

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

WP(C).No. 31538 of 2007 (S)

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AGAINST THE ORDER/JUDGMENT IN OA 88/2006 of CENTRAL ADMINISTRATIVE  
TRIBUNAL,ERNAKULAM BENCH

PETITIONER(S)/(RES. 1 TO 3 IN THE ORIGINAL APPLICATION):

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1. UNION OF INDIA, REPRESENTED BY  
THE SECRETARY TO THE GOVERNMENT OF INDIA  
MINISTRY OF WOMEN & CHILD DEVELOPMENT,  
SHASTRI BHAVAN, NEW DELHI.

2. THE UNDER SECRETARY,  
MINISTRY OF WOMEN & CHILD DEVELOPMENT  
FOOD AND NUTRITION BOARD, JEEVANDEEP BUILDING  
PARLIAMENT STREET, NEW DELHI-1.

3. THE DEPUTY TECHNICAL ADVISER,  
FOOD & NUTRITON BOARD, SOUTHERN REGION, SHASTRI BHAVAN  
26, HADDOWS ROAD, CHENNAI-600 006.

BY ADV. SRI.TPM.IBRAHIM KHAN,SENIOR PANEL COUNS

RESPONDENT(S)/(APPLICANTS IN THE ORIGINAL APPLICATION):

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1. C.V.ELSI,  
EX-DEMONSTRATION OFFICER, COMMUNITY FOOD &  
NUTRITON EXTENSION UNIT, FOOD & NUTRITION BOARD  
KENDRIYA BHAVAN, C-3 BLOCK, 3RD FLOOR  
P.O.C.S.E.Z., KOCHI-682 037.

2. VALSAMMA MATHEW,  
DEMONSTRATION OFFICER, COMMUNITY FOOD & NUTRITION  
EXTENSION UNIT, PEACE HOME, TC 26/930  
PANAVILLA JUNCTION, THIRUVANANTHAPURAM.

R,R1 BY ADV. SRI.M.A.SHAFIK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22-  
07-2015, THE COURT ON 27/7/2015 DELIVERED THE FOLLOWING:

W.P.(C) NO.31538/2007

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE ORDER DATED 4/7/2007 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH IN ORIGINAL APPLICATION NO.88 OF 2006.

EXT.P2: COPY OF THE ORIGINAL APPLICATION NO. 88 OF 2006 ALONG WITH ITS ANNEXURES FILED BY THE FIRST RESPONDENT/APPLICANT BEFORE THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

EXT.P3: COPY OF THE REPLY STATEMENT FILED BY THE PETITIONERS/RESPONDENTS IN ORIGINAL APPLICATION NO. 88 OF 2006 ALONG WITH ITS ANNEXURES BEFORE THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

EXT.P4: COPY OF THE INTERIM ORDER DATED 11/2/2008 PASSED BY THE HONOURABLE SUPREME COURT OF INDIA IN SPECIAL LEAVE TO APPEAL (CIVIL) NO.1840/2008.

RESPONDENTS EXHIBITS:

EXT.R1(A): COPY OF THE JUDGMENT DATED 5/11/2007 OF THE HON'BLE HIGH COURT OF DELHI IN W.P.(C) NO.8152/2007 AND CONNECTED CASES.

/TRUE COPY/ PS TO JUDGE.

**P.R.RAMACHANDRA MENON &  
SUNIL THOMAS, JJ.**

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**W.P.(C). No.31538 of 2007**  
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Dated this the 27<sup>th</sup> day of July, 2015

**JUDGMENT**

**Sunil Thomas, J.**

Aggrieved by the order of the Central Administrative Tribunal, Ernakulam Bench, in O.A.No.88/2006, respondents 1 to 3, have approached this Court with this writ petition.

2. Both the applicants before the Tribunal were working as Demonstrator Officers in the Department of Women and Child Development Food and Nutrition Board. Both of them had entered the service on 15/3/1976 as Demonstrator/Technical Assistant. Thereafter, the first applicant was directly recruited thereafter as Demonstration Officer on 12/2/1982 in the scale of pay of Rs.5,500 - 9000 through UPSC. The second applicant was promoted as Demonstrator Officer on 12/2/1982, in the same scale of pay. They have been continuing in the service thereafter.

3. The 5<sup>th</sup> Central pay Commission, inter alia, recommended two financial upgradation for the Central

Government employees on completion of 12 years and 24 years respectively of service. The first Assured Career Progression Scheme.(ACP) was introduced with effect from 9/8/1999. The first applicant completed 12 years of service on 1994 and the second applicant, having got his first promotion, was eligible for consideration of the second ACP in 1980. Hence, as per Annexure A1, the first applicant was granted the ACP with effect from 9/8/1999 and the second applicant on the same day vide Annexure A2. The 5<sup>th</sup> Central Pay Commission had also inter alia recommended that the post of Demonstrator/Senior Technical Assistant in the pay scale of Rs.5,500-9000 be bifurcated in equal ratio as Grade I and Grade II, in the pay scale of Rs.6500-10500 for Grade I. Though the above recommendation was approved by the Ministry in 1997, it was not immediately implemented by the respondent. While so, ACP granted to the applicants along with the similarly situated other persons was objected by the audit authorities. Hence, the respondents considered the issue and bifurcation was introduced with retrospective effect from 1/1/1996, by order dated 11/3/2005. Consequently, pay scales of the applicants and similarly situated persons were revised and overpayment was

sought to be recovered by Annexures A3 and A4 orders dated 18/1/2006 and 13/1/2006 respectively.

4. The above orders were challenged by the applicants before the Central Administrative Tribunal. The Tribunal, on appreciation of the entire issue, declared that the applicants are entitled to ACP as originally afforded to them and quashed both Annexures A3 and A4. It was further directed that in case the applicants were placed at a lower pay scale than Annexure A1 and A2, the respondents shall work out the difference and pay within a period of two months from the date of communication of the order.

5. This is assailed in this writ petition by Union of India and others. Heard both sides and perused the records.

6. To quash Annexure A3 and A4, the Central Administrative Tribunal had relied on the order of the Principal Bench in O.A. No.477/2006. It appears that the issue decided in O.A. No. 477/2006 was of identical nature and the Principal Bench had relied on the decision reported in **Purushottam Lal Das v. State of Bihar** (2007 (2) SLJ SC 68). In the above decision, in an identical situation, wherein the overpayment was objected to by the audit, the Supreme Court held that when

there was no default, misrepresentation or fraud played by the applicants in their promotion, recovery of overpayment was not liable to be made. It was further held that the principles of natural justice, though cannot be put in a straightjacket formula and peculiar circumstances of the case, are to determine their applicability, yet the trite law is that even in a mistake committed by the Government, if civil consequences ensue upon a Government servant, then without following as a condition precedent, the principle of audi alteram partem, any decision taken without afford of reasonable opportunity to show cause would be opposed to the rule of law as held in **Shekhar Ghosh v. Union of India** (2007 (1) SCC (L & S), 247).

7. In the present case, there was no fault from the part of the applicants. The situation arose only because of delay in the bifurcation of grades. Further, the applicants were permitted to enjoy the benefit for long. Thereafter, when it was sought to be withdrawn, the above applicants were not given a fair hearing before the impugned orders were issued. Further it was not due to any fraud, misrepresentation of fraud committed by the applicants, that the amount was sought to be recovered from them.

7. The above facts indicate that the Central Administrative Tribunal had sustained its judgment on reasonable and valid grounds and had followed the earlier view taken by the Principal Bench in the light of the law laid down by the Supreme Court of India. Nothing has been brought on record to show that the view taken by the Principal Bench has since been interfered.

We find that no reasonable ground has been made out to take a different view and there is no scope for an interference. The writ petition is without any merits and is accordingly, dismissed.

Sd/-

**P.R.RAMACHANDRA MENON**  
**Judge**

Sd/-

**SUNIL THOMAS**  
**Judge**

dpk

**/true copy/ PS to Judge.**

