

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

WP(C).No. 29506 of 2007 (S)

(AGAINST THE ORDER/JUDGMENT IN OA 640/2003 of CENTRAL
ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH DATED 02.05.2006)

PETITIONER(S) :

O.R.BHASKARAN, S/O.LATE RAGHAVAN NAIR,
ASST.SUPDT OF POST OFFICES ALUVA (RETIRED)
RESIDING AT GEETHANJALI, AIRANIKULAM, MALA P.O.
THRISSUR DIST.

BY ADVS.SRI.P.C.SEBASTIAN
SRI.MARTIN G.THOTTAN

RESPONDENT(S) :

1. THE CHIEF POSTMASTER GENERAL, KERALA
CIRCLE, THIRUVANANTHAPURAM.

2. THE DY.DIRECTOR, POSTAL ACCOUNTS,
THIRUVANANTHAPURAM.

3. POSTMASTER GENERAL, CENTRAL REGION,
KOCHI.

4. THE SENIOR SUPDT OF POST OFFICES,
ALUVA DIVISION, ALUVA.

5. UNION OF INDIA, REPRESENTED BY ITS
SECRETARY, MINISTRY OF COMMUNICATIONS, NEW DELHI.

BY ADV. SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR
BY ADV. SHRI.SOORANADU S.SREEKUMAR, CGC
BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
21-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1 : TRUE COPY OF LETTER NO. B-41 DATED 11.12.2001
ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.

EXT.P2 : TRUE COPY OF LETTER NO.B-41 DATED 22.07.2003 ISSUED
BY THE 4TH RESPONDENT TO THE POSTMASTER, ALUVA

EXT.P3 TRUE EXTRACT OF DEPARTMENT OF POSTS LETTER NO.2-20/95
PAP DATED 04.10.1996

EXT.P4 TRUE COPYM OF THE AMENDED ORIGINAL APPLICATION
NO.640/2003 FILED BY PETITIONER BEFORE THE HON'BLE
CENTRAL ADMINSTRATIVE TRIBUNAL, ERNAKULAM.

EXT.P5 TRUE COPY OF THE REPLY STATEMENT DATED 23RD APRIL
2004 FILED BY THE RESPONDENT IN O.A.NO. 640/03 BEFORE
THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM.

EXT.P6 TRUE COPY OF THE ORDER DATED 2.5.2006 OF THE \
HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM
IN O.A.No. 640/03

EXT.P7 TRUE COPY OF THE REPRESENTATION DATED 01.06.2006
SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT.

EXT.P8 TRUE COPY OF THE LETTER NO.ST/62-9/ORB DATED
17.01.2007 ISSUED BY THE 3RD RESPONDENT TO THE
PETITIONER.

EXT.P9 TRUE COPY OF MEMORANDUM NO.3126/83-PE-I DATED
17.12.83 ISSUED BY THE DIRECTOR GENERAL, P &T NEW
DELHI CIRCULATED VIDE MEMO NO.BB/ONE PROMOTION DATED
27.12.83 BY THE SUPDT OF POST OFFICES, ALLEPPEY.

EXT.P10 TRUE EXTRACT OF GOVT. OF INDIA, DEPT. OF POSTS,
CIRCULAR LETTER NO.22-6/96-PE I DATED 08.10.1990.

RESPONDENTS' EXHIBITS:

EXT.R1 A COPY OF THE ORDER OF THE HON'BLE CAT, ERNAKULAM
BENCH IN O.A. 1597 OF 1995.

/TRUE COPY/

P.S. TO JUDGE

**P.R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.**

.....
W.P.(C)No.29506 OF 2007
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Dated this the 21st day of August, 2015

J U D G M E N T

P.R. Ramachandra Menon, J.

Rectification of the mistake, while fixing the pay of the petitioner in the concerned scale, on giving functional promotion to the post of Sub Divisional Inspector of Post Offices in tune with F.R.22(1)(a)(i) granting an additional increment notwithstanding the fact that such a benefit was already given to the employee pursuant to the Grade Promotion effected under the TBOP Scheme on completion of 16 years in the post of Postal Assistant (Lower Selection Grade), is the subject matter involved in this petition. The challenge raised against the proceedings of the Department was repelled by the CAT, Ernakulam, except for intercepting the steps for recovery of the excess payment as per Ext.P6 order , which in turn is sought to be challenged in this writ petition.

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2. The petitioner entered service of the respondents on 17.12.1966 as a Time Scale Clerk, which post was subsequently redesignated as Postal Assistant. While so, the petitioner was deputed to the Army Postal Service on 15.12.1972 and was continuing there for nearly 13 years. During the course of service in the Army on deputaiton, he was promoted to the post of 'Naik Subedar' on 01.02.1980 in the scale of pay of Rs.425-640, which was the scale equivalent to the grade of Lower Selection Grade in the Department of Posts. Such placement was given to the petitioner clearly stipulating that the posting and promotion in the Army, while serving in the Army Post Office would not be of any significance in relation to the service in the parent Department. Subsequently, the petitioner was elevated to the Lower Selection Grade in the parent Department and was placed in the scale of pay of Rs.425-640 w.e.f. 30.11.1983 on a notional basis under the Time Bound One Promotion Scheme. After completion of nearly 13 years of service in the Army Post Office, the petitioner was repatriated to the parent Department; upon which he was posted as Sub Postmaster. Since the

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petitioner was drawing a basic salary of Rs.515/- in the scale of pay of Rs. 425-640/- at the time of his relief from the Army Post Office, as reflected from the Last Pay Certificate issued by the Director of Accounts (Postal), Nagpur, the Postmaster, Chalakkudy, fixed the pay of the petitioner on rejoining duty as Postal Assistant, reckoning the basic pay as Rs.515/-.

3. Pursuant to recommendation of the 4th Central Pay Commission, the scale of pay of Rs.425-640 was revised to Rs.1400-2300/-. The petitioner was brought under the revised scale of pay of Rs.1400-2300/- under the TBOP Scheme and later was promoted to the cadre of Inspector of Post Offices on regular basis as per Annexure A2 order dated 05.03.1987. On promotion as above, the pay of the petitioner came to be fixed at Rs.1640/- in the scale of pay of Rs.1400-2300 under F.R.22-C and the petitioner was drawing the salary with annual increments. In the meanwhile, a mistake occurred in fixing the pay of the petitioner came to the notice of the second respondent/Dy.Director, Postal Accounts, who instructed the 4th respondent/Sr.Superintendent of Post Offices to take necessary

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remedial measures to have had the pay fixed correctly. It was accordingly that Annexure A5 notice dated 28.09.1995 was issued by the 4th respondent pointing out that the pay was wrongly fixed at Rs.1560/-, which required to be refixed as Rs.1480/- w.e.f. 15.03.1986 and proposing to recover the excess payment of **Rs.15111/-** by way of monthly installments at the rate of Rs.300/-. This was sought to be challenged by the petitioner by filing **O.A.No.1597 of 1995** before the CAT, Ernakulam.

4. After hearing both the sides, the Tribunal found, as per Annexure A6 order, that there was an erroneous fixation. Accordingly, the course pursued by the Department in refixing the salary at appropriate level of Rs.1480/- was upheld; however intercepting the steps for recovery of the excess payment . The said verdict has become final and refixation was effected accordingly. Later, the petitioner was served with a memo dated 11.12.2001 as instructed by the second respondent/Dy.Director, Postal Accounts, to the effect that there was a further defect in connection with promotion given to the petitioner in the post of

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Sub Divisional Inspector, in the very same scale of pay of Rs.1400-2300, which scale was already given to the petitioner under the TBOP Scheme. The regular promotion in the post of Sub Divisional Inspector was given from 08.06.1987 and the concerned Postmaster had fixed the pay allowing the benefit under F.R.22(1)(a)(i) at Rs.1640/-, which was subsequently revised to Rs. 1560/- based on Annexure A6 order of the Tribunal. It was pointed out that the actual pay of the applicant ought to have been fixed only at Rs.1520/- as on 08.06.1986, with DNI(date of next increment) on 01.11.1987. In fact, the petitioner was drawing the basic pay of Rs.2000/- upto 30.06.1995 and Rs.2050/- from 01.07.1995. It was also stated that the applicant was officiating as Complaints Inspector, Irinjalakkuda, from 07.10.1986 to 07.10..1987, before the regular posting from 08.06.1987 and during this period as well, the pay was allowed giving irregular fixation under F.R.22(1)(a)(i). It was in the said circumstance, that a proposal was issued to recover the excess payment of Rs.16731/- and asking for explanation, if any.

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5. The above proceedings of the respondent Department were sought to be challenged by filing **O.A.No.640 of 2003**, mainly contending that, at the time of granting higher Grade under the TBOP Scheme, he was retained in the same post / cadre (Postal Assistant) and he did not move to a higher post at all. The regular promotion was given to the post of Sub Divisional Inspector , which is a selection post having supervisory duties and such other duties at higher level, whereas the post of Postal Assistant is only a feeder post with clerical duties. Though the scale of pay in the post of Postal Assistant (on giving higher grade under TBOP Scheme) and the scale of pay of the Sub Divisional Inspector were the same , it could not be stated that the post of Postal Assistant was equivalent to the Post of Sub Divisional Inspector. Various other contentions were also raised with reference to the relevant Rules.

6. The respondent Department contended that the petitioner was sent to the Army Postal Service, subject to the specific conditions prescribed by the Ministry of Defence as per O.M. Dated 19.03.1985, that the official who had been given

promotion to the higher post in the Army Postal Service was not entitled to corresponding promotion in the parent cadre. It was accordingly, that the petitioner was not given the higher pay at the time of his relief from the Army Postal Service, which stand was repelled by the CAT in the earlier round of litigation by way of O.A. 1597 of 1995. Subsequently, while the petitioner was working as TBOP SPM, he was given promotion as Inspector of Post Offices in the same scale of pay, i.e. 1400-2300/- and that there was no provision to refix his pay under F.R.22-C when the promotion given was to the same time scale of pay. It was only by way of mistake on the part of the staff of the Department, that higher fixation was given resulting overpayment of Rs.16731/- which was sought to be recovered. After hearing both the sides, the Tribunal, as per Ext.P6 order dated 02.05.2006, held that the course pursued by the Department was in conformity with the law declared by the Apex Court as per the decision reported in **Union of India and others vs. Ashoke Kumar Banerjee (1998 SCC (L&S)1277)** and that no interference was warranted, but for the steps to

recover the excess payment. Placing reliance on the decisions rendered by the Apex Court in **Sahib Ram vs. State of Haryana and others** [(1994) 28 ATC 747] and **Syam Babu Verma and others vs. Union of India and others** [(1994) 2 SCC 521], it was held that there was no fault on the part of the petitioner with regard to fixation and overpayment and as such, steps for recovery of excess payment were intercepted. This order is under challenge at the instance of the petitioner, to the extent he is aggrieved of the re-fixation.

7. Heard Mr. Martin G. Thottan, the learned counsel for the petitioner, and Mr.N. Nagaresh, the learned Asst. Solicitor General, in detail.

8. It is to be noted that the petitioner had challenged his pay fixation at two stages, one on repatriation from the Army Postal Service and the other one, pursuant to regular promotion given to him to the cadre of SDI(Sub Divisional Inspector). The wrong fixation given in the first round was rectified and re-fixed by the Department. The challenge raised still in this regard has been repelled by the verdict passed by the CAT in O.A.1597 of

1995 , which has become final, though steps for recovery of excess payment were intercepted.

9. With regard to the second stage, the main contention is that the higher grade given to the petitioner under the TBOP Scheme in the post of LSG cannot be a ground to deny the benefit of fixation as envisaged under F.R.22-C while promoting the petitioner to the post of SDI. This is obviously for the reason that the duties and responsibilities substantially differ from the post of Postal Assistant/Lower Selection Grade and that of the SDI. If it be so, there is no other way but to follow the mandate of **Rule 22C and** to fix the salary accordingly, which was correctly done by the Department and hence did not require any refixation or reduction. It is further pointed out that no reliance could be placed on F.R.22(1)(a)(i) as the said provision was introduced, in substitution of F.R.22-C, only w.e.f. 1989, which cannot be made applicable to the promotion of the petitioner effected in 1986.

10. After hearing both the sides, the Tribunal observed that the short question to be considered and decided was whether

the promotion granted to the petitioner to the post of SDI from 01.11.1986 was to be considered as promotion to a post involving higher duties and responsibilities , thus entitling him to the benefit of F.R.22-C or F.R.22(1)(a)(i), as the case may be. The contention raised by the Department that, since both the posts were having same scale of pay, the post of SDI could not be deemed to be a higher post than the post of LSG (TBOP) was found as devoid of any merit, holding that the post of Postal Assistant is basically a Group C post with scale of pay of Rs.975-1550 and that all those persons who had completed 16 years of service in the said cadre were eligible to be placed in the next higher grade of Rs.1400/- under the TBOP Scheme . Even after placement of the petitioner in the said higher grade, the petitioner continued to discharge the duties in the lower post of Postal Assistant and there was *no* change in the nature of duties and responsibilities pursuant to regular promotion. It was however observed by the Tribunal that the relevant question to be considered was whether the benefit of F.R. 22 C/F.R.22(1)(a)(i) could have been availed by an employee twice, firstly at

the time of moving to the higher grade on completion of fixed tenure of service and later, on getting promotion to the same scale of pay on a functional basis. The legal position was considered and answered the question in the negative by the Apex Court, making the law explicitly clear, as per the decision in **Union of India and others vs. Ashoke Kumar Banerjee** (1998 SCC (L&S)1277). Based on the said ruling, the Tribunal observed that, at the first stage the employee got the scale without any higher duties and responsibilities and at the next stage he started discharging higher duties and responsibilities. The ratio of the decision is that, if the benefit had been availed at the first stage, it cannot be granted at the second stage. This being the position, the question to be considered was not whether F.R.22(1)(a)(i) was having only prospective effect or not (as contended by the petitioner/applicant); but whether the applicant could avail the same benefit twice in the same scale. It was accordingly, that the claim of the petitioner was rejected, however holding that no recovery of overpayment was to be effected in view of law

declared by the Apex Court in **Sahib Ram vs. State of Haryana and others** [(1994) 28 ATC 747] and **Syam Babu Verma and others vs. Union of India and others** [(1994) 2 SCC 521]. We find absolutely no illegality or irregularity in the verdict passed by the Tribunal.

11. Incidentally, it is also to be noted that the claim of the petitioner if acceded to, that will give rise to a series of anomalous circumstances. This is obviously for the reason that, if the petitioner starts at a lower level in the order of seniority and if sufficient promotional avenue is not there, chance to get promotion is rather bleak, and on completion of the fixed tenure, he will get one 'jump' under the TBOP Scheme. However, a person who is having better merit than the petitioner and placed at a higher level in the order of seniority, may get promotion, in turn getting one fixation benefit under F.R.22-C/F.R. 22(1)(a)(i) at such instance. Subsequently, if the persons like the petitioner/juniors, who get the higher grade under TBOP Scheme and getting the benefit of higher fixation in the same post, get functionally promoted and if they are to be given the

benefit of higher fixation once again in the same scale , they will be getting a 'double jump' and will steal a march over the seniors, drawing more pay which will be an instance of injustice and not the mandate of the Scheme /rule of law. This aspect was considered by the Apex Court as well, when the judgment was rendered in **Union of India and others vs. Ashoke Kumar Banerjee** (1998 SCC (L&S)1277). The observation in paragraph 9 in this regard is relevant and hence extracted below:

"Further, the respondent is a junior officer in the category of Junior Engineers and he has already got the benefit of the FR on completion of 15 years. If he is to be given a second benefit on the basis of the same FR, then he would be getting more than his seniors, who might have got promoted earlier and might have got benefit of the FR 22(I)(a) (i) only once. Such an anomaly was not obviously intended by the FR."

From the above, it is clear that the TBOP Scheme introduced to remedy the situation in respect of persons who could not aspire

timely promotions and thus to mitigate stagnation, cannot be interpreted to mean that the beneficiary is entitled to have the benefit of fixation at both the stages, one at the time of granting TBOP benefit and the other one at the time of granting regular promotion. The idea and understanding of the petitioner in this regard is thoroughly wrong and misconceived.

12. It has been contended by the petitioner in paragraph 3 of the Original Petition that the petitioner became qualified for promotion to the cadre of Inspector of Post Offices in the departmental competitive examination conducted in the year 1982 while he was in Army Postal Service, but was not given promotion immediately, for want of vacancies in view of abolition of number of posts and had to wait upto 05.03.1987, to be posted as Inspector. The benefit of time bound promotion in the said circumstance was extended to the petitioner and was placed in the LSG notionally w.e.f. 30.11.1983, by virtue of the eligibility of the petitioner. Had the petitioner been given promotion in the year 1982, if vacancies were available, the petitioner could have aspired only one fixation at that stage and nothing more.

Non-granting of promotion to the petitioner at that point of time (for want of sufficient vacancies) also is a pointer to the fact that his placement in the seniority list was at a lower level than the persons who got promotion to the higher post in the available vacancies of SDI. If the version of the petitioner is accepted and benefit of fixation is given at both the levels, it can only promote injustice, which cannot be done, as the law cannot be interpreted to perpetuate injustice.

In the above facts and circumstances this Court finds that Ext.P6 order passed by the Tribunal is perfectly within the four walls of law and is not assailable under any circumstance. Interference is declined and the Writ Petition is dismissed.

**P.R. RAMACHANDRA MENON,
JUDGE**

**BABU MATHEW P. JOSEPH,
JUDGE**