

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN  
&  
THE HONOURABLE MR.JUSTICE K.HARILAL**

**FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936**

**OP (CAT).No. 50 of 2015 (Z)**

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AGAINST THE ORDER/JUDGMENT IN OA 614/2013 of CENTRAL ADMINISTRATIVE  
TRIBUNAL,ERNAKULAM BENCH DATED 03-09-2014**

**PETITIONER(S)/RESPONDENTS:**

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- 1. UNION OF INDIA,  
REPRESENTED BY THE SECRETARY, DEPARTMENT OF POSTS,  
NEW DELHI - 110 001.**
  - 2. THE CHIEF POST MASTER GENERAL,  
KERALA CIRCLE, TRIVANDRUM - 695 033.**
  - 3. THE POST MASTER GENERAL,  
NORTHERN REGION, KERALA CIRCLE, KOZHIKODE - 673 011.**
  - 4. THE SUPERINTENDENT OF POST OFFICERS  
THALASSERY DIVISION, THALASSERY - 670 101.**

**BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL**

**RESPONDENT(S)/APPLICANT IN O.A:**

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**A.VASANTHAKUMAR,  
S/O. LATE SRI. M. GOPALAN, MULTI TASKING STAFF,  
THALASSERY HEAD POST OFFICE,  
RESIDING AT ACHATH HOUSE, PALAYAD P.O.  
THALASSERY - 670 661.**

**THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 13-03-2015, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**DG**

**APPENDIX**

**PETITIONER(S)' EXHIBITS:**  
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- EXHIBIT-P1- TRUE COPY OF THE O.A 614/2013.**
- EXHIBIT-P2- TRUE COPY OF THE REPLY STATEMENT FILED BY THE RESPONDENTS IN O.A 614/2013.**
- EXHIBIT-P3- TRUE COPY OF THE REJOINDER FILED BY THE APPLICANT IN O.A 614/2013.**
- EXHIBIT-P4- TRUE COPY OF THE ADDITIONAL REPLY STATEMENT FILED BY THE RESPONDENT IN O.A 614/2013.**
- EXHIBIT-P5- TRUE COPY OF THE ADDITIONAL REJOINDER FILED BY THE APPLICANT IN O.A 614/2013.**
- EXHIBIT-P6- TRUE COPY OF THE ADDITIONAL REPLY STATEMENT FILED BY THE RESPONDENT IN O.A 614/2013.**
- EXHIBIT-P7- TRUE COPY OF THE SECOND ADDITIONAL REJOINDER FILED BY THE APPLICANT IN O.A 614/2013.**
- EXHIBIT-P8- TRUE COPY OF THE 3RD ADDITIONAL REPLY STATEMENT FILED BY THE RESPONDENT IN O.A 614/2013.**
- EXHIBIT-P9- TRUE COPY OF THE ORDER DATED 03/09/2014 IN CAT ERNAKULAM BENCH IN O.A 614/2013.**

**RESPONDENT(S)' EXHIBITS - NIL**  
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**//TRUE COPY//**

**P.A TO JUDGE**

**'CR'**

**THOTTATHIL B.RADHAKRISHNAN &  
K.HARILAL, JJ.**

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O.P.(CAT).No.50 of 2015  
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Dated this the 13<sup>th</sup> day of March, 2015

**J U D G M E N T**

**Thottathil B.Radhakrishnan, J.**

- 1.We have heard the learned Senior Panel Counsel for the Central Government.
- 2.The respondent, who belongs to the category of multi-tasking staff in the Postal Department, filed O.A.No.524 of 2009, seeking different reliefs in view of his claim that he was entitled to be earmarked against the year 2002 itself or at least with effect from 3.6.2003, the date on which his immediate senior was appointed. Through that original application, he sought different reliefs, including a declaration to the aforesaid effect and also consequential benefits, including pension and that he is eligible to be regularized with

effect from 2002.

3.The aforesaid O.A.No.524 of 2009 was allowed by the Tribunal as per Annexure A1 in Exhibit P1 after holding that the applicant was entitled to the relief with effect from the date of occurrence of the vacancy in 2002. Accordingly, the Tribunal declared that the applicant is eligible for appointment as Group-D, notionally with effect from the date of occurrence of the vacancy. Having regard to the nature of the plea raised by the establishment before us, we think that it is apposite to quote paragraph 11 of Annexure A1 order in O.A.No.524 of 2009. It reads as follows:

“In this view of the matter, the O.A is allowed. Accordingly, we declare that the applicant is eligible for appointment as Group-D notionally, w.e.f the date of occurrence of the vacancy. No order as to costs.”

4.However, the applicant thereafter faced a situation where the

establishment refused to give him the consequential benefits relatable to the service from the date so declared, notionally, in relation to pension. He, therefore, filed O.A.No.614 of 2013 from which this petition under Article 227 of the Constitution of India arises.

5. The fundamental plea levied by the establishment in this original petition is that the relief granted by the Tribunal to the respondent herein through its order in O.A.No.524 of 2009 was limited to a declaration and, therefore, it should be deemed that other reliefs sought for were refused by the Tribunal in that round of litigation and hence applying the doctrine of constructive res judicata, the present direction of the Tribunal is barred. The learned Senior Panel Counsel for the Central Government made reference to the decisions of the Honourable Supreme Court of India in **State of M.P v. Mangilal Sharma [(1998) 2 SCC 510]** and **Commissioner of Income Tax v. T.P.Kumaran [(1996) 10 SCC 561]**.

6. **Mangilal Sharma** (supra) was a case where notwithstanding

the fact that the plaintiff therein was entitled to further reliefs, in furtherance of the declaratory relief he had sought for in relation to reinstatement, no further relief flowing out of such declaration was sought for. Therefore, when any relief that would have followed that declaratory decree is left unsatisfied, it was held that having obtained only a declaratory decree through a suit in which the plaintiff would and could have claim to the further decree; such a plaintiff is barred from claiming those further reliefs in an independent suit. This is the deducible ratio decidendi of that precedent, to the extent that case is to be looked into, as one cited in support of this petition.

7. In **T.P.Kumaran** (supra), the issue was slightly at variance.

An original application was filed challenging the dismissal of an employee from service. Reinstatement was ordered. No relief was sought for and obtained in relation to consequential arrears, though such relief could have been claimed in that original application. Therefore, in a subsequent application, the Apex Court held that a subsequent plea in that regard is

barred in view of the principles emanating out of Explanation 4 of Section 11 of CPC embodying the doctrine of “constructive res judicata.”

8. The situation in the case in hand, is wholly different. Therefore, the afore-noted precedents do not apply. This is so because, here is a case where the respondent filed O.A.No.524 of 2009 for grant of different reliefs and that original application was allowed. As can be seen from what we have quoted in paragraph No.3 above from the Tribunal's order in that case, all that had happened was that the declaration, which was part of the reliefs so granted, stood exemplified and explained by the Tribunal as to the eligibility of the applicant in that case (respondent herein) to appointment as Group-D, notionally, with effect from the date of occurrence of the vacancy. That verdict did not taper down or take away the result of the decision of the original application whereby that original application stood allowed granting the different reliefs sought for by him, including all consequential benefits by way of pension. The latter part of paragraph 11 of Annexure A1

order in O.A.No.524 of 2009 is only clarificatory of the declaration granted as regards the date from which the declaration would operate. That, in no way, takes away the right of the employee to the relief granted when the original application stood allowed. Those reliefs included the relief of consequential benefits including pension. Any other view of appreciating the decision in Annexure A1 order of the Tribunal would thwart the course of justice and is irreconcilable to common sense and ordinary prudence. We say so because, in the common course of human conduct, we are not, in our wisdom, capable to comprehend that the respondent, a 'multi-tasking' staff ought to have understood the decision in O.A.No.524 of 2009 in any manner other than how it has been explained herein. Unlike **Mangilal Sharma** and **T.P.Kumaran**, this is a case where the applicant had claimed necessary reliefs and the verdict handed down through O.A.No.524 of 2009 was a comprehensive one in his favour. Such grant of relief should necessarily bring home to him all incidental reliefs as well. This is what has been done by the learned Tribunal after appropriately assimilating consideration

and grant of reliefs made through the order impugned in this original petition. That is instituted by the applicant as O.A.No.164 of 2013 is not hit by either the doctrine of constructive res judicata or by the principle that he had not sought for all reliefs to which he was eligible, in the earlier round. In such situations, the principles laid down in **Mangilal Sharma** and **T.P.Kumaran** do not apply. Hence, as rightly noted by the learned Tribunal in paragraph 7 of the impugned order, the benefit of the earlier decision of the Tribunal ought to reflect in the consequential aspects of the service as well. We do not find any error of jurisdiction or illegality in the decision of the Tribunal.

9. We can easily visualize that the respondent, a progeny of this Nation would not have, in the wilderness of his dreams, envisioned his "Masters" in the establishment to entertain a quibbling of this nature; which we are sure he cannot face; for, he would rest being a mite who could be mute before the voices of his masters; whom he would dare not challenge, in a mighty establishment. He is part of the Sovereign, 'We, the

People of India', and ought not to be subdued and suppressed by any feudal mind set of the higher ups in the establishment of governance where he works. Those higher ups are equal minuscules like the applicant, or as powerful as he is. This is the play of the seminal equality doctrine in the Constitution of India; which, unfortunately, many who are in higher pedestal of governance appear to forget.

10. For the aforesaid reasons, this original petition fails. The impugned order does not warrant interference under Article 227 of the Constitution of India.

In the result, this original petition is dismissed in limine.

Sd/-  
**(THOTTATHIL B.RADHAKRISHNAN, JUDGE)**

Sd/-  
**(K.HARILAL, JUDGE)**

//TRUE COPY//

P.A TO JUDGE

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