CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 262 of 2010

Monday, this the 1st day of August, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

1. A.Nandakumaran, Assistant Accounts Officer,
Office of the CPMG, Thiruvananthapuram – 33.

2. K.Radhakrishnan, Assistant Accounts Officer,
Office of D.A.P., GPO, Thiruvananthapuram.

3. P.Radha, Assistant Accounts Officer,
Office of D.A.P., GPO, Thiruvananthapuram.

4. K.Premachandran Nair, Assistant Accounts Officer,
Office of the CPMG,
Thiruvananthapuram – 33. ..... **Applicants**

(By Advocate – Mr. Vishnu S Chempazhanthiyil)

Versus

1. The Director of Accounts (Postal),
Kerala Circle, GPO Complex, Thiruvananthapuram – 1.

2. The Chief Postmaster General, Kerala Circle, Thiruvananthapuram.

3. Union of India represented by Assistant Director General
(PA-ADMN), Department of Posts, PA Wing,
Dak Bhavan, Sansad Marg, New Delhi. ..... **Respondents**

(By Advocate – Mr. Sunil Jacob Jose,SCGSC)

This application having been heard on 1st August 2011, the Tribunal on the same day delivered the following:

ORDER

By Hon'ble Mr. Justice P.R. Raman, Judicial Member -

Before passing Annexure A-3 order of merger the applicants and

some others were promoted to the post of Assistant Accounts Officer and were drawing the pay scale to that post and as per the present order Annexure A-5 the overpayments of the officers who were promoted as Assistant Accounts Officer, were ordered to be recovered as they are found not eligible for the same.

2. It is the contention of the applicants that before the commencement of Annexure A-3 order of merger, officers were promoted to the post of Assistant Accounts Officer and they are entitled to the pay attached to that post and subsequent to the merger they continued to draw the same pay. Hence, according to them recovery is illegal.

3. The very same issue has come up for consideration in a batch of cases in OAs Nos. 53 of 2010 and connected cases. After careful consideration of the relevant provisions with reference to the factual situation and after referring to the relevant decisions of the Apex Court, we have held in paragraph 12 of the judgement dated 3rd March, 2011 in OAs Nos. 53 of 2010 and connected cases as under:-

> "12. In the instant cases, the recovery now proposed by the respondents is the amount that was paid on fixation of their pay on regular promotion correctly made under FR 22(I)(a)(1). It is not directly related to fixation of pay in revised pay scale in accordance with the VI Central Pay Commission. In the light of the various decisions of the Hon'ble Supreme Court and the Hon'ble High Court of Kerala, the recovery of the amount which was paid as per the extant rules, cannot be justified by the retrospective application of CDS (RP) Rules, 2008. The respondents are justified in refixing the pay of the applicants in the revised pay scale in the wake of implementation of the VI Central Pay Commission. But they cannot recover the amount already paid legally to the applicants upon their promotion as per Recruitment Rules."

4. The Tribunal further went into the question as to whether the excess payment made falls in the nature in any of the two principles as referred to in paragraph 13 following the decision of the Apex Court in Registrar, Cooperative Societies Haryana & Ors. Vs. Israil Khan & Ors. - 2010 (1) SCC 1123. Those two principles were reproduced in paragraph 13 which is as follows:-

> "13. In ***Sahib Ram v. State of Haryana***; 1995 Supp (1) SCC 18 and ***Shyam Babu Verma v. Union of India***; (1994)2 SCC 521, it is contended that any excess payment made to the employees should not be recovered from them. ***In Registrar, Cooperative Societies Haryana and Others vs. Israil Khan and Others***;(2010)1 SCC(L&S) 1123, the Apex Court held that:-
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> > "There is no "principle" that any excess payment should not be recovered back by the employer. This Court, in certain cases has merely used its judicial discretion to refuse recovery of excess wrong payments of emoluments/allowances from employees on the ground of hardship, where the following conditions were fulfilled:
> >
> > "(a) the excess payment was not made on account of any misrepresentation or fraud on the part of the employee.
> >
> > (b) Such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous"
>
> Therefore, we have to examine as to whether the excess payment made in this case falls under any of the two conditions aforementioned before we grant any relief. In this case the fixation benefit was admitted as admissible under FR 22(I)(a)(1) in the pre-revised pay scale initially and was subsequently extended to the revised pay scale as per the VI Central Pay Commission recommendations. But as per the VI Pay Commission recommendations, the posts were merged into an identical grade pay. It is only by virtue of the subsequent clarifications issued by the Department dated 4.12.2009 (copy of which is produced as Annexure A4 in O.A. No. 53/2010), it has become necessary to revise the fixation of the pay. effected in all cases of identical pay scales/grade pay and benefit granted to the merged/upgraded pay scale. Thus the excess payment was made only because of applying a wrong principle based on particular interpretation of a

rule or order which was subsequently found to be erroneous and thus falls under condition No.(b) referred to in the Apex Court's judgment (supra). Therefore, even though the respondents are entitled to refix the pay, the recovery sought to be made has to be set aside as it will cause undue hardship especially when one of the conditions for granting such relief is satisfied in this case."

5. It was held that it is only by virtue of subsequent clarification issued by the Department that it became necessary to fix the pay in all cases of identical pay scales/grade pay and benefit granted to the merged/upgraded pay scale. Thus, the excess payment made was made only because of applying the wrong principle based on a particular interpretation of a rule or order which was found subsequently erroneous as is referred to in the Apex Court judgment in Registrar, Cooperative Societies Harayana & Ors. case (supra). Therefore, the respondents were entitled to re-fix the pay but the recovery sought to be made was set aside in that matter as it would cause undue hardship especially when one of the conditions for granting such relief is satisfied. Accordingly, we ordered in OA No. 53 of 2010 & batch cases as follows:

"14. In the light of the above, it is ordered as follows :

The order dated 04th December, 2009 to the extent it directs recovery of the benefits granted on promotion to merged/upgraded pay scale from the pay and allowances of the applicants is hereby quashed and set aside. The interim stay orders on the recovery of benefit of pay fixation granted to the applicants in O.A. Nos. 53/10, 213/2010, 539/2010, 544/2010 and 549/2010 on promotion to the present posts are made absolute. However, the applicants are not entitled to protection of their pay fixed allowing the benefit of pay fixation on promotion effected to the merged/upgraded pay scale/posts after 31st December, 2005. "

6. In the light of the aforesaid decision, we hold that the order impugned Annexures A-5 and A-5A to the extent it relates to the applicants alone directing recovery of the benefit granted on promotion to merged/upgraded pay scale from their pay and allowances is quashed. The interim stay of recovery is made absolute. However, the applicants shall not be entitled to protection of pay fixed allowing the benefit of pay fixation on promotion effected to the merged/upgraded pay scale.

7. OA is allowed to the extent above. No costs.

(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

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