

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 292/98

Monday this the 27th day of November, 2000.

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

1. R.Rajasekharan Nair
S/o Ramakrishna Pillai
Tea Maker, Postal Tiffin Room
Thycaud Head Post Office
Trivandrum-14
2. A.Rajendran
S/o Ayyappan **Pillai**
Dish Cleaner, Postal Tiffin Room
Thycaud Head Post Office
Trivandrum-14.Applicants

By advocate Mr.M.R.Rajendran Nair

Versus

1. Union of India represented by
Secretary
Ministry of Communications
Department of Posts
New Delhi.
2. The Chief Post Master General
Kerala Circle
Trivandrum.
3. Senior Superintendent of Post Offices
Trivandrum
4. The Post Master
Thycaud Head Post Office and Chairman
Postal Tiffin Room, Thycaud.
5. The Director of Canteen
Department of Personnel and Training
Asoka Road
New Delhi.Respondents

By advocate Mr. Govind K.Bharathan, SCGSC

Application having been heard on 27th November, 2000,
the Tribunal on the same day delivered the following:

O R D E R

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

Applicants are employed in the Postal Tiffin Room attached with Thycaud Head Post Office. As they were not being treated as Government servants extending the benefit of the judgement of the Hon'ble Supreme Court in M.M.R.Khans' case on the ground that the canteen was not registered, the applicants

filed OA 396/95 which was disposed of with a batch of connected cases by a common order dated 15.11.95 with certain directions regarding registration of the canteen and extension of the benefits to the employees. In implementation of the judgement of the Tribunal in those cases, the canteen was got registered and by orders of the Chief Postmaster General of Kerala Circle dated 13.9.96 the applicants were appointed as Tea Maker and Dish Cleaner respectively with effect from 1.10.91 in the scale of pay of Rs.750-940. Pursuant to the above order, arrears of pay and allowances were paid to the applicants. Finding that the payment of arrears of pay and allowances made for the period from 11.3.95 to 16.9.96 during which, according to the respondents, the canteen was not functioning, was irregular, a show cause notice was issued to the applicants calling upon them to credit the excess amount paid to them and informing them that failure to do so would entail recovery of the excess amount. Annexures A25 and A26 are representations submitted by the applicants denying their liability on the ground that the amount was paid to them on the orders of the Tribunal. After considering the representations, respondents issued Annexure A1 order informing the applicants that as the amount was wrongly paid to them the same would be recovered from their pay and allowances in instalments commencing from the month of February, 1998. It is alleged in the application that the impugned order to the extent of directing recovery of the payment made to them is unjusifiable as the amount was paid in terms of the directions contained in the judgement of the Tribunal in OA 396/95 and that even if the canteen was not functioning and payment was made erroneously, yet since the applicant has not been responsible for the wrong payment made and in view of the rulings of the Hon'ble Supreme Court reported in 1995 Supp (3) SCC 722, 1995 Supp (4) SCC 593, 1995 Supp (1) SCC 470, 1994 (27) ATC 121, 1994 (27) ATC 630, 1995

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Supp (1) SCC 18, 1996 (8) SCC 11 and 1995 Supp (3) SCC 591, the amount is not recoverable. It has also been stated that as the non-functioning of the canteen was for no reason attributable to the applicant, the respondents cannot escape from the liability. With the above allegation the applicant has filed this application seeking to quash A-1, to declare that they are entitled to draw the pay and allowances for the entire period from 1.10.91 to 17.9.96 consequent up on their being treated as government servants from 1.10.91 and to direct the respondents not to make recovery from their salary on the allegation that the canteen was defunct from 11.3.95 to 16.3.96.

2. Respondents in their reply statement contend that the payment made towards backwages for the period during which the canteen was defunct was erroneous and the recovery of the amount is made in public interest and not based on legal principles.

3. We have heard the learned counsel on either side. On the question whether the canteen was functioning or not functioning between the period 11.3.95 and 16.9.96 there was no declaration in any litigation between the parties. In the order in OA 396/95, there was no declaration that during the period in question the canteen was functioning and there was no direction that the applicants should be paid backwages for the period from 11.3.95 to 16.9.96. The applicants have not produced any material to show that during the period in question, the canteen was functioning and that the applicants were working there. Identical question came up before this bench of the Tribunal in OA 766/97. It was held that for the period during which the canteen was not functioning, the applicants were not entitled to any increment or benefits. We do not find any reason to deviate from the view taken in that

case. The applicants have been treated as Government servants with effect from the date of their eligibility, but there is no rule, law or instructions which enable them to claim wages during the period they have not worked. It has not been established that the applicants were kept out of work unjustifiably and unreasonably. It has not been declared so in any prior proceedings nor is there a prayer for a declaration that denial of work to the applicants during the period is unjustified or that during the period in question the applicants had actually been working in the OA too. The over payment made to the applicants, therefore, apparently was inadvertent and erroneous.

4. In the light of the facts and circumstances, we are of the view that the payment made to the applicants as backwages for the period from 11.3.95 to 16.9.96 was erroneous as there was no such direction in the judgement in OA 396/95. The question is whether the respondents are justified in making recovery of the amount erroneously paid to the applicants. We have perused the rulings of the Apex Court relied on by the applicants. In none of the judgements the Apex Court has declared that the Government cannot recover any amount which was paid under a mistake. The Apex Court in several rulings have observed that payments erroneously made can be recovered even if the payments were not made at the instances of the person who received them. If any authority is needed it can be had in the ruling of the Apex Court in Gangaram Vs. Regional Transport Authority 1997 (6) SCC 139.

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5. In the light of what is stated above, we do not find any merit in this application and therefore, we dismiss the same leaving the parties to bear the costs.

Dated the 27th November, 2000.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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A.V. HARIDASAN
VICE CHAIRMAN

Annexures referred to in this order:

- A25: True copy of the representation dated 27.10.97 submitted by 1st applicant to the 2nd respondent.
- A26: True copy of the representation dated 27.10.97 submitted by 2nd applicant to the 3rd respondent.
- A1: True copy of the memo No.H/TR/THD dated 17.2.98 issued by the 4th respondent.