

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO. 408/2004

TUESDAY THIS THE 17th DAY OF MAY, 2005.

CORAM:

**HON'BLE SHRI K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE SHRI H.P. DAS, ADMINISTRATIVE MEMBER**

S. Ashok Kumar S/o Sekharan Nair
Junior Librarian, Central Administrative Tribunal
Ernakulam Bench residing at Rahulam
Behind LMS Godown, Kunnumpuram
Kakkanad, Kochi-682 030.

..Applicant

(By Advocate Mr. T.C. Govindaswamy)

Vs

1. Union of India represented by
the Secretary to the Government of India
Ministry of Personnel, Public Grievances & Pension
Department of Personnel & Training
New Delhi.
2. The Principal Registrar
Central Administrative Tribunal,
Principal Bench, New Delhi.
3. The Hon'ble Central Administrative Tribunal
Ernakulam Bench through its Registrar
Ernakulam.

Respondents

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

ORDER

HON'BLE SHRI H.P. DAS, ADMINISTRATIVE MEMBER

The applicant S. Asok Kumar, a Junior Librarian in the Central Administrative Tribunal, Ernakulam Bench, joined on 27.3.1992 his present post of Junior Librarian in the scale of pay of Rs. 1400-2600 as a direct recruit, selected by the Staff Selection Commission. With effect from 1.1.1996 he was granted the replacement scale for Rs. 5000-8000. His grievance is that even though the Ernakulam Central Administrative Library was classified as belonging to category-II, in pursuance of the norms prescribed by the Government in acceptance of the recommendations of the Review Committee constituted under the recommendation of the IVth Central Pay Commission, the benefits of such reclassification were not granted to him. Implementation of the Ministry of Personnel OM dated 21.2.2002, would warrant upgradation of the post, from Junior Librarian to Assistant Library and Information Officer, and grant of consequential higher scale. He challenges Annexure A-5 clarification issued by the Ministry of Personnel etc. which holds that though the OM dated 21.2.2002 Ministry of Personnel (A3) is still valid it is not applicable to Library staff of CAT as it is applicable only to Central Government Librarians working in various Departmental Libraries. The main ground of challenge is that under Rule 4 of the Central Administrative Tribunal (Staff) Conditions of Service Rules 1985, all matters relating to pay and allowances of CAT

staff are to be regulated in accordance with rules and regulations applicable to Central Government Employees. Thus, the applicant goes on to plead, incorrect denial of equation has deprived him of his legitimate due. The respondents while conceding that Rule 4 of the CAT Staff condition of Service Rules 1985, indeed equates CAT staff with those of the Central Government for the purpose of application of rules relating to pay and allowances, etc., hold that they have gone by A5 clarification issued by the Ministry of Personnel in consultation with the Ministry of Finance..

2. The applicant has sought the following reliefs.

- (a). Call for the records leading to the issue of Annexure A-5 and quash the same.
- (b). Declare that the nonfeasance on the part of the respondents 1 and 3 to implement Annexure A-1 and A-3 is arbitrary, discriminatory and unconstitutional.
- © Direct the 1st and 2nd respondents to implement Annexure A1 and to grant the applicant the scale of pay of Rs.2000-3500/6500-10500 w.e.f. 27.3.1992 duly redesignated him as Assistant Library and Information Officer with all consequential benefits including arrears of pay and allowances flowing therefrom.
- (d) Award costs of and incidental to this application.
- (e) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.

3. Heard.

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4. Since it is an admitted fact that the pay and allowances of CAT staff are to be regulated in line with those applicable to Central Government Employees, the point of equation is a non-issue. The real issue is whether there could be a sustainable distinction between Libraries under Central Government Departments and the Libraries of CAT? CAT is set up under a statute, but the staff and facilities of CAT are those provided by the Central Government and these are funded as well as administered with the same set of rules and regulations. So, a Library of CAT is also a Library under the Central Government. The Librarian incharge of this Library is as much a central Government Employee for the purpose of application of Pay Rules, as any one else. Further, the tenuous distinction between Departmental Libraries and other Libraries, sought to be made by the authors of the A5 clarification is not sustainable in the light of the recommendations of the Pay Commissions and the prescriptions of the Review Committee. The Review Committee set up in pursuance of the recommendations of the IVth Pay Commission did not make such a distinction in as much as it allowed the size and function of the Library to determine the staffing in different grades. Departmental Library' therefore would cover all Libraries under the control of the Department, those wholly funded and administered by it, distinguished only by size and function, across the board, and not by origin and location. Thus, a Library of the Department located in the Central Secretariat is as much a Departmental Library as

a Library of the CAT in Ernakulam. The Vth Pay Commission's recommendations extracted in Annexure A2 deals separately with the National Library, Central Reference Library, School Libraries and other Departmental Libraries (DGCA, UPSC, Navy, ASI), mainly because of variables demonstrating special features. There too the recommendations leave out all other Libraries to the implementation of Review Committee recommendations. Since the Ernakulam CAT Library has made no claim for special dispensation and the respondents do not dispute that it has been classified under category-II, grant of benefit to the applicant should have followed the normal course. These arguments of the learned counsel for the applicant appear reasonable, particularly in the absence of any explanation as to why a doubt arose in the first place (Annexure R1) and on what considerations the A5 clarification was offered. It is pertinent to note that the present set up of the CAT Ernakulam Library consists of a Junior Librarian in the scale of Rs. 5000-8000 and a Library Attendant in the scale of Rs. 3050-4590. As a category-II Library it should instead have atleast an Assistant Library &Information Officer in the scale of Rs. 6500-10,500 and a Library & Information Assistant in the scale of Rs. 5500-9000. To this, the learned counsel for the respondents posed the counter that, the Administrative Tribunals Act, 1985 in Section 13 leaves the decision in regard to nature and categories of officers and staff required to assist the Tribunal, to the Central Government and therefore no claim for

automatic upgradation can be made until the higher posts are provided. This line of argument seeks to establish that since the post sanctioned is that of Junior Librarian, the applicant can claim the benefit available to a Central Government Librarian in the same scale, but not higher. The learned counsel for the applicant argued that going by that logic too, the applicant would be entitled to receive the benefit available to a Central Government Librarian heading a Category-II Library.

5. Had the Review Committee Report been implemented in time, then the post of Junior Librarian in the scale of Rs. 1400-2600 would have been first of all brought into the revised structure with the designation Library Information Assistant. Thereafter, on categorisation of the Library as in Category-II, the Library incharge, if qualified should have been appointed as Assistant Library & Information Officer. The applicant was recruited in 1992 as a Junior Librarian (Library incharge of a category-I Library) only because the Staff Selection Commission was notified of a vacancy on Rs. 1400-2600 scale. Even though the applicant had the required qualification for the higher post, it is a fact that he chose to compete for a lower post and he cannot now seek automatic placement in the higher post from his date of initial appointment in CAT as a Junior Librarian. He would continue as such until he is given the benefit of enhanced entry scale of Rs. 5500-9000 w.e.f. 1.1.1996 and then he would become eligible for promotion to the

post of Assistant Library and Information Officer in the scale of rs. 6500-10500.

6. In sum we conclude as follows:

(i) In pursuance of Ministry of Finance OM dated 24.7.1990, the Ernakulam CAT Library, categoriesed under Category-II should have been placed in charge of an Assistant Library & Information Officer in 1990 itself. Failure to do that and continuing with the post of Junior Librarian in a lower scale would amount to deliberate non-implementation of the A1 orders, but that would not allow any basis to the applicant recruited as a Junior Librarian, two years later, to claim retrospective upgradation for the simple reason that had the vacancy of an Assistant Library & Information Officer been announced for direct recruitment in 1992, there would have been others too competing with him for the post. So, the fact of the matter as it stands is that the IVth CPC Recommendations though accepted by the Government were not implemented and the applicant as an individual cannot now claim a benefit that was denied to a class.

(ii) In pursuance of A3 Govt. of India Ministry of Finance

OM dated 21.2.2002 the applicant would be entitled to a raise in pay scale from Rs. 5000-8000 to Rs. 5500-9000 w.e.f. 1.1.1996 as he possess the required qualification on par with Departmental Librarians at the entry level. Consequently he would also be eligible for promotion to the post of Assistant Library & Information Officer in the scale of Rs. 6500-10,500 on completion of three years in the scale Rs. 5500-9000 i.e. w.e.f. 1.1.1999.

(iii) In order to avail promotion to the scale of Rs. 6500-10500 in the rank of an Assistant Library and Information Officer w.e.f. 1.1.1999 the post must exist on that date, but since the category justified post was not created at the appropriate time in disregard of the recommendations of successive Pay Commissions, the post of Assistant Library & Information Officer in the scale of Rs. 6500-10500 be created retrospectively by upgrading the existing post of Junior Librarian (Library & Information Assistant) w.e.f. 1.1.1999 and the applicant be considered for deemed promotion to that post from 1.1.1999. On deemed promotion w.e.f. 1.1.1999 and consequential pay fixation the applicant would not be entitled to draw the arrears through he would be entitled to draw the increments notionally accrued,

prospectively from the date of actually joining the promotional post.

(iv) The respondents are not fair in holding that the benefits of A3 memo dated 21.2.2002 would not be applicable to the applicant as that memo covers only Central Government Librarians working in various Departmental Libraries and not the Librarians of CAT. Evidently a tenuous distinction is being made between Central Government Employees and CAT employees. Since under Rule 4 of CAT (Staff) Conditions of Service rules, 1985 all the service conditions of CAT employees are to be governed by rules and regulations applicable to corresponding grades and scales of the employees of the Central Government, any change in the scale in Government would automatically influence the regulation of the scale in the CAT. Parity does not end with on-time equation, it is a burden to be carried in perpetuity. As to the argument that the applicant is a CAT employee and not a Central Government Employee it would be sufficient to point out that the Tribunal does not determine its own requirement of staff, it does not have a separate source of funding its manpower, it has also no powers to vary the terms and conditions of employment. For all

practical purposes, the CAT Employees are Central Government Employees under Rule 4 of their Service Condition Rules. That is how they should be treated for all practical purpose.

7. In the light of the conclusions drawn in the para 6 above, we dispose of the Application with the following orders:

- (i) We quash Annexure A5 and declare that Annexure A3 memo would be applicable to the employees of CAT.
- (ii) In consequence, we direct the respondents to grant the benefit of the scale Rs. 5500-9000 to the applicant w.e.f. 1.1.1996 and pay the arrears upto 31.12.98 within a period of two months from the date of passing the orders.
- (iii) We also direct that in pursuance of Annexure A3 memo read with Para 55.180 of the Vth CPC Recommendations accepted by the Government, the applicant would be entitled to promotion to the rank of Assistant Library & Information Officer on completion of three years in the upgraded scale of Rs. 1640-2900 (5500-9000) as enjoined in

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the Review Committee Recommendations accepted by the Government way back in 1990. If the categorisation is accepted, and a qualified incumbent is in position, then grant of a legitimate benefit by upgrading the existing post of Junior Librarian to that of Assistant Library and Information Officer should pose no problem at all. The applicant however would be entitled to only deemed promotion to that post w.e.f. 1.1.1999 and would be entitled to actual financial benefits in terms of higher pay and increments accrued from 1.1.1999 notionally carried forward from the prospective date of actually joining the higher post.

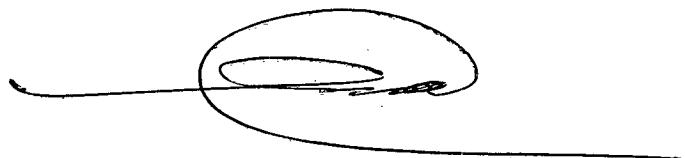
8. No order as to costs.

Dated 17.5.2005.

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H.P. DAS
ADMINISTRATIVE MEMBER

KMN



K.V. SACHIDANANDAN
JUDICIAL MEMBER