

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 453 OF 2009

Wednesday, this the 19th day of August, 2009.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

E. Gangadharan,
G.D.S. Branch Postmaster, Kodakkad B.O.,
In account with Chettipady S.O., Tirur H.O.,
residing at Erekkattil House,
Kodakkad P.O., Chettipady,
Malappuram District – 676319. ... Applicant

(By Advocates Mr. O.V. Radhakrishnan Sr. with
Ms. Rekha Vasudevan & Mr. K. Ramachandran)

versus

1. Superintendent of Post Offices,
Tirur.
2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
3. Union of India rep. by its Secretary,
Ministry of Communication, New Delhi. ... Respondents

(By Advocate Mr. T.P.M. Ibrahim Khan, SCGSC)

The application having been heard on 14.08.2009, the Tribunal
on 19.08.2009 delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant joined as the then E.D. Delivery Agent, Kodakkad B.O. In April 1984 and in 2007 he was appointed as GDS Branch Postmaster, Kodakkad. Immediately before his transfer to the above post, the applicant was clearing an amount of Rs.2,010/- in the TRCA Rs.1740-30-2640/-. The TRCA attached to the post of BPM is however, Rs.1600-40-2400/-. On his joining the post as BPM, the applicant's total emoluments were worked out to Rs.3,745/- while just before joining his new post, he was

clearing a sum of Rs.4,027/-. Vide Annexure A-3, A-4 and A-5, (the pay slips), the applicant was placed in the stage of 2000 in November 2007, with a total emoluments of Rs.4,082/-, Rs.2,040/- in November 2008, with the total emoluments of Rs.4,417/- and in February 2009, the same amount was paid to him. However, to his shock and surprise, the TRCA had been reduced to Rs.1,640/- with the total emoluments of Rs.3,601/- in March 2009. The applicant has therefore, filed this O.A. claiming protection of TRCA.

2. Respondents have contested the O.A. and according to them the TRCA has been correctly fixed.

3. Learned counsel for the applicant submitted that it is settled law that whenever a GDS is transferred from one post to another with different TRCA, always the TRCA drawn by him in the previous post is duly secured.

4. According to the applicant, as early as in 2005, this Bench of the Tribunal has held that while effecting transfer, the TRCA drawn shall be protected, vide Annexure A7 order dated 22nd November 2005, and in a recent Full Bench Decision decided on 14th November 2008, the Bench has held as under:-

"(b) In so far as transfer from one post to the same post with Different TRCA and within the same Recruitment Unit, administrative instructions provide for protection of the same vide order dated 11th October, 2004 subject only to the maximum of the TRCA in the transferred unit (i.e. maximum in the lower TRCA).

(c)

(d) *In respect of transfer from one post to another within the same recruitment unit but with different TRCA (i.e. from higher to lower), pay protection on the same lines as in respect of (b) above would be available."*

5. The case of the applicant falls under (d) above. However, it has been stated that the above Full Bench decision had been challenged before the High Court and the High Court has admitted the writ Petition No. 16376/2008 and is pending, but no stay has been ordered.

6. There is no bar on following an order, against which writ petition is pending, for even if stay is granted, such an impugned order is kept only in abeyance but not overruled or upset, as held by the Apex Court in the case **Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assn., (1992) 3 SCC 1**, as under:-

"While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in



law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending."

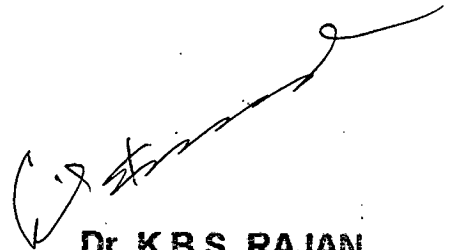
7. In view of the above legal position, this OA is allowed with a direction to the respondents to revise the TRCA of the applicant in the range of Rs.1,640 – 2,400/- protecting the allowance drawn prior to his transfer as GDSBPM and the difference thereof from March 2009 be paid to the applicant. It is however open to the respondents to clamp a rider to the effect that such protection of allowance drawn is subject to the outcome of the writ petition against the Full Bench decision referred to above and if need be, an undertaking to that effect that the applicant shall refund the difference in the Allowances drawn may also be obtained from him and the same could be invoked if circumstances so necessitate.

8. This order be complied with, within a period of two months from the date of communication of this order. No costs.

(Dated, the 19th August, 2009.)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



Dr. K.B.S. RAJAN
JUDICIAL MEMBER