

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.340/2006

Friday, the 9th day of November, 2007.

CORAM:

HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER

Sasi.R,
Lakshmi Chitra,
Thekkumkara, Pullichira PO,
Kollam

... Applicant

By Advocate Mr. Pirappancode V.S. Sudheer

V/s.

- 1 Union of India,
represented by Secretary,
Ministry of Home Affairs,
New Delhi.
- 2 Registrar General, India,
Census Operations, Government of India,
Ministry of Home Affairs,
2A Man Singh Road,
New Delhi-110 011.
- 3 Pay and Accounts Officer(Census)
Ministry of Home Affairs, New Delhi
- 4 Deputy Director of Census Operations,
Directorate of Census Operations,
Andaman & Nicobar Islands,
10, Church Lane, Port Blair-744 102. ... Respondents

By Advocate Mr. TPM I Khan SCGSC

This application having been heard on 31.10.2007 the Tribunal delivered the following on 9.11.2007

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(ORDER)

Hon'ble Mr. George Paracken, Judicial Member

1 Challenge in this OA is regarding the fixation of pay of the applicant as Office Superintendent(OS for short). The brief facts of the case are that while applicant was working as Assistant in the scale of pay of Rs.5000-150- 8000, he was promoted to the post of Head Assistant in the scale of pay of Rs.5500-175-9000 w.e.f. 8/2/2000 vide order dated 30/3/2000 (Annexure A-1). Immediately thereafter, w.e.f. 15/3/2000, the post of Head Assistant was merged with the post of OS (Annexure R-5). Both the posts were in the identical scale of Rs.5500-175-9000 but the difference was that while the post of Head Assistant was a Group 'C' post, the post of OS was a Group 'B' one. After merger, the post has been designated as OS.

2 When the applicant was promoted as Head Assistant w.e.f. 8/2/2000, his pay was fixed vide Annexure A-1 letter dated 30/3/2000 under FR 22(1)(a)(i) and fixed at Rs.6725/- in the scale of Rs.5500-175-9000 w.e.f. 8/2/2000 and with the next increment in the said scale w.e.f. 1/10/2000. When the posts of Head Assistant and OS were merged w.e.f. 15/3/2000, the respondents have again refixed his pay under FR 22(1)(a) (1). This time the pay of the Applicant as Head Assistant as on 8/2/2000 was fixed at Rs.6900/- as against Rs.6725/- as already fixed vide Annexure A I order dated 30/3/2000. Again from 15/3/2000, his pay was fixed at Rs.7250/- taking into consideration of the pay already fixed at Rs.6900/- as

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on 8/2/2000 as Head Assistant and also the fact that after the merger, the status of the post has been changed from Group 'C' to Group 'B' and the post of OS carries higher responsibility than the post of Head Assistant. According to the applicant, the aforesaid fixation of pay was perfectly in order and he was drawing his pay and allowance in accordance with the said fixation from 27/3/2003.

3 When the applicant superannuated on 31/3/2005, the Pay and Account Office (PAO for short) (Census) after scrutiny of his pension papers has remarked that the pay fixation of the Applicant in the post of Head Assistant was not correct. Since he was initially allowed to draw only Rs.6,725/- in the higher post of (Rs.5500-175-9000) with effect from 8/2/2000 till his next increment i.e., 1/10/2000, the PAO asked the department to revise the pay fixation accordingly and to calculate its net effect. Further, according to the PAO, since the post of Head Assistant was merged with the post of Office Superintendent having identical scale and the merged post was designated as Office Superintendent with effect from 15/3/2000 in the same scale, it could not be treated as higher scale for the purpose of application of FR 22(1)(a)(1). Thereafter, the respondents have refixed his pay vide impugned Annexure A-6 order dated 6/9/2005 according to the earlier Annexure A-1 order dated 30/3/2000 taking into consideration of his pay of Rs.6725/- as already fixed in the scale of pay of Rs 5500-175-9000 as on 8/2/2000 against the post of Head Assistant. In the Annexure A-7 letter, the Pay & Accounts Office of the Ministry of Home Affairs (Respondent No.3) has informed the Registrar

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General of India, Census Operation, Government of India, New Delhi (Respondent No.2) that the applicant was promoted as Head Assistant w.e.f. 8/2/2000 and he had given his option for fixation of pay under FR 22 (1)(a)(i) from the date of accrual of increment in the lower post. Hence his pay was fixed at Rs.6725/- above the stage in the scale of the promotion post then the pay drawn. The DCO later changed this order and directly fixed his pay under FR-22(1)(a)(i) which was not permissible as the option exercised would be final and it cannot be changed later on. They also raised doubts as to whether the merger of the Head Assistants and OS in the identical scale of Rs.5500-175-9000 would amount to promotion and whether his pay could be fixed under FR 22(1)(a)(i).

4 The applicant had challenged the aforesaid Annexure A-6 fixation order dated 6/9/2005 and the Annexure A-7 letter from Respondent No.3 to Respondent No.2 first of all on the ground that those orders were issued without affording him an opportunity of hearing and, therefore, the same was against the principles of natural justice. On merit he has submitted that having enjoyed the pay fixation already done vide Annexure A-4 order dated 27/3/2003 for all these years for which he was actually eligible, denial of any such fixation is discriminatory and violative of Article 14 and 16 of the Constitution. He has also stated very clearly that the post of OS carries higher responsibilities than the post of Head Assistant and hence no reliance can be placed on FR 22(III). Moreover, he had already exercised option vide Annexure A-3 letter dated 17/3/2003. He has exercised a revised option in the changed circumstances He has also

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submitted that he has been discriminated in this matter as Shri M.Krishna, who was holding the post of Head Assistant in the scale of pay of Rs.5500-175-9000 and on the merger of the said post with that of OS w.e.f. 15/3/2000, his pay has been fixed under FR 22(1)(a)(1). His pay of Rs.7250/- which he was drawing as Head Assistant as on 15/3/2000 was taken into consideration and a notional increment has been given to him in the same scale raising his pay to Rs..7425/- and fixed in the next stage Rs.6700/- with the next date of increment as 1.2.2001.

5 We have heard Advocate Mr.PVS Sudheer for the applicant and Advocate Mr.Shaji V A for Mr.TPM I Khan SCGSC for respondents respectively.

6 The undisputed fact in this case is that the applicant was working as an Assistant in the scale of pay of Rs.5000-150-80000 up to 8/2/2000 and he has been promoted as Head Assistant Group 'C' in the scale of pay of Rs.5500-175-9000 on the same date and his pay had to be fixed under FR 22(1)(a)(1). Accordingly, his pay was fixed vide Annexure A-1 letter dated 30/3/2000 taking into consideration his option to fix his pay from 1/10/2000. However, after the merger of the post immediately thereafter on 15/3/2000 and the merged post has been designated as OS in Group 'B' , obviously he had to carry higher responsibilities in the merged post. Accordingly, his pay has been rightly fixed afresh vide Annexure A-4 order dated 27/3/2003. By this order, the respondents have taken into consideration the pay of Rs.6650/- drawn by him in the lower post of Assistant in the scale of Rs.5000-150-8000 as on 8/2/2000 by

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giving one notional increment in the same scale, his pay has been raised to Rs.6800/- and fixed at the next higher stage in the scale of Rs.5500-175-9000 and fixed at Rs.6900/- as on 8/2/2000. This fixation cannot be faulted in any manner. However, as per the merger of the post of Head Assistant and OS from 15/3/2000 in the identical scales of pay of Rs.5500-175-9000 another fixation has become necessary. As admitted by the respondents themselves, the merged post of OS was a Group 'B' post compared to the Group 'C' post of Head Assistant and it carries higher responsibilities. It is for these reasons that the applicant's pay as on 15/3/2000 was taken as the pay already fixed in the scale of pay of Head Assistant at Rs.6900/- and then he was given a notional increment and fixed at the next higher stage. In my considered opinion, the aforesaid fixation of pay was absolutely in accordance with the rules and objections raised by Pay & Accounts Office that the applicant had already given the option and the same was final and it could not have been changed cannot be sustained because with the merger of the post of Head Assistant with that of OS was not a promotion and, therefore, it was not an anticipated one. It is in these circumstances that the applicant had changed his option and I do not find anything wrong in the revised option. The option is always with regard to a particular situation and it cannot be sustained when the situations change. The further contention of the Pay & Accounts Office that both the posts of Head Assistant and OS are identical and, therefore, further fixation of pay under FR 22(1)(a)(i) is not permissible is also to be rejected outright because the cadre authorities themselves have admitted



in their Annexure A-4 order dated 27/3/2003, the the status of the post of Head Assistant has been changed from Group 'C' to that of OS Group 'B' and carries higher responsibilities than that of the post of Head Assistant. It is not for the Pay & Accounts Office to decide whether a particular post carries higher responsibilities or not. Therefore, their objection in this regard is unwarranted and, therefore, rejected.

7 In the above facts and circumstances of the case, I allow this OA and quash and set aside the Annexure A-6 order dated 6/9/2005 and Annexure A-7 order dated 21/9/2005. In the result, the Annexure A-4 order dated 27/3/2003 refixing the pay of the applicant at Rs.6900/- as on 8/2/2000 against the post of Head Assistant in the scale of Rs.5500-175-9000 and further fixation of pay against the post of OS from 15/3/2000 at Rs.7250/- shall be sustained and should be revived. The respondents are therefore directed to restore the Annexure A-4 order and grant the applicant all the consequential benefits as if the Annexures A-6 and A-7 orders were not issued. Since the applicant has already retired from service, the respondents shall comply with the aforesaid orders within a period of two months from the date of receipt of copy of this order. There shall be no orders as to costs.

Dated, the 9th November, 2007.


GEORGE PARACKEN
JUDICIAL MEMBER

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