

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.406/2000.

Friday this the 15th day of February 2002.

CORAM:

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

O.George, (Retired Higher Selection Grade
Postal Assistant), Savings Bank,
Central Organisation, Head Post Office,
Kottarakkara) Shiju Bhavan, Pandithitta,
Ambalanirappil P.O., Kunnicode,
Quilon District. Applicant

(By Advocate S/Shri Johnson Kanadan and Krishnan Thampi)

Vs.

1. Post Master, Head Post Office,
Kottarakkara.
2. Senior Superintendent of Post
Offices, Quilon Division, Quilon.
3. Dy.Director, Postal Accounts,
Trivandrum-695 010.
4. Chief Postmaster General,
Kerala Circle, Trivandrum.
5. Union of Inida, represented by its
Secretary, Department of Posts,
New Delhi. Respondents

(By Advocate Mrs.Rajeswari A., ACGSC)

The application having been heard on 15th February 2002
the Tribunal on the same day delivered the following:

O R D E R

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

The applicant who commenced service as Lower Division Clerk (LDC for short) in the Dandakaranya Project of the Government of India on 24.9.1971 was promoted as Upper Division Clerk (UDC for short) in January 1966. The applicant was rendered surplus w.e.f. 1.1.1986 in the Project sent to the Central Surplus Staff Cell and redeployed to the Department of Posts where he joined in the Savings Bank Control Organisation

(SBCO for short) on 21.4.1986. The benefit of the TBOP as also BCR Schemes was extended to the staff of the SBCO. Accordingly, the applicant was placed in the Lower Selection Grade, TBOP in the scale of Rs.1400-2300 w.e.f. 1.8.1991 under A-1 order. He was again placed in Higher Selection Grade, in the scale of Rs.1600-2660 w.e.f.1.10.1991 by order dated 18.3.1994 (A2) under BCR. His pay was also refixed on such placement. While the applicant was working in the Kottarakkara Head Post Office, the inspection party consisting of Accounts Officer noted that the applicant's pay has been wrongly fixed granting him TBOP and BCR promotions and he was wrongly paid supervisory allowance at the rate of Rs.50/- from 1.8.1991 to 31.5.1993 taking into account his service prior to joining the department. An amount of Rs. 10,080/- was noted to have been disbursed to the applicant wrongly which was directed to be recovered from his salaries and the Postmaster was advised to refix his pay properly. The applicant made a representation in which he claimed that the service under Dandakaranya Project is to be counted for placement in LSG and HSG under TBOP and BCR and therefore there was no occasion for refixation or recovery. However, the pay of the applicant was reduced from Rs.2050/- to 1850/- per month w.e.f. 1.7.1994 as per Certificate dated 20.9.1995 and recovery was also effected. The applicant retired from service on 30.6.1996. The sum of Rs.22,430/- was withheld from his Death-cum-Retirement Gratuity (DCRG for short) which was paid only on 15.6.1998. The applicant filed O.A.1249/96 praying for quashing the refixation and reduction of the applicant's pay from Rs.2050/- to Rs.1850/w.e.f.1.7.1994 and for a direction to refund the amount recovered from the applicant as alleged overpayment made as also against the special supervisory allowance at the rate of Rs.50/for a total amount of Rs.1050/-w.e.f. 1.8.1991 to April

1993 and for a direction to the respondents to fix the pension of the applicant without taking into account the refixation of pay and for consequential benefits. O.A.1249/96 was dismissed. However, the respondents were directed to consider the applicant's entitlement and to issue orders. After the dismissal of the O.A. 1249/96, the applicant went on making representations. Ultimately the impugned order(A11) dated 15.1.1998 has been issued in purported implementation of the order of the Tribunal by which the applicant's pension has been worked out on the basis of refixation of his pay. Aggrieved by that the applicant has filed this application. It has been alleged in this application that the Apex Court has in Dwijen Chandra Sarkar and another Vs. Union of India and another (1999 (2) SCC 119) declared the law that the service rendered prior to redeployment, though not countable for seniority, can be reckoned for the purpose of placement in the higher scale under TBOP and BCR Schemes, the action taken by the respondents in refixing the applicant's pay on the report of the audit party, is unjustified and therefore, the respondents are bound to restore the applicant's pay at Rs.2050/- from 1.7.1994 and to refund the amount of Rs. 11,737/recovered from his pay and allowances as also to pay him interest for the delay in payment of Rs. 22,433/- as part of DCRG withheld.

2. The respondents contend that Annexure A-11 order has been issued pursuant to the directions contained in the order of the Tribunal in O.A.1249/96 taking into account his due entitlements and therefore, the applicant is not entitled to any of the reliefs at this distance of time.

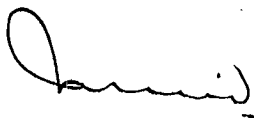
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3. We have given anxious consideration to the facts and circumstances of the case brought out in the pleadings emerging from the documents on record and the submissions of the learned counsel on either side. The pay of the applicant was reduced retrospectively from Rs.2050/- to Rs.1850/- and recovery was effected on the ground that the applicant's promotion and placement in the LSG and HSG granting him the benefit of service rendered in the Dandakarunya Project prior to his redeployment was erroneous, as noted by the audit party. It is true that the challenge of the applicant to this action was not successful before this Tribunal in O.A.1249/96. However, the Tribunal has directed the respondents to consider and settle the entitlements of the applicant and to pass appropriate orders within three months from the date of receipt of that order. The respondents have issued A-11 on 15.1.1998. The applicant had made representations on 10.7.99 and 24.7.99 (A7 and A8). Since the Apex Court has declared the law that, the service rendered by the incumbent in the previous organization prior to redeployment, has got to be counted for placement in the higher scale under TBOP and BCR Schemes in its decision in Dwijen Chandra Sarkar and another Vs. Union of India and another (1999 2 SCC 119) the reduction and refixation of the applicant's pay to Rs.1850/- from Rs.2050/- w.e.f. 1.7.1994 and at Rs. 1680/- w.e.f. 1.8.91 on the ground that the applicant's service prior to redeployment would not count for placement in the higher scales under TBOP and BCR is no more valid. Since the wrong fixation of pay is a continuing grievance and as the Government as a model employer has to follow a uniform policy in respect of his employees. We find little merit in the contention of the respondents that the applicant is not at this distance of time entitled to claim the reliefs.

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4. In the light of what is stated above, we are of the considered view that the applicant is bound to succeed in this application. We, therefore, dispose of this application declaring that the applicant is entitled to be granted TBOP and BCR promotions reckoning the service rendered in Dandakarunya Project prior to his redeployment in SBCO of the Postal Department, in view of the ruling of the Apex court in Dwijen Chandra Sarkar and another Vs. Union of India and another (1999 2 SCC 119) that, reduction of the applicant's pay from Rs.2050/to Rs.1850/- w.e.f. 1.7.94 and recovery made from his pay from February 1995 onwards fixing the applicant's pay retrospectively w.e.f. 1.8.1991 as Rs.1680/- is unsustainable. We direct the respondents to restore the pay of the applicant to Rs.2050/- from Rs.1850/- and in HSG with consequential benefits and further direct the respondents to refund the amount recovered from the applicant's pay at Rs. 11,737/- and to refix his pension accordingly and make available to the applicant the consequential monetary benefits arising therefrom. The above exercise shall be completed and the payment should be made to the applicant within a period of three months from the date of receipt of a copy of this order. In the facts and circumstances we are not inclined to grant the prayer for interest. No costs.

Dated the 15th February 2002.



T.N.T.NAYAR
ADMINISTRATIVE MEMBER



A.V.HARIDASAN
VICE CHAIRMAN

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the Memo No.ST/13/58/91/7-4-93 of Asst.Postmaster General (Staff) Office of the 4th Respondent.
2. A-2: True copy of the order No.ST/13/60/92 dt.18-3-1994 of the Asst.Director (Staff) Office of the 4th respondent.
3. A-3: True copy of the representation dtd.10-3-1998 of the Applicant to the 4th respondent.
4. A-4: True copy of the representation dtd.17-4-1998 to the 2nd respondent.
5. A-5: True copy of the Applicant's representation dated 27-4-1998 to the 2nd respondent.
6. A-6: True copy of the representation dt.22-6-1998 to the 2nd respondent.
7. A-7: True copy of the representation dt.10-7-99 to the 5th respondent.
8. A-8: True copy of the representation dt.24-7-99 to the 4th respondent.
9. A-9: True copy of the order dt.16-8-1999 in OA 1201/97 of the Hon'ble Administrative Tribunal, Ernakulam.
10. A-10: True copy of the judgment of the Supreme Court dt.15-12-1998 in Civil Appeal No.1393/1998 Dwijen: Chandra Sarkar & Another Vs. Union of India & Another reported in JT 1998 (8) SC 575 1999(1) SLR 39 to 43.
11. A-11: True copy of the order No.AP/PEN/54/95 dated 15-1-1998 of the 4th respondent.

Respondents' Annexures:

1. R-2(A): Photostat copy of the order No.15/4/97-CS.III, dated 24.7.1997, issued by the V.K.Singh Kushwah, Director, Ministry of Personnel Public Grievances, Department of Personnel & Training, Delhi.
2. R-2(B): Photostat copy of the order dated 7.11.97, in O.A No.1249/96 of this Hon'ble Central Administrative Tribunal, Ernakulam Bench.
