

12

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 347 OF 1996

Cuttack, this the 8th day of March, 2000

Subash Chandra Nayak Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.

(SOMNATH SOM)
VICE-CHAIRMAN

8/3/2000

13
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 347 OF 1996
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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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Subash Chandra Nayak,
aged about 34 years, son of Khetrabasi Nayak,
At/PO-Byree, Dist.Jajpur, now working as ED Packer and in
addition to that as EDMC in Byree S.O. Byree ...Applicant

Advocates for applicant - M/s Pradipta
Mohanty
D.N.Mohapatra
G.Sahoo
Smt.J.Mohanty

Vrs.

1. Union of India, represented by the Chief Post Master General, Orissa Circle, Bhubaneswar, District-Khurda.
2. Superintendent of Post Offices, Cuttack South Division, At/PO/Dist.Cuttack-753001.
3. Sub-divisional Inspector (Postal), Central Sub-Division, Cuttack, At/PO/Dist. Cuttack-753 001.
..... Respondents

Advocate for respondents - Mr.Ashok Mohanty
Sr.C.G.S.C.

ORDER

J.S.M.
SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to the respondents to pay him extra allowance for the extra work done during the period from 27.7.1983 to 21.6.1990 and again from 10.1.1996 till date. He has also prayed for getting cycle allowance. The third prayer is for a direction to the respondents to dispose of his representation at Annexure-6 within a specified time limit and for quashing the order at Annexure-7. The fourth

prayer is for a direction to the respondents to go on paying cycle allowance and not to deduct the same for the purpose of recovery.

2. The case of the applicant is that he was appointed as E.D.Packer-cum-E.D.D.A. on 6.7.1983 in the order dated 12.7.1983 at Annexure-1 in Byree E.D.S.O. This ED Sub-Post Office had the delivery area covering 17 villages. The establishment consisted of one EDSPM, one EDDA and one EDDA-cum-ED Packer. The applicant was performing the duties of both EDDA and EDDA-cum-ED Packer. As this was extra-departmental work he was not required to work for more than five hours. As the delivery area was confined to 17 villages it was possible for the applicant to perform the duties of ED Packer-cum-EDDA within five hours. The wages for ED Agents have been fixed by different circulars of Central Government at a graduated scale for duty for less than two hours, for more than two hours and for maximum five hours. On 27.7.1983 the EDSO, Byree, became Departmental S.O. and another four Branch Post Offices were included in the area and the entire delivery area was expanded. With the existing staff the extra work was handled and therefore the applicant was compelled to work for six to ten hours, but he was not paid extra remuneration for this excess period and for performing excess work, though he claimed for the same. On 21.6.1990 another E.D.Branch office was opened at Barunia taking out some area of Byree S.O. and since then one EDDA of Byree S.O. performed the duties in the delivery area of Barunia EDBO. Though the applicant was performing extra duty prior to 21.6.1990 he has not been paid extra

allowance despite the recommendation of Superintendent of Post Offices, Cuttack South Division (respondent no.2) for extra payment of Rs.50/- per month from 27.7.1983 to 21.6.1990. The applicant moved respondent nos. 2 and 3 for on several occasions praying for payment of allowances for extra work. Respondent no.2 in his visiting remarks had stated that taking into account the quantum of work one post of separate ED Packer should be provided to Byree S.O. From the visiting remarks it is clear that the applicant was performing excess work for another post. The matter was also taken up by the Union. The applicant has enclosed the proceedings of the meeting with the Union held on 29.3.198 at Annexure-3 in which on the demand of the Union that extra allowance of Rs.50/- should be paid to the ED Packer, Byree S.O. as he was performing double work, from the Department's side it was mentioned that the proposal is still under compilation for submission to Circle Office. The applicant has stated that the Sub-Divisional Inspector (Postal), Central Sub-Division, Cuttack (respondent no.3) in his inspection report dated 26.6.1989 also indicated the justification for payment of extra remuneration to the applicant. The applicant has further stated that in order dated 21.6.1990 at Annexure-4 the delivery area of EDDA-I came under Barunia B.O. consequent upon opening of the said Branch Office with effect from 21.6.1990. As such the delivery work assigned to ED Packer of Byree S.O. should be assigned to EDDA-I and the work of ED Packer and EDDA-I will be managed accordingly. It was also ordered that ED Packer will continue to clear the letter box at Byree Railway Station as before. As the applicant was not being paid any extra remuneration he approached the Tribunal in

in OA No. 626 of 1994 for a direction for payment of extra allowance of Rs.50/- per month from 27.7.1983 to 21.6.1990. The Tribunal in their order dated 2.11.1994 (Annexure-5) disposed of the OA at the stage of admission directing that representation should be filed within one week and shall be disposed of within 15 days from the date of receipt of such representation. In compliance with the aforesaid direction dated 2.11.1994 the applicant filed a representation on 9.11.1994 (Annexure-6), but the same was not disposed of within fifteen days as directed by the Tribunal. Again in order dated 10.1.1996 (Annexure-7) services of Bijaya Kumar Nayak, EDMC, Byree S.O. were terminated and the work of Shri Nayak was entrusted to the applicant and he was directed to exchange mails at Byree Railway Station and EDMC, Chhatia-Byree Line was directed to receive incoming mail at Railway Station in addition to their own duties without any extra remuneration. It was also ordered that this arrangement would continue until further orders. The applicant has stated that because of order dated 10.1.1996 he was again given additional work but without any extra allowance. The applicant has stated that he is engaged from 9 A.M. to 8 P.M. everyday. He has also stated that as ED Packer of Byree S.O. since 21.6.1990 he is having full time workload for eight hours from 9 A.M. to 5 P.M. but he is getting allowance for maximum of five hours per day. He has filed further representation on 12.2.1996 (Annexure-8). The applicant has further stated that from January 1996 from his salary Rs.120/- per month has been deducted without any rhyme or reason indicated to him in writing. He ascertained and came to know that the same is being deducted towards

S. Som.

recovery against payment of cycle allowance of Rs.20/- per month already made to him from 21.6.1990 till 31.12.1995. From 1.1.1996 payment of cycle allowance has been stopped. Against such illegal deduction the applicant has made a further representation dated 16.3.1996 at Annexure-9 but without any result. He has further stated that he is supposed to work as ED Packer only and this work is confined only to the Post Office, but he has been entrusted the work of clearing the letter box at Railway Station, Byree, which is the work of EDDA. Accordingly, for covering the distance of 10 KM per day he is entitled to cycle allowance of Rs.20/- per month. The applicant has furtherstated that prior to 21.6.1990 the applicant was performing the duties of ED Packer -cum- EDDA and was also getting cycle allowance at the rate prevalent then. As his representations filed from time to time have not been considered, the applicant has come up in this petition with the prayers referred to earlier.

3. The respondents have filed counter opposing the prayers of the applicant. They have stated that the claim of the applicant for extra allowance from 6.7.1983 to 21.6.1990 is without any merit and is also barred by limitation. The respondents have also stated that the applicant was initially appointed as ED Packer-cum-EDDA, Byree EDSO with effect from 6.7.1983. As he was ED Packer-cum-EDDA he was required to work as Packer as well as perform delivery work in some of the villages of Byree EDSO assigned to him. The other villages coming within the delivery zone of Byree SO were being served by the other EDDA. Byree EDSO was subsequently upgraded to a Departmental SO with effect from 27.7.1983. The staff strength consisted of one Time

Scale Sub-Post Master, one EDDA, one ED Packer-cum-EDDA and one EDMC. The applicant was ordered to work as ED Packer-cum-EDDA with the same delivery jurisdiction which was kept under him when the S.O. was not upgraded. Consequent upon upgradation, four Branch Offices were tagged to the S.O. The applicant worked as ED Packer-cum-EDDA from 6.7.1983 to 5.9.1990 without any change in the delivery jurisdiction of the applicant. Later on in 1990 a Branch Office was opened in Barunia village and five villages from the delivery jurisdiction of Byree S.O. were transferred and tagged to the newly opened Branch Office and the entire delivery area of the applicant was transferred to EDDA-1 consequent upon transfer of some of the villages from the delivery jurisdiction of Byree S.O. As such the applicant performed only the duties of ED Packer with effect from 1990. The workload of the applicant was accordingly calculated to be 1 hour 53 minutes only basing on the statistical information collected from Byree S.O. Before transfer of the delivery area of the applicant to the other delivery agent, the monthly allowance of the applicant was fixed at Rs.420/- per month plus DA as admissible as per the workload. The workload of the applicant in the capacity of only ED Packer, Byree SO did not justify giving of monthly allowance of Rs.420/- which he was getting previously. Therefore, he was ordered to clear one letter box in Byree Railway Station with effect from 21.6.1990 and to exchange outgoing mails of Byree S.O. at Railway Station with effect from 10.1.1996 consequent upon termination of services of EDMC, Byree S.O. The respondents have stated that the workload of the applicant in the capacity of ED Packer, Byree S.O. including the work of clearance of letter box and exchange of mail at Byree Railway Station

comes to 2 hours, 15 minutes and 15 seconds. On the basis of this workload his monthly allowance comes to Rs.270/- as against the minimum allowance of Rs.240/- and maximum of Rs.420/- per month. According to the departmental instructions, EDDA/EDMC and other ED Agents except EDBPMs/SPMs can get maximum monthly allowance of Rs.420/- payable for 5 hours of work. But the applicant is getting maximum allowance of Rs.420/- plus DA although the present workload of the applicant does not justify retention of the maximum allowance which he is getting at present. Consequent upon posting of EDMC, Byree SO on 7.6.1996 the work of exchange of outgoing mail at Byree Railway Station entrusted to the applicant has since been transferred and the applicant has been working as ED Packer, Byree SO with effect from 8.6.1996. He is not getting any cycle allowance as the same is not admissible as per the departmental rules. The respondents have denied the averment of the applicant that he is performing double duty. The respondents have further stated that respondent no.2 had made no recommendation for payment of Rs.50/- as extra allowance from 27.7.1983 to 5.9.1990. It is stated that the applicant had approached respondent nos. 2 and 3 for extra allowance for alleged excess work but his request was considered and rejected as he had worked for less than five hours. As regards direction of the Tribunal it is stated that the applicant in his representation had prayed for payment of extra allowance of Rs.50/- per month for alleged performance of work for more than 10 hours. The representation was duly considered and it was found that the sanctioned post of the applicant was of EDDA-cum-ED Packer and the applicant has been granted maximum allowance as per workload. Accordingly, his representation

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was considered and rejected and the direction given by the Tribunal was duly complied with. The respondents have further stated that it is a fact that the applicant was ordered vide Annexure-7 to exchange outgoing mail at Byree Railway Station consequent upon termination of services of EDMC with effect from 10.1.1996. This was done because the workload of the applicant was less than 5 hours. In view of this, the applicant is not entitled to any extra allowance because of discharging the aforesaid duty. It is stated that the above arrangement was temporary and consequent upon appointment of EDMC the work of exchanging mail has been withdrawn from 8.6.1996. The applicant has the workload of 1 hour 53 minutes, but there has been no reduction in his monthly allowance. The respondents have further stated that while the applicant was working as EDDA prior to 5.9.1990 he was getting monthly allowance as admissible along with admissible cycle allowance. As the cycle allowance was not admissible, the said allowance was recovered from the applicant. It is further stated that from 5.9.1990 the applicant is not entitled to get cycle allowance and therefore his prayer for restoration of the cycle allowance is without any merit. Lastly, it has been stated that the applicant was working in the sanctioned post of ED Packer-cum-EDMC of Byree S.O. and was being paid the maximum allowance. In that post he was getting monthly cycle allowance. He was ordered by respondent no.3 to work as ED Packer and to clear the letter box at Byree Railway Station in the order at Annexure-4 but he was paid cycle allowance at the rate of Rs.30/- per month with effect from 5.9.1990. As he is not entitled to this amount, this was recovered. On the above grounds the respondents have opposed the prayers of the applicant.

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4. I have heard Shri Pradipta Mohanty, the learned counsel for the petitioner and Shri Ashok Mohanty, the learned Senior Standing Counsel for the respondents and have also perused the records.

5. The applicant himself has stated in paragraph 4(ii) of the OA that he was appointed as ED Packer-cum-EDDA with effect from 6.7.1983. From this it is clear that his job not only included his responsibility as ED Packer which is confined to the Post Office but also as EDDA. The applicant has stated that initially the Byree EDSO had 17 villages within its delivery area. He has merely stated that he was performing the duty of EDDA-cum-ED Packer. He has not stated that he was doing delivery work in all the 17 villages. The respondents, on the other hand, have stated that at that time some of the villages of Byree EDSO were assigned to him and the other villages were served by another EDDA of Byree EDSO. This contention of the respondents made in the counter has not been denied by the applicant. The respondents have further stated that even when EDSO, Byree, became a departmental Sub-Post Office and another four Branch Offices were included in the area of jurisdiction of Byree S.O. there was no change in the delivery jurisdiction of the applicant. They have further stated that in 1990 another Branch Office was opened at Barunia and five villages from the delivery jurisdiction of Byree S.O. were transferred and tagged to the newly opened Branch Office at Barunia. They have also stated that after this the entire delivery area of the applicant was transferred to EDDA-1 and the applicant was only performing the duty of ED Packer and he was also asked to clear one Letter Box at Byree Railway Station from 21.6.1990 and to exchange outgoing mail of

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Byree S.O. at Byree Railway Station with effect from 10.1.1996 when services of Bijaya Kumar Nayak were terminated. These averments again have not been denied by the applicant. From this it is also clear that with the upgradation of Byree EDSO to Departmental Sub-Post Office there was no increase in the workload of the applicant. His workload consisted of the work of ED Packer as also clearing the Letter Box in Byree Railway Station. The applicant has stated that he has been working for more than five hours. The respondents, on the other hand, have pointed out that his workload was calculated to be 1 hour and 53 minutes. But before transfer of the delivery area from the applicant to the other EDDA the applicant was getting allowance of Rs.420/- plus DA per month which was the maximum allowance admissible to an ED Agent. As his workload as ED Packer alone did not justify payment of allowance at the above rate, he was asked to clear the Letter Box at the Byree Railway Station. It further appears from Annexure-A to the counter that in pursuance of the order of the Tribunal in OA No. 626 of 1994, the Superintendent of Post Offices, Cuttack South Division, granted the applicant a personal hearing and recorded a reasoned order as directed by the Tribunal. The Superintendent of Post Offices has stated in this order that with effect from 5.9.1990 delivery work was withdrawn from the applicant and the applicant was entrusted with clearance of Letter Box at Byree Railway Station only once daily. The Superintendent of Post Offices has also noted that the distance of the Railway Station from the old Byree S.O. was 2 K.Ms. and therefore the applicant's average cycling was to the extent of 8 K.Ms. per day. The Sub-Post Office was shifted from the old building to a new building and the Superintendent of Post Offices has noted

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that he has personally verified that the distance of the new building from Byree Railway Station is $\frac{1}{4}$ K.M. and as such the applicant's daily cycling comes to only 2 K.Ms. per day. The learned Senior Standing Counsel has enclosed Director-General, Posts' letter dated 15.7.1987 which was issued after considering the recommendation of Savor Committee on fixation of remuneration of E.D. Agents. In this circular it has been mentioned that for EDDAs, EDMC and other ED Agents cycle allowance was increased from Rs.8/- to Rs.20/- subject to the condition that the distance covered is 10 KM or more. It was also mentioned that this would take effect from 1.11.1986. Therefore as the distance from Byree S.O. to the Byree Railway Station and the distance covered by the applicant for clearing the Letter Box was less than 10 K.Ms. both in respect of the old building of Byree SO and also new building of Byree SO, the applicant's case is not covered by the above circular of Director General, Posts, because he was covering less than 10 K.Ms. per day. In view of this, it is held that the applicant is not entitled to get cycle allowance as prayed for by him. This prayer is accordingly rejected.

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6. The other aspect of the matter is that he was actually paid cycle allowance of Rs.20/- per month from 21.6.1990 to 31.12.1995, as mentioned by the learned counsel for the petitioner during hearing of the petition. The respondents in paragraph 22 of the counter have stated that he was paid cycle allowance at the rate of Rs.30/- per month from 5.9.1990 to which he was not entitled and accordingly the amount was recovered. The learned counsel for the petitioner has stated that as the cycle allowance was paid to him by the respondents themselves, this amount

should not have been ordered to be recovered from him. In support of his contention the learned counsel for the petitioner has relied on the case of R.B.Saxena v. Union of India and others, 1996(2) SLJ (CAT) 142 in which Jodhpur Bench of the Tribunal has taken note of decision of the Hon'ble Supreme Court in the case of Sahib Ram v. State of Haryana and others, 1995 SCC (L&S) 248, in which it has been held that if the payment has been made not because of any fault on the part of the Government servant, the amount should not be recovered. In this case, according to the circular which came into force from 1.11.1986 cycle allowance was not payable to the applicant, but by mistake the cycle allowance was paid to him. This amount has also been fully recovered in the meantime as has been mentioned by the learned counsel for the petitioner in course of hearing. In view of this, the prayer of the applicant not to recover any amount from his allowance has become infructuous. The applicant has further stated that before recovery no order of recovery was issued to him and no showcause notice was also given to him. But as the applicant is not entitled to the cycle allowance in accordance with the circular referred to by me because his cycling was less than 10 K.M. per day, by not giving a showcause notice the applicant has not been prejudiced in any way. The applicant has also not made any averment as to how he has been prejudiced because no showcausenotice has been issued to him.

7. In the result, therefore, the Original Application is held to be without any merit and the same is rejected. No costs.

Somnath Som
(SOMNATH SOM)
8/3/2000
VICE-CHAIRMAN