

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 27/6 day of July, 2007

Original Application No. 1532 of 1994

Hon'ble Mr. Justice Khem Karan, Vice Chairman
Hon'ble Mr. P.K. Chatterji, Member (A)

Akhil Bhartiya Dak Karmchari Sangh (Group D, Post Man and EDA) Division Badaun (UP), through its Divisional Secretary, Ashok Kumar Saxena.

. . . Applicant

By Adv: Sri R.C. Pathak

V E R S U S

1. Union of India thoroughly Secretary, Govt. of India, Ministry of Communication (Postal) Sanchar Bhawan, New Delhi.
2. Director General, Postal Department, General Post Office, New Delhi.
3. Chief Post Master General, UP Circle, Lucknow.
4. Post Master General, Bareilly Region, Bareilly.
5. Dak Adhikshak (Postal Superintendent), Badaun Division, (UP).

. . . Respondents

By Adv: Sri S. Srivastava

O R D E R

By Hon'ble Mr. P.K. Chatterji, Member (A)

This OA 1532/94 was considered by this Tribunal on 26.06.2000. After hearing the counsel the Tribunal decided the OA on the basis of preliminary objection that in the application of Akhil Bhartiya Dak Karmachari Sangh, the applicant was only a Divisional Secretary and has no right to file this OA representing the

Subrahmanya

whole cadre. The OA was dismissed as not maintainable.

2. After the decision of the Tribunal a WP No. 1782/01 was filed by the applicants before the Hon'ble High Court at Allahabad which affirmed on 14.07.2004 the decision of the Tribunal dated 26.06.2006 in OA 1532/04. Thereafter, the applicants filed Civil Appeal No. 5198/06 before the Hon'ble Supreme Court against the orders of the Hon'ble High Court Allahabad. The Civil Appeal was placed before the Hon'ble Supreme Court on 24.11.2006 whereupon the Apex Court set aside the impugned judgment of the Division Bench and the matter was remanded to the Tribunal for fresh consideration of the OA. The direction of the Hon'ble Supreme Court is as follows:

"The appeal above-mentioned being called on for hearing before this Court on the 24th day of November 2006. UPON perusing the record and hearing counsel for the parties herein. THIS COURT DOTHE in disposing of the appeal inter alia PASS the following ORDER:

".....we are of the view that the matter could be considered by the High Court on merits and the Union of India would be at liberty in raise the contention whether the appellant is an employee or not who is entitled to contest the case as a Member of the Association.

In the result, the impugned judgment of the Division Bench is set aside and the matter is remained to the Central Administrative Tribunal for fresh consideration."

3. The OA was, therefore, taken up for consideration in presence of the learned counsel for the applicant as well as the respondents in pursuance of the direction of the Hon'ble Supreme

me a h

Court and also as per request made by the learned counsel for the applicants in MA 4395/06.

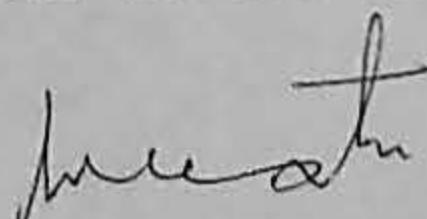
4. The OA has been filed by the Divisional Secretary, Akhil Bhartiya Dak Karmachari Sangh on behalf of about 613 Extra Departmental Employees of the Postal Division of Badaun. The petition is in favour of granting the ED employees (Presently called GDS employees) equal pay and status as that of the Departmental Postal Employees on the ground that the ED Employees were doing more or less similar work as that of regular employees and, therefore, on the principle of equal wage for equal work they were claiming parity.

5. Before going into the question further it would be necessary to give a background of the engagement of Extra Departmental Employees in the Postal Department as given by the applicant. The system of engagement of Extra Departmental Employees is in existence almost since the inception of the Department of Post over a century ago. The object underlying such engagement was a judicious blend of economy and efficiency in providing postal services to the rural areas. The need for the Postal Services in the remote/rural areas were restricted as compared to the urban areas. The department, therefore, hit upon the idea of availing of the services of School Teachers, Shop Keepers in the

M. Rehman

villages having reasonable standard of literacy and also an adequate means of livelihood who, in the leisure hours could provide the Postal Services to the Villagers, in this way combining some social service with gainful avocation. The persons selected for such job always had an alternative means of livelihood. It was a job for restricted hours. for which full time departmental employees were not required. For this reason the workers were called Extra Departmental Agents. India being a vast country it was neither possible or not necessary to provide a full time Post Offices to all the villages. But through the ED Agency services the Govt. ensured that the need for communication of the rural masses was met.

6. Matters however started changing fast after the independence. At the time of independence there were about 40,000/- Post Offices in the whole Country whereas at present the number of Post Offices has exceeded 1,50,000/-, 80% of which are in the rural areas and majority of such post Offices are manned by Extra Departmental Agents. Out of a total strength about 6 lacs employees in the Department the ED Agents constitute about 50% of the work force. It is stated in the OA that ED agents formed the backbone of the rural postal services in the Country, they render all the services which are provided by the Departmental Employees in the Urban

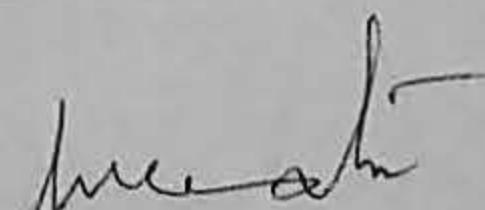
A handwritten signature in black ink, appearing to read "meath".

Areas such as collecting and delivering mail, opening and servicing Post Office Savings Banks Accounts etc. With the growth of population in the Country the work load in the rural Post Offices has quickly expanded putting a lot of strain on the ED employees. At the time of introducing the EDA Services the scope of the rural Postal Service was limited. But with the growth the EDAs were rendering as much service in terms of quantity and quality as the Departmental Employees. Therefore, maintaining a distinction between the Departmental Employees and the EDAs was anachronistic.

7. Starting from the sixties the ED Work force started agitating for redressal of their grievances for poor salary and service condition. The grievances of the Agents started engaging the attention of the Govt. The first one man Committee to look into their grievances was formed in October 1970 with the appointment of one Sri Madan Kishore as Chairman. The Committee examined the position in depth and made certain recommendations. However, most of the recommendations were not accepted by the Govt. In the eighties as a sequel to the setting up of the IV Central Pay Commission a one man Committee known as Savoor Committee was appointed by the Govt. to examine the pay structure and the service condition of the employees and to suggest procedure of periodical review of their allowances. The

Committee submitted its report in August 1986. In consequence of the recommendations of the Committee certain revisions in the condition of service of the ED employees including the pay structure was made. A third Committee under the Chairmanship of Justice Talwar was formed by the Govt. after the formation of the V Central Pay Commission to look into the Pay structure and condition of service of the ED Employees on the same way as it was done before. The Govt. examined the report of the Committee and did implement some of the proposals in part.

8. The point which has been made in this OA is that from this chronological history it would be clear that the aspiration of the ED Employees for equal treatment with Departmental employees has been appreciated and the grievances are accepted as genuine. But the Govt. however has always moved slowly perhaps due to financial consequences of giving Departmental status to all the EDAs. That is why the recommendations of the several aforementioned Committees have been implemented after a lot of revision and after curtailing them substantially. It is also stated by the applicants in the OA that the Govt. has also moved far away from the original concept of engaging part time school teachers, shopkeepers as EDA in rural areas to that of engaging educated unemployed youth in the villages. This, according to the OA, is in recognition of

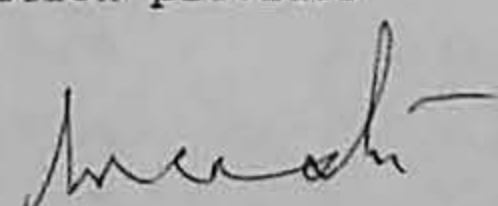


the fact that a part time service by such people was no longer adequate to meet the burgeoning needs of postal service in the rural areas due to the growth in population and development of economy. Therefore, the idea of a part time service for providing postal work was outdated. It has outlived its purpose and should be scraped.

9. It is also stated by the applicants that they have been victim of exploitation and inequality. While they render as much service in volume as that of the Departmental Employees, they are not treated at par. Not only are they given much less wage, other conditions of service also were much less favorable.

10. It was also brought to the notice of the Tribunal that the matter regarding the EDAs has gone for consideration of different Tribunals/Courts including the Hon'ble Supreme Court. It has also been stated by the applicant that in some cases the Hon'ble Supreme Court has made illuminating observations in favour of the EDAs as it would be evident from the observations of the Apex Court in 1990 (2) SCC 396 (page 403/405)

"We have referred to several precedents- all rendered within the current decide to emphasize upon the feature that equal pay of equal work and providing security for service by regularizing casual employment within a reasonable period have been unanimously accepted by the Hon'ble Supreme Court as a Constitutional goal to our socialistic policy. Article 141 of the Constitution provides

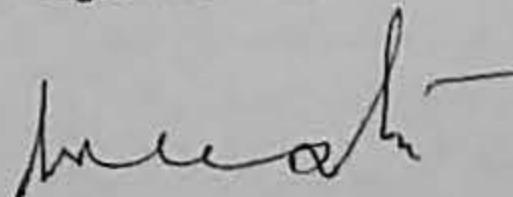


how the decision of this Court are to be treated and we do not think there is any need to remind the instrumentalities of the State be it of the Centre or the State, or the public sector that the Constitution makers wanted them to be bound by what this Court said by way of interpreting the law"

11. The applicants have also cited some part of the Apex Court judgment in relation to a petition of Casual Labours working in the Post and Telegraph Department 1988 (1) SCC 122 (Page 129-131)

"It may be true that the petitioners have not been regularly recruited but many of them have been working continuously for more than a year in the department and some of them have been engaged as casual labourers for nearly ten years. They are rendering the same kind of service which is being rendered by the regular employees doing the same type of work. Clause (2) of Article 38 of the Constitution of India which contains one of the Directive principles of State Policy provides that "the State shall, in particular, strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas of engaged in different vacations. Even though the above directive principles may not be enforceable as such by virtue of article, 37 of the Constitution of India, it may be relied upon by the petitioners to show that in the instant case they have been subjected to hostile discrimination. It is urged that the State cannot deny at least the minimum pay in the pay scale of regularly employed work men even though the Government may be compelled to extent all the benefits enjoyed by regularly recruited employees. We are of the view that such denial amounts to exploitation of labour. The Government cannot take advantage of its dominant position, and compel any worker to work even as a casual labourer has agreed to work on such low wages. That he has done because he has no other choice. It is poverty that has driven him to that State. The government should be a model employer. We are of the view that on the facts and in the circumstances of this case the classification of employees into regularly recruited employees and casual employees for the purpose of paying less than the minimum pay payable to employees in the corresponding regular cadres particularly in the lowest ranks of the department where the pay scales are the lowest is not tenable....."

12. It is further stated by the applicants who cited form the Apex Court decision in the Superintendent of Post Offices Vs. P.K. Rajamma 1977



(3) SCR 678 that the EDAs were not casual workers but they held Posts under the administrative control of the State. It was apparent from the rules that the employment of EDAs was in a post which existed "APART FROM" the person. Though such post is outside the regular Civil Services, there was no doubt that it was a post under the State. The test of a Civil Post laid down by the Apex Court in Kanak Chandra Dutta's case were satisfied in the case of EDAs.

13. With the above submission the applicant has claim following reliefs:

- "a. issue a direction commanding the respondents to regularize the services of ED Employees as regular employees; to pay equal emoluments to the employees to that of their regular departmental counter parts;
- b. issue direction to the respondents to treat the services of the ED Employees for a period of 8 hours in a day by directing the respondents to open the rural post offices for eight hours per day.
- c. issue an order or direction enforcing the fundamental rights of the ED employees enshrined under Articles, 14, 16, 21, 38 (2) and 39(d) of the Constitution of India.
- d. award costs of this claim petition in favour of the claimants; and/or such and other or further orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice and circumstances of the case."

14. During the arguments the learned counsel for the applicant cited from the judgments of the Apex Court from different cases, in which view was taken that the case of the EDAs should be considered in terms of the principle of equal pay for equal

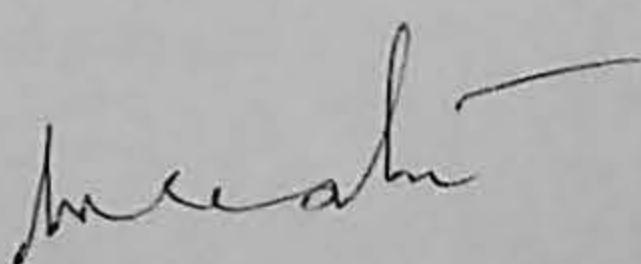
me a

work. The case laws and the extracts from the decision are as follows:

A. 1990 (2) SCC 396 Dharwad District P.W.D
Literate Daily Wage Employees Association &
Ors. Vs. State of Karnataka: -

" Equal pay for equal work and providing security for service by regularizing casual employment within a reasonable period have been unanimously accepted by the Supreme Court as a constitutional goal to our socialistic policy. What the Supreme court has said by interpreting law on this subject would be binding on the instrumentalities of the State- be it of the Centre or the State- by virtue Article 141. The philosophy of the Court as evolved in various cases is not that of the Court but is ingrained in the Constitution as one as one of the basic aspects and if there was any doubt on this there is no room for that after the Preamble has been amended and the Forty second Amendment has declared the Republic to be a socialistic one. The relevant constitutional philosophy must be allowed to become a part of every man in this country, then only would the Constitution reach everyone and he or she would be nearer the goals set by it. That perhaps can happen in every filed."

B. AIR 1988 (SC) 519 Delhi Municipal Karmachari
Ekta Union Vs. P.L. Singh and)ors: -



"3. After hearing the learned counsel for the parties we find that the Delhi Municipal Corporation has practically no tenable defence to the claim made by the workmen. There is no justification for the Corporation extracting the same amount of work from the workmen concerned on payment of daily wages at rates lower than the minimum salary which is being paid to other workmen who have been recruited regularly even though the workmen involved in this case have been working for a number of years. Nearly six years have elapsed from the date of the reference but without any change in the attitude of the Corporation."

C. 1986 (1) SCC 637 **Direndra Chamoli & Anr. Vs.**

State of U.P: -

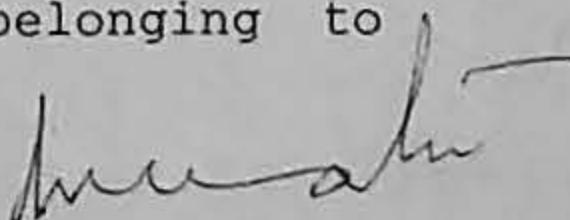
"2. It is peculiar on the part of the Central Government to urge that these persons took up employment with the Nehru Yuvak Kendras knowing fully well that they will be paid only daily wages and therefore, they cannot claim more. This argument lies ill in the mouth of the Central Government for it is an all too familiar argument with the exploiting class and a welfare State committed to a socialist pattern of society cannot be permitted to advance such an argument. It must be remembered that in this country where there is so much unemployment, the choice for the majority of people is to starve or to take employment on whatever exploitative terms are offered by the employer. The fact that these employees accepted employment with full knowledge that they will be paid only daily wages and they will not get the same salary and conditions of

Meech

service as other Class IV employees, cannot provide an escape to the Central Government to avoid the mandate of equality enshrined in Article 14 of the Constitution. This article declares that there shall be equality before law and equal protection of the law and implicit in it is the further principle that there must be equal pay for equal value. These employees who are in the service of the different Neharu Yuvak Kendras in the country and who are admittedly performing the same duties as Class IV employees, must therefore get the same salary and conditions of service as Class IV employee. It makes no difference whether they are appointed in sanction post or not. So long as they are performing the same duties, they must receive the same salary and conditions of service as Class IV employees."

D. 1988 (1) SCC 122 National Federation of P&T
Employees Vs. UOI & Ors : -

" Unless a sense of belonging to the organization engaged in production arises in a workman, he will not put forward his best effort to produce more. That sense of belonging arises only when he feels that he will not be turned out of employment at the whim of the management. It is for that reason that as far as possible security of work should be assured to the employees so that they may contribute to the maximization of production. It is again for this reason that managements and the governmental agencies in particular should not allow workers to remain as casual labourers or temporary employees for an unreasonably long period of time. The employees belonging to



skilled, semi skilled and unskilled classes can be shifted from one department to another even if there is no work to be done in a given place. Our wage structure is such that a worker is always paid less than what he produces and if any worker remains idle on any day, the country loses the wealth that he would have produced during that day. It is against this background that non-regularization of temporary employees or casual labour for a long period can be said to be not a wise policy. The respondents are, therefore, directed to prepare a scheme on a rational basis for absorbing as far as possible the casual labourers who have been continuously working for more than one year in the posts and Telegraph Department."

E. 1987 (SUPP) SCC 658 U.P. Income Tax Department
 Contingent Staff Welfare Association Vs. UOI &
 Ors : -

"3. When this petition came up for admission the court directed that this case should be listed after the disposal of the Writ Petition No. 373 and 302 of 1986 instituted by the daily rated casual labour employed in the Posts and Telegraph Department, since the questions involved in this case and in those two writ petitions were almost the same. By its judgment dated October 27, 1987 in Daily Rated Casual Labour Employed under P&T Department through Bhartiya Dak Tar Mazdoor Manch Vs. Union of India, this Court has issued the following directions as regards the claim of the daily rated workmen involved therein for higher wages : (SCC p. 130, para 8)

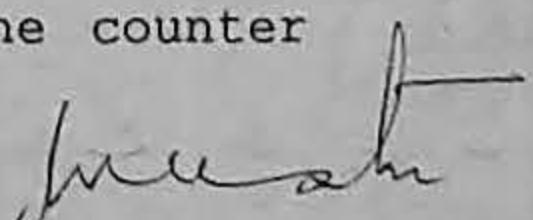
meat

We accordingly direct the Union of India and the other respondents to pay wages to the workmen who are employed as casual labourers belonging to the several categories of employees referred to above in the Posts & Telegraphs Department at the rates equivalent to the minimum pay in the pay scales of the regularly employed workers in the corresponding cadres but without any increments with effect from February 5, 1986 on which date the first of the above two petitions, namely, Writ Petition No. 302 of 1986 was filed. The petitioners are entitled to corresponding dearness allowance, if any, payable thereon. Whatever other benefits which are now being enjoined by the casual labourers shall continue to be extended to them.

4. On the claim for regularization of the services of the workmen involved in the abovementioned case, this Court issued the following direction : (SCC p. 131, para 9)

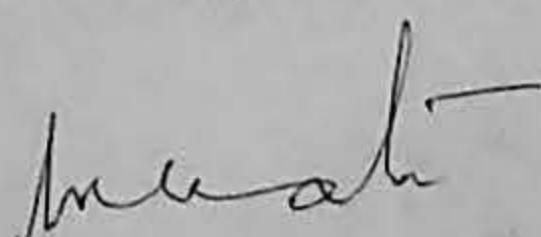
We, therefore, direct the respondents to prepare a scheme on a rational basis for absorbing as far as possible the casual labourers who have been continuously working for more than one year in the posts and Telegraphs Department.

5. The facts and circumstances of the present case are similar to the facts and circumstances of the case relating to the daily rated labour in the Posts and Telegraphs Department. We have carefully considered the pleas in the counter



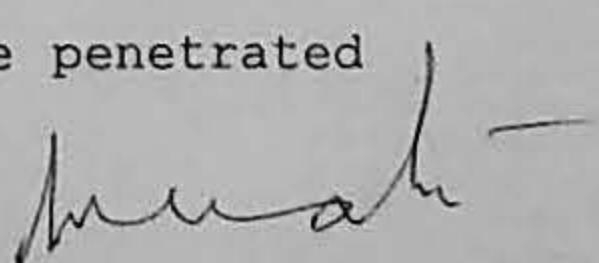
affidavit. The government orders providing for the absorption of the contingent paid staff are hedged in by a number of conditions. We also find that many such employees have been working on daily wages for nearly eight years and more. We are not satisfied with the scheme which is now in force. We are, therefore, of the view that in this case also we should issue the same directions as in the above decision for the reasons given by the Court in the above decision. We accordingly allow this writ petition and direct the respondents to pay wages to the workmen who are employed as the contingent paid staff of the Income Tax Department throughout India, doing the work of Class IV employees at the rates equivalent to the minimum pay in the pay scale of the regularly employed workers in the corresponding cadres, without any increments with effect from December 1, 1986. Such workmen are also entitled to corresponding Dearness Allowance and Additional Dearness Allowance payable thereon. Whatever other benefits which are not being enjoined by the said workmen shall continue to be extended to them. We further direct the respondents to prepare a scheme on a rational basis for absorbing as far as possible the contingent paid staff of the Income Tax Department who have been continuously working for more than one year as Class IV employees in the Income Tax Department."

15. By opposing the points made by the Applicants and their learned counsel the learned counsel for the respondents stated that the rules governing the service of the ED Employees were different and it



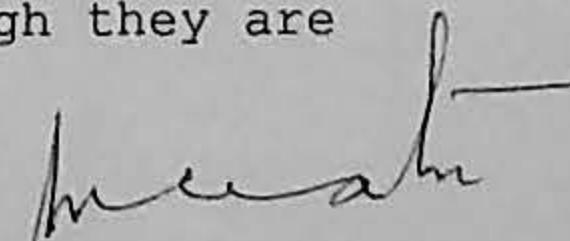
clearly stated that the service could not be treated at par with the Departmental Employees. By countering the claim of the applicants that they were doing as much work as the Departmental Employees, the respondents stated that the work hours of EDAs were restricted to 2 to 5 hours. This is not intended as a full time job. For this reasons in the service conditions it is laid down that the agents had an adequate alternative means of livelihood. It has also been stated by the respondents in reply that over the years the Govt. has brought about improvements in the pay structure and other service conditions of the EDAs. There is a method of periodical revision of the pay. Not only that the remuneration being paid to the EDAs have gradually been increased. Different allowances such as conveyance, Bicycle allowances have also been introduced.

16. While in this way there has been gradual improvement in the pay structure and amelioration of the service conditions the respondents have also stated that it would not necessary to bring them at par to the departmental employees. The learned counsel for the respondents during the arguments stated that in recent years the volume of Postal Business in rural areas has gradually decreased due to advent of alternative means of communication such as E-mail, Mobile Phone etc. Banks have penetrated



in rural areas also. As result the Postal Saving Bank has also dwindled. There are many village post Offices which received practically no mail to be delivered. The number of Postcard/Inland cards/stamps sold in the counter is also negligible. In such a situation it was not at all justified to bring the ED Employees at par with the Departmental Employees.

17. It is also stated by the learned coounse for the respondents during the arguments that decision on condition of services of the employees including those of the part time and casual employees were the prerogative of the executive. These are not for Courts/Tribunals to interfere with unless there is a patent violation of the Constitutional provisions. the learned counsel for the respondents strongly refuted that there was violation of the Constitutional Provision including Article 14, 16, 21, 38 (2) and 39 (d) as stated by the applicants. It is stated by the learned counsel that the Govt. was not making any hostile discrimination between the two groups of employees, nor was there any exploitation as the present pay structure would indicate that remuneration in a prorate basis is provided vis-a-vis to the departmental employees. However, it would not be possible to provide retiral benefits like pension to the EDAs as per their present condition of service although they are



not casual employees, they are rendering part time agency function and providing retiral benefits like departmental employees is not admissible as per the relevant rules.

18. We have gone through the pleadings, heard the arguments of the counsel for the parties. The learned counsel for the applicant has talked about the principle of equal pay for equal work and stated that since the EDAs are doing the same work in quantity and quality it is necessary to give them the benefit by extending the principle. The learned counsel for the respondents however, strongly refuted that the EDAs were doing equal work as the departmental employees. He has stated that firstly, their work hours are restricted from 2 to 5 hours. He has also stated that at present the work load of the rural Post Offices has drastically reduced. With this development the claim of EDAs on principle of Equal Pay for Equal work has also lost its rationale.

19. We have applied our mind to this aspect of equal pay for equal work. Apart from the arguments placed by the learned counsel for the respondents, we have also viewed the matter in the light of the judgment of the Apex Court in different cases. The position at present more or less is that the Principle of equal pay for equal work applies to

meah

those who are equally placed in all respect. Such equality is not to be interpreted on the basis of the work hours alone. Distinctions in scales of pay made on the basis of educational qualification and such other factors as monetary and other responsibility entrusted to the employees would also be determining factors in scales of pay.

20. The rules of service of the EDA are all enshrined in the GDS service rules at present. Earlier it was EDAs rules (at the time when the OA was filed). Both the rules make it clear that the conditions of service on which the Agents are employed are not the same as that of the departmental employees. Unless those rules are made ultra-vires and amended, it is not possible to revise the condition of service of the EDAs including the pay structure. We do not find that the rules of service has been challenged in this OA. However, by going through the entire gamut of the issue and after applying our mind fully to it we are of the view that the requirement and conditions of service of the EDAs are not the same as the Departmental Employees. It is a different matter that in some of rural offices the EDAs are sometimes compelled to work beyond their scheduled work hours due to excessive work load. But this is an exception. In a large of majority of rural Post Offices the EDAs have much less work load compared

M. S. A.

to the departmental employees as stated by the respondents. Therefore, it is neither necessary nor reasonable to treat both the groups at par.

21. In course of arguments learned counsel for the respondents also informed us that due to huge proliferation of the Rural Postal Network there is a lot of burden on a Govt. spending. A large percentage of the Post Offices in the rural areas are un-remunerative. Since independence the network has increased manifold. It was due to socio political reasons and also with a view to providing universal service in communication. Postal Services used to be the only provider of the Universal Services as far as communication was concerned. There was no other means of communication except Physical transmission of written communication. Over the last few decades the situation has changed. There has been electronic means of communication which started replacing the physical transmission of letters gradually since 60's. In addition to this there was an advent of private couriers for transmission of written communication. These two developments have diminished the volume of mail substantially. Moreover, the postal services are no more seen as sole provider of Universal Services in communication.

meash —

22. It has led to a situation where the work in the rural Post Offices has decreased considerably. The work which EDAs preformed in this rural network has also decreased in consequence. As a result the postal management was constrained to keep the network under constant review to rationalize the network and the physical structure so as to make it as viable as possible and to contain the expenses of Universal Services. At many offices the establishment is under review so that the number of EDAs is being cut down. The position is still in an amorphous stage and it would perhaps take considerable time when the exact requirement and structure of rural postal network will emerge. Knowing that the major part of the ED establishment don't have enough work to justify the departmental status, it is neither possible nor advisable to give all of them departmental status across the board.

23. On these considerations we are not able to find any merit in this OA which is, therefore, dismissed. No cost.

Murad
27.7.07
Member (A)

V. Datta
Vice-Chairman

/pc/