

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.424/2003

Tuesday this the 23rd September 2003

C O R A M

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

S.Kalyanasudaram Pillai
EDDA, redesignated as Gramin Dak
Sevak Mail Deliverer cum CSS
Anad P.O.Nedumangad,
Trivandrum Distt.

Applicant

(By Advocate Mr.Thomas Mathew)

Vs.

1. Superintendent of Post Offices
South Postal Division
Trivandrum-14
2. Chief Post Master General
Kerala Circle, Trivandrum.
3. Director General, Deptt of Posts
New Delhi.
4. Union of India represented by its
Secretary, Dptt..of Posts, New Delhi.

Respondents

(By Advocate Mr.C.B.Sreekumar, ACGSC)

This application having been heard on 23rd Sept 2003 the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN.

The applicant was initially appointed as Extra
Departmental Delivery Agent, Anad provisionally by order dated
27.10.97 for a period between 28.10.97 and 31.12.97 till the
regular appointment is made whichever is shorter. However, he
continued beyond 31.12.97. When the respondents took steps for
appointment of another provisional hand replacing him, he
challenged the move by filing O.A No.453/98. The respondents

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contended that the applicant not being sponsored by the Employment Exchange the appointment was made as a stop gap arrangement pending selection from among the nominees of the Employment Exchange. The contention of the respondents were rejected and the respondents were directed to allow the applicant to continue till a regular appointment would be made.

2. On acceptance of the recommendations of Justice Talwar Committee, a Time Related Continuity Allowance (TRCA) was fixed for all categories of ED Agents as per Govt of India, Deptt. of Posts OM No.26-1/97-PC dated 17.12.98. The applicant who was working as EDDA, Anad on provisional basis was placed in the scale of Rs.1740-30-2640. However, the applicant was not granted increments @ Rs.30 in the scale Rs.1740-2640. Similarly, the Productivity Linked Bonus for the years 1999-2000, 2000-2001 and 2001-2002 was also not paid to him. The applicant submitted Annx.A3 representation for grant of annual increment and bonus. The respondents had paid an amount of Rs.3377/- to the applicant towards bonus for the year 1998-99. When the said amount was sought to be recovered stating to be irregular payment, the applicant filed O.A No.82/2000 praying for declaration that he was entitled to Productivity Linked Bonus/ex-gratia payment for the year 1998-99. The application was allowed and the impugned order seeking recovery of PLB for the year 1998-99 was set aside by order dated 11.3.02. Since the applicant has been continuing ever since 1997. The applicant claims that he is entitled to increments in the scale Rs.1740-30-2640 in terms of Annx.A2 order and that he is entitled to ex-gratia payment of bonus for the years 1999-2000, 2000-01 and 2001-02. The applicant,

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therefore, has filed this application for a declaration to the said effect and direction accordingly.

3. The respondents in their reply statement would contend that the applicant not being a regular ED Agent in terms of the clarification contained in letter dated 5.3.99 (Annx.R2) as also Annxs.R-3 and R-4, he is not entitled to either Productivity Linked Bonus or increments.

4. The applicant in the rejoinder has indicated that the Tribunal had in O.A No.1197/2000 rejected an identical contention raised by the respondents and declared that the provisional ED Agent is entitled to get annual increments and ex-gratia payment/bonus, that the above judgment has already been implemented by the respondents and there is no grace in contending that the applicant is not entitled to the same relief.

5. We have carefully gone through the pleadings and all the documents placed on record and have heard at length the arguments of Mr.Thomas Mathew, counsel for the applicant and Mr.C.B.Sreekumar, ACGSC, counsel for the respondents. The short question that calls for determination in this case is whether a provisional ED Agent employed continuously for a number of years is entitled to annual increments TRCA. as also productivity linked bonus. When an identical issue has evolved in O.A No.1197/2000, V.Ayyappan Nair Vs. Sub Divisional Inspector of Post Offices, Neyyattinkara & Ors, the clarifications which had

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been put forth by the respondents have been considered by the Tribunal and the same were discussed in paragraphs 4 to 6 which can be profitably extracted as follows:

"4. It is not in dispute that the applicant has been continuously working as EDDA, Chenkar with effect from 16.6.97 and that he has been placed at Rs.1740-30-2640 in the TRCA with effect from 1.3.98. The claim of the applicant for drawal of annual increment is resisted by the respondents on the ground that in terms of the clarification contained in Annex.R1(1) letter of the DG(Posts), provisional ED [Agents are to be paid only the minimum of the TRCA with effect from 1.3.98. The relevant query and clarification has been profitably extracted below:

Query:

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

Clarification:

(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 a minimum of TRCA only w.e.f. 1.3.98.

5.A close scrutiny of the clarification given would clearly indicate that from 1.3.98 onwards the substitute and provision ED Agents would be placed at the minimum of the TRCA. It does not mean that even if the provisional appointment continues for a number of years, the provisional appointee would remain in the starting stage itself. Even in the case of provisional employees, the drawal of annual increments are not prohibited. The case of substitutes may be different. We are of the considered view that the clarification only indicates that on 1.3.98 a provisional ED Agent would be placed at the beginning of the TRCA and his progression in that scale would be on completion of one year.

6. Similarly, the denial of ex-gratia payment to the provisional ED Agent basing on the clarification contained in Annex.R1(2) is also not justified. The query and clarification on points (vi) and (vii) are relevant in this case, which can be extracted as follows:

Query:

(vi) Substitutes engaged to work in the place of EDs who are either working as Gr.D/Postman against leave vacancy.

Clarification:

As the substitute working in such posts of EDs are not regular ED employees, they are not eligible for bonus.

Query:

(vii) Substitutes working in place of EDAs who are put off duty.

Clarification:

Such substitutes are not entitled for bonus as they are not regularly appointed to ED posts.

What is stated is that substitutes, either engaged to work in the place of ED Agents who were on leave as Postman or work in the place of ED Agents who were put off duty, would not be entitled to bonus as they are not regularly appointed to ED posts. The said clarification does not speak anything about ED Agents who are provisionally appointed. Therefore, the denial of the ex-gratia payment/bonus to the applicant on the ground that he is only a provisional ED Agent also is not justified."

6. After detailed consideration as above, the Tribunal declared that the applicant was entitled to annual increments as also Productivity Linked Bonus and directed the respondents to pay the same. In addition to the documents which were relied on O.A No.1197/2000, in the reply statement the respondents have also made reference to Annx.R4 which is only a comments on the documents issued on such query which says that provisional ED Agents are not to be paid increments and productivity linked bonus. This is only a comment and not a conscious decision taken by the competent authority. Further, Annx.R4, comment was issued on 7.8.02 whereas the judgment rendered by the Tribunal was on 30.9.02. The contention of the applicant that the respondents have implemented the decision of the Tribunal in

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O.A.1197/2000 by making payment of increments and productivity linked bonus has not been disputed by the respondents. In the light of what has been stated above, we find that the issue in this case is fully covered by the decision in O.A 1197/2000 and we find no reason to take a different view.

7. In the light of what is stated above, the contentions of the respondents are rejected and the application is allowed declaring that the applicant is entitled to annual increments of TRCA from 1.3.98 onwards in the scale Rs.1740-30-2640 and to receive productivity linked bonus for the year 1999-2000 onwards till 2001-2002 and thereafter. The respondents are directed to grant the increment TRCA w.e.f. 1.3.98 and make payment of arrears as also the productivity linked bonus to the applicant. The whole exercise shall be completed and payment made within a period of 3 months from the date of receipt of a copy of this order. No order as to costs.



(T.N.T.Nayar)
Administrative Member

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(A.V.Haridasan)
Vice Chairman.