

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 321/2001

Monday, this the 3rd day of February, 2003..

CORAM :

HON'BLE SHRI G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE SHRI K.V. SACHIDANANDAN, JUDICIAL MEMBER

T.A. Suryakumari,
W/o Shri N. Venu,
Senior Hindi Translator,
O/o the Chief Postmaster General,
Kerala Circle,
Thiruvananthapuram,
residing at TC 8/333-1,
Thiruvathira, Alappuram,
Thiruvananthapuram-695006.

... applicant

(By Advocate Mr. O.V. Radhakrishnan)

Vs

1. Chief Postmaster General,
Kerala Circle,
Trivandrum-695033.
2. Director of Postal Services(HQ),
O/o the Chief Postmaster General,
Kerala Circle,
Trivandrum-695033.
3. Union of India rep. by its
Secretary,
Ministry of Communications,
New Delhi.
4. K.R. Ranjini,
Junior Hindi Translator,
O/o the Chief Postmaster General,
Thiruvananthapuram-33.
5. S. Rekha,
Junior Hindi Translator,
O/o the Chief Postmaster General,
Thiruvananthapuram-33.
6. Fabeena M,
Junior Hindi Translator,
O/o the Chief Postmaster General,
Thiruvananthapuram-33.

... Respondents

[Mr. P. Vijayakumar, ACGSC(R 1-3)
Mr. Sasidharan Chempazhanthiyil(R 4,5&6)]

The application having been heard on 3.2.2003, the Tribunal on the same day delivered the following.:

ORDER

HON'BLE SHRI G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

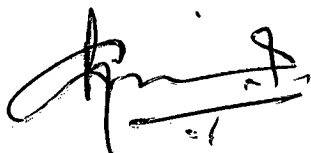
The applicant, aggrieved by Annexure A7 memo No.ST/1/13/96 dated 2.4.2001 of the 1st respondent and Annexure A7(a) notice No.ST/3-294/2000 dated 22.11.2002 of the 2nd respondent by which the 1st respondent ordered repatriation of the applicant to her parent division and the 2nd respondent had asked her to show cause as to why her pay should not be re-fixed under the provisions contained in FR 35 respectively, filed this Original Application seeking the following reliefs :-

- (i) To call for the records relating Annexure A7 and A7(a) and to set aside the same;
- (ii) To issue appropriate direction or order, directing the respondents to allow the applicant to continue in the post of Senior Hindi Translator in the office of the 1st respondent without regard to Annexure A7;
- (iii) To issue appropriate direction or order, directing the respondents to treat the applicant as holding the post of Senior Hindi Translator on regular basis and in substantive capacity irrespective of the initial appointment on temporary basis;
- (iv) To grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case; and
- (v) To award costs to the applicant.

2. The applicant at the time of filing this OA was working as Senior Hindi Translator in the office of the 1st respondent on adhoc basis. She was initially appointed as Postal Assistant on a regular basis w.e.f. 20.8.1983. She passed MA(Hindi) from the Kerala University with 2nd class in 1985, and that her services were being utilised as Hindi Translator and for correspondence from 4.5.1984 Annexure A1 certificate dated 23.1.1987 issued by the 1st respondent was produced by her. She was deputed for training under the Hindi Translation Training Scheme conducted by the Central Translation Bureau for a period from 1.7.1987 to



30.9.1987 and after completion of the same, she was issued a Translation Training Certificate(Annexure A2). Thereafter, the Assistant Director(Staff) in the Office of the 1st respondent issued Annexure A3 notification dated 10.2.1994 inviting applications from eligible candidates for selection to the post of Senior Hindi Translator Grade-I in the scale of pay of Rs.1640-2900/- on adhoc basis for a period of three months. The applicant applied and she was selected for appointment as Senior Hindi Translator by Annexure A4 order dated 23.3.1994 issued by the 2nd respondent. Even though in Annexure A4 it was specifically stated that her appointment was only for a period of three months, she was allowed to continue in the said post even after three months. She claimed that the appointment had been extended as per orders issued from time to time by the 2nd respondent. In the meanwhile, as directed by the 2nd respondent, the Assistant Director(Staff) issued Annexure A5 memo dated 31.3.1995 terminating the temporary and adhoc appointment of the applicant w.e.f. 31.3.1995. The applicant challenged Annexure A5 memo before this Tribunal in OA No.524/95. However, before the Original Application came up for admission, the applicant was reappointed as Senior Hindi Translator as per order dated 19.4.1995. The said fact was taken note of by the Tribunal and OA No.524/95 was dismissed by the Tribunal by Annexure A6 order dated 27.4.1995. The applicant claimed that she had continued in the post of Senior Hindi Translator in the office of the 1st respondent without any breaks for the past more than 7 years. Smt. M. Vishalakshi, the permanent incumbent of the post who had been promoted to the post of Hindi Officer on adhoc basis, against whose vacancy the applicant had been appointed temporary adhoc basis had also continued as Hindi Officer. In view of the said fact when Smt. M. Visalakshi regular incumbent of the post was till continuing as Hindi Officer in the office of the 1st respondent, she must be treated to have been promoted on regular



basis. Further as the applicant's appointment was after a due process of selection and she had been discharging the duties attached to the post for the past more than 7 years, the applicant submitted that there was no administrative exigency or any necessity shown in Annexure A7 for the repatriation of the applicant to her parent division inviting adverse civil consequences. She further submitted that during the pendency of the OA, she was informed by Annexure A7(a) dated 22.11.2002 issued by the DPS(SR), the 2nd respondent to the effect that the applicant was promoted as Senior Hindi Translator, Circle Office, Trivandrum on temporary and adhoc basis, her pay fixed under FR 22(1)(a)(i) should have been restricted under FR 35, and that she was eligible to draw Rs.1440/- only on her adhoc appointment as Senior Hindi Translator and that it was proposed to re-fix her pay as on 31.3.1994 under the provisions contained FR 35. Alleging that Annexure A7(a) was arbitrary, ultra vires and liable to be set aside and aggrieved by Annexure A7, the applicant has filed this Original Application seeking the above said reliefs.

3. Respondents 4, 5 and 6 filed reply statement resisting the claim of the applicant. According to them, the appointment of the applicant as Senior Hindi Translator was not in accordance with the recruitment rules, in support of which they annexed R-4(a) and R-4(b), Indian Post and Telegraph Department(Hindi Translator Grade I, Grade II, Grade III and Hindi Typist) Recruitment Rules, 1983 and Amended Rules, 1984 respectively. They also annexed R-4(c), Department of Posts(Junior Hindi Translator and Senior Hindi Translator) Recruitment Rules, 1996. They claimed that the applicant did not satisfy the conditions for promotion or transfer on deputation as in R4(b) and that neither her appointment was direct recruitment as Senior Hindi Translator. She was also not holding any analogous post in the

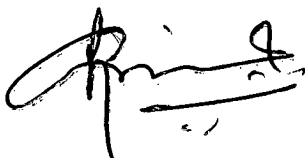


scale of pay of Rs.330-560/-(pre-revised) for more than five years to be eligible for appointment by transfer on deputation. She was not working as Hindi Translator Grade II for appointment by promotion within the recruitment rules. They submitted that the applicant was appointed purely on temporary adhoc basis. They claimed that the 4th respondent was eligible for consideration for promotion to Grade I as she satisfied the conditions of service in Grade II including the service rendered by her in the parent department before appointment in the present grade upon notification. According to them, the adhoc appointment however long the period may be gave no right to continue in a substantive capacity and if the reliefs sought for by her were granted, the same would deprive the other candidates of their right for consideration for promotion to the post of Senior Hindi Translator Grade I. In that case, there would be no vacancy in Grade I which would affect the promotions prospects of respondents 4 to 6.

4. Respondents 1-3 filed reply statement resisting the claim of the applicant. According to them, the Original Application was not maintainable under law or on facts. They submitted that the post of Senior Hindi Translator at Circle Office, Trivandrum fell vacant on 1.12.1993 on the adhoc promotion offered to Smt. M. Visalakshi as Hindi Officer. According to the order of the Directorate, 50% of the posts of Senior Hindi Translators were to be filled up by direct recruitment and remaining 50% by deputation of eligible Group C staff. In this case, as there was only one post, it was to be filled up by regular recruitment through Staff Selection Board and since such exercise would take some time, it was decided to fill up the vacancy temporarily on adhoc basis by posting departmental hands on deputation and accordingly Annexure A3 was issued. In response to Annexure A3, two applications were received including that of the applicant.




At the time of verification, it was noticed that even though the applicant did not have the qualifications required, on comparative assessment and in view of the exigencies of service, the applicant was appointed as temporary and adhoc basis for the post of Senior Hindi Translator for a period of 3 months by Annexure A4. Later the applicant's posting was extended from time to time. They submitted that the appointment being an adhoc appointment on deputation, the lien of the applicant remained in her pre-deputation post of Postal Assistant. They further submitted that the recruitment rules for Senior Hindi Translators were revised by the Government of India vide notification No.20-1/94-BPB-I dated 5.12.1996, according to which the existing qualification requirements to the post of Senior Hindi Translator were revised and when the question of giving extension of the adhoc posting of the applicant beyond 20.2.2001 came up for consideration, in the wake of representations from rival claimants for officiating appointment and the matter was scrutinised in detail, it was found that while the applicant had a MA Degree in Hindi, she did not have English as the main or elective subject at Degree level as required under the existing recruitment rules. They further submitted that in accordance with the orders contained in R1(a) letter No.28036/8/87-ESTT(D) dated 30.3.1988 issued by the Department of Personnel and Training under Ministry of Personnel, Public Grievances and Pension, officiating appointment were not to be continued beyond one year. Accordingly, since it was found out that the applicant did not satisfy the required eligibility under the recruitment rules and since it was not permissible to extend the officiating period beyond one year, applicant's adhoc services were terminated by Annexure A7. According to them, there were no grounds to sustain the OA and it was liable to be dismissed.



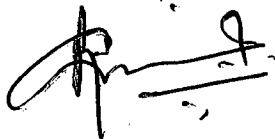
5. Applicant filed rejoinder. Respondents filed additional reply statement and the applicant filed additional rejoinder.

6. Heard the learned counsel for the parties.

7. The learned counsel for the applicant Shri O.V. Radhakrishnan after taking us through the facts as contained in the Original application, took us through the educational qualifications of the applicant as contained in Annexure A9 Provisional Certificate dated 30.4.1986 and Annexure A10 Provisional Certificate dated 29.10.1983 both issued by the University of Kerala. He also referred us to Annexure A11 certificate dated 30.5.2001 issued by the Registrar, University of Kerala. Relying on the three documents, he submitted that the applicant was in possession of the qualifications as contained in the recruitment rules. He submitted that the applicant continued to work as Senior Hindi Translator from 1994 and he was entitled for relaxation as contained in Annexure A8 order of the respondents dated 28.5.1987. He submitted that the applicant is entitled for relaxation sought for as the applicant had been continuing in the post for the past several years and the respondents could not invoke provisions of recruitment rules which came into force only in 1996 when the vacancy occurred in 1994. According to him, the posting had been treated as adhoc basis only because vacancy in which the applicant had been posted against was on the promotion of the earlier incumbent Smt. M. Visalakshi as Hindi Officer on adhoc basis. Annexure A7 which had not stated any reason or ground for repatriation of the applicant to the parent department could not be sustained. He submitted that there was no chance for the reversion of Smt. M. Visalakshi from the post of Hindi Officer and the vacancy should be treated as a regular one. He also referred us to the ruling of the Apex Court in Baleshwar Das Vs State of UP (AIR 1981 SC

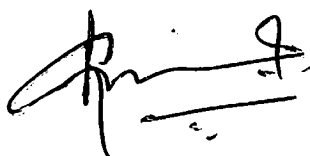


41). According to him, Annexure A7 Memo dated 2.4.2001 repatriating the applicant without notice and without any reason and on the ground that the initial appointment of the applicant as Senior Hindi Translator was on temporary adhoc basis was arbitrary, discriminatory and violation of Article 14 and 16 of the Constitution. He submitted that Annexure A7 was issued without notice and same has been issued without following the requirement in Section 311(2) of the Constitution of India. As the applicant had been appointed after following the procedure for appointment on regular basis, on her satisfying the required qualification on selection, her selection as Senior Hindi Translator should be made as regular one made in substantive capacity. According to him, as the respondents themselves had not initiated any action for appointment of Senior Hindi Translator on regular basis, there was no need to repatriate the applicant and by such action respondents only proposed to fill up the post on adhoc basis which could not be done. The learned counsel submitted that when the Original Application was pending, respondents had issued Annexure A7(a) notice without following the provisions contained in Section 19(4) of the Administrative Tribunals Act that all proceedings under the service rules should abate unless the same was permitted by the Tribunal. According to him, respondents were wrong in issuing said Annexure A7(a) notice and the same was illegal and without authority of law. He also referred us to FR 35 and the said rule applied only on appointment by promotion. As the applicant's appointment as Senior Hindi Translator was not in the normal line and was by transfer on deputation, provisions under FR 35 would not be applicable in the applicant's case. Further even if FR 35 enabled the Central Government to fix the pay of the officiating Government servant, in this case, Annexure A7(a) notice was issued by the Assistant Director(Staff) without authority of law. Respondents had not explained under which provision of law they



proposed to re-fix the pay of the applicant under FR 35. Moreover, the pay of the applicant they proposed in Annexure A7(a) would be below the minimum of the scale of the post of Senior Hindi Translator.

8. The learned counsel for the respondents 1 to 3 Shri P. Vijayakumar, ACGSC took us through the reply statement and to the factual aspects contained in the reply statement. He submitted that the applicant was claiming a relief to direct the respondents to treat the applicant as holding the post of Senior Hindi Translator on regular basis. He submitted that such relief was not admissible to the applicant as the vacancy in which she was appointed was a temporary one because of the promotion of Smt. M. Visalaskhi as Hindi Officer on adhoc basis. When the vacancy of Senior Hindi Translator was a temporary and adhoc one, the applicant could not seek regular posting against such a vacancy. When the question of giving extension of the adhoc posting of the applicant beyond 20.2.2001 came up for consideration, in the wake of representations from rival claimants for officiating appointment, the applicant's educational qualifications were scrutinised and it was found that the same was not in conformity with the revised recruitment rules which came into force in 1996. As regards the applicant's claim that the relaxation had been given as in Annexure A8, he submitted that what was given in the past as per Annexure A8 was only relaxation in age and there was no relaxation in educational qualifications. He also referred us to the recruitment rules and submitted that as per the recruitment rules, a person was to be posted on transfer on deputation, and it was to be filled up on regular basis as per rules on the date of regular filling up.



9. The learned counsel for the respondents 4 to 6 took us through the reply statement and drew our attention to the orders in OA No.655/1998 and submitted that the case of the applicant in that application was similar to the applicant in this Original application and the ratio of that judgement in that OA was squarely applicable to the facts of this case.

10. We have given careful consideration to the submissions of the learned counsel for the parties and pleadings of the parties and have perused the materials placed on record.

11. On a careful consideration of the submissions of the learned counsel for the parties, and the pleadings and material placed on record, we find that there is no dispute among parties that the applicant by Annexure A4 order was appointed on adhoc basis as Senior Hindi Translator while she was working as postal Assistant in the office of the 1st respondent. It was specifically mentioned in Annexure A4 that the appointment was purely temporary and on adhoc basis for three months and was likely to be terminated at any time without notice.

12. The issue to be decided is whether by Annexure A4 order, the applicant acquired any right for regularisation in the post of Senior Hindi Translator. At the time of appointment, the respondents did the same after inviting applications as per Annexure A3 notification dated 15.2.1994. In Annexure A3, the condition prescribed was that the candidate should not be more than 35 years as on 1.7.1994 and the educational qualifications were stated as under :-

"Master's Degree of a recognised University in Hindi/English with Hindi/English as a main subject a Degree.

OR



Master's Degree of a recognised University in any subject other than Hindi/English with Hindi and English as main subjects at Degree level.

OR

Master's Degree of a recognised University in any subject other than Hindi/English with Hindi/English medium and English/Hindi as a main subject at Degree level.

OR

Master's Degree in Hindi/English or in any other subjects with Hindi/English medium with English/Hindi as a main subject or as a medium of examination at Degree level.

Recognised Diploma Certificate course in translation from Hindi to English and vice-versa or two year's experience of translation work from Hindi to English and vice-versa in Central/State Government offices including Government of India Undertaking."

13. From the respondents' reply statement, we find that only two employees applied in response to Annexure A3 and both of them were found to be not qualified as per the conditions laid down in Annexure A3 and that in exigency of service, the applicant was offered the post of Senior Hindi Translator on temporary adhoc basis for a period of three months. But we find that it is also a fact that she had been continued in the same post by extension from time to time. So the position is whether the applicant is eligible for relaxation of qualifications of recruitment rules existing at that time. On going through annexures, we find that the applicant was eligible as per R4(a) and R4(b) recruitment rules existing at that time as far as educational qualifications are concerned. At the same time according to R4(a) and R4(b), the post of Senior Hindi Translator Grade I was to be filled up by (i) 50% by direct recruitment and (ii) 50% by promotion failing which by transfer on deputation and, failing both, by direct recruitment. For promotion, it is to be done from among Hindi Translators Grade II with 5 years service in the grade after regular appointment, working in the Circle or Administrative unit in which the post is sanctioned or is to be



filled up. Transfer on deputation is to be resorted to only when promotion method fails. The conditions stipulated for transfer on deputation are as follows :-

"From amongst persons holding analogous posts in the pay scale of Rs.425-640 or equivalent with 5 years' regular service in the grade,-


(i) in the Circle or Administrative unit in which the post is sanctioned or is to be filled up, failing which

(ii) in the other Circle, Telephone District, Civil Circle, Postal Training Centre or Telecom Training Centre, located within the territorial jurisdiction of the Circle in which the post is sanctioned or is to be filled up. Candidates for appointment on deputation should possess the qualifications as specified in column 7.

Note:- The period of deputation shall ordinarily not exceed three years."

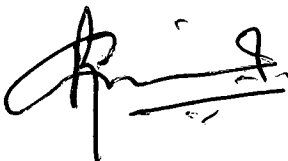
14. It is evident from the above that transfer on deputation can be only from persons holding analogous post in the scale of pay of Rs.425-640/- or equivalent with 5 years' regular service in the grade. The learned counsel for the applicant submitted that 5 years regular service of the applicant in the grade of Postal Assistant should be treated as equivalent to grade of Rs.425-640/-. We find that on a reading of the provisions of recruitment rules as reproduced as above, we are unable to accept this proposition of the learned counsel for the applicant.

15. It is very evident that transfer on deputation is to be done from persons holding analogous posts in the scale of pay of Rs.425-640/- or equivalent with 5 years regular service in the grade. The grade referred to here is the grade Rs.425-640/-. In this view of the matter, the applicant who was a Postal Assistant at that time was basically not eligible for consideration as Senior Hindi Translator. In any case, she was considered on the basis of Annexure A3 notification, which we are of the view was not issued in accordance with R4(b) recruitment rules. Further, in Annexure R4(b) recruitment rules, it was also mentioned that



the period of deputation shall ordinarily not exceed three years. The applicant admittedly working from 1994 on transfer on deputation basis and she had been holding the post Senior Hindi Translator on transfer on deputation on the basis of the recruitment rules for a period of more than three years. The learned counsel for the applicant submitted that this plea has not been taken by the respondents in the reply statement. We are of the view that as the applicant is seeking a direction to the respondents to regularise her appointment in the matter of a writ of mandamus, the Tribunal has to see whether the applicant is legally entitled for the reliefs sought for. Since the applicant has not challenged the recruitment rules and the recruitment rules specifically provided that appointment will be on transfer on deputation and the period is restricted to three years, the applicant does not have any legal right for the reliefs sought for in the application. Further from R4(a) order and from the pleadings we find that the applicant while holding the post of Senior Hindi Translator was in the scale of Rs.5500-9000/- whereas on repatriation she would be posted as LSG postal Assistant in the grade Rs. 5000-8000/-. When she was sent on deputation, she was in the then existing grade of Rs.975-1660/- of Postal Assistant. It is clear from the above that the applicant even though was working in the Senior Hindi Translator post, she had not been denied due promotion in her parent cadre.

16. In this view of the matter, we are of the considered view that the applicant has no right to claim for continuing as Senior Hindi Translator, in which post she was working on transfer on deputation on adhoc temporary basis. The respondents had admitted that the applicant, who was posted as Senior Hindi Translator on the basis of the qualifications decided at that time as per the educational qualifications prescribed in the recruitment rules then existing and since recruitment rules which



was modified in 1996, she has to satisfy the educational qualifications as prescribed in the existing recruitment rules for her regularisation. We find that the applicant does not have any right to continue as Senior Hindi Translator in the post in which she was temporarily working on deputation. She was working on the post on transfer on deputation.

17. The learned counsel for the applicant submitted that the earlier incumbent of the post of Senior Hindi Translator, Smt. M. Visalakshi was also taken from the post of Postal Assistant and posted as Senior Hindi Translator and since she was regularised, the applicant also had a right to get regularisation in the said post. In our view, rights of Government employees emanates from rules framed under Article 309 of the Constitution of India and directions/instructions issued by the Government of India. Just because another employee had been given a benefit de hors the rules, the same would not entitle another employee to get the same benefit de hors the rules.

18. In OA No.656/98, the Postal Assistant who was working on adhoc basis as Junior Hindi Translator had approached this Tribunal for regularisation. The order of the Tribunal in the said OA dated 8.1.2001 was produced by the respondents as R1(b). We have gone through the order of the Tribunal in that O.A. This Tribunal in para 3 of the order held as under :-

"3. Respondents 4 to 5 say that in the year 1994 at the time of the adhoc selection in the post of Junior Hindi Translator, the pay scale corresponding to the scale of Rs.330-560 was Rs.1200-2040. The applicant at that time was a Postal Assistant in the scale of Rs.975-1660. She was not eligible for transfer on deputation as Junior Hindi Translator. To manage the day-to-day work purely as a stop gap arrangement, she was appointed as Junior Hindi Translator as per A2 order. The applicant who had no eligibility to be appointed under the 50% departmental quota could not be considered for the post. The applicant though has a Master's Degree in Hindi, English was not a compulsory and elective subject at Degree level.



She does not possess the educational qualification prescribed in A9 recruitment rules. Even as per the old recruitment rules, the applicant was not eligible for appointment as Junior Hindi Translator as she was not holding an analogous post with the pay scale of Rs.1200-2040 at that time. As the applicant has no legal claim according to the rules, her representation was not forwarded for consideration."

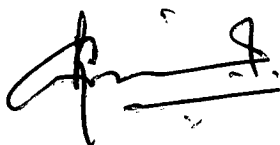
19. Similarly in this case the applicant as Postal Assistant was also in the scale of Rs.975-1660/-. As per the recruitment rules, transfer or transfer on deputation could be considered from among persons holding analogous posts in the scale of Rs.425-640/- and the Tribunal in the above OA held that the post in the scale of Rs.1200-2040/-could not be treated equivalent to the post in the scale of Rs.975-1660/-. This Tribunal in the said order further held as follows :-

"7. The applicant was admittedly appointed as a Postal Assistant. She was given an adhoc appointment as Junior Hindi Translator. How that happened has been explained by the respondents clearly by saying that though the applicant was not actually eligible for transfer of deputation as Junior Hindi Translator, to manage the day-to-day work purely as a stop gap arrangement, she was appointed as Junior Hindi Translator as per A-2. A-2 specifically says that the appointment is purely temporary and adhoc and is likely to be terminated at any time without notice.

8. Respondents have specifically stated that even as per the old recruitment rules the applicant was not eligible for appointment as Junior Hindi Translator as she was not holding an analogous post in the pay scale of Rs.1200-2040 at that time. The applicant was not holding a post analogous since her pay scale was only Rs.975-1660 at that time.....

11. The fifth relief sought is to direct respondents 1 to 5 to regularise the service of the applicant as Junior Hindi Translator. The only ground stated for this relief is that the applicant has been working as Junior Hindi Translator on adhoc basis for more than three years. An adhoc employee, even if continued for a decade, continues to be adhoc. So, on the basis that the applicant has worked for more than three years on adhoc basis it will not give a right to her to claim regularisation."

20. The above order of this Tribunal in which one of us was a party(Administrative Member) squarely applies to the facts and circumstances of this case also. In the result, we hold that the applicant in this OA is not entitled for the relief of regularisation sought for.



21. The applicant has also challenged Annexure A7(a) order issued by the 2nd respondent. Annexure A7(a) reads as follows :-

DEPARTMENT OF POSTS, INDIA
CHIEF POSTMASTER GENERAL, KERALA CIRCLE,
THIRUVANANTHAPURAM-695033.

NOTICE

No.ST/3-294/2000

Dated 22 Nov., 2002.

Smt. T.A. Suryakumari while working as T/S PA, Trivandrum North Division was promoted to the cadre of Senior Hindi Translator, Circle Office, Trivandrum, in the scale of pay of Rs.1600-2660(pre-revised) purely on temporary and adhoc basis against the vacancy caused due to the adhoc promotion of Smt. M. Visalakshi as Assistant Director(OL) vide Memo No.ST/1/13/93 dated 28.3.1994.

The posting being purely on adhoc basis and not in the normal line of promotion her pay fixed under FR 22(1)(a)(i) should have been restricted under FR 35. But this was not done. This irregularity came to notice when fixation of pay of the official in the cadre of Senior Hindi Translator was processed on revision of the pay scales of Hindi Translators.

At the time of promotion to Sr. Hindi Translator, Smt. Suryakumari was drawing Rs.1240/- in the scale of Rs.975-1660/-. She is eligible to draw Rs.1440/- only on her adhoc appointment as Sr. Hindi Translator. Now, therefore the undersigned proposes to re-fix the pay of the official as on 31.3.1994 accordingly under the provisions contained in FR 35.

The above proposal is without prejudice to the interim order of the Hon'ble Central Administrative Tribunal in OA No.321/01 not to repatriate the applicant pending the OA and subject to its final outcome.

Objection to the proposal, if any, should be submitted within 10 days of receipt of this communication failing which action will be taken accordingly.

Sd/-
(V. Rajarajan)
Director of Postal Services(SR)

To

Smt. T.A. Suryakumari,
Offg. Sr. Hindi Translator,
C.O., Trivandrum.

22. We find from the above that the applicant's pay was fixed by respondents applying FR 22(1)(a)(i) when she was promoted on adhoc basis as Senior Hindi Translator in 1994. It is now being proposed by them to re-fix the pay of the applicant restricted under the provisions contained in FR 35. Applicant's specific



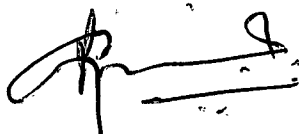
case is that FR 35 is not applicable to the facts and circumstances of the case, and that the applicant is appointed by transfer on deputation as Senior Hindi Translator and in the case of transfer on deputation FR 35 is not applicable and FR 35 is applicable only in the case of promotion. Further, according to the counsel for the applicant, Central Government had not issued any order restricting her pay under FR 35 when she was appointed by transfer on deputation. He submitted that the authority who had issued Annexure A7(a) has no authority of law and had issued the same without jurisdiction. The counsel for the respondents referred us to Government of India Decision No.3 at page 147 of the Swamy's Compilation of FRSR Fourteenth Edition 1999 - Reprint and submitted that restrictions contained in FR 35 are applicable in the case of appointment by transfer on deputation as long as the appointee did not fulfill the eligibility conditions prescribed in the recruitment rules .

23. We have carefully gone through the rival submissions and the rules and the Government of India instructions.

24. The Government of India Decision No.3 under FR 35 is as under :-

(3) Promotion not on regular basis - pay to be fixed under FR 22(1)(a)(i) initially and restricted under FR 35. Prior to the issue of this Department's Notification No.1/10/89-Estt.(Pay-I), dated 30.8.1989, amending FRs 22, 22-C, 30 and 31, FR 22-C was applicable for pay fixation on promotion on regular as well as on adhoc basis. It has, however, now been provided in the amended rule that FR 22(I)(a)(1), will apply in all those cases of pay fixation where the promoted persons fulfill the conditions of eligibility prescribed in the relevant rules for promotion. With the issue of the said amendment, it has become necessary to specify under what circumstances, the restrictions imposed under FR 35 and as communicated in GIO(2) above would apply.

2. The matter has been considered and it has been decided that in cases of appointment on promotion in the normal line within the cadre but which are not on regular basis, initially the pay may also be fixed under FR 22(I)(a)(1). If there is substantial increase in pay so fixed, the pay may be restricted under FR 35 in accordance with the provisions contained in O.M. No.18/12/85-Estt.(Pay-I) dated 18.7.1986 and modified vide No.18/26/86-Estt.(Pay-I) dated 29.7.1987 GIO(2) above.



3. The effect of this order is that restrictions under FR 35 are not to be invoked where a Government servant holding the post in substantive or temporary or officiating capacity is promoted or appointed in substantive or temporary or officiating capacity, as the case may be, subject to the fulfillment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance."

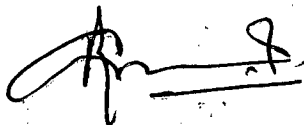
25. Further Government of India Order(1) appearing on page 153 of Swamy's Compilation of FRSR(Page 153, 15th Edition/2000) reads as under :-

"No restriction of officiating pay in cases of regular cadre promotion.- Under the existing orders, provisions of FR 35 operate only in respect of appointments by transfer on deputation. Recently, a question was raised as to whether the said provisions of FR 35 would also apply to cases of promotions within the cadre.

The matter has been considered. It has been decided that the restrictions of officiating pay under FR 35 should not be invoked in respect of regular cadre promotions where the employee becomes due for promotion, falls within the zone of consideration and fulfils all qualifications prescribed for promotion.

[G.I., M.H.A., Dept. of Per. & A.R., O.M.
No.F.1/23/80-Estt.(Pay)-10, dated the 5th August, 1981.]

26. On a reading of the above, we have no hesitation to hold that the provisions to FR 35 as per Government of India orders, operate in cases of transfer on deputation. At the same time, we have to see whether Annexure A7(a) order issued after 8 years of appointment of the applicant is illegal or not. Respondents do not have any case that the applicant had a role in the fixation of her pay in the post of Senior Hindi Translator. Her pay was fixed by the appropriate authority without restricting it under



FR 35. The applicant had been enjoying the said pay fixed all these years. Recovering the overpayment made on this account for none of her fault would be harsh. The Hon'ble Supreme Court in Sham Babu and Others Vs Union of India and Others(1994 2 SCC 521) held:

"Although we have held that the petitioners were entitled only to the pay scale of Rs.330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330-560 but as they have received the scale of Rs.330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

27. Accordingly, we set aside and quash Annexure A7(a) order to the extent it proposes to recover the overpayment made to her. At the same time we give liberty to the respondents to re-fix the pay of the applicant in accordance with FR 35 as long as she is working as Senior Hindi Translator prospectively in accordance with the instructions and orders of the Government of India.

28. In the result, the Original Application is allowed in part as above. No order as to costs.

Dated the 3rd February, 2003.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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