

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 754 of 1995.

Dated this Wednesday, the 8th day of March, 2000.

M. M. Narayanan Nambiar, Applicant

Shri B. Dattamoorthy alongwith Shri S. P. Inamdar, Advocate for the Applicant.

VERSUS

Union Of India & Others, Respondents

Shri S. S. Karkera for Shri P. M. Pradhan, Advocate for the Respondents.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha,
Vice-Chairman.

Hon'ble Shri B. N. Bahadur, Member (A).

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library.

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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Hon'ble Shri B. N. Bahadur, Member (A).

Shri M. M. Narayanan Nambiar,
Supdt. of Post Offices,
Raigad Division,
Alibag - 402 201.

... Applicant

(By Advocate Shri D. Dattamurthy
alongwith Shri S. P. Inamdar).

VERSUS

1. The Chief Post Master General,
Kerala Circle,
Trivandrum - 695 033.

2. The Chief Postmaster General,
Maharashtra Circle,
Bombay - 400 001.

3. The Director of Accounts
(Postal), Nagpur - 440 001.

4. The Supdt. of Post Offices,
Cannanore Division,
Cannanore - 670 001.

5. Union of India through
The Director General,
Department of Post,
Dak Bhavan,
New Delhi - 110 001.

... Respondents.

(By Advocate Shri S.S. Karkera for
Shri P. M. Pradhan).

OPEN COURT ORDER

PER.: Shri R.G. Vaidyanatha, Vice-Chairman.

This is an application filed by the applicant
challenging the legality of the impugned order dated
19.05.1995 and for consequential reliefs directing the

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respondents not to make any recovery on the basis of refixation of pay, etc. Respondents have filed reply opposing the application. The Tribunal has granted an interim order dated 27.07.1995 directing the respondents not to make any recovery on the basis of the impugned order. Today we have heard the Learned Counsel appearing on both sides.

2. The short point involved in this case is, whether the period from 18.11.1992 to 27.11.1992 should count for the purpose of fixation of pay of the applicant in the promotional post of Group 'B' post.

The applicant was working as an Assistant Superintendent of Post Offices and on local officiating basis he was sent as HSG Grade-I^{for cananavay} on 20.10.1992 by order 03.11.1992. When he was working in that post on officiating basis, within few days and in particular, on 05.11.1992, the applicant came to be promoted to Group 'B' post and was allotted to Maharashtra Circle. It appears that the applicant was relieved in view of his appointment to Group 'B' post on 17.11.1992. According to the applicant, he applied for ten days leave from 18.11.1992 to 27.11.1992. He has availed joining time from 28.11.1992 to 13.12.1992. He has joined the Group 'B' post at Raigad Division, Alibagh, Maharashtra on 14.12.1992. It is also seen that in the first instance applicant's leave was granted. Earlier, the leave was granted by order dated 20.12.1993 with a certificate that applicant would have continued to

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officiate in the post of HSG Grade-I from 18.11.1992 to 27.11.1992 and the said period will count towards increment. It is further stated that this order was issued with the concurrence of direction received from the Chief Postmaster General, Kerala Circle, Trivandrum. On this basis, the applicant's pay was fixed in Group 'B' post, as per letter dated 27.1.1994 which is at page 29 of the paper book. According to the applicant, he is entitled to the pay fixation as per this letter at page 29.

But subsequently, an impugned order came to be issued which is dated 19.05.1995 stating that the certificate given in the earlier letter dated 20.12.1993 is cancelled. If this letter dated 19.05.1995 is allowed to stand, then on that basis the applicant's salary will be refixed and apprehending recovery of excess payment, the applicant has approached this Tribunal.

3. The applicant has taken number of grounds challenging the legality and validity of the impugned order dated 19.05.1995.

The respondents in their reply have justified the impugned order by taking certain grounds in the reply.

4. After hearing both sides we find that the impugned order dated 19.05.1995 suffers from the vice of non-application of principles of natural justice.

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When applicant's salary had been fixed on the basis of certificate issued by the competent authority, the benefit given to the applicant cannot be taken away unilaterally without hearing him or giving an opportunity to show cause as to why the benefit should not be taken away. It may be if the order is passed by mistake, it can be corrected but only after hearing the official, since any adverse order is going to affect him seriously. If this impugned order is allowed to stand, the applicant will suffer substantially in his monthly emoluments, as alleged in the O.A. and as pressed by the Learned Counsel at the time of argument. Therefore, we feel that when such an order is passed which has the effect of affecting the applicant financially, the order should not have been passed without giving a show cause notice to the applicant. There are many factual points to be considered by the competent authority before passing such an order. At the time of arguments we find there is divulgence of opinion on many factual issues. It is, therefore, desirable that the impugned order should be quashed and the matter should be remitted back to the competent authority to issue a show cause notice to the applicant and then after hearing him, pass appropriate orders according to law. In the facts and circumstances of the case, we direct the Chief Postmaster General, Kerala Circle, Trivandrum, to issue a show cause notice to the applicant briefly mentioning the tentative grounds as to why the previous certificate in the earlier order dated 20.12.1993 should not be cancelled and give him atleast minimum 30 days time for representation. It is open

to the applicant to send a detailed reply to the show cause notice by producing the available evidence in support of his case and after giving a personal hearing to the applicant, the competent authority shall ~~apply~~ his mind and pass a speaking order either accepting or rejecting the contentions of the applicant. Needless to say that if any adverse order is passed by the competent authority, the applicant can challenge the same according to law.

5. In the result, the O.A. is allowed by quashing the impugned order dated 19.05.1995 but giving liberty to the competent authority to issue show cause notice to the applicant and then pass appropriate orders in the light of the observations made in this order. Till such an order is passed by the competent authority, no recovery should be made from the salary of the applicant. All contentions on merits of both sides are left open. In the circumstances of the case, four months time is granted to the competent authority to comply with this order. A copy of this order be communicated to the Chief Postmaster General, Kerala Circle, Trivandrum, for information and compliance. No order as to costs.

B. N. Bahadur
(B. N. BAHADUR),
MEMBER (A).

R. G. Vaidyanatha
(R.G. VAIDYANATHA)
VICE-CHAIRMAN.