

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.48/04

Monday this the 7th day of February 2005

C O R A M :

**HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P.DAS, ADMINISTRATIVE MEMBER**

Somasekhara Ayya B,
GDS Mail Deliverer,
Kundankuzhi Branch Post Office,
Residing at Thottathil Kandan, P.O. Kundankuzhi,
Kasargod District. ... Applicant

(By Advocate M/s.Sureshkumar Kodoth & K.P.Balagopal)

Versus

1. Union of India represented by the
Director General of Postal Service,
New Delhi.
2. The Post Master General,
Kerala Circle, Thiruvananthapuram.
3. Sub Divisional Inspector of Post Offices,
Kanhagad Sub Division, Kanhagad,
Kasargod District.Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 7th February 2005 the Tribunal
on the same day delivered the following :

ORDER

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

The applicant working as GDS MD, Bedadka Post Office from
1.1.1961 was drawing a monthly allowance of Rs.2773/- in the scale
Rs.1740-30-2640 in response to Annexure A-1 notification by which
application for transfer to a new post of GDS MD Kundankuzhi in the TRCA
Rs.1375-25-2125 from working GD Sevaks of Kanhagad Sub Division
applied for transfer finding that by such transfer he would be nearer home.

His request was accepted and by Annexure A-2 order dated 22.5.2002 he was offered appointment by transfer in which it was specifically stated that the GDS Service of the applicant from 1.1.1961 to 22.4.2002 shall be treated as continuous GDS Service for all purposes. By Annexure A-3 order the applicant was directed to report for duty at Kundankuzhi on 23.4.2002. He accordingly joined there. Finding that he was not being given protection of TRCA the applicant submitted a representation Annexure A-4 dated 29.8.2002, that since on transfer his service was treated as continuous he was entitled to get the TRCA protected. While so, the applicant was served with Annexure A-5 memorandum which is said to be a corrigendum dated 24.10.2002 which reads as follows:

CORRIGENDUM

No.MD II/BO/32 dated Kanhangad the 24.10.2002

In this office appointment order No.MD II/BO/32 dated 22.5.2002 issued in favour of Sri.B.Somasekhara Ayya, S/o.B.Krishnayya, Thottathil Kandam, P.O.Kundankuzhy in respect of the post of GDS Mail Deliverer II, Kundankuzhy, the paragraph regarding the GDS service of Sri. B.Somasekhara Ayya as GDS MD Bededka for the period from 1.1.1961 to 22.4.2002 may please be deleted.


Sd/-
Sub Divisional Inspector of Post Offices,
Kanhangad Sub Division,
Kanhangad 671315.

2. Thereafter the applicant was served with Annexure A-6 reply to his representation stating him that he was not entitled to get protection of TRCA because he has already given a undertaking that he cannot claim protection of TRCA drawn in the previous post . Aggrieved the applicant has filed this application seeking to set aside Annexure A-5 and Annexure A-6, for a declaration that he is entitled to get the pay fixed reckoning the previous service as GDS MD with effect from 1.1.1961 and for a direction to the respondents to disburse to the applicant salary at Rs.2773/- with effect from 23.4.2002.

3. The respondents resist the claim of the applicant. They contend that the applicant having undertaken in his declaration dated 16.4.2002 that he would not claim protection of TRCA and having accepted the transfer to a post with lower TRCA he is not entitled to the reliefs sought. The respondents also contend that in O.A.1234/99 the Tribunal held that on transfer GDS is not entitled to protection of TRCA, therefore, the applicant is not entitled to the protection of TRCA.

4. The applicant in the rejoinder has stated that Annexure R-2 declaration was not really written by him, that his signature in blank paper was obtained and the balance was typed and filled by the authority concerned in a manner which suited them with a view to deprive him of his legitimate allowance.

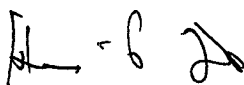
5. We have heard the learned counsel on either side and perused the material on record. The appointment of the applicant by transfer from the post of GDS MD Bededka as GDS MD, Kundankuzhi was not entirely on the request of the applicant but was on invitation for application for transfer issued by the respondents. In the appointment order Annexure A-2 it was very clearly stipulated that the service of the applicant from 1.1.1961 to 22.4.2002 would be treated as continuous for all purposes and the applicant was by Annexure A-3 order directed to report for duty by 23.4.2002. On the strength of Annexure A-2 offer the applicant took charge on 22.4.2002. The respondents were therefore estopped from deleting the clause in Annexure A-2. Further since the appointment was treated as a transfer we have not been shown any rules, rulings or instructions to the effect that by transfer within the same recruitment unit the incumbent would lose his past service for any purposes. We do not find any reason or justification for not protecting the TRCA because the



scale to which the applicant has been transferred has to go further up to Rs.2125/- for reaching the saturation point. The contention of the respondents that the applicant having given a voluntary declaration that he would not seek protection of TRCA as evidenced by Annexure R-2 he is not entitled to seek protection is also not tenable for two reasons. For one thing we find considerable force in the argument of the applicant that Annexure R-2 was not really written and signed by him and that his signature was obtained in blank paper and it has been made use of for typing an undertaking that he would not claim protection of TRCA. Secondly the extant instructions do not lay down that by transfer in the same recruitment unit as GDS would loose past service for any purpose. The service on transfer is to be treated as continuous. The contention taken in the reply statement are therefore to be rejected. The reliance placed on the judgment of the Tribunal in O.A.1234/99 is thoroughly misplaced because that was entirely in a different situation wherein the incumbent holding a post of GDS SPM was transferred to a post of GDS BPM was transferred to a post of GDS BPM a different post.

6. In the light of what is stated above we allow this application, set aside the impugned orders, declare that the applicant was on his transfer entitled to protection of the basic TRCA which he was drawing prior to his transfer and direct the respondents to disburse to the applicant the allowance at the rate of Rs.2773/- with effect from 23.4.2002 with arrears within a period of two months from the date of receipt of a copy of this order.

(Dated the 7th day of February 2005)



H.P.DAS
ADMINISTRATIVE MEMBER



A.V.HARIDASAN
VICE CHAIRMAN