

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO.501/2008

Thursday this the 6 th day of November, 2008.

CORAM:

HON'BLE DR. K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K. NOORJEHAN, ADMINISTRATIVE MEMBER

V. Ummerkoya,
S/o Syedali, GDSMD, Puthur P.O.,
Pallickal, Malappuram, residing at;
'Kozhiserrimadu House, Puthur P.O.,
Pallickal, Malappuram 673 636. ... Applicant

(By Advocate Shri Shafik M.A.)

Vs.

1. Union of India, represented by
the Chief Postmaster General,
Kerala Circle, Trivandrum.
2. The Superintendent of Post Offices,
Manjeri Division, Manjeri,
Malappuram. ... Respondents

(By Advocate Shri A.D.Raveendra Prasad, ACGSC)

The application having been heard on 6.11.2008
the Tribunal on the same day delivered the following:

ORDER

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

The applicant in this O.A. has sought for a declaration that he is entitled to the annual increase in TRCA from 14.9.2003 onwards and also entitled to Ex-gratia payment of Bonus from the year 2002-2003. He has further prayed for a direction to the respondents to pay the aforesaid increase in TRCA and Ex-gratia Bonus with interest. Briefly stated, the applicant was provisionally appointed as GDS Mail Deliverer at Puthur with effect from 24.9.2002 and his appointment was after notification was issued for filling up the post on provisional basis.

Later on, he was appointed on regular basis also with effect from 22.9.2008. The respondents have not considered the case of the applicant for payment of Ex-gratia bonus and annual increase in the TRCA during the period of his provisional appointment. According to them the Ministry of Communication and I.T. vide Annexure R-2 order dated 7.8.2002 has clearly stated that provisional appointees are not entitled to annual increase in TRCA and bonus.

2. The question whether provisional appointees are entitled to annual increase and payment of bonus, has been considered by this Tribunal in a number of earlier O.As. The latest case in this regard is O.A. No.576/07 decided on 3.7.2008. According to the said order, provisional appointees are entitled to TRCA, annual increase as well as annual bonus. It is appropriate to extract the order which is as hereunder.

"The applicant in this OA is aggrieved by the denial of annual increments in Time Related Continuity Allowance (TRCA for short) and ex -gratia payment of bonus. He has, therefore, sought a declaration that he is entitled to annual increments in TRCA of Rs.1740-30-2640 from 1.10.2001 onwards and ex-gratia payment of bonus for the financial years 2001-2002 to 2005-2006 in terms of the provisions contained in Government of India, Department of Posts O.M.No.26-1/97 – PC & ED Cell, dated 17.12.1998(Annexure A-3).


2 The brief facts of the case are that the applicant, was provisionally appointed as GDS Mail Deliverer at Kallayam P.O. with effect from 24.10.2001 against the put off vacancy of the regular incumbent Shri S.Sanalkumar vide Annexure A-1 letter dated 22.10.2001. The said post was in the TRCA of Rs.1740-30-2640 and he has been continuously working from that date. He has, therefore, submitted that he is entitled to draw the periodical annual increments in the said TRCA w.e.f 1.10.2002, 1.10.2003, 1.10.2004, 1.10.2005 and 1.10.2006 but the respondents have not granted them so far, as a result he is still drawing the minimum of the TRCA at Rs.1740/-. In this regard, he has filed Annexure A-4, copy of pay slip of July, 2007 which shows his basic pay is still Rs.1740/-.

3 He has also submitted that the ex-gratia payment of bonus declared by Government of India, Department of Posts from 2001-2002 onwards have also not been paid to him so far. In this regard he has produced the Annexure A-6 letter dated 9.10.2002, Annexure A-7 letter dated 3.10.2003, Annexure A-8 letter dated 11.10.2004, Annexure A-9 letter dated 19.9.2005 and Annexure A-10 letter dated 25.9.2006 by which the Government of India, Department of Posts have declared ex-gratia payment of bonus to Gramin Dak Sevaks for 57 days for the accounting year 2001-2002, 65 days for the accounting year 2002-2003 and 60 days each for the accounting year 2004-2005, 2005-2006 and 2006-2007.

4. According to him he had approached the first respondent namely, Assistant Superintendent of Post Offices, Trivandrum East Sub Division and made oral requests for grant of increments and ex gratia bonus but without any fruitful results. He has also made the Annexure A-5 representation dated 18.10.2006 to the first respondent stating that this Tribunal has already granted similar benefits to the Applicants in OA 1197/2000 and OA 423/03. He has also relied upon the Annexure A-3, Government of India, Department of Posts O.M.No.26-1/97 – PC & ED Cell dated 17.12.1998 by which Justice Talwar Committee recommendations regarding revision of allowances of Postal Extra Departmental Agents have been accepted by the Government and orders have been issued fixing the TRCA for EDMCs/ED Packers/ED Runners/ED Messengers and all other categories of ED Agents.

5 The applicant has further submitted that the denial of annual increments to the applicant in the TRCA in which he has been placed is illegal, arbitrary and in violation of Article 14 and 16 of the Constitution of India. He has also submitted that this issue has already settled by this Tribunal vide its orders in OA 1197/2000 (V.Ayyappan Nair Vs. Sub Divisional Inspector of Post Offices, Neyyattinkara & Ors), OA 424/2003 (S.Kalyanasundaram V/s Superintendent of Post Offices, South Postal Division, Trivandrum & Ors) and OA-787/05 (S.Biju Kumar V/s. Assistant Superintendent of Post Offices, Trivandrum East Sub Division, Trivandrum & Ors).

6 The applicant in OA 1197/2000 (supra) was also a provisional ED Agent and the stand of the respondents was that provisional ED Agents were not entitled to annual increment but that they are to be paid only the minimum of TRCA and they are also not entitled to get bonus as they are not permanent Government employee. According to the clarification contained in



the letter of DG (Posts) New Delhi dated 5.3.1999 and letter of the Postmaster General, Kerala Circle, Trivandrum dated 29.11.1998 also, the provisional ED Agents are not entitled for those benefits. After examining the issue, this Tribunal held that the aforesaid clarification does not mean that even if the provisional employee continues for a number of years, he should remain in the starting stage itself and there is no prohibition for them to draw the annual increments. The Tribunal also held that the denial of ex-gratia payment to the provisional ED Agents based on the clarifications contained in letter of the Postmaster General, Kerala Circle, Trivandrum dated 29.11.1998 is also not justified. Accordingly, the Tribunal allowed the OA and directed the respondents to draw the annual increments of the applicant and make available to him the ex-gratia payment/bonus for the years 1997-98, 1998-99 and 1999-2000.

7 The applicant in OA 424/2003 was another provisionally EDDA appointed till a regular appointment is made. He was also placed in the TRCA of Rs.1740-30-2640. He was not granted increments of Rs.30/- per annum and the ex -gratia for the years 1999-2000, 2000-2001 and 2001-2002 was also not paid to him. The contention of the respondents in that case was also that the applicant not being a regular ED Agent, in terms of the aforesaid clarification dated 5.3.99, he was not entitled to annual increments or Productivity Linked Bonus. Holding that the issue raised in this OA is fully covered by the decision of OA 1197/2000(supra), the said OA was allowed directing the respondents 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.

7 OA-787/2005(supra) was also exactly similar to the other two OAs namely, OA-1197/2000(supra) and OA 424/2003 (supra). The applicant therein has relied upon those orders in that case also. This Tribunal agreeing with the contention of the applicant, allowed the OA and directed the respondents to pay the arrears of pay and bonus to the applicant within three months from 14th September, 2006 failing which interest on the amount due from the date of the order at the rate of 6%.

8 In the reply statement also, the respondents submitted that the applicant is only a provisional GDS employee appointed against a put off vacancy of the regular incumbent and hence he is not eligible for annual increments of TRCA and ex-gratia payment of bonus. They have also stated that the submission of the Applicant that he was placed in the TRCA of Rs.1740-30-

2640 is misleading as he has been provisionally appointed to the post of GDS MD Kallayam against the put of vacancy of the original incumbent and as per departmental orders he is not entitled for any increments or ex-gratia bonus as payable in the case of regular GDS employees. They have also relied upon the Ministry of Communications & IT, Department of Posts, letter No.22-20/2002-GDS dated 7.8.2002(Annexure R-1) clarifying that provisional appointees are not entitled for bonus and annual increments. It has been stated in the aforesaid letter that provisional appointment is resorted to when a GDS (a)retires (b) is put off duty or (c) when deputed to APS and instructions are already there to curb the practice of making provisional appointments and to reduce the period of provisional appointments to the bare minimum. They have also relied upon the order of the Ahmedabad Bench of this Tribunal in OA-114 /2004 Mr.V.P.Gorfad V/s. Union of India & Ors. The applicant therein was appointed on provisional basis as EDBPM as the regular incumbent of the post was on put off duty. The provisional appointment of the applicant as GDSBPM was discontinued by the respondents vide order dated 19.2.2004 and hence the applicant approached the Tribunal. According to the respondents, the work load did not justify the work being taken by the substitute. It was, therefore, decided to assign the duty to the existing GDS by way of combination of duties. The Tribunal held that the decision cannot be held to be arbitrary and illegal as the same is taken in the interest of administration. So far as the applicant therein was concerned, his appointment being provisional one, it was held that he was not entitled to claim that his termination was illegal or arbitrary on his having worked for some time in that post. Accordingly the OA was rejected.

9 We have heard Advocate Shri Shafik M A for the Applicant and Advocate Mrs.Mini R Menon, ACGSC for the Respondents. The question here is, if a provisionally appointed GDS continues beyond the period of one year, whether he will be entitled for increment in the TRCA in which he has been placed and the bonus as applicable to regularly appointed GDSs. This question need not bother us any further as the issue has already been settled by atleast three judgments of this Tribunal, namely, OA 1197/2000 (supra), 424/2003(supra) and 787/2005 (supra). In all these three OAs, it has been clearly held that the provisional GDS are entitled for the annual increments as well as Productivity Linked Bonus. Undisputedly, the applicant in this OA has been appointed to the post of GDS MD against a put off duty of the regular incumbent who was in the TRCA of Rs.1740-30-2640 w.e.f.

24.10.2001. He has been continuously working in that capacity. By Annexure A-4 pay slip of July 2007, it is seen that he is still drawing the basic TRCA of Rs.1740/- in the scale of Rs.1740-30-2640. Further, the OA 114/2004 (supra) relied upon by the Respondents cannot be applied in the present case.

7 In the above facts and circumstances of the case and in the light of the aforesaid judgment, we hold that the applicant herein is also entitled to the annual increments as well as Productivity Linked Bonus. We, therefore, direct the respondents to grant the annual increments of TRCA to the applicant w.e.f. 1.10.2002 onwards in the scale of Rs.1740-30-2640 upto 2006. The Respondents also shall pay him the ex-gratia payment of Productivity Linked bonus from the accounting year 2001-2002 onwards till 2005-2006 at the rate applicable in terms of the Annexure A-6, Annexure A-7, Annexure A-8, Annexure A-9 and Annexure A-10 of letters of the Government of India, Department of Posts. The arrears arising out of the aforesaid directions shall be paid to the applicant within a period of two months from the date of receipt of a copy of this order. In case the respondents fail to pay the arrears within the aforesaid stipulated period, they will be liable to pay the interest of 9% from the date of this order till the payments are made. With the aforesaid direction, the OA is allowed. There shall be no orders as to costs."

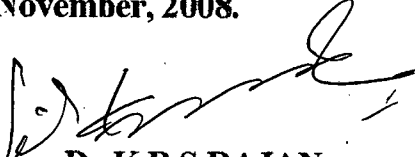
3. We are in full agreement with the above decision of this Tribunal. As such, the decision as above has to be extended to the applicant in this case as well.

4. In view of the above O.A. is allowed. It is declared that the applicant is entitled to annual increase as well as productivity linked bonus. Respondents are directed to grant annual increase of TRCA to the applicant with effect from 14.9.2003 (i.e. one year after he joined) in the scale of pay 1740-30-2640. They shall also pay the applicant Ex-gratia payment of Productivity Linked Bonus for the accounting years 2002-2003 onwards as applicable to other regular Gramin Dak Sevaks. Arrears arising out of the abovesaid direction shall be paid to the applicant within a period of three months from the date of receipt of a copy of this order. In case the respondents fail to pay arrears within the above said stipulated

period, they will be liable to pay interest on the arrears due to the applicant @ 9% from the date of this order till the payments are made. No costs.

Dated the 6 th November, 2008.


Ms.K.NOORJEHAN
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER