

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.275/2002

Friday this the 8th day of November, 2002

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

Kamalamma P
Retired Group D (Non Test Category)
Puthenvila Veedu, Madathil Lane,
NCC Road, Peroorkada PO
Trivandrum District.Applicant

(By Advocate Mr.Thomas Mathew)

V.


1. The Superintendent,
Postal Stores Depot,
Trivandrum.23.
2. Assistant Accounts Officer,
(Pension) Office of the Deputy Director
of Accounts (Postal)
Trivandrum.
3. Deputy Director of Accoutns (Postal)
Trivandrum.1.
4. Union of India, represented by the
Secretary, Department of Posts,
New Delhi. ...Respondents
(By Advocate Mr. C.Rajendran, SCGSC)

The application having been heard on 8.11.2002, the Tribunal
on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

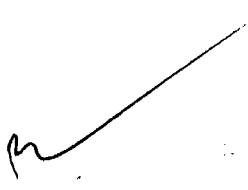
The applicant who commenced service as a casual labourer in the office of the first respondent in the year 1974 was conferred with temporary status with effect from 1.10.1989. Subsequently she was regularized as a Group D non-test category in the scale of pay of Rs.750-940 with effect from 12.10.1992. She retired on superannuation on 31.3.2002. The applicant was in receipt of basic pay of Rs.



3020/- in the scale of Rs.2550-3200. The grievance of the applicant is that just on the eve of her retirement by Annexure.A3 pay slip her basic pay was reduced to Rs. 2960/- and she was granted leave encashment only on the reduced basic pay and also not taking into account of the number of days of leave earned by her during the period of service as a temporary status casual mazdoor (Annexur.A4) and by Annexure.A5 order an amount of Rs. 8954/- is ordered to be deducted from the retirement gratuity due to the applicant. It is alleged in the application that the action of the respondents in reducing the basic pay of the applicant, not granting the cash equivalent of the leave earned during the service as temporary status casual mazdoor and the order for recovery of Rs. 8954/- from the retirement gratuity of the applicant without showing any reason and without even issuing a notice and affording her to show cause is arbitrary, irrational and wholly unjustified. With these allegations, the applicant has filed this application seeking to set aside Annexures.A3,A4 and A.5, for a declaration that the reduction of the applicant's pay from 3020/- to 2960/- is illegal, arbitrary and unconstitutional, that the applicant is entitled to basic pay of Rs.3020/- and all consequential benefits including the terminal benefits and for a direction to the respondents to give the applicant arrears of pay and allowances on the basis of unreduced basic pay of Rs.3020/and all other consequential benefits flowing from the above declaration.

2. The respondents seek to justify the reduction of the applicant's pay from 3020/- to 2960/- on the ground that there had been a mistake in fixing the basic pay of the applicant on regular appointment inasmuch as instead of fixing the basic pay at the minimum of the pay scale of Rs.750-940 in accordance with OM dated 29.1.98 of the Government of India, Department of Personnel (Annexure.R.1), the pay of the applicant was fixed at Rs.786/-. This mistake was rectified which accounts for the reduction of the pay, contend the respondents. They also resisted the claim of the applicant for cash equivalent of the leave earned during her temporary status service on the ground that the records are not seen in the office.

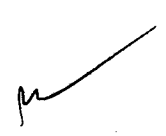
3. We have heard the learned counsel on either side and have perused the materials placed on record. The short question that calls for an answer in this case is whether the increments earned by the applicant as a temporary status casual mazdoor are to be ignored in fixing her pay on regular appointment in a Group D post. The contention of the respondents that the applicant's pay should have been fixed at Rs. 750/- on the date on which she was regularly appointed is based on Annexure.R.1 instructions contained in the Office Memorandum of the Ministry of Personnel, Public Grievances and Pension. The validity of Annexure.R.1 was considered by the Hyderabad Bench of the Central Administrative Tribunal in OA 1051/98. The Bench observed as follows:



"The applicants have earned their increments because of their working as temporary status casual mazdoors. Their carrier as temporary mazdoors cannot be washed away when they were regular mazdoors by refixing their pay at the minimum pay scale. We see no justification to reject the case of fixation of pay of the applicants at the time of regularisation on the basis of last pay drawn by them as temporary status casual mazdoors. The telecom had acted very correctly as per the guidelines given by them dated 22.12.92.

In view of what is stated above, we set aside the impugned letters dated 17/18.6.98 of R.3(A.1) and also the Office Memorandum dated 29.1.98 of the Department of Personnel and direct the respondents to continue to pay the applicants in accordance with the pay fixation as was done initially before referring their case to the postal Directorate."

4. The Ernakulam Bench of the CAT has in OA 1373/99 followed the judgment of the Hyderabad Bench of the Central Administrative Tribunal. Annexure.R.1 order of the Government of India, Department of Personnel, Public Grievances and Pension having been struck down, the respondents should not have acted on the basis of that instruction and issued the impugned orders.. We, therefore are of the view that the reduction of the applicant's basic pay to Rs. 2960/- by Annexure.A3 is unsustainable. The cash equivalent of the earned leave paid to the applicant was also not real amount which the applicant was entitled had it been calculated according to the basic pay drawn by the applicant on the date of her retirement on Rs.3020/-. The contention of the respondents that because records relating to leave earned during temporary status casual



service is not seen in the office is not a reason to deny the applicant's claim for payment of cash equivalent of leave earned during that period. Respondents have to trace out the missing records, ascertain the amount due to the applicant and make payment accordingly.

5. Regarding the impugned order Annexure.A5 the respondents have committed two errors. One having based their action on Annexure.R.1 which has already been set aside and the second they have decided to reduce a sum of Rs. 8954/without even giving a notice to the applicant. The impugned order Annexure.A5 is, therefore, vitiated and void.

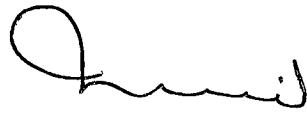
6. Since the terminal benefits of the applicant including pension have been worked out on the basis of the reduced pay and since we have found that the reduction of the basic pay of the applicant is unjustified the applicant is entitled to have the terminal benefits worked out on the basis of the unreduced pay of Rs.3020/-.

7. In the result, in the light of the above discussion, we allow this application, set aside the impugned orders and direct the respondents to work out the pension and other retiral benefits of the applicant treating that the applicant's last drawn basic pay was Rs.3020/-, to make available to the applicant arrears of pension resulting therefrom and refund to the applicant a sum of Rs.8954/which has been deducted from the gratuity. The respondents shall



also after tracing out the records relating to the applicant's service as temporary status casual mazdoor, calculate and make payment to her of the cash equivalent of the leave which she has earned during that period subject to the provisions regarding the ceiling. The above direction shall be complied with and consequential payments made to the applicant as expeditiously as possible at any rate within a period of four months from the date of receipt of a copy of this order. Parties will suffer their costs.

Dated the 8th day of November, 2002



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of Memo No.PSD/42/Vol.V dated 12.10.92 issued by the 1st respondent.
2. A-2: True copy of the pay slip for the month of February, 2002.
3. A-3: True copy of Pay Slip No.23 for the month of March 2002.
4. A-4: True copy of Memo No.C/3/2001-02 dated 3.4.2002 issued by the 1st respondent.
5. A-5: True copy of order No.8923/Pen 4C/465/01-02/DCRG/1207 dated 27.3.2001 issued by the 2nd respondent.
6. A-6: True copy of applicant's letter dated 8.4.2002 to the 1st respondent.
7. A-7: True copy of the applicant's letter dated 10.4.2002 to the 1st respondent.
8. A-8: True copy of applicant's letter dated 8.4.2002 to the Assistant Chief Accounts Officer, Office of the 3rd respondent.
9. A-9: True copy of order passed by this Hon'ble Tribunal in O.A.No.1373 of 1999 dated 1.1.2002.
10. A-10: True copy of judgment in O.P.NO:13244 of 2001-S of the Hon'ble High Court of Kerala.

Respondents' Annexures:

1. R-1: True copy of order NO.49014/4/97-Estt (C) dated 29.1.98.
2. R-2: True copy of order NO.Rectt/27-2/90 dated 23.6.97.
3. R-3: True copy of order No.8629/Pen.4/C.465/01-02 dated 15.3.2002.

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