

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

OP (CAT).No. 32 of 2015 (Z)

AGAINST THE ORDER/JUDGMENT IN OA 207/2013 of CENTRAL ADMINISTRATIVE
TRIBUNAL,ERNAKULAM BENCH DATED

PETITIONERS/RESPONDENTS:

1. UNION OF INDIA AGED 59 YEARS
REPRESENTED BY SECRETARY TO GOVERNMENT OF INDIA
MINISTRY OF COMMUNICATIONS, DEPARTMENT OF POSTS
NEW DELHI - 110 001.

2. THE CHIEF POSTMASTER GENERAL
KERALA CIRCLE, THIRUVANANTHAPURAM - 695 033.

3. THE SENIOR SUPERINTENDENT OF POST OFFICERS,
KOTTAYAM DIVISION, KOTTAYAM- 686 001.

4. THE SENIOR POSTMASTER,
KOTTAYAM H.O., PIN - 686 001.

BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENE

RESPONDENT/APPLICANT:

T.V.SATHIAMMA
W/O. LATE DIVAKARAN
WORKING AS GDS BPM ERAVINELLOOR P.O.
RESIDING AT MULLACKAL HOUSE, MANGANAM P.O.
KOTTAYAM - 686 018.

R1 BY ADV. SRI.MARTIN G.THOTTAN
R BY ADV. P.C. SEBASTIAN

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 26-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (CAT).No. 32 of 2015 (Z)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT-P1-TRUE COPY OF THE O.A 207/2013 FILED BY THE RESPONDENT
BEORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

EXHIBIT-P2-TRUE COPY OF THE M.A 336/2013 IN O.A 207/2013

EXHIBIT-P3-TRUE COPY OF THE OBJECTION TO THE M.A FOR CONDONATION OF
DELAY FILED BY THE RESPONDENTS.

EXHIBIT-P4-TRUE COPY OF THE REPLY STATEMENT DATED 12/11/2013, FILED
BY THE PETITIONERS.

EXHIBIT-P5-TRUE COPY OF THE REJOINDER STATEMENT DATED 27/01/2014
FILED BY THE RESPONDENT BEFORE THE CAT, ERNAKULAM BENCH

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EXHIBIT-P6-TRUE COPY OF THE ADDL. REPLY STATEMENT FILED BY THE
PETITIONERS DATED 05/03/2014.

EXHIBIT-P7-TRUE COPY OF THE ORDER IN O.A 207/2013 WITH M.A NO.
336/2013 DATED 31/07/2014 OF THE CAT, ERNAKULAM BENCH.

RESPONDENT(S) ' EXHIBITS

NIL

K. SURENDRA MOHAN, & SHAJI P.CHALY,JJ.

O.P(CAT) NO:32 OF 2015

Dated this the 26th November, 2015.

JUDGMENT

The Union of India and others, the respondents in O.A.207/2013, have filed this original petition challenging Ext.P7 order of the Central Administrative Tribunal ('CAT' for short) condoning the delay and allowing the original application filed by the respondent. The respondent had filed the original application contending that she was initially appointed as a GDS Mail Deliverer ('GDSMD' for short) at Paduva Post Office in Kottayam Postal Division. On her request, she was transferred from the post of GDSMD Paduva to the post of GDS Branch Post Master ('GDSBPM' for short) on 27.3.2008. At the time of transfer, the respondent was drawing a time related continuity allowance ('TRCA' for short) at the stage of ₹4670/- in the scale of ₹4220-75-6740. After

transfer, her TRCA was fixed at ₹3660-70-5760. She was transferred to the post of GDSBPM after she had executed an undertaking that she would not claim her former pay scale. However, according to the petitioners, in the year 2013, five years after her transfer she filed O.A.207/2013 contending that her pay was liable to be protected. Though there was a delay of 1808 days the CAT has condoned the delay and has allowed the original application granting protection of the respondent's pay. The petitioners are aggrieved by the said order.

2. According to Shri.N.Nagaresh, the Assistant Solicitor General of India (ASGI), the CAT seriously erred in condoning the delay and allowing the application filed by the respondent. The learned ASGI has placed reliance on the decisions of the Apex Court in U.P.Jal Nigam and Another v. Jaswant Singh and Another [(2006)11 SCC 464, A.P.Steel Re-Rolling Mill Ltd. V State of Kerala and others [(2007)2 SCC 725] and S.S.Balu and another v. State of Kerala and others [(2009)2 SCC 479] in

support of his contention that, persons who were not vigilant in enforcing their rights were not entitled to any benefit after a considerable lapse of time. This is so even in cases where others who were similarly situated, but were vigilant had been granted relief. It is pointed out that the respondent herein had slept over her rights for an abnormally long period. It is also pointed out that she had consciously obtained transfer on her request, after executing an undertaking that she would not claim a higher salary. Thereafter, she had acquiesced and had been receiving the lower pay for five years thereafter. In view of the above, it is contended that there is no justification for granting her any relief.

3. Adv.Martin G. Thottan who appears for the respondent disputes the above contentions of the learned ASGI. According to the counsel, there is absolutely no delay in filing the original application. Though it is true that she had obtained transfer on her request, that does not disentitle her from claiming protection of her pay. The issue

according to the learned counsel had been considered by a Full Bench of the Central Administrative Tribunal and had been decided in favour of the respondent. This Court has in Annexure A3 judgment, upheld the decision of the Full Bench. It was in view of the above that the Central Administrative Tribunal had condoned the delay and allowed the Original Application. According to the learned counsel, Ext.P7 therefore does not call for any interference.

4. Heard. It is no doubt true that, the petitioner had been transferred in the year 2008 on her own request. According to the learned ASGI, she was working as a GDS Mail Deliverer before her transfer. However, she had been transferred to a different post, that of a GDSBPN. Since the transfer was to a different post it is contended that protection of pay would not be applicable. However, we notice from Annexure A3 judgment that, a similar question had been considered by this Court in the said judgment. A Full Bench of the Central Administrative Tribunal had held that in respect

of transfer from one post to another within the same recruitment unit but with different TRCA (i.e from higher to lower) pay protection on the same lines as in our case would be available. The above verdict of the Full Bench has been upheld by another Division Bench of this Court in Annexure A3 judgment. In view of the above binding dictum we are not satisfied that any interference with Ext.P7 is called for under Art.227 of the Constitution. As rightly pointed out by the learned counsel for the petitioners the reduction in pay being a continued grievance of the respondent could not attract the limitation that has been prescribed. In any case, the CAT has exercised its discretion and has condoned the delay. We notice that, the respondent is working as a GDS. She cannot be credited with sufficient education or knowledge of the consequence of her act in having executed the undertaking that she would not claim her higher grade. We also notice that a similar contention has been negated by the Division Bench in Annexure 3 judgment.

For the foregoing reasons we do not find any grounds to admit this original petition. The same is therefore dismissed.

Since the time stipulated by Ext.P7 for complying with the directions therein has expired, the petitioners are granted a further period of six weeks from the date of receipt of a copy of this judgment for complying with the same.

Sd/-
K. SURENDRA MOHAN
Judge

Sd/-
SHAJI P.CHALY
Judge

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/True copy/

