

I/8

**CENTRAL ADMINISTRATIVE TRIBUNAL**

**JODHPUR BENCH.**

O.A.No.133/2006

Decided on : May 10, 2007

**CORAM : HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN &  
HON'BLE MR.R.R.BHANDARI, MEMBER (A.)**

Om Prakash Maurya S/o Shri Umed Ramji, aged about 41 years, resident of Village & Post Kantaliya, District Pali (Presently working on the post of G.D.S. B.P.M. At Village & Post Hariyamali via Sojat Road, District Pali (Raj.)

.....

Applicant

By : Mr. S.K.Malik, Advocate.

Versus

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. Superintendent of Post Offices, Pali Division, Pali Marwar (Raj.)
3. Post Master, Marwar Junction, District Pali (Raj.).

....

Respondents

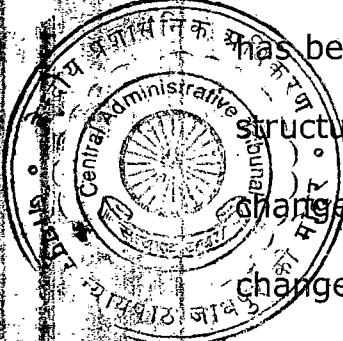
By : Mr.M.Godara, Advocate for Mr.Vinit Mathur, Advocate.

**ORDER (oral)**

**KULDIP SINGH, VC**

The applicant has filed this O.A. against in-action on the part of the respondents to grant him annual increments and bonus, due every year, to him with arrears.

2. The facts as alleged by the applicant are that he was initially appointed as EDBPM w.e.f. 10.12.1997 at Village & Post Office Hariyamali. He was issued a formal appointment order dated 10.6.1998 (Annexure A-1) It is stated that after coming into force of Postal Gramin Dak Sevak Service Rules, 2001, the post of E.D. BPM has been re designated as G.D.S. B.P.M and under the new rules pay structure, other allowances and condition of service have been changed. As per new rules, the allowance admissible to EDAs has been changed to Time Related Continuity Allowance (T.R.C.A) w.e.f. 1.3.1998 and under new rules, the TRCA for the post of BPM has been revised to Rs.1280-35-1980, for those with work load upto 3 hours



fin

JK 9

etc. The implementation of these rules were made by the Department somewhere in 2002. Thus, pay of the applicant has been fixed at Rs.1280/- but no increment and bonus due w.e.f. March, 1999 onwards has been paid to him, whereas other BPMs are paid increments and bonus regularly under the new rules.

3. He further states that he made various verbal requests from time to time but to no effect. It is further submitted that non grant of these amounts to applicant amounts to violation of articles 14 and 16 of the Constitution more so when he is discharging his duties diligently and to the satisfaction of respondents and as such he is entitled to the relief claimed for.

4. The respondents are contesting th O.A. In their reply they plead that applicant was engaged as EDBPM Village & Post Hariyamali on purely temporary and provisional basis w.e.f. 10<sup>th</sup> December, 1997 as a stop gap arrangement. It was made clear that he is being engaged in place of one Shri Laxaman Ram, so his service are required to be terminated at any time without any notice on return of Shri Laxaman Ram. They further submit that since applicant is working as a substitute, he is eligible only for payment of TRCA and as per letter dated 5.3.1989 he is not entitled to increments as increments are available to the regular GDS and provisional GDS are not entitled to get increments or productivity linked bonus as admissible to the permanent GDS employees, as per the instructions contained in D.G. Letter dated 19.9.2005 and as such the O.A. deserves dismissal.

5. We have heard the learned counsel for the parties and perused the material on the file.

6. It is not disputed that as per D.G., Posts,O.M.No.26-1/97-PC & ED Cell, dated 17.12.1998 and clarificatory circular dated 10.8.1999, as amended by O.M. Dated 5.5.2000, as published in Section II of Swamy's Postal Gramin Dak Sevak, issue 2004, page 9 thereof, Time



JK

Related Continuity Allowance (TRCA) was revised and TRCA for EDBPMs having workload up to 3 hours, is Rs.1,280-35-1,980. The case of the applicant falls having workload up to 3 hours as is apparent from pleadings of the parties. The applicant has been fixed at the minimum of the pay scale, i.e at Rs.1,280/- treating his workload up to 3 hours. The TRCA of EDBPMs having work load up to 3 hours are to be Rs.1,280-35-1,980. So, the question arises whether the applicant is entitled to increments of Rs.35/- or not.

7. Learned counsel for the applicant submitted that applicant was appointed vide letter dated 10<sup>th</sup> June, 1998 (Annexure A-1) and one of the conditions of the appointment letter provides as under :

**"Shri Om Prakash (name of the selected candidate) shall be governed by the Extra-Departmental Agents (Conduct and Service) rules, 1964".**

Relying upon the above condition, learned counsel for the applicant submitted that for all practical purposes, he is governed by the EDA (Conduct & Service) Rules, 1964 and all other rules and orders applicable to EDAs meaning thereby that he is at par with regular EDAs and as such entitled to increment and bonus. Though he is a provisional employee but he has been fixed at the minimum of the scale at the stage of Rs.1,280/- but after one year's of continuous service, he is entitled to earn increment as per the item No.3 mentioned in the schedule A of OM dated 5.5.2000.

8. On the contrary ,learned counsel for the respondents submitted that a clarification was issued vide letter dated 5<sup>th</sup> March, 1999 (Annexure R-1), inter-alia, as under :

1/2



10. Whether payment to substitute or provisional appointee will be made at the rate equal to that of incumbent of the post.

(a) For substitute and provisional appointment during the period 1.1.96 to 28.2.98 payment will be made by increasing the basic monthly allowance by a factor of 3.25 & in terms of the Directorate OM No.26-1/97-PC&ED Cell dated 17.12.98.

(b) The substitute and provisional appointee will be paid at minimum of TRCA only w.e.f. 1.3.98.

9. Learned counsel for the respondents submitted that applicant being provisional appointee has to be paid minimum of the TRAC w.e.f. 1<sup>st</sup> March, 1998 and he is not entitled to increments and as such no increments can be granted.

10. We have considered the contentions of both the sides. We may mention that the appointment letter issued to the applicant clearly says that the applicant shall be governed by the EDA (Conduct & Service) Rules and other rules and orders applicable to EDAs. No instructions have been issued for non grant of increments to the provisional employees. It is very surprising that a person who was appointed somewhere in 1998 remains on static salary of Rs.1,280/- though TRCA of such EDBPMs like him are allowed increments of Rs.35/- every year. Learned counsel for the respondents has been unable to take us to any rule which may in clear term restrict grant of increments to the provisional employees. Clarification referred to above by the respondents though shows that the substitute GDS shall be paid minimum of the TRCA w.e.f. 1.3.1998 but it is for those who are on rolls on the date of issue of clarification. Moreover the clarification is very clear that for substitute and provisional appointments, during the period 1.1.96 to 28.2.98, payment will be made by increasing the basic monthly allowance by a factor of 3.25 &

Ku



S-

Ifc 12

In terms of the Directorate OM No.26-1/97-PC&ED Cell dated 17.12.98 and the substitute and provisional appointee will be paid at minimum of TRCA only w.e.f. 1.3.98. The differential explained was for payment of basic monthly allowance by 3.25 factor up to 28.2.98 and from 1.3.1998, the system has been changed. The instructions insist on cut off date chosen for mode of payment and it is not in regard to payment of increments to provisional employee. The language implies in the instructions does not restrict the payment of increments to be given after rendering service of one year to persons like applicant.

Once the pay of the applicant has been fixed at minimum of the scale at Rs.1,280/- in the pay scale is Rs.1,280-35-1980, he is entitled to increment of Rs.35/- after completion of one year's service. A committee namely Justice Talwar Committee on Postal Extra Departmental System was constituted which gave its report, inter-alia with recommendations that emoluments of EDAs are to be increased by payment of salary on pro rata basis of payment to whole time departmental employees and it suggested ways of increasing their working hours by way of combination of duties and by increasing the work load of the Branch Offices. The Committee recommended grant of scales of pay for a minimum of 3 hours 45 minutes etc. If there is a scale of pay with an increment in the main rules, and an incumbent is appointed in that particular pay scale, the respondents cannot be allowed to say that a substitute employee, even if he is continued for about 10 years, is not entitled to increments. Such plea goes against the very spirit and intention of recommendations of the Committee.

11. The next question arises whether the applicant is also entitled to productivity linked bonus or not. In this regard respondents have relied upon letter dated 19.9.2005 (Annexure R-2). It specifically provides that emoluments drawn by a substitute employee will not be counted towards bonus calculation for either substitute or incumbents



KW

GDS. In respect of those GDS who were appointed in short term vacancies in Postmen/Group 'D' cadre, the clarification dated 6.2.1990 and 4.7.1991 will apply. These instructions are very clear. Since the applicant was appointed against short term engagement on provisional basis and in the face of clear cut instructions, which are not under challenge, he is not entitled to productivity linked bonus. However, we are of the considered view that he is entitled to the regular increments from 1999 onwards.

12. In view of the above discussion, this O.A. is partly allowed. The applicant is held entitled to the increment of Rs.35/- every year on completion of one year's service w.e.f. 1999 onwards. However, since he has approached late to the Tribunal, the arrears have to be restricted to 18 months prior to the date of filing of the O.A. which is 3.7.2006. He will be entitled to fixation of pay w.e.f. 1999, but will be entitled to actual arrears only w.e.f. 13.1.2005. The order be complied with within a period of three months from the date of receipt of copy of this order. No order as to costs.

  
R.R.Bhandari

**(R.R.BHANDARI)AM**

  
**(KULDIP SINGH)VC**

May 10, 2007.

HC\*

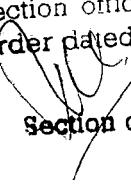
free copy of  
order.

  
S.K. Mallick  
Adv.

15/5/07

Q1  
17/5/

part II and III destroyed  
in my presence on 23-6-14  
under the supervision of  
section officer ( ) as per  
order dated 26.5.14

  
Section officer (Record)