

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.297 OF 2004

Monday this the 28th day of August, 2006

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**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

K.Jose Thomas, aged 63 years
retired JTA, Office of the Official Liquidator,
Ernakulam,
S/o K.V.Thomas, Kalapurackal House,
Near Railway Station, Kuruppanthara,
Manjoor PO, Kottayam District
Kerala State 686603.Applicant

(By Advocate Mr. Shafik M.A)

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- 1 Union of India, represented by the
Secretary, Ministry of Finance
(Department of Company Affairs)
New Delhi.
- 2 The Regional Director, Department of Company
Affairs, Shastri Bhavan, 26, Haddows Road,
Chennai.600 006.
- 3 The Official Liquidator,
High Court of Kerala,
Ernakulam, Kochi.682018.Respondents

(By Advocate Mrs. Aysha Yousuff, ACGSC)

The Application having been finally heard on 11.8.2006, the Tribunal on
28.8.2006 delivered the following:

ORDER

Hon'ble Mr. George Paracken, Judicial Member

The applicant has filed the present OA against Annexure.A1
letter of the respondent No.2 dated 28.8.2003 which has been issued in

2

pursuance to this Tribunal's order dated 2.4.2003 in OA 268/03 filed by the applicant earlier.

2 The applicant while working as UDC was drawing a special pay of Rs. 70/- along with his salary and on his adhoc promotion as Junior Technical Assistant (JTA for short) on 26.10.95 his pay was fixed reckoning the said special pay. However, due to some administrative exigencies the applicant was reverted to the post of UDC for two days from 1.4.96 to 2.4.96 but was again promoted as JTA and he continued to work in that post till he retired on 30.1.98. His case was that when he was reverted from the post of JTA as UDC, he ought to have been reverted to the post of UDC with special pay so that on his subsequent promotion as JTA, his pay could be refixed by giving benefit of special pay again which eventually would have an effect on his pensionary benefits. The applicant made representation on 13.3.97 (A2) followed by another representation dated 22.10.97 (A4). Since there was no response from the respondents he filed the said OA 268/03 which was disposed of on 2.4.03 with the direction to the respondents to consider his representation and dispose of the same by passing a speaking order. Accordingly, the respondent No.2 considered the representation of the applicant and disposed it of by the Annexure.A1 letter dated 22.8.03 rejecting his request for the following reasons":

"(a) The applicant has been promoted as Junior Technical Assistant on ad hoc basis w.e.f. 26.10.1995 and posted in the O/o the Official Liquidator, Kerala from O/o the Registrar of Companies, Kerala. He has been given 2 days break on 1.4.1996 and 2.4.1996 and continued as ad hoc Junior Technical Assistant from 3.4.1996 onwards. The 2 days break has been given for administrative exigencies and the official's argument that he should have been accommodated in the post of Upper Division Clerk

8

carrying Special Pay for the said 2 days break is denied on the grounds that while the official was working, in the O/o the OL, Kerala, on his ad hoc promotion as JTA, the identified post of UDC carrying special pay was available only in the O/o the ROC, Kerala. In the circumstances, it is not known as to how Shri Jose Thomas can be shown as UDC, on reversion, as if working in the Office of Registrar of Companies, Kerala for the said 2 days ie., on 1.4.1996 & 2.4.1996.

(b) The filling up of the post of UDC carrying Special Pay cannot be claimed as a matter of right since because he is the seniormost person in that Grade in view of the clarifications issued vide GOI, Ministry of Finance OM No.F.7(52)-E.III/78 dated 29.12.1982 that the seniority-cum-fitness would not be the criterion for filling up of the post but the selection is to be made by the Controlling Authority on the suitability of a particular official to handle the work in a post identified as carrying discernible duties and responsibilities of complex nature.

(c) As already a person, who is holding substantive post of UDC, has been sanctioned Special Pay against such identified post of UDC in the O/o ROC, Kerala for the period from 1.3.1996 to 28.2.1997, Shri Jose Thomas who has not worked in the said office and has not discharged the said duties for the said two days ie., 1.4.1996 and 2.4.1996 cannot claim Special Pay. As such the action in not posting him, on reversion, to the post of UDC carrying Special Pay is correct as per Rules.

(d) After the implementation of the fifth Pay Commission the grant of Special Pay for discharging complex nature of work has been replaced by fixing the pay of the person who has held that post on 1.1.96 in the pay scale of Rs. 5000-150-8000. It may be seen that the official has been promoted as ad hoc JTA w.e.f 26.10.1995 and continued to be as ad hoc JTA till 31.3.1996. Since he has not held the post of UDC carrying Special Pay as on 1.1.1996, he is not eligible to claim the same. In that ground also his plea for considering him for the post of UDC carrying Special Pay on reversion cannot be accepted."

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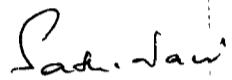
3 According to the applicant, the rejection of his request vide the aforementioned Annexure.A1 letter is arbitrary, discriminatory, contrary to law and unconstitutional. He has also submitted that his case is squarely covered by an earlier decision of this Tribunal in OA 689/2005 decided as recently as on 20.6.2006. That OA was also against the same respondents filed by one Shri C.A.Paul, retired as Technical Assistant who was working with the respondent No.4, namely, the Official Liquidator of High Court of Kerala. The applicant in the said OA while working as JTA was promoted as STA on ad hoc basis with effect from 3.4.95 followed by promotion on regular basis with effect from 16.8.99. The said applicant had performed the duties of STA in the officiating capacity with effect from 3.4.95 to 30.9.98 with short duration breaks of 1 to 4 days on five occasions. The claim of the applicant was to ignore those artificial breaks for treating the period from 3.4.95 to 30.9.98 as continuous as per FR 26-A and to grant annual increments and for further fixation of pay. The respondents themselves have conceded in that as per the advice received by them from DOPT "when the pay fixed in case of promotion is less than the pay drawn during the last spell of officiation against the same post, the pay drawn during the last spell of officiation can be allowed. The benefit of broken period of officiation is admissible only if on re-promotion, the pay is fixed at the same stage as fixed during the last officiation period.

4 In our considered opinion the respondents have to adopt the same procedure in fixing of the pay of the applicant also on his second spell of ad hoc promotion to the post of JTA. We, therefore, declare that the applicant is entitled to the pay in the post of JTA ignoring the artificial breaks imposed on him with all increments for the period he has worked as

JTA by considering the post of UDC held by the applicant after reversion for two days notionally as a post of UDC with special pay. The respondents are directed to fix the pay accordingly and disburse the pension and other pensionary benefits to the applicant. The aforesaid directions of this Tribunal shall be complied with within a period of three months from the date of receipt of this order. There shall be no order as to costs.

Dated this the 28th day of August, 2006


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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