

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.494/2004

Tuesday this the 5th day of December, 2006

CORAM

Hon'ble Mr. N. Ramakrishnan, Administrative Member
Hon'ble Mr. George Paracken, Judicial Member

P.A.Thomas S/o Abraham,
aged 43 years,
Gramin Dak Sevak Mail Deliverer (put off)
Kuriyode PO, Chadayamangalam,
residing at Parathattu Mini Bhavan,
Chandayamangalam PO. 691534.

.....Applicant

(By Advocate Mr.M.R.Hariraj)

V.

- 1 Union of India, represented by the
Secretary to Government,
Department of Posts,
Ministry of Communications,
New Delhi.
- 2 Chief Post Master General,
Kerala Circle,
Trivandrum.
- 3 Senior Superintendent of Post Offices,
Kollam Division,
Kollam.
- 4 Assistant Superintendent of Post Offices,
Kollam South Sub Division,
Kollam.
- 5 Sub Divisional Inspector,
Postal, Kottarakkara Sub Division,
Kottarakkara.

.....Respondents

(By Advocate Mr.TPM Ibrahim Khan, SCGSC)

The application having been finally heard on 15.11.2006, the Tribunal on 5.12.2006 delivered the following:



ORDER

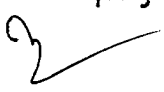
Hon'ble Mr. George Paracken, Judicial Member

The applicant in this OA has sought to quash the Annexure.A1 order "putting him off" from duty under the provisions of Rule 12(1) of the GDS (Conduct & Employment) Rules, 2001 and to reinstate him in service thereafter. He has also challenged the vires of Rule 12 (3) of the Gramin Dak Sevaks (Conduct & Employment) Rules, 2001 and the Annexure.A2 order issued thereunder sanctioning him an amount of compensation as ex-gratia payment equal to 25% of the Time Related Continuity Allowance (TRCA) together with admissible DA thereon as illegal and violative of Articles 14, 16 and 21 of the Constitution of India. Rule 12 (3) reads as under:

"(3) A sevak shall be entitled per month for the period of put-off duty to an amount of compensatory as ex gratia payment equal to 25% of his/her Time Related Continuity Allowance together with admissible Dearness Allowance."

He has, therefore, prayed for the quashing of the Annexure.A2 order and for issuance of a direction to the respondents to pay him subsistence allowance at the rate of 50% of the pay admissible to him with effect from the date of his 'put off duty' from service and also for a direction to the respondents to revise the subsistence allowance from the due dates with all consequential benefits.

2 The brief facts of the case are that the applicant was 'put off' from duty with effect from 9.1.2002 vide Annexure.A1 order dated 9.1.2002 and allowed ex-gratia payment of 25% of the TRCA vide the Annexure.A2 order also dated 9.1.2002. Thereafter, he was served with the charge memo dated 21.4.2003 and an inquiry was initiated against him. During the inquiry proceedings, he made Annexures.A3 and A4 representations dated



18.2.2004 and 12.5.2004 for his reinstatement as well as for payment of increased subsistence allowance from the due dates, which were not granted.


3 The respondents have not refuted the facts as narrated by the applicant in the O.A. However, the respondents have submitted that the prayer of the applicant for payment of enhanced ex-gratia was not allowed as he is only a GDS who is governed by the GDS (Conduct & Employment) Rules, 2001 which is totally different from the rules governing the regular departmental officials and the GDSs cannot be considered at par with the departmental officials for payment of subsistence allowance and other benefits. They have also submitted that FR 54 is not applicable to GDSs and none of the reliefs sought by the applicant was in conformity with the rules governing the GDSs.

4 Advocate Shri M.R.Hariraj has also filed a detailed argument note on behalf of the applicant. He submitted that the respondents' argument that the GDS cannot be treated on par with departmental hands for payment of subsistence allowance and FR 54 is not applicable to them have no rational basis in view of the provisions contained in FR 2&3 which reads as follows:

"FR.2: The Fundamental Rules apply, subject to the provisions of Rule 3 to all Government servants whose pay is debitable to Civil Estimates and to any other class of Government servants too which the President may, by general or special order, declare them to be applicable.

FR.3: Unless in any case it be otherwise distinctly provided by or under these Rules, these Rules do not apply to government servants whose conditions of service are governed by Army or Marine Regulations."

According to him the very fact that the pay of the GDSs are debitable from civil estimates makes it clear that departmental hands and GDSs cannot be



treated differently and therefore F.R 54 applies to the GDSs as well.

5 Shri Hariraj argued that since the master servant relationship exists between the respondents and the applicant, the applicant must be deemed to be considered as a "Government Servant" as held by the Apex Court in Supdt. Of Post Offices Vs. P.K.Rajamma (1977) 3 SCC 94. The relevant paras of the said judgment are as under:

"4 It is thus clear that an extra departmental agent is not a casual worker but he holds a post under the administrative control of the State. It is apparent from the rules that the employment of an extra departmental agent is in a post which exists "apart from" the person who happens to fill it at any particular time. Though such a post is outside the regular civil services, there is no doubt it is a post under the State. The tests of a civil post laid down by this Court in Kanak Chandra Datfa's case are clearly satisfied in the case of extra departmental agents.

5 For the appellants it is contended that the relationship between the postal authorities and the extra departmental agents is not of master and servant, but really of principal and agent. The difference between the relations of master and servant and principal and agent was pointed out by this Court in Lakshminarayan Ram Gopal and Son Ltd. Vs. Government of Hyderabad..

The rule makes it clear that these extra departmental agents work under the direct control and supervision of the authorities who obviously have the right to control the manner in which they must carry out their duties. There can be no doubt therefore that the relationship between the postal authorities and the extra departmental agents is one of master and servant".


Shri Hariraj has also submitted that when it is an undisputed fact that the pay of the GDS is debitable to the civil estimates, it is only to camouflage the real relation of master and servant existing between the respondent department and the GDSs, the respondents are calling the GDSs as "Agents" and branding their pay as 'allowance' instead of 'salary'. As regards Rule 12(3) of the GDS (Conduct & Employment) Rules, 2001 is concerned, Shri Hariraj submitted that the GDS Rules being non-statutory



in nature, they cannot over run the statutory mandate of FR 54 for paying 50% of the pay as initial subsistence allowance and paying 25% allowance to the GDS as ex gratia is absolutely illegal and inconsistent with the FR and therefore ultra vires. The other argument put forwarded by Shri Hariraj is that Rule 12(3)(ibid) violates Articles 14 and 16 of the Constitution of India. He submitted that under the Extra Departmental Agents (Conduct and Service) Rules which earlier governed the conditions of service of EDAs (later re-designated as GDSs), there was no provision for payment of subsistence allowance to EDAs at all. This was challenged before this Tribunal in various cases as discriminatory and in Peter J D'souza and another Vs. Superintendent of Post Offices and others (1989) 9 ATC 225 the Bangalore Bench of this Tribunal held as under:

"59 We noticed in the course of hearing of these cases that the jugglery of the two rather arcane expressions, namely, 'putting off duty' and 'consolidated allowances' artfully substituted by the department for the words 'suspension' and 'salary' respectively in the 1964 rules, which are not statutory but have been framed under the executive authority of the Government of India has been largely instrumental in labelling the category of EDAs in the department as a hybrid one, making them neither fish nor fowl, with no little detriment to their service conditions. Some of these impediments which are flagrant are: (i) denial of allowances to the EDAs outright, for the entire period of "put off duty" (which not infrequently may exceed considerably beyond the maximum of 120 days stipulated for completion of the inquiry) even though they are honourably acquitted in the inquiry and (ii) denial of SA, even beyond the above maximum of 120 days, regardless of the fact, that the delinquent EDA has not in any manner been responsible for that delay, which may sometimes be inordinate. To our judicial conscience, this discrimination as compared to the regular employees of the department, seems palpably unjust and erroneous. We would even say, that R.9(3) of the 1964 Rules, draconian in this context."

6 Shri Hariraj has pointed out that the earlier contention of the respondents that the EDAs are permitted to have other means of livelihood



and hence they stand on a different footing from that of the departmental hands has also been rejected by this Tribunal as stated in para 64 of the said order which is as under:

"64 The EDAs, as mentioned earlier, are in fact on a higher plane, as compared to the casual labourers, from the point of view of their tenure of service, the nature of their duties and responsibility. If the plight of casual labourers engaged intermittently on seasonal works, attracted the concern of the Supreme Court for amelioration of their service conditions, the case of an EDA *a fortiori*, merits greater consideration for the reasons aforementioned. He is a civil servant, with a clear jural relationship as "master" and "servant", as observed in Rajamma's case, but with a difference, in that his official duty as EDA, is hyphenated with his private avocation in his leisure hours, as expressly allowed under the 1964 Rules as a measure both of expediency and economy, under special circumstances obtaining in rural area, in regard to postal service without however, the EDA system becoming dysfunctional thereby. His emoluments as compared to his regular counterparts, in the department are fixed commensurate with his workload, in each category of post and with reference to his place of work and in course of time an equation is sought to be established with the regular posts in the department, taking into account, the growing intensity of postal work in rural areas. If this be the case, there is no reason, as to why the EDAs should not be governed by the same principles, as in the case of the regular employees in the department in regard to grant of SA. The mere fact that the EDAs have an alternate source of income does not seem to be a justifiable reason, to deprive an EDA of subsistence allowance at any rate in its entirety, during the period of his 'put off duty' particularly when the current trend in the department is to engage educated rural youth, who may not necessarily have an adequate alternate source of income. Besides, it is unrealistic to expect educated rural youth of sufficient means, to be content with none too remunerative a service as that of EDA. In this context the decision of the Supreme Court in *Chandrabhan's* case relied upon by Counsel for the applicants, is in point, as it places an impediment on the EDA, in defending himself in an inquiry, if SA is denied to him, which results in financial hardship to him. It needs to be realized, that both the EDA and his regular counterpart in the Department, belong to the same genus as a "civil servant", according to the decision of the Supreme Court in *Rajamma's* case only distinction being, that the EDA belongs to another species namely, that of a 'hyphenated civil servant', with freedom expressly provided to him, under the 1964 Rules, to pursue his personal avocation in his leisure hours, in conjunction with his official duty as EDA."

appointment as E.D.Agents has been held to be unconstitutional by the Hon'ble High Court of Kerala in Director General Vs. C.A.T. (2002) 1 KLT 554. and therefore, treating the EDAs (GDSs) differently from the departmental hands is discriminatory and the same principles shall apply with regard to subsistence allowance also. The then existing rule was struck down as violative of Articles 14 and 16 and the government was directed to re-examine the matter in its entirety and frame new set of rules. However, respondent department took the matter before the Hon'ble Supreme Court but the SLP was dismissed as early as in 1995 as is evident from the judgment of the Apex Court in Secretary Department of Posts Vs. Chander Pal Singh (1999) 9 SCC 168.

8 Another Bench of this Tribunal also came to the same conclusion in Anam Mallik V. Union of India (1995) 30 ATC 380 wherein it was held as under:

"If the EDAs could not (sic) be considered as 'holders of civil posts' there is absolutely no reason as to why they should be discriminated from other departmental employees in the matter of payment of subsistence allowance during put off duty."

9 He has also submitted that Rule 12(3) is violative of Article 21 of the Constitution of India as payment of subsistence allowance is not a bounty but it is matter of right as has been held by the Apex Court in the case of Jagadamba Pasad Shukla Vs. State of UP. (2000) 7 SCC 90. The right to subsistence allowance as one emanating from the Fundamental Right to life and liberty under Art.21 of the Constitution of India has been settled by the dictum of the Hon'ble Supreme Court in Capt.M.Paul Anthony Vs. Bharat Gold Mines Ltd (1999) 3 SCC 679 in which it has been held as under:



"On joining government service, a person does not mortgage or barter away his basic rights a human being, including his fundamental rights in favour of the government. The government, only because it has the power to appoint does not become the master of the body and soul of the employee. The government by providing job opportunities to its citizens only fulfills its obligations under the Constitution, including the Directive Principles of State Policy. The employee, on taking up an employment only agrees to subject himself to the regulatory measures concerning his service. His association with the Government or any other employer, like instrumentalities of the Government or statutory or autonomous corporations etc. is regulated by the terms of contract of service or service rules made by the Central or State Government under the proviso to Article 309 of the Constitution or other statutory rules including certified standing orders. The fundamental rights, including the right to life under Article 21 of the Constitution or the basic human rights are not surrendered by the employee. The provision for payment of subsistence allowance made in the service rules only ensures non-violation of the right to life of the employee. That was the reason why this Court in *State of Maharashtra V. Chandrabhan Tal* struck down a service rules which provided for payment of a nominal amount of rupees one as subsistence allowance to an employee placed under suspension."

10 On the other hand, the main thrust of the argument of Shri Ibrahim Khan, SCGSC on behalf of the respondents was that the ex-gratia payment as provided under Rule 12(3) of the GDS (Conduct & Employment) Rules, 2001 cannot be compared with the subsistence allowance being granted to the government servants under FR 53(3). He has stated that the GDS cannot be equated as Government servants and the entire case of the applicant is built upon the false assumption that the GDSs are equal to the regularly appointed government servants.

11 We have considered the pleadings in the case. We have also extensively heard Shri Hariraj and Shri TPM Ibrahim Khan on behalf of the applicant and respondents. The crux of the argument of Shri Hariraj on behalf of the applicant is that the Gamin Dak Sevaks (GDSs) are a class of government servants and for the purpose of payment of subsistence allowance they shall not be discriminated from other government servants



in the various departments and Ministries of the Government of India. The phrase "put off duty" used with regard to the GDSs is nothing but the term 'suspension' used with regard to other government servants and the phrase "Time Related Continuity Allowance" used in the case of GDSs is nothing but the camouflaged use of "pay" or "salary" in the case of other government servants. According to him GDSs being government servants cannot be treated differently from other government servants for the purpose of grant of subsistence allowance. Per contra is the argument of Shri TPM Ibrahim Khan on behalf of the respondents.

12 In practical terms, the impact of "suspension" on a government servant and 'put off duty' on a GDS is the same. The dictionary meaning of "suspension" is the action of suspending or condition of being suspended; the action of debarring or state of being debarred, especially for a time, from a function or privilege, temporary deprivation of one's office or position." (Oxford dictionary). Suspension is an executive action whereby a government servant is kept out of duty temporarily pending final action. Suspension does not put an end to the service of a government servant. Suspension by itself is not a punishment but it causes great hardship including personal hardship to the government servant. The government servants get their salary at reduced rates during the period of suspension. Since the relationship of master and servant is not severed during the period of suspension, the government servant continues to be bound by the lawful directions of the government and he cannot engage himself in any other employment, business, profession or vocation. Same are the limitations of the GDSs who are under put off duty.

13 The Government servants including the civilian Government



servants in the defence services for whom the Central Civil Services (Classification, Control & Appeal) Rules, 1965 apply can be placed under suspension in tune of Rule 10 of the said Rules and they are entitled to certain payments during the period of suspension as provided under Fundamental Rules 53, which provides as under:

FR.53:(1) A government servant under suspension or deemed to have been placed under suspension by an order of the appointing authority shall be entitled to the following payments, namely:-

(i) In case of a Commissioned Officer of the Indian Medical Department or a Warrant Officer in Civil employ who is liable to revert to Military duty, the pay and allowances to which he would have been entitled had he been suspended while in military employment'

(ii) In the case of any other government servant--

(a) a subsistence allowance at an amount equal to the leave salary which the Government servant would have drawn if he had been on leave on half average pay or on half pay and in addition, dearness allowance, if admissible on the basis of such leave salary;

provided that where the period of suspension exceeds three months, the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first three months as follows:-

(i) the amount of subsistence allowance may be increased by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during the period of the first three months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the government servant;

(ii) The amount of subsistence allowance, may be reduced by a suitable amount, not exceeding 50 percent of the subsistence allowance admissible during the period of the first three months, if in the opinion of the said authority, the period of suspension has been prolonged due to reasons, to be recorded in writing, directly attributable to the Government servant;

(iii) the rate of dearness allowance will be based on the increased or, as the case may be, the decreased amount of subsistence allowance admissible under sub-clauses (i) and (ii) above.

(b) Any other compensatory allowance admissible from time to time on the basis of pay of which the government servant was in receipt on the date of suspension subject to the fulfillment of

other conditions laid down of the drawal of such allowances.

(2) No payment under sub-rule(1) shall be made unless the Government servant furnishes a certificate that he is not engaged in any other employment, business, profession or vocation;

provided that in the case of a government servant dismiss, removed or compulsorily retired from service, who is deemed to have been placed or to continue to be under suspension from the date of such dismissal or removal or compulsory retirement, under sub-rule (3) or sub rule (4) of Rule 12 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, and who fails to produce such a certificate for any period or periods during which he is deemed to be placed or to continue to be under suspension, he shall be entitled tot he subsistence allowance and other allowances equal to the amount by which his earning during such period or period, as the case may be, fall short of the amount of subsistence allowance and other allowances that would otherwise be admissible to him; where the subsistence allowance and other allowances admissible to him are equal to or less than the amount earned by him, nothing in this proviso shall apply to him."

14 Similar provisions for payment of subsistence allowance have also been made for the Railway Servants, Members of the All India Services and various other categories of government employees. In all the above cases, the standard norm for payment of subsistence allowance is an amount equal to the leave salary which a member of the service would have drawn if he had been on leave on half-average pay or on half pay and in addition, dearness allowance, if admissible on the basis of such leave salary. However, by Rule 9(3) of the E.D. Agents (Conduct & Services) Rules, 1964, the then E.D. Agents (now GDSs) were not entitled or any allowance for the period they remained under 'put off duty'. Rule 9 of the said E.D. Agents Rule may be reproduced herein below for convenience:

"9(1) Pending an enquiry into any complaint or allegation of misconduct against an employee, the appointing authority or an authority to which the appointing authority is subordinate may put him off duty:



provided that in cases involving fraud or embezzlement, an employee holding any of the posts specified in the Schedule to these rules may be put off duty by the Inspector of Post Offices, under immediate intimation to the appointing authority;

(2) An order made by the Inspector of Post Offices under sub-rule (1) shall cease to be effective on the expiry of fifteen days from the date thereof unless earlier confirmed or cancelled by the appointing authority or an authority to which the appointing authority is subordinate.

(3) An employee shall not be entitled to any allowance for the period for which he is kept off duty under this rule."

15 As noted earlier the position has undergone a sea change after the judgment of this Tribunal Peter J.Dsouza's case (supra), which ultimately ended with Rule 12(3) of the GDS (Conduct & Employment) Rules, 2001. The observation of the Bangalore Bench of the Tribunal was that the jugglery of the two rather arcane expressions, namely, "putting off duty" and "consolidated allowances" artfully substituted by the Department, for the words "suspension" and "salary" respectively, in the 1964 Rules, which are not statutory but have been framed under the executive authority of the Government of India, has been largely instrumental, in labelling the category of EDAs in the Department as a hybrid one, making them neither fish nor fowl, with no little detriment to their service conditions. The Bangalore Bench after detailed discussion of the case laws, disagreed with the judgment of the High Court of Kerala in Kattampalli's case upholding the validity of Rule 9 of 1964 Rules which has since been superseded the Department of Posts, Gramin Dak Sevaks (Conduct & Employment) Rules, 2001 and concurred with the judgment of the same High Court in Sardana's case (supra) in which the respondents' contention that the general principle of law governing suspension would not apply to action of put off duty was rejected. The Tribunal ultimately struck down



Rule 9(3) of the 1964 Rules as violative of Article 14 of the Constitution.

16 The Apex Court has also agreed with the conclusion that had reached by the Tribunal in Peter J D'souza's case that Rule 9(3) of the Posts and Telegraphs Extra Departmental Agents (Conduct & Service) Rules 1964 was violative of Rule 14 of the Constitution of India. The said rule has since been amended by the respondents from 13.2.1997 and cured the defect. This position was reiterated by the Apex Court in Secretary Department of posts and others Vs. Chanderpal Singh (1999) 9 SCC 168. The short judgment in that case is as under:

"1 This matter has been placed before a larger Bench by reason of the order dated 22.1.1999. That order notes that counsel stated that there were conflicting views of this Court as regards Rule 9(3) of the Posts and Telegraphs Extra Departmental Agents (Conduct & Service) Rules, 1964.

2 Learned counsel of the appellants has fairly stated that on 13.2.1997 the said rule had been amended to cure the defect that was found in it by this Court in the order made on 10.7.1995 in SLP (C) No....of 1990 (CC No.457) Sec. Ministry of Communications V.S.Gundu Achary. This court there agreed with the conclusion that had been reached by the Central Administrative Tribunal in the case of Peter J.D'Souza V.Suptd. Of Post Offices that the said rule was violative of Article 14 of the Constitution of India. (emphasis added)

3 The judgment which it said to take a different view is *Union of India V. Kameshwar Prasad*. (1997) 11 SCC 650. We find however, that the constitutional validity of the said rule was not in question. What was held there was that having regard to the said rule, the Tribunal in that case could not have made orders for payment of allowances for the period the respondents were kept off duty. In other words, it was assumed that the said rule was valid.

4 In these circumstances, the special leave petition is dismissed."

17 In Anam Mallik and others Vs. Union of India and others (1995) 30 ATC 380, the applicants therein were either Extra departmental Delivery Agents (EDDA) or Extra departmental Packers of Mail Carriers or



Branch Postmasters. They approached the Tribunal with the prayer to give appropriate direction to the respondents to treat them and other similarly situated EDAs as members of the regular Civil Services of the Government and declare that they are entitled to all the benefits incidental to regular Civil Services and that the words attached to their posts as "Extra" or "Agents" be removed. They also prayed for a declaration that they are entitled to salary and allowances on leave, subsistence allowance during put off duty pending inquiries against them and other service benefits available to regular civil servants. The following were the points on which the Tribunal gave its findings in the said order.

- (i) Whether the classification of EDAs is a reasonable classification and whether such classification offends either Article 14 or Article 16 of the Constitution?
- (ii) Whether by the fact that they are holders of civil posts under the State they are entitled to be treated as regular Governments servants under the Posts & Telegraphs Department?
- (iii) Whether Rule 9(3) of the Extra Departmental Agents (Conduct & Service) Rules, 1964 imposing restriction on payment of subsistence allowance during the period of put off is justifiable? and
- (iv) Whether they are entitled to leave with allowances?

Citing various judgments of Apex Court in Randhir Singh V. Union of India (1982) 1 SCC 618, State of Maharashtra V. Chandrakant Anant Kulkarni (1981) 4 SCC 130 the Tribunal took the view that the principle of 'equal pay for equal work' is not squarely attracted in the case of E.D. Agents. The classification of ED Agents as a different category is reasonable and it fulfils the test prescribed by the Supreme Court time and again. Therefore, the prayer of the applicants to issue a direction to the Central Government to them as members of regular civil service was not acceded



to. As regards the other prayer regarding Rule 9(3) of the ED Agents (Conduct and Service) Rules, 1964 depriving them of the subsistence allowance during put off duty pending inquiry was concerned, it was held violative of Article 14 of the Constitution, therefore liable to be struck down. The Government of India was also directed to make adequate provision for payment of subsistence allowance to the ED Agents during their put off duty. As regards the claim of the EDAs for grant of leave with allowance it was not found feasible to recommend the same especially when the allowance are being paid by the department to the substitute according to existing procedure. The Tribunal finally passed the following order:

- (i) The prayer of the petitioners that they should be treated as regular Government employees is rejected.
- (ii) Rule 9(3) of the ED Agents (Conduct & Service) Rules, 1964 is violative of Article 14 of the Constitution, it is liable to be struck down, and hence struck down and the Government is directed to make adequate provision for payment of subsistence allowance to ED Agents during their put off duty; and
- (iii) Government shall consider providing for leave to E.D. Agents keeping in view the number of hours of work, wages paid and other aspects and make appropriate provision in this behalf in the Rules governing their service conditions.

18 In Paul Anthony (supra) the Apex Court has specifically dealt with the issue of payment of subsistence allowance and the relevant paras of the



judgment are extracted below:


"25 Before us, it is not disputed on behalf of the respondents nor was it disputed by them before the High Court, that subsistence allowance was not paid to the appellant while the proceedings against him were being conducted at the departmental level.

31 "On joining government service, a person does not mortgage or barter away his basic rights a human being, including his fundamental rights in favour of the government. The government, only because it has the power to appoint does not become the master of the body and soul of the employee. The government by providing job opportunities to its citizens only fulfills its obligations under the Constitution, including the Directive Principles of State Policy. The employee, on taking up an employment only agrees to subject himself to the regulatory measures concerning his service. His association with the Government or any other employer, like instrumentalities of the Government or statutory or autonomous corporations etc. is regulated by the terms of contract of service or service rules made by the Central or State Government under the proviso to Article 309 of the Constitution or other statutory rules including certified standing orders. The fundamental rights, including the right to life under Article 21 of the Constitution or the basic human rights are not surrendered by the employee. The provision for payment of subsistence allowance made in the service rules only ensures non-violation of the right to life of the employee. That was the reason why this Court in *State of Maharashtra V. Chandrabhan Tal* struck down a service rules which provided for payment of a nominal amount of rupees one as subsistence allowance to an employee placed under suspension."

19 In Jagadamba Prasad Shukla V. State of UP (2000) 7 SCC 90

non-payment of subsistence allowance for a delinquent suspended employee was the only contention and the Apex Court held as under:

"8 The payment of subsistence allowance, in accordance with the Rules, to an employee under suspension is not a bounty. It is a right. An employee is entitled to be paid the subsistence allowance. No justifiable ground has been made out for non-payment of the subsistence allowance all through the period of suspension i.e., from suspension till removal. One of the reasons for not appearing in inquiry as intimated to the authorities was the financial crunch on account of non-payment of subsistence allowance and the other was the illness of the appellant. The appellant in reply to the show cause notice stated that even if he was to appear in



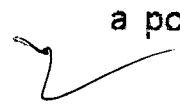
inquiry against medical advice, he was unable to appear for want of funds on account of non-payment of subsistence allowance. It is a clear case of breach of principles of natural justice on account of the denial of reasonable opportunity to the appellant to defend himself in the departmental inquiry. Thus, the departmental inquiry and the consequent order of removal from service are quashed."

20 In the Department of Posts, Gramin Dak Sevaks (Conduct & Employment) Rules, 2001 issued under the authority of the Government of India vide the Director General of Posts letter No.22-1/2000-ED&Trg dated 24.4.2001 replacing the E.D.Agents (Conduct & Service) Rules, 1964, provisions had been made for payment of compensatory ex-gratia payment equal to 25% of the Time Related Continuity Allowance payable to the GDSs during their "put off" period. The relevant provisions contained in Rule 12(3) of the said Rules have already been extracted elsewhere in this order.

21 Now the question is whether the standard norm of subsistence allowance which is an amount equal to the leave salary while a member of the service would have drawn, if he had been on leave on half average pay or half pay should apply to Gramin Dak Sevaks also or not?.

22 In P.K.Rajamma's case (supra) while the Apex Court held that the tests laid down in State of Assam Vs. Kanak Chandra Dutta (AIR 1967 SC 884) regarding civil post are satisfied in the case of Extra Departmental Agents, their posts are outside the regular civil services. In para 4 of the said judgment, it was stated as follows:

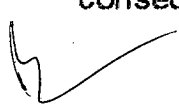
"4 It is thus clear that an extra departmental agent is not a casual worker but he holds a post under the administrative control of the State. It is apparent from the rules that the employment of an extra departmental agent is in a post which exists 'apart from' the person who happens to fill it at any particular time. Though such a post is outside the regular civil services, there is no



doubt it is a post under the State." The tests of a civil post laid down by this Court in Kanak Chandra Dutta's case are clearly satisfied in the case of the extra departmental agents."

23 The Hon'ble High Court of Kerala in J.D.Kattampally Vs. Union of India (1980) 3 SLR 726 (ker) observed that the EDAs were only part-time employees as distinguished from regular or full time employees in the Department and the degree of control over those two categories of employees was accordingly different. Para 3 of the said judgment is profitable to reproduce below:

"It is admitted fact that the petitioner is a part-time employee whose service conditions are governed by the Rules. Eligibility for appointment to that post is different from that of a regular or full-time employee. The degree of control the employer is having over him is different from what the employer usually will have over a full-time regular employee. In Paragraph 2 of letter No.43-14/72-PEN dated 2.3.1972 issued by the Director General of Posts and Telegraphs under the authority of Rule 284 of P&T Manual, Volume IV, a copy of which was furnished to us by the Standing Counsel to the Central Government for our perusal, it is found that Extra departmental Sub-Postmasters and Branch Postmasters are appointed mainly from the following category's (1) P&T pensioners; (2) State and other Government pensioners (3) Local Board Teachers; (4) Quasi Government and Railway officials; and (5) Outsiders. From the copy of letter No.5-9/72-ED Cell dated 18.8.1973 of the Director general of Posts and Telegraphs it is found that the maximum age limit upto which an Extra Departmental Agent may be retained in the agency work will be 65 years provided he continues to remain fit for the discharge of his duties. There are sufficient indications in the rules the Manual and the Circular letters issued by the competent authorities that there is vast difference in the terms and conditions of service of Extra departmental part-time employee from those of full time regular employees. Equal rights and equal treatment could be claimed where the rights and duties are comparable to each other, no otherwise. The classification between part-time employees on the one hand, and full time employees on the other, not being arbitrary, but one based on rotational grounds, having intelligible, differentia and nexus to the object sought to be served, a part time employee like the petitioner is not entitled to claim parity of treatment with a full time regular employee. When this position is accepted, the question of discrimination or consequent violation of the provisions of Articles 14 and 16 of



the Constitution does not arise."

24

In another judgment in K. Saradamma Vs. The Superintendent of Post Offices (1982) 2 SLJ 156 (ker) the Hon'ble High Court of Kerala while not agreeing with the contention of the respondents therein that the general principle of law governing 'suspension' should not be applied to action of 'put off duty' also held that the Extra Departmental staff do not enjoy all the rights and privileges which the regular Central Government employees enjoy. The Hon'ble High Court observed as under:

"It is difficult for the Court to accept that an order of put off must be treated differently from an order of suspension. The 1985 Rules do not contemplate a put off action and the Rules do not contemplate an act of suspension. It is not because there is any material or legal distinction between the two courses of action that different phraseologies are used in the two sets of rules. The reason for using the expression "suspension" in one set of Rules and the expression "put off" in the other set of Rules is on account of the nature of the standing of the employees covered by the two sets of Rules. The 1965 Rules apply to regular Central Government employees and the rules apply to Extra departmental staff. The extra departmental staff do not enjoy all the rights and privileges which the regular Central Government employees enjoy. It must necessarily be on account of this difference in their legal status and standing that different names are suggested in the two sets of rules, for what is substantially a similar action. Whether an action is called suspension or put off, it has the effect of preventing the incumbent from attending his duties and drawing regular perquisites due to him. He is not out of service; in fact, he is very much in service. At the same time he is rendered inactive and he is deprived of certain privileges. These are the broad characteristics of the action as suspension and the action of put off. I am, therefore, unable to agree with the submission made on behalf of the respondent that the general principle of law governing suspension should not be applied to the action of put off."


In the same judgment, as far as the application of the provisions of FR 53 was concerned, the Hon'ble High Court was quite categorical that the said provisions would not apply. The court observed as under:



"5 The question of application of the provisions of Rule 53 of the Fundamental Rules or anything analogous to that cannot arise inasmuch as per sub-rules (2) and (3) of Rule 5 of the Rules, the extra departmental agent is not entitled to any allowance during the period when he is allowed leave. It would even appear that the reference to allowance in Rule 9 and Rule 9(3) of the rules is not to subsistence allowance, but to the consolidated allowance which the extra departmental agent would have been entitled to receive had he not been put off duty. There is no order placing the petitioner under suspension. Even assuming that Ext.P2 order, by which he is put off duty, amounts to suspension, in the sense that he is forbidden from discharging his duties during the pendency of an inquiry against him, as laid down by the Supreme Court in V.P.Gidroniya V. State of MP (1970) 1 SCC 362 there is no justification for holding that a person placed in the position of the petitioner is entitled to subsistence allowance inasmuch as FR 53 in terms could not apply to his case, and there is no other provision which enables him to claim subsistence allowance during the period, he is put off duty pending inquiry initiated against him. The reference to allowance in Rule 9 of the Rules, obviously not being to subsistence allowance, in any event, there is no justification for striking down that on any of the grounds urged by the petitioner in the writ petition and during the course of the argument by his counsel."

25 From the aforesaid discussion, it is seen that the law regarding payment of subsistence allowance to GDSs is fairly settled. It is no more in dispute that the post of GDS is a post under the State and they are entitled for subsistence allowance during the period they are "put off duty." It is in recognition of the above position that Rule 12(3) has been incorporated in GDS (Conduct & Employment) Rules, 2001. However, as held by the Apex Court in Rajamma's case, the posts of GDSs are outside the regular service. The regular government servants who are governed by the CCS (CCA) Rules, 1965 etc. when placed under 'suspension', are entitled for subsistence allowance as laid down in FR 53 and other analogous rules. In their case, they are paid subsistence allowance initially at an amount equal to the leave salary which the government

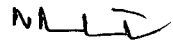
servant would have drawn if he had been on leave on half pay and the admissible allowances on the basis of such leave salary. However, when the GDSs are placed on "put off duty", they are entitled for only an amount as compensation paid ex-gratia equal to 25% of their Time related Continuity Allowance. The sole question is whether the regular government servant and the GDSs can be treated alike for the purpose of payment of allowance during the period of suspension/put off duty. Or in other words, whether it is arbitrary or discriminatory to treat them differently for the said purpose to attract Article 14 and 16 of the Constitution. In fact this question was considered by the Hon'ble High Court of Kerala in the case of J.K.Kattampally (supra) and distinguished the EDAs (now GDSs) from the regular or full time employees. Essentially GDSs are part time employees. Their eligibility for appointment to that post is totally different from that of a regular employee. The difference between GDSs and regular employees are more than the similarities between them. When this is an acceptable position, question of discrimination hardly arises in the matter of payment including the subsistence allowance. In the judgment in K.Saradamma (supra) the Kerala High Court has specifically considered the application of FR 53 on EDAs and held that it is not applicable. In Anam Mallick's case (supra), this Tribunal did not find fault with treating E.D Agents as a separate category. Their claim for grant of leave with allowances was also rejected. In the light of the aforesaid discussion, we are of the considered view that the GDSs being a different category of employees distinct and different from the regular employees having totally different conditions of service, cannot be equated in the matter of payment of subsistence allowance. While as a matter of



principle, the GDSs cannot be denied payments of subsistence allowance, the quantum of subsistence allowance payable to them depends upon their condition of service. Hence, we reject the contention of the applicant that Rule 12(3) of the GDS (Conduct & Employment) Rules, 2001 is illegal and violative of Article 14, 16 & 21 of the Constitution. The OA is, therefore, dismissed. There shall be no order as to costs.

Dated this the 5th day of December, 2006


GEORGE PARACKEN
JUDICIAL MEMBER


N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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