

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 516 OF 2009

Friday, this the 17th day of September, 2010

CORAM:

**HON'BLE Mr.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

P.Hareesh
Gramin Dak Sevak Mail Carrier
Kadanchery EDSO, Malappuram District
Residing at 'Cherooli House', Nariparamp PO
Malappuram District ... **Applicant**

(By Advocate Mr.Shafik M.A.)

versus

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

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

The application having been heard on 17.09.2010, the Tribunal
on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

The short questions in the OA are that whether the applicant was appointed on provisional basis, as contended by the counsel for applicant or his appointment is only a stop gap arrangement and that if the applicant is appointed on provisional basis and if he continues for more than one year, whether he is entitled for increments in TRCA and Productivity Linked Bonus ? It is also to be considered whether the applicant was appointed following the regular procedure followed by the Department or not ?



2. We have heard Mr.Shafik, the counsel appearing for the applicant and Mr.A.D.Raveendras Prasad, ACGSC appearing for the respondents. Counsel for respondents contends that since the appointment of the applicant was on a stop gap arrangement and no procedure has been followed for appointing him, he is not entitled for the benefit issued by the Government of India regarding Productivity Linked Bonus alongwith TRCA. This question came up for consideration earlier and this was referred before the Full Bench on the question raised there to the effect that as per orders issued by Government of India for allowing benefit of Productivity Linked Bonus and other benefits is applicable to provisional employees or not ? The Full Bench as per order dated 13.08.2010 held that the provisionally appointed GD, who have been appointed following all the procedures and formalities prescribed for regular appointment and who have completed one year or more of service would be entitled for increment under TRCS and also Productivity Linked Bonus, as awarded to regular GDS.

3. In the light of the above decision arrived at by the Full Bench, we have no doubt that if the applicant can be considered as provisionally appointed GDS and continued for more than one year, he is entitled for the benefit derived by the Government of India orders. In this context, the counsel for respondents submitted that no procedure has been followed and the decision cannot be applied. We are not inclined to accept the contention of the counsel for respondents that no procedure has been followed for appointment of the applicant even on provisional basis. That is the fault on the part of the Department when the applicant worked for more than seven years. If so, there is no doubt to hold that the applicant has

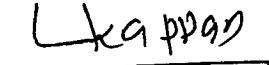


been appointed after following the procedure followed for regular appointment. In the light of the Full Bench decision and the findings , we are of the view that the applicant is entitled for TRCA and Productivity Linked Bonus as per orders issued by Government of India. Accordingly, **OA is allowed.** Further we direct the respondents to pass appropriate orders in the matter as early as possible at any rate, within sixty days from the date of receipt of a copy of the order. No order as to costs.

Dated, the 17th September, 2010.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE K.THANKAPPAN
JUDICIAL MEMBER

VS

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.516/09

Thursday this, the 3rd day of June, 2010

CORAM:

**HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER(J)
HON'BLE MR. K.GEORGE JOSEPH, MEMBER(A)**

P.Hareesh,aged 29 years,
S/o Narayanan Nair, Gramin Dak Sevak Mail Carrier,
Kadanchery EDSO, Malappuram District,
Residing at 'Cherooli House', Nariparamp PO,
Malappuram District. ..Applicant

By Advocate: Mr. Shafik M.A.

vs.

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

By Advocate : Mr.A.D.Raveendra Prasad,ACGSC

The Application having been heard on 03.06.2010, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

This Original Application has been filed by the applicant for a direction to get productivity linked bonus and annual increments even though he is appointed on a provisional basis and continuing as such. For the claim the applicant relies on the orders passed by this Tribunal by a

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Division Bench consisting of Hon'ble Dr. K.B.S.Rajan, Judicial Member and one of us viz. Hon'ble Sri George Joseph, Administrative Member in O.A.No.605/2008 and connected cases. The aforesaid Original Applications have been allowed and directed that the applicants therein are entitled to future increments and ex gratia bonus even on their provisional employment. For the same claim, when O.A.No.698/2007 has been considered by this Tribunal, a Division Bench consisting of Hon'ble Sri George Paracken, Judicial Member and Hon'ble Dr. K.S.Sugathan, Administrative Member vide order dated 20th October,2008 held as follows:-

“4. The services on 'provisional basis' and 'regular basis' are entirely on different footings. The respondents have a clear policy regarding payment of productivity linked bonus and increments in TRCA to the Gramin Dak Sevaks. According to the said policy, productivity linked bonus and increments in TRCA are admissible to only regular Gramin Dak Sevaks and not to those who are serving on provisional basis. It is on the basis of the aforesaid policy that the respondents have rejected the applicant's representation for grant of productivity linked bonus and increments for the period of his provisional service commencing from 12.9.1999 vide impugned Annexure A-5 letter dated 15.6.2007. They have paid him both the productivity linked bonus and the increments in TRCA after 19.5.2005 i.e. the date from which he has been regularly appointed. We do not find the aforesaid action of the respondents arbitrary, unjust and illegal as alleged by the applicant. This O.A. is, therefore, devoid of any merits and the same is dismissed accordingly.”

2. Like manner in O.A.No.576/07 has been again considered this question by a Division Bench consisting of Hon'ble Dr.K.B.S.Rajan ,

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Judicial Member and one of us (Hon'ble Mr.K.George Joseph, Administrative Member) in O.A. 605/08 and connected cases and while disposing of the said O.As., the Division Bench considered the view taken in O.A.No.698/07 and ordered that the stand in the said O.A. can be considered only as per incuriam. In the present O.A. reply statement has been filed by the respondents and the respondents rely on an order No.22-20/2002-GDS dated 07.08.2002 of the Ministry of Communications & IT, Department of Posts, GDS Section in which it was categorically ordered that "As far as provisional appointment against persons deputed to APS, the issue of allowing regular appointment against such posts to curb provisional appointment will be expired. It may also be mentioned that the issue of whether bonus should be paid to the provisional appointees, has been examined even earlier in consultation with Internal Finance and rejected. Hence the question of giving into this demand does not arise. The bonus is however being given to GDS who are working against departmental posts and who provide substitute in their place. Thus the provisional appointees are not entitled to bonus."

3. Same order has been referred in O.A.No.576/2007, in para-8 of the order, it was observed as follows:-

"8. In 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 R1) 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 O.A-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 GDBPM was discontinued by the respondents vide order dated 19.2.2004 and hence the applicant approached this 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, the 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 O.A. was rejected.”

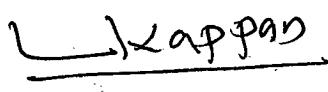
4. A reading of the above orders would show that the decisions arrived at by this Tribunal are fragmented and contradictory. Hence we feel that it is only proper for us to refer the matter to a Larger Bench to decide the issue. Hence we are doing so. The Registry is directed to take up the



matter with the Hon'ble Chairman at the earliest for constituting a Larger Bench for the above purpose. Ordered accordingly.


(K.GEORGE JOSEPH)
MEMBER(A)

/njj/


(JUSTICE K.THANKAPPAN)
MEMBER(J)