I/8

CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH: JODHPUR.

Original Application Nos. 05, 06 & 23/2005

Date of decision: 8th April 2005

Hon'ble Mr. J K Kaushik, Judicial Member.
Hon'ble Mr. G.R. Patwardhan, Admn Member.

Original Application No. 5/2005

1.All India Postal Extra Departmental (GDS) employees Union, through its Divisional Secretary Shri Radhey Shyam, S/o Shri Pushkar Dutt, aged 40 years, GDS Main Peon Krashi Upaj Mandi Post Office Bhilwara, r/o Bhagwanpura, Dist. Bhilwara.
2. Gopal Krishna Patwari Son of Shri Ladu Ram Patwari, aged 43 Years, GDS Branch Post Master, (GDS BPM) Post Office Dhinkola Distt. Bhilwara r/o Village Dhinkola, Dist. Bhilwara.

Applicants

VERSUS

1. Union of India through the Secretary to the Government, Ministry of Communication (Department of Posts) Sanchar Bhawan, New Delhi.

2. Post Master General Rajasthan, Southern Region, Ajmer.

3. Superintendent of Post Offices, Bhilwara.

: Respondents.

Original Application No. 6/2005.

1. All India Postal employees Union,(Class III) through its Divisional Secretary Shri Mool Chand Jain, S/o Shri Ladu Lal Jain aged 43 years, Postal Assistant, Head Office Bhilwara, r/o A.578, Vijay Singh Pathik Nagar, Bhilwara.
2.Gehari Lal Chhipa S/o Shri Devi Lal aged 56 years, Sub-post Master, Post Office, Pur, Distt. Bhilwara, r/o House No. B-87, Ajad Nagar, Bhilwara.

Applicants.

VERSUS

1. Union of India through the Secretary to the Government, Ministry of Communication (Department of Posts) Sanchar Bhawan, New Delhi.

2. Post Master General Rajasthan, Southern Region, Ajmer.

3. Superintendent of Post Offices, Bhilwara.

4/3

Respondents.

Original Application No. 23/2005.

1.All India Postal employees Union,(Group C) through its Divisional Secretary Shri Rakesh Kumar Gupta S/o Shri Jagdish Prasad aged 52 years, Accountant, Head Post Office, Chhittorgarh, r/o Bapu Nagar, Senthi, Chhittorgarh.

2. Kanhaiya Lal Kumavat S/o Shri Omkar Lal aged 44 years sub Post Master, Post Office Chhoti Sadari, Distt. Chhittorgarh, r/o Chhotri Sadari, Distt. Chhittorgarh.
3. All India Postal Extra Departmental (GDS) Employees UnionThrough it Divisional Secretary Ram Chandra Balai, S/o Shri Ratan Lal, aged 38 years, GDS BPM Arnoda, Distt. Chhittorgarh, r/o village Arnoda, Distt. Chhittorgarh.
4. Rameshwar Lal S/o Shri Badri Lal aged 46 years, GDS Sub PostMaster, Manera, Distt. Chhittorgarh, r/o village Kanera, Distt. Chhittorgarh.

Applicants

VERSUS

1. Union of India through the Secretary to the Government, Ministry of Communication (Department of Posts) Sanchar Bhawan, New Delhi.

2. Post Master General Rajasthan, Southern Region, Ajmer.

3. Superintendent of Post Offices, Chhittorgarh.

: Respondents

Mr. Vijay Mehta : Counsel for the applicants in all the O.As

Mr. Vinit Mathur: Counsel for the respondents in all the OAs.

ORDER

Per Mr. J K Kaushik, Judicial Member.

Original Application Nos. 5/2005, 6/2005 and 23/2005, have been filed assailing the validity and propriety of order dated 03/07.12.2004 (Annex. A./1) and order dated

31.12.2004 (Annex. A/2) etc, wherein certain additional work is ordered to be entrusted to the employees of Postal Department including the Gramin Dak Sevaks (for short GDS). Since the cause of action as well as the reliefs are based on similar set of facts and common question of law are involved in all these cases, they were heard together and are being disposed of by this common order.

2. For the purpose of deciding the aforesaid OAs, we shall be taking the facts from O.A No. 5/2005. GDS, (erstwhile Extra Departmental Agents (EDAs for short), which may be succinctly put under normal circumstances, are required to perform the duties as per the norms given at Annex. A/4. On the basis of these norms workload is assessed, posts are created and the standard of working hours meant for the post of GDS enumerated. They are required to discharge their duties within the prescribed time schedule and it is alleged, there is no time left for GDS to discharge any work other than the prescribed one. They are paid allowances for their work, which is known as Time Related Continuity Allowances (TRCA for short) and the said allowance is calculated on the basis of points. Their service conditions are governed by GDS (Conduct and Employment) Rules, 2001. There is a shortage of GDS Postal Assistants in Bhilwara Division and despite the increase in workload, additional posts have not been created and on the contrary GDS Posts are

being curtailed as is evident from the communication dated 29.04.2003.

3. The further facts of the case are that most of the post offices are manned by GDS Employees as single-man offices. They are also required to carry out additional duties of GDS MC, MP, and MD and many other duties. The maximum time is taken in collecting mails and delivering the same and to achieve this one has to travel at least 10 Kms. Certain other illustrations have been adduced. Now the respondent's No. 2 has issued a letter dated 09.12.2004, communicating that there is a proposal to start Bill Mail Service with Ajmer Vidyut Vitharan Nigam Ltd (AVVNL for short) and the same is under active consideration in the Regional Office. It has been further averred that a sum of Rs. 3/- per bill shall be levied for delivering the electricity bills to the consumers and Rs.5/- per bill for collecting the amount from the consumers in addition to the Bill amount. They shall have to prepare the daily account of the amount received and then forward the accounts to the Accounts Department. They have also to affix revenue stamp on the bills amounting to more than Rs.500/-. The collected amount is also to be deposited in the account of the Nigam in SBBJ. But it is alleged there is no provision regarding any compensation to the GDS by way of any allowance for doing this extra work. It is said that due to constraint of office hours,

the completion of the volume of work would be humanly impossible. The respondents have neither created the requisite infrastructure nor created additional man power for doing the large scale work and for delivering the electricity bills and collection of the bill amount. Thousands of electricity consumers are likely to deposit their bill amounts and even blank receipts books are not available. Further no arrangement has been made for keeping the cash collected in pursuance of bills and no provision made remitting the cash from remote post offices and no security has been provided for keeping the cash. Respondent No. 2 has no jurisdiction to impose additional duties and responsibilities besides what have been mentioned in Annex. A/4. The O.A has been filed on numerous grounds mentioned in para 5 and its sub paras.

4. The respondents have filed a detailed and exhaustive reply to the O.A countering the facts and grounds raised therein. The reply includes additional para styled as 'facts in brief'. It has been averred that by now more than 150 years have elapsed, the Postal department has rendered valuable service. It is providing services not only to urban people but also to people living in extreme remote area by effectively using the existing infrastructure and resources. At this juncture of modern era, customers have legitimate expectations to avail all type of business under one roof and therefore. it is considered

expedient and necessary, for the department, to diversify its activities. It has been the endeavor of the department that revenue generating scheme should be launched so that the department becomes self-sustained at the earliest. Number of services like Greeting Post, Mutual Bonds, Pension payment, Instant International Money Transfer scheme, speed post, passport services, e-post services, express post parcel service, Business post service, Bill Mail service, Retails Post etc. have been introduced. A Business Development Directorate has been established at Central level in Delhi. New business packages including the delivery of bills of public utilities and collection of charges thereof were approved. A proposal to collect electricity bills from AVVNL and deliver the same to the consumers and collect the money from consumers and pay the same to AVVNL is also one among them but the same is yet to be implemented. It has been further averred that similar type of scheme is in operation in respect of Jodhpur Vidyut Vitharan Nigam Limited and also in some other circles/ States as well.

5. The further defence of the respondents as set out in the reply is that the present scheme is meant for the purpose of making the department self-sustained at the earliest by utilizing the existing infrastructure and resources. It is not for the applicants trade union to suggest as how the department should function and that has to be decided by the Union of India,

Department of Posts and also collectively by Postal Services Board, for which the latter is fully authorized and competent and therefore this Bench of the Tribunal would not like to interfere in the lawful orders passed by the competent authorities of the department. Hence the OAs deserve to be dismissed on this count alone. It has been averred that there is no change in the terms and conditions of service of the employees. It is also averred that after analyzing the entire functions, the competent authority may take a decision to create or abolish any post(s) depending upon the workload in the area. There are number of branches, which are running at a loss, in the Bhilwara division. Similarly postal assistants will have to work only for 7 ½ hours per day and nobody is performing their duties beyond 7 ½ hours. Certain other details have been furnished. The grounds raised in the O.A have generally been denied.

6. A short rejoinder has been filed giving certain more details regarding the work load points etc and almost reiterating the facts and grounds raised in the O.A as well as controverting the factual details brought out in the reply especially in regard to the small savings.

7. We have heard the elaborate arguments advanced by both the learned counsel for the contesting parties and have anxiously considered the rival submissions and have carefully gone through

the records of this case. The learned counsel for both the parties have reiterated their pleadings. The learned counsel for the applicants has made us to traverse through various communications and has made an endeavor to demonstrate before us that the action of the respondents is ex-facie arbitrary and whimsical. Granting more allowances to the GDS is done on the basis of points assigned for their work, but so far no points are proposed to be assigned for the additional work. As regards the other employees like postal assistants and post masters there is no provision for paying them overtime allowances. He has also submitted that single handed post offices are already over burdened with the work load and it is highly improbable to execute the additional work being thrust upon the employees without any jurisdiction. The learned counsel for the applicants has also tried to persuade us that there is acute shortage of personnel even at present and without taking the stock of the situation, the new scheme is being launched and is being given effect to. He has stressed hard to submit that it is next to impossible to execute the scheme in the present situation. Therefore, the reliefs claimed in these OAs are fully justified and deserve acceptance.

8. Per contra, the learned counsel for the respondents has vehemently opposed the contentions raised on behalf of the applicants. He has also submitted that a policy decision has been

I/16

taken at the highest level by the Ministry of Communications keeping in view the available infrastructure and then only the proposal was approved. He has submitted that until any arbitrariness or mala fide is shown, a policy decision cannot be called in question and no judicial review lies in such matters. He has also endeavoured hard to persuade us that it is difficult to understand as to in what way the trade union is aggrieved in the matter. The learned counsel for the respondents had also submitted that every effort has been made to provide requisite facilities for handling and executing the policy in question and if extra posts are required they would be created and if any over time allowance is required to be paid the same shall be paid. As regards the counting of work and assignment of points it has been said that it also shall be done. Incidentally, the second respondent was present in person in the Court and he was permitted to give additional information regarding the scheme in vogue. He has been very helpful in making clear the details of the scheme and has persuaded us to believe that every effort has been made to ensure that the scheme is a success as well as workable. He has also submitted that this scheme is not a new concept even in Rajasthan and it has been successfully launched in Jodhpur region. By now lot of experience has been gained and the difficulties which had been experienced in other regions overcome and sorted out and a clear picture is available before the respondent. The infrastructure has accordingly been

engineered so as to reduce the inconvenience to the minimum and ensure that the objectives of the policy are achieved. He has also reiterated that due care shall be taken to ensure that the work goes on smoothly and where extra man power is required the same shall be provided and where extra working hours is required provision has been made to pay them over time allowance.

9. In the rejoinder, the learned counsel for the applicant has submitted that the respondents should have made clean breast of their procedure and they should have carried out the required exercise regarding the creation of posts and the modes to deal with the extra work ought to have been set well in advance and the respondents should not have ordered the implementation of the proposal at random and taken the employees at surprise. However, he was asked a question from the Court as to whether the claim of the applicants is relating to extra payment for the additional job or against the very scheme being launched, itself. The learned counsel for the applicants has submitted that their objection is regarding the very scheme since it is not possible to work with the scheme due to various constraints including that of working hours as well as the nature of duties being performed by them under the present infrastructure.

10. We have given our anxious thought to the submissions put forth on behalf of both the parties. As far as the factual details are concerned, we consider it to point out that they are not of so much significance in the instant cases. However, we are required to answer one of the vital questions as to whether this Bench of the Tribunal would be justified in interfering with such policy matters. We may gather the proposition of law on the point from some of the decisions of the Apex Court. We refer to two such decisions in this respect with the extract of relevant portions as under:

Federation of Railway Officers Association and others vs. Union of India: [AIR 2003 SC 1344]

> Para 12. In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be unrestricted discretion. On matter affecting policy and requiring technical expertise Court would leave the matter for decision of those who are qualified to address the issue. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of the power, this court will not interfere with such matter.

State of Punjab & ors Ram Lubhaya Bagga Etc. etc. [(1998) 4 SCC 117]

> So far as questioning the validity of governmental policy is concerned in our view it is not normally within the domain of any court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying modifying or annulling it, based on however sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belongs to the executive. It is

within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints.

11. A bare perusal of the aforesaid ratio of the judgments makes it evident that in normal cases, it is not for the Courts and the Tribunals to interfere with policy decisions of the Government. Now applying the same to the facts of the instant cases, we find that the learned counsel for the applicants has pleaded that the implementation of the policy in question is not feasible under the present infrastructure. It is not the case of the any of the applicants that there is arbitrariness or that the policy is in any way inconsistent with the any of the provisions of the Constitution of India or in any way otherwise irrational. As far as the question of feasibility is concerned, we find that the respondents themselves are taking stock of the situation and have agreed to provide the requisite infrastructure in due course of time. Otherwise also what work should be assigned to whom and how much work should be allotted to an individual and what should be the standard of evaluation of work etc, are the matters within the domain of the executive to decide and as rightly said by the learned counsel for the respondents, there is hardly any scope for judicial review in policy matters. But the Courts/Tribunals can interfere with the policy decisions in exceptional matters which is not the case in the instant cases. There is no question of interfering with the policy decisions on

the pretext that there is difficulty in implementing such policy decisions. In this view of the matter, we don't find that the action of the respondents is in any way arbitrary and unfair.

12. We have come to feel that there is a general tendency that whenever changes introduced are not liked; they are first resisted and it is only after passage of time that one gets accustomed and things get normalised. This occures offen beclausle of lack of knowledge. Therefore one should try to understand the objectives of the policies which later attract even appreciations. We take judicial notice of the developments in the communication systems. There is lot of rush at STD/PCO Booths in every street and corner in the country besides increase of telephone bills and the age old work load of post offices in mail delivery appears to have reduced drastically. The use of telegram appears to have become obsolete. The printing or use of ordinary post card is negligible. It is therefore understandable that the postal department shall have to rise to the occasion to meet the new challenges so as to remain in existence. The Bill Mail service seems to be one in furtherance of such objectives and instead of putting stumbling blocks, such schemes need to encouraged and facilitated. The nation has lot of hopes especially from the Trade Unions, who are participants in the management of the industries of this country and they are expected to persuade

their member employee in a constructive and prospective manner in ensuring success in such endeavours.

13. In view of what has been said and discussed above, we are of the firm opinion that the Original Applications are devoid of merits and substance and the same are hereby dismissed. The interim order granted stands vacated. No costs.

Sd/-
(G.R.PATWARDHAN)
MEMBER (A)

Sd/-
(J.K.KAUSHIK)
MEMBER (J)

jsv

CERTIFIED TRUE COPY
Dated 8/4/05

अनुभाग अधिकारी (न्यायिक)
Section Officer (Judl.)
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
जोधपुर न्यायपीठ, जोधपुर
Jodhpur Bench, Jodhpur.

Part II and III destroyed in my presence on 09/11/14 under the supervision of section officer (J) as per order dated 18/12/13

Section Officer (Record)