28
Show NRP.R

Reply
10/12

S.O.(T.II)

A

V.R

Notice for 15.12.92
issued.

A 16/12

M.R.R

I.D. issued

16/12

23.

SPON (DW)

Mr. MPR Nair
S/o Dr. S. P. Nair

On request of learned counsel
for original deposit - filed on 9.2.93
for further direction.

Ph

Reply statement
filed

DA

PAK

9-2-93 Mr. MPR Nair
(19) Mr. George Joseph

Filed the (CPCC) before a Bench
of which Hon'ble Shri N. Dhermeder, I.M.
is a member on 15.2.93

~~(AVH)~~ (RR)

B
(AVH)

9-2-93

(26) Mr MRR Nair
Mr George Joseph

At the request of counsel, list on 9.3.93.

RR

15.2.93

AVH

SPM & AVH

CPC 124/92 Mr. MRR Nair for applicant.
in OA 25/91 Mr. George Joseph, ACGSC

List before Court No. II on 22.3.93.

AVH

9.3.93

SPM

NOON

Mr. MRR Nair
Mr. George Joseph by PMS

At the request of learned counsel
for respondents post on 13.4.93.

(RR)
22/3

(AVH)
22/3

adit 15th by notice

(27) Mr MRR Nair
Mr George Joseph

At the request of the learned counsel for the respondents, post on 27.4.93.

RR

ND

15.4.93

(14) Mr MR Rajendran Nair
Mr George Joseph, ACGSC (Issue notice to both counsel)

Learned counsel for the respondents has filed an additional statement and contended that the directions contained in the judgment has been fully complied with. After hearing the ^{case} counsel of both sides, we are satisfied that there is full compliance of the judgment of this Tribunal rendered in OA 25/91. It is very clear in para-7 of the judgment that substantive pay of the applicant as seen from Annexure-II is Rs 1230/-. That finding is to be read alongwith the operative portion in para-11 of the judgment. It is in that perspective, the Executive Engineer, Telcom Civil Division, Ernakulam has sought Annexure-V clarification. Learned counsel for the applicant also brought ^{para} our notice Annexure IV order ^{in the} case of an employee similarly situated who has been reverted on transfer. In the light of these Annexures at IV and V, we are of the ^{and in other cases and findings} view that the ^{directions in the} judgment has not been fully complied with. ^{as indeed}

Post the case for further directions on 26.5.93 on ^{cum} which date the respondents shall report full compliance of the judgment. Otherwise will be compelled to direct personal appearance of the concerned officer before the Tribunal for answering his charges.

(R Rangarajan)
Administrative Member 28.4.93

(N Dhar madan)
Judicial Member

Recd on
30/4

AS/AM
M.BB

12/No. 1

26.5.93

Mr. MRR Nair

Mr. George Joseph along with Smt. Rajalakshmi AAO.

(28)

In this case after hearing the counsel on both sides on 28.4.93 we have passed an order directing the respondents to report compliance of the judgment. ^{we further directed her,} if the respondents do not comply with the directions, ^{in case of non-serve} we directed personal appearance ^{of} ² of the concerned officer before the Tribunal.

The learned counsel for the respondents submitted that he received a copy of the ^{above} order on CP(C) only on 13.5.93 and he requires further time for complying ^{with} the directions.

Smt. Rajalakshmi, Asstt. A.O. appeared along with the learned counsel for the respondents and submitted that she was ^{very} ^{expecting} full compliance of the order by today and produced a letter received from the Assistant Director General (TE) dated 24.5.93. Smt. Rajalskhmi, A.A.O. ^{has} undertaken that full compliance of the judgment will be done within one month from today. ^{Under these circumstances we grant} ^{for compliance of the directions.} ^{full time. Post this} CP(C) on 1.7.93.

(RR)

26.5.93

(ND)

A
27/6
MGR

Mr MRR Nair
Mr George Joseph, ACGSC

This CP(C) was posted peremptorily today for reporting compliance of the directions in OA-25/91 as clarified in our order dated 28.4.93.

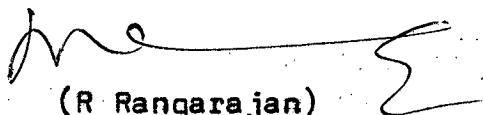
2. The officer who was present on the last posting (Mf.1029A3) does not appear today. However, an M.P. with Dy. No. 5964/93 has been filed for getting further time.

3. On 26.5.93 we have heard the learned counsel for the respondents as also Smt Rajalakshmi, Assistant A.O. who appeared before us personally and submitted that she may be granted to require one month time to comply with the directions of the judgement. Accordingly, we granted the time. An M.P. Dy. No. 5964/93 was filed today for granting further two months time for implementing the directions in the judgement in the O.A. This is very strongly opposed by the learned counsel for the petitioner on the ground that the respondents are not willing to implement the directions in OA-25/91. He also indicated that in the order dated 28.4.92 (produced in the case makes clear) that the employees similarly situated who had been reverted on transfer were given the benefit, but the applicant is denied the same due to the filing of CP(C). In the light of this submission after going through the reasons stated in the M.P., we are of the view that no earnestness is shown by the respondents in complying with the directions in the spirit in which the same were issued by this Tribunal in OA-25/91. The respondents could have implemented the judgement, at least making it clear that the benefits are being given pursuant to the directions issued in the petition on the

4. Y base of the directions and that it shall not be quoted as a precedent.

4. However, after hearing the learned counsel on both sides, we are inclined to take a lenient view and grant further time to the respondents for implementing the directions in the judgement on terms. Accordingly, we grant three weeks from today for full implementation of the directions in the judgement, ^{Moving} _{u/cpk/4} if the applicant in the M.P. pays a sum of Rs.1000/- to the learned counsel for the petitioner ^{u/cpk/4} within a week from today, in default the M.P. ~~is~~ stands rejected.

5. Post after three weeks.


(R. Rangarajan)

A.M.

1-7-93


(N. Dharmadan)
J.M.

1-7-93

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m/sd

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PO
26/7/93
26/7/93
26/7/93
m/sd

26.7.93 (13) Mr. MR Rajendran Nair
Mr. George Joseph, ACGSC

Learned counsel for petitioner submits that the petition is not pressed. We record the submission and dismiss the petition as not pressed. No costs.


R. Rangarajan
A.M.


Chettur Sankaran Nair (J)
V.C.