

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.329/99

Tuesday, this the 10th day of July, 2001.

CORAM;

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

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

P.K.Thankamani,
Section Supervisor(Operative),
Accounts Officer(Establishment)
Department of Telecommunication,
Ernakulam, Kochi-31. - Applicant

By Advocate Mr NN Sugunapalan

Vs

1. Assistant General Manager(Administration),
O/o the Principal General Manager
Telecom, Department of Telecommunications,
Ernakulam, Kochi-31.
2. General Manager Telecom District,
Department of Telecommunications,
Ernakulam, Kochi-31.
3. Union of India represented by its
Secretary,
Ministry of Communication,
Department of Telecommunications,
New Delhi. - Respondents

By Advocate Mr TC Krishna, ACGSC

The application having been heard on 10.7.2001, the Tribunal on the same day delivered the following:

O R D E R

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

The applicant while working as Section Supervisor(Operative), was promoted under the Biennial Cadre Review(BCR for short) Scheme in the pay scale of Rs.1600-2660 with effect from 1.7.96, by order dated 24.6.96(A-1). Her pay

✓

was fixed in the higher grade. The present grievance of the applicant is that the respondents have issued A-3 order for recovery of overpayment made pursuant to A-1 order on the ground that the promotion made by A-1 order was erroneous and therefore, she has been reverted. The applicant prays that as she was not at all responsible for her erroneous promotion, the impugned order to the extent it relates to recovery may be set aside.

2. The respondents seek to justify the impugned action on the ground that applicant's promotion vide A-1 order was erroneous.

3. We have heard the learned counsel on either side. That the applicant's promotion under A-1 order was erroneous is not seriously disputed by the applicant. The applicant is not seeking to have the impugned order set aside in its entirety but only to the extent it orders recovery of overpayment made on the basis of promotion. Even according to the respondents, the applicant was in no way responsible for the erroneous promotion. The error, if any, was committed by the competent authority in the department. The applicant did not even make a claim for promotion. It took about three years for the respondents to realise the error committed in ordering the promotion of the applicant. During this period if the applicant had been paid higher salary pursuant to the mistake of the respondents, it would be harsh to ask her to refund the same, because as a low paid employee, she would have spent whatever was received as pay every month. The

Hon'ble Supreme Court has in a catena of rulings held that if excess payment of salary on account of wrong fixation of pay etc. has been made erroneously and if the employee concerned was not responsible for such excess payment, the amount so paid should not be recovered. In Sahib Ram Vs State of Haryana and others, 1995 Supp(1) SCC, 18, it was held that the amount of pay erroneously paid cannot be recovered if the employee was not responsible for such excess payment.

4. In the light of what is stated above, we find that the respondents cannot be allowed to recover the excess payment in this case made erroneously for which the applicant was not responsible. The impugned order to the extent it directs recovery from the applicant of overpayment consequent to erroneous promotion is set aside. No costs.

Dated, 10th July, 2001.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

trs

LIST OF ANNEXURES REFERRED TO IN THE ORDER:

1. A-1: True copy of order No. ST/EK-209/28/II/99 dated 24.6.96 issued by the 1st respondent to the applicant.
2. A-3: True copy of order No. ST/EK-209/28/III/85 dated 1.3.99 issued by the 1st respondent to the applicant.