

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No.334/2003

Wednesday this the 17th day of December, 2003.

C O R A M

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN  
HON'BLE MR.H.P.DAS, ADMINISTRATIVE MEMBER

G.Sivanandan,  
S/o Gangadharan,  
Motor Cycle Driver,  
Press Information Bureau,  
Thiruvananthapuram  
Residing at :  
Pramitha House, LIC Colony Road  
Pongumude,  
Medical College, P.O.  
Thiruvananthapuram

: Applicant

[By Advocate Mr.M.R.Rajendran Nair ]

Vs.

1. The Additional Principal Information Officer,  
Press Information Bureau,  
Shastri Bhawan,  
Haddoos Road,  
Chennai - 600 006.
  2. Principal Information Officer,  
Press Information Bureau,  
Shastri Bhawan,  
A Wing, New Delhi - 110 001.
  3. Union of India, Secretary,  
Ministry of Information and Broadcasting,  
New Delhi
- : Respondents

[By Advocate Mr.C.Rajendran, SCGSC ]

The application having been heard on 17.12.2003, the  
Tribunal on the same day delivered the following:

O R D E R

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

The applicant commenced his service as Peon on 10.03.1969.  
He was promoted to the post of Motor Cycle Driver in the pay  
scale of Rs. 110-139 with effect from 12.02.1973. Thereafter,  
by Annexure A-7 order dated 07.07.2000 the applicant was given

..2/-

two financial upgradation simultaneously to the scale of Rs.4000-6000 and 4500-7000. The grievance of the applicant is that by the A-1 order dated 24.01.2003 of the 2nd respondent it was held that the applicant who was recruited as a Peon had been once promoted as Motor Cycle Driver with effect from 12.02.1973 in the scale of Rs. 3050-4590 (revised) he was entitled to only second financial upgradation in the scale of Rs. 3200 - 4900 as the post of Motor Cycle Driver is an isolated post and directing refixation of his pay in the scale of Rs.3200-4900 and recovery of overpayment and consequentially Annexure A-2 and A-10 orders have been issued modifying the orders granting two financial upgradation to the applicant and informing that Rs.13,495/- would be recovered from his pay in instalments. Applicant has filed this Original Application seeking to set aside Annexures A-1, A-2 and A-10, declaring that the applicant is entitled to two financial upgradations in the cadre of Motor Cycle Driver, for a direction that the cadre of Motor Cycle Driver is at par with that of Staff Car Drivers in the respondent department and for a direction to extend the consequential promotional benefits of Annexure A-6 to the applicant.

2. The respondents resist the claim of the applicant. They contend that the two financial upgradations by Annexure A-7 order was given by a mistake. It is contended that the applicant having been given one promotion to the post of Peon in the year 1973, he was entitled to only one financial upgradation and that too in the next higher general scale as the post of Motor Cycle Driver is an isolated post. They contend that as the impugned

orders were issued only to rectify the mistake committed the applicant has no legitimate grievance to be redressed. They also contend that the Recruitment Rules for the post of Motor Cycle Driver and Staff Car Driver being totally different, the applicant is entitled to seek the benefit of Annexure A-6 which gives the revised scales to Staff Car Drivers only.

3. We have carefully perused the pleadings and all relevant materials available on record. It is an undisputed fact that the applicant who was recruited as a Peon in the scale of Rs.70-85 with effect from 10.03.1969 was promoted as Motor Cycle Driver in the scale of Rs.110-139 with effect from 12.02.1973 (See Annexure A-3 and A-4). Thus if the applicant's promotion by Annexure A-4 is to be reckoned as a promotion then the applicant would be entitled to the second financial upgradation in the appropriate scale. The learned counsel of the applicant argued that the appointment of the applicant as Motor Cycle Driver cannot be considered as a promotion because according to the Recruitment Rules, the post of Motor Cycle Driver was to be filled by considering all the Group 'D' employees possessing the requisite qualification and therefore this can be considered only as Direct Recruitment. We are unable to accept this argument. A perusal of the Recruitment Rules would make it clear that the primary method of filling the post of Motor Cycle Driver is by promotion of Group 'D' officials possessing driving licence and requisite qualifications. That all the Group 'D' officials having the qualification are considered for promotion does not make the method not a promotion and only direct recruitment. In the

application also the applicant has stated that he was promoted as Motor Cycle Driver in 1973. Annexure A-4 also proves this. Hence the applicant having availed off one promotion is under the ACP Scheme eligible to be considered for the second financial upgradation in the relevant scale.

4. The next question is whether the fixation of the applicant's pay in the scale of Rs.3200-4900 under second financial upgradation by Annexure A-1 and A-2 order is correct. It is not disputed that the post of Motor Cycle Driver is an isolated post. The argument of the learned counsel of the applicant that Motor Cycle Driver and Staff Car Drivers are on par and therefore Annexure A-6 order would apply to Motor Cycle Driver also has only to be mentioned and rejected because, on a perusal of the Recruitment Rules for the post of Motor Cycle Driver as also Staff Car Drivers, it is seen that the method of recruitment, qualification, pay scale etc. are different. As per rules and instructions contained under the Scheme financial upgradation in the case of isolated posts is to be granted in the next higher scale of pay. As the pay scale of Motor Cycle Driver is Rs.3050-4590 the financial upgradation to be given is only to the next higher scale namely Rs.3200-4900. It is therefore, evident that the respondents had obviously committed an error in granting the applicant both the financial upgradation in the scale of pay of Rs.4000-6000 and Rs.4500-7000 with effect from 9.8.1999 by Annexure A-7 order. This mistake was required to be corrected and therefore the impugned order Annexure A-1 had been rightly issued. Learned counsel of the applicant argued that the

impugned order having been issued without notice to him the same are liable to be set aside. He further argued that even if there was a mistake ~~is~~ to be rectified <sup>as</sup> on the alleged wrong fixation and over payment were made by the respondents without the applicant making any misrepresentation, the respondents were not justified in making recovery from the pay and allowances of the applicant who is a low paid employee. We find no force in the argument that the impugned orders should be set aside because no notice was issued before passing these orders. It is true that before passing an order which causes adverse civil consequences to a person he should be given an opportunity of being heard. But <sup>Can it</sup> ~~cannot~~ be said that the impugned order Annexure A-1 caused adverse civil consequences? We are of the view that in the facts of the case the answer is in the negative. A mistake had obviously been committed in granting two financial upgradations to the applicant in the scale of Rs.4000-6000 and Rs.4500-7000 which is against the spirit of the scheme as also standing instructions. This mistake does not cloth<sup>e</sup> the applicant with a right to claim pay in the scale of Rs.4000-6000, and Rs.4500-7000 <sup>What</sup> ~~as what~~ suffers from a vice of mistake does not create any legal consequences. What has been done by the impugned order is only rectification of the mistake and not causing any adverse civil consequence to the applicant. However, we find force in the last limb of the argument of the learned counsel of the applicant that in equity and fairness the respondents should be restrained from recovery <sup>ing</sup> the overpayment because the applicant was not at all responsible for the mistake committed in issuing Annexure A-7 order. The applicant being a low paid employee it is harsh to

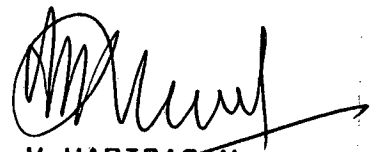
call upon him to refund the overpayments which he would have spent immediately on receipt of pay. Hence we find that the order for recovery of Rs.13,495/- from the pay and allowances of the applicant cannot be sustained.

In the result the impugned orders to the extent of modifying the fixation of pay on financial upgradation in the scale of Rs. 3200-4900 are upheld as they have been passed validly to rectify the mistake committed in Annexure A-7 and A-8 orders and to prevent loss to state exchequer. However, for reasons stated supra we direct the respondents not to make recovery of Rs.13,495/- (the overpayment) from the pay and allowances of the applicant and to refund to the applicant recovery if any, already made. No costs.

Dated, the 17th December, 2003.



H.P.DAS  
ADMINISTRATIVE MEMBER



A.V.HARIDASAN  
VICE CHAIRMAN

vs