

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.26/1993

DATE OF DECISION : 10.08.1993

Smt. P.K.Kousalia,
UDC, Telecom Forms Depot,
Cochin - 20.

.. Applicant

Mr.E.Thankappan

.. Adv. for applicant

V/s

1. Union of India, rep. by
Secretary, Min. of Home
Affairs, New Delhi.
2. Chief Gen. Manager, Telecom,
Kerala Circle,
Trivandrum.
3. Assistant Engineer, Circle
Telecom. Stores Depot,
Kochi-20.
4. Director Gen. of Telecom,
Kerala Circle,
Trivandrum.

.. Respondents

Mr.T.K.Venugopalan, ACGSC

.. Adv. for respondents.

CORAM : The Hon'ble Mr.N.Dharmadan, Judicial Member

JUDGEMENT

MR. N.DHARMADAN, JUDICIAL MEMBER

The limited question arising for consideration in this case is as to the interpretation of para 3 of the judgment in O.P. 10482/1983-I, produced as Annexure-A4.

2. According to the applicant, she is a member of the Pulaya community and she has been appointed as Lower ^{selection} Division Clerk after/by the Staff Selection Commission with

effect from 22.10.82 till 4.12.82, as per Annexure-1. She was directed to produce a community certificate, which is recognised as Scheduled Caste by the Central Government as per the existing list. Accordingly, she produced Annexure-A3 certificate from the Tahsildar. In the light of Annexure-A3 certificate the respondents should have reviewed the termination of the applicant with effect from 4.12.82. Since they refused to act on the basis of Annexure-A3 certificate she was compelled to challenge the termination before the High Court in O.P.10482/83-I which was allowed with the following observations/directions:-

"3. I had in my judgment in OP No.4896/1983 declared that 'Pulaya' is the same as 'Pulayan' notified in the Presidential Order, as item 54, applicable to the State of Kerala. There can therefore be no doubt that the petitioner belongs to the scheduled caste Pulayan included in the Presidential Order. She is therefore entitled to be appointed to the post to which she was selected in the quota reserved for scheduled castes."

Thereafter the applicant was reappointed on 20.2.1985 by giving all service benefits except the salary.

3. As indicated above, the only limited prayer of the applicant is to quash Annexure-7, denying the pay and allowances for the period referred to above.

4. The respondents have filed a reply in which they have stated that the applicant is not entitled to remuneration for the period from 5.12.82 to 19.2.85 on the ground that Rule 17 of F.R. applies to the facts of this case.

5. I have gone through this Rule, FR 17, as relied on by the respondents in the reply. On the facts and circumstances of the case, FR 17 does not apply. The applicant cannot be considered to be a person who absented from duty without any authority. ^{Proviso} to the FR 17 makes it clear that an officer who is absent from duty without any authority shall not be entitled to any pay and

allowances during the period of such absence. On the facts of this case, the applicant cannot be considered to be a person who absented without any authority. The applicant was willing and worked in the office from the date on which she assumed duty but the authorities have taken the view that the applicant has produced a wrong certificate of community and thereby she cannot be allowed to work. Even though she produced Annexure-A3 certificate dated 21.4.83 she was not permitted to work as LDC on the basis of the selection by the Staff Selection Commission and consequent appointment. She was forced to file an original application before the High Court and get an order in her favour so as to enable her to continue in the office. However, according to Annexure-A4 order the applicant has been reinstated in service with effect from 20.2.1985 with all benefits except the salary for the period.

6. The learned counsel Shri Venugopalan appearing on behalf of the respondents raised two contentions. According to him the normal rule of 'no work no pay' should be applied to the facts of this case. Admittedly, the applicant did not work as LDC from 5.12.82 to 19.2.85, the date of appointment pursuant to Annexure-A4. The normal rule does not apply to the facts of this case. The applicant was denied work for no fault of her. The applicant produced community certificate even at the time of appointment and at a later stage when she was called upon to produce the same. On the basis of the certificate the applicant should have been permitted to work in the office but ^{as there was} ~~denial of~~ opportunity ^{to} the applicant to work continuously in the office, without understanding the correct legal position. The applicant filed original application before the High Court and settled the legal position

and obtained an order. Only after the order of the High Court, the applicant was permitted to do work in the office. So, no fault can be attributed to the applicant. Moreover, the last sentence in the judgment makes it very clear that the applicant is "entitled to be appointed to the post to which she was selected in the quota reserved for scheduled castes". The operative portion clearly states that the applicant is entitled to appointment from the date of selection. It imparts the idea that appointment follows all consequential benefits. As indicated above, since the applicant was willing to work and she was doing all efforts to get work, the normal principle of 'no work no pay' does not apply to the facts of this case.

7. The second point raised by the learned counsel for the respondents is that the applicant should have either filed a review petition before the High Court or a contempt application for getting the reliefs and according to the learned counsel, this O.A. is not maintainable. I am not prepared to accept the contention of the learned counsel. The proper remedy of the applicant after passing of the impugned order is to challenge the same in a separate O.A. and not to file R.A. or contempt application as stated by the learned counsel. In the instant case the department has interpreted the operative portion of the judgment and they have taken a wrong view. No reason is given to support their view that the applicant is not entitled to pay and arrears for the period from 5.12.82 to 19.2.85. If the applicant was not actually eligible for pay and allowances for the above period, the High Court would have held so in the judgment. So long as there is no specific bar in the judgment applicant is entitled to all consequential benefits. I have already held that the applicant is entitled to pay and allowances for the above period

particularly when there is no fault on the part of the applicant.

8. The applicant also relied on a decision in S.Thankamani Amma vs. Union of India & Ors., SLJ 1987 (4) 720 (CAT). That is a case of denial of opportunity to work in the promoted post. The Court held that after the retrospective promotion the applicant therein is entitled to all consequential benefits for the denial was ~~for no fault~~ on his part. The same principle can be applicable ~~in~~ this case also. The applicant was illegally prevented from working and hence she is entitled to pay and allowances also. In the result, on the facts and circumstances of the case, I am of the view that Annexure-A7 order is liable to be set aside. Accordingly, I quash the same and declare that the applicant is entitled to all consequential benefits including pay and allowances as per Annexure-A4 judgment.

9. The application is allowed as above. No costs.


(N.DHARMADAN)
JUDICIAL MEMBER
10.08.1993

10.8.93

v/-

LIST OF ANNEXURES:

1. Annexure-A4 .. Copy of judgment in OP No.10482 of 1983-I dated 8.1.1985.
2. Annexure-A1 .. Copy of Memo No.ST/43-7 dated 28.12.82 from the General Manager, Telecom, Trivandrum.
3. Annexure-A3 .. Copy of Caste Certificate dated 21.4.1983.
4. Annexure-A7 .. Copy of letter dated 26.6.92 from Assistant Engineer, Circle Telecom Store Depot, Cochin-20.