

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 360/97

WEDNESDAY, THIS THE 11TH DAY OF AUGUST, 1999.

C O R A M:

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

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

S. Padmakumari
W/o C.R. Sreekumar
Lower Division Clerk
Integrated Fisheries Project,
Cochin-16.

..Applicant

By Advocate Mr. Mohan C. Menon

Vs.

1. Director,
Integrated Fisheries Project,
Cochin-16.

2. Union of India represented by the Secretary
Ministry of Agriculture,
Krishi Bhavan,
New Delhi-110 001.

..Respondents

By Advocate Mr. George Joseph, ACGSC

The application having been heard on 11.8.99, the Tribunal on the same day delivered the following:

O R D E R

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

The applicant was appointed as Lower Division Clerk in the Integrated Fisheries Project w.e.f. 7.3.1988 on compassionate grounds on the death of her father who was an employee under the Project. When the applicant was initially appointed, as she had not acquired a speed of 30 w.p.m. in English typewriting, she was to receive increment of pay only on acquisition of the said speed. On passing the examination conductd by the Kerala Government Technical Examination (KGTE) in the year 1993, the applicant was granted increment w.e.f. 1.3.89 by the competent authority. However, the

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applicant was served with Memo No. IFP/Admn/11/77/87 Vol.II dated 9.12.96 (A5) stating that as the applicant had not passed the typewriting test conducted by the Staff Selection Commission or any other test equivalent thereto and as she was not eligible for permanent exemption from passing the test, drawal of increment in her case was irregular and therefore, the amount paid to her by erroneous grant of increment would be recovered from her pay and allowances. It was also stated that the applicant had become eligible for grant of permanent exemption from passing the typewriting test w.e.f. 7.3.96. The applicant aggrieved by this order has filed this application seeking to set aside the impugned order. It has been stated that the competent authority having been satisfied that the applicant had acquired the required speed of typewriting and having released her increments, merely on the basis of an audit note it is not permissible to make recovery of the amount which according to the applicant was paid legitimately to the applicant.

2. The respondents in their reply statement seek to justify the impugned action on the ground of the guidelines/instructions contained in the Ministry of Home Affairs O.M.NO.15/3/53-Estt.(D) dated 16.9.65, and FR 26 (R2) for the purpose of being eligible for drawal of increment, pass in the typewriting test conducted by the Staff Selection Commission at the speed of 30 w.p.m. in English or the certificate in typewriting issued under the Hindi Teaching Scheme alone would be treated as proof of acquiring the standard and therefore grant of increment to the applicant on production of certificate issued by the KGTE was wrong and the audit objection was rightly made. As the applicant has become eligible for permanent exemption from passing the typewriting test only w.e.f. 7.3.96, the

respondents contend that the applicant has no legitimate cause of action.

3. Shri George Joseph, the learned counsel for the respondents brought to our notice the fact that the applicant though was appointed on adhoc basis as LDC on 7.3.88, was appointed on regular basis on 23.11.90 on which date the instructions contained in Annexure R2 have become effective. On a careful scrutinee of the materials on record, we find that the applicant has understood that she has to pass the examination conducted by the Staff Selection Commission for being eligible for the grant of increment because that was why the applicant appeared twice in the speed test conducted by the SSC though not successful. Further, in view of the instructions contained in Annexure R2, a pass in the examination other than the one conducted by the SSC or the certificate issued under the Hindi Teaching Scheme would not be accepted as proof of having acquired the minimum required standard of typing ability. Therefore, the applicant having not passed the said typing test would not normally have been eligible for drawal of increment. She would have become eligible for the same only on 7.3.96 on completion of 8 years of service as per the rules. In any case, as the increment has been sanctioned and payment has been made monthly by the competent authority itself without any reason attributable to the applicant, we are of the considered view that for the drawal of increment by the applicant she is not at fault. The Apex Court in a catena of judgments held that if a erroneous payment has been made to an employee over a period of time, it is not permissible for the employer to recover the amount at a later stage. Further, the order releasing increments of pay of the applicant has also not been recalled by the competent authority.

4. In the light of what is stated above, while upholding the contention of the respondents that the

applicant should have passed the typewriting speed test conducted by the SSC or one held by the Hindi Teaching Scheme, we set aside the impugned order for recovery of over payment for the reason that the applicant was not responsible for the erroneous drawal of increments.

5. The application is disposed of as above without any order as to costs. respo

Dated the 11th August, 1999.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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A.V. HARIDASAN
VICE CHAIRMAN

List of Annexures referred in this Order

Annexure A5

True copy of the Memo No.IFP/Adm/11/7-7/87/Vol.II/3186 dated 9.12.96 issued by the 1st respondent to the applicant.

Anexure R2

An extract of Annexure Memorandum No.14020/2/91-Estt(D) dated 22.9.92