

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00185/2018

Thursday, this the 24th day of May, 2018

CORAM:

Hon'ble Mr. U. Sarathchandran, Judicial Member
Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member

K. Mohanan,
Aged 53, S/o. M. Kunjumon,
Working as 'MTS', Ponnani H.O., Tirur Division,
Residing at Kalathingal House, Andathode P.O.,
PIN – 679 564.

..... **Applicant**

(By Advocate – Mr. Martin G. Thottan)

V e r s u s

- 1 Union of India,
Represented by the Secretary to Department of Posts,
New Delhi – 110 001.
- 2 The Director of Postal Service,
Northern Region, Kerala Circle,
Kozhikode.
- 3 The Superintendent of Post Offices,
Tirur Division, Tirur – 676 104.
- 4 The Senior Superintendent of Post Offices,
Palakkad Division, Palakkad – 678 001.

..... **Respondents**

(By Advocate – Mrs. P.K. Latha, ACGSC)

This Original Application having been heard on 16.05.2018, the
Tribunal on 24.05.2018 delivered the following:

ORDER

Per: E.K. Bharat Bhushan, Administrative Member

O.A. No. 185/2018 is filed by Shri K. Mohanan, an MTS of
Ponnani Head Office of Postal Department aggrieved by Annexure A6 letter

dated 6.12.2017 by which recovery of alleged overpayment has been ordered to be recovered from the applicant's pay and allowances.

The reliefs sought in the OA are as under:-

- (a) Call for the records leading to the issuance of Annexure A6 and quash the same.
- (b) Direct the respondents to refund amount recovered from the applicant as over-payment on the basis of Annexure A6.
- (c) Award costs of and incidental to this application,.
- (d) Grant such other relief, which this Honourable Tribunal may deem fit and proper in the circumstances of the case.

2. The brief facts of the case are as under:

Applicant while working as Leave Reserve Postal Assistant was placed under suspension w.e.f. 26.9.2007 for a period of 90 days, which was continued beyond 90 days without any extension order. Hence applicant was entitled to be reinstated after completion of 90 days. However respondents treated him as if he was continuing under suspension. The applicant filed OA No. 244/2009 before this Tribunal and this Tribunal directed the respondents to reinstate the applicant from 25.12.2007 and to grant all consequential benefits. OP (CAT) filed against the said order was dismissed by the Hon'ble High Court of Kerala on 8.4.2016. When the OA was pending, the disciplinary proceedings that had been initiated concluded with imposing punishment of reduction to the lower post of Multi Skilled Employee w.e.f 30.09.2016 upto 31.12.2023. It was also ordered that the applicant will not earn any increments during the period of reduction to the lower post.

3. In compliance with the orders in the OP (CAT) the respondents issued order dated 24.11.2016 reinstating the applicant as Postal Assistant

w.e.f. 25.12.2007 (Annexure A2) and the applicant had been discharging the duties of Postal Assistant and drawing salary attached to the said post from the date of issue of Annexure A2 orders. However, by order dated 8.11.2017 (Annexure A3) the respondents cancelled the order of reinstatement as Postal Assistant and issued orders reverting the applicant as MTS, clarifying that the applicant is entitled to benefits as an MTS only. Pursuant to the above orders, applicant is presently working as MTS at Ponnani Head Post Office. While so, applicant received the impugned order dated 6.12.2017 of the third respondent ordering recovery of an amount of Rs. 2,34,869/- being over payment on account of alleged excess drawal of pay and allowances. Hence the applicant has approached this Tribunal for the aforesaid reliefs.

4. The grounds urged by the applicant are that Annexure A6 order is arbitrary, unsustainable and violative of Articles 14 and 16 of the Constitution of India. Applicant has performed the duties of Postal Assistant from 1.11.2016 to 17.11.2017 and is entitled for the salary attached to the post of Postal Assistant for the period. The action of the respondents in passing Annexure A6 on the presumption that he is only deemed to be a MTS during the period from 1.11.2016 to 17.11.2017 and recovering the excess salary is arbitrary and is liable to be interfered with by this Tribunal. There is no misrepresentation on the part of the applicant leading to issuance of Annexure A2 order and allowing the applicant to work as Postal Assistant from 1.11.2016 to 17.11.2017.

5. Per contra, respondents filed a reply refuting the allegations in the OA. They submit that the suspension was reviewed vide minutes of the

review committee dated 18.2.2009 and this fact was informed to the applicant. However the applicant filed OA No.244/2009 before this Tribunal stating that revision was not done within 90 days as prescribed. In the meantime the official was charge sheeted vide Memo dated 23.6.2008 and the proceedings were finalized imposing the punishment of reduction to the lower post of Multi Skilled Employee w.e.f the date of reinstatement upto 31.12.2023. It was ordered that the official will not earn any increments during the period of reduction to the lower post as MSE. It was further ordered that the applicant will not regain his original seniority on re-promotion to the cadre of Postal Assistant on 1.1.2024 and that the reduction will have the effect of postponing his future increments for the entire period of reduction. The applicant was reinstated into service as MTS w.e.f. 30.10.2009.

6. In compliance with the judgment of the Hon'ble High Court in which it was clarified that the applicant would be entitled only to the monetary benefits consequent to the orders passed by the CAT in the case, less the subsistence allowance, if any drawn or received by him, the applicant was erroneously ordered to be reinstated as Postal Assistant wef. 25.12.2007 vide order dated 21.11.2016. When the PMG, Northern Region, Calicut directed to review the case before making payment of arrears to the applicant, it was found that in the judgment dated 8.4.2016 the Hon'ble High Court did not direct reinstatement of the official in the cadre of Postal Assistant (PA) and instead only the period of suspension less the first 90 days was to be treated as spent on duty in PA cadre. Hence the applicant was entitled only for monetary benefits treating the period of suspension less the

initial 90 days as deemed to have been spent on duty as PA. So the impugned order had been issued treating the applicant reinstated to the cadre of MTS w.e.f. 30.10.2009 as ordered in the disciplinary proceedings and the arrears of pay and allowances was recalculated. The recovery of excess paid amount of Rs. 234869/- has been ordered accordingly. This was intimated to the applicant, who submitted a representation dated 14.12.2017 requesting reduction of monthly instalment of recovery to Rs. 1000/- per month. Considering that representation it was decided vide letter dated 26.12.2017 that the balance amount of Rs. 108000/- is to be recovered from the salary of the applicant in 72 instalments. The respondents have acted as per the orders issued by the Hon'ble Courts.

7. Shri Martin G.Thottan, learned counsel appearing for the applicant and Mrs.P.K.Latha,ACGSC appearing for the respondents have been heard and all documents/records perused.

8. Correcting the order at Annexure A2 is a communication at Annexure A3 the first paragraph of which is quoted below:

“Sri. K. Mohanan, MTS, Tirur Division who was erroneously reinstated into service as PA, Tirur Division w.e.f 25.12.2007 vide this office memo No. WP/01/09 dated 21.11.2016 is hereby ordered to be reinstated as MTS, Tirur Division with effect from 30.10.2009 in rectification of the said orders.”

9. This is at the core of the applicant's grievance. The applicant had been working as an MTS in Tirur Division and had been suspended from service on 26.09.2007. On account of the fact that his suspension had not been reviewed even after 90 days and as the suspension period extended well beyond this period he had approached this Tribunal for relief. Favourable orders obtained from this Tribunal by the applicant were challenged by the

respondents before the Hon'ble High Court. As a parallel proceedings, while this set of events were taking place, the disciplinary action initiated against the applicant came to a close on 30.10.2009 and when he was reinstated as MTS by virtue of order dated 22.10.2009. Subsequently, in compliance with the orders of the Hon'ble High Court the respondents issued the order at Annexure A2 treating his reinstatement ordered by the Hon'ble High Court w.e.f. 25.12.2007 to be treated as service at the level of Postal Assistant.

10. Now, while recovery has been ordered on the ground that Annexure A2 had been issued “erroneously”. The respondents have calculated a large sum of money as excess payment and indicated it as recoverable from the employee. While the facts before us seem to clearly indicate that leaving aside the suspension period for 90 days his service from 25.12.2007 onwards till 30.10.2009 is to be considered as Postal Assistant, on the latter date at the conclusion of the disciplinary proceedings his rank had been brought down to the MTS. Also he had put in actual service as a Postal Assistant from 01.11.2016 to 31.10.2017. Even if the respondents claim the arrangement had been made as a result of an error the respondents have no authority whatsoever to deny him the pay and allowances as due to a Postal Assistant for the actual period he had worked in the post.

11. While examining these facts, the entire picture of which is not clearly discernible in either the OA or in the counsel statement filed in response, we see that the applicant is now functioning as an MTS and is aggrieved by the recovery of a large sum of money from his pay and allowances. In so far as the recovery of sums from employees are concerned the judgment in *State of Punjab Vs. Rafiq Masih – 2015 (4) SCC 334* holds

the field. MTS is a Group D service and by virtue of this judgment any recovery from the applicant would be illegal. Hence, on this ground itself we feel that the OA has merit on its side. OA succeeds and all reliefs as claimed by the applicant in the OA are allowed except refund of the recovery already effected. No costs.

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

(U.SARATHCHANDRAN)
JUDICIAL MEMBER

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List of Annexures of the Applicant

- Annexure A-1** - True copy of the judgment dated 08.04.2016 in W.P.(C) No. 12155/2010 of the Hon'ble High Court of Kerala.
- Annexure A-2** - True copy of the order bearing No. F1/IV-4/07-08/II dated 24.11.2016 issued by the third respondent.
- Annexure A-3** - True copy of the order bearing No. WP/01/09 dated 08.11.2017 issued by the third respondent.
- Annexure A-4** - True copy of the order bearing No. B2/KM/2017 dated 08.11.2017 issued by the third respondent.
- Annexure A-5** - True copy of the Memo No. F1/IV-4/07-08/II dated 17.11.2017 issued by the third respondent.
- Annexure A-6** - True copy of the Letter bearing No. E/MISC/2017-18 dated 06.12.2017 issued by the third respondent.

List of Annexures of the Respondents

Nil.
