

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No. 552/2005**

**Wednesday, this the 11th day of April 2007.**

**CORAM:**

**HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN  
HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER**

G.K.Anitha Kumari  
Gramin Dak Sevak Branch Post Master,  
Mukkoodu P.O., Mulavana,  
Kollam Division. ... Applicant

(By Advocate Shri T.C.Govindaswamy & Mr. Thmoas Mathew)

**Vs.**

1. Senior SuperIntendent of Post Offices,  
Kollam Division, Kollam 691 001.
2. Chief Post Master General, Kerala Circle,  
Trivandrum.
3. Director General,  
Department of Posts,  
New Delhi.
4. Union of India, represented by its  
Secretary, Department of Posts,  
New Delhi. ... Respondents

(By Advocate Shri P.M.Saji, ACGSC)

The application having been heard on 3.4.2007,  
the Tribunal on 11.04.07 delivered the following:

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

The question is short but sharp. What is the price that a G.D.S.  
Employee pays for a transfer at his request to another recruiting unit has been

specified in the instructions dated 11-02-1997 (Annexure A-9) and the same calls for the interpretation of the following portion of the said instructions:-

"2 In the context of the provisions contained in this office letters under reference, a reference has been received from the Postmaster General, Kochi Region, on the subject in OAs referred to above. The matter has been examined and the following pointwise position is clarified below:-

(I) .....

(II) Whether the "Placement" of an ED Agent in one Post Office to another be treated as "transfer" or as on "appointment"

3.....

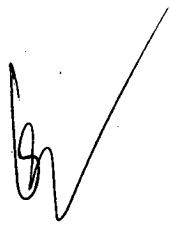
4. In so far as (II) above is concerned, it is clarified that if the placement of an ED Agent is from one Post Office to another within the same recruiting unit, the same will be treated as transfer and the ED Agents concerned will not forfeit his past service for any purpose including seniority. However, if the placement is from one Post Office to another outside his own recruiting unit, in such an event, the placement will be treated as fresh appointment and the ED Agent concerned will forfeit his past service for seniority and will rank junior most to all the regularly appointed ED Agents of that unit."

2. Now the brief facts of the case as spelt out in the O.A.

(a) The applicant while working as GDSBPM, Manali P.O. in Pattinamthitta Postal Division was transferred as EDS BPM, Mukkoodu P.O. in Kollam Postal Division vide Annexure A(1) order dated 01.03.2004.

(b) At the time of his transfer, the applicant was drawing Basic Pay/TRCA at Rs 1,920/- in the scale of Rs 1,600 - 40 - 2400.

(c) On her joining the P.O. at Mukkoodu, the applicant was placed in



the TRCA scale of Rs 1,600 - 2400 but was paid only Rs 1,600/- being the minimum in the said scale.


(d) Reduction in the TRCA compelled the applicant to pen a representation dated 30-06-2004 but since the same did not evince any response from the respondents, OA 115 of 2005 was filed praying for a declaration that the reduction in the pay and DA on transfer from GDS BPM Manali to GDS BPM Mukkoodu is illegal, arbitrary and discriminatory and for a direction to the respondents to restore the rate of TRCA at Rs 1,920/- in the scale of Rs 1,600 - 40 - 2,400/-. The said OA was disposed of by order dated 22-02-2005 with a direction to the respondents to consider and decide the representation filed by the applicant.

(e) Accordingly, the respondents decided the representation by the impugned order, whereby the request of the applicant was rejected on the ground that on her transfer, the applicant has been treated as a fresh appointee.

(f) Applicant has preferred this OA against the said impugned order dated 05-05-2005 (Annexure A-8).

3. Respondents have contested the OA. Their contention is that as per the original order dated 11-02-1997, placement of the applicant was to be treated as a fresh appointment and the applicant stands to lose the benefit of past service for seniority and as such, he does not enjoy any right for pay protection.

4. The applicant has filed rejoinder, in which he has filed a copy of the order dated 17-12-1998 (Annexure A-12) regarding the introduction of TRCA. He has further stated that since the applicant was posted in the place of one Shri



Abraham whose TRCA was Rs 1920/- there is no additional expense as his claims is only for the payment of the same TRCA.

5. Additional reply had been filed in which the respondents brought on record an order dated 6-5-1985 (Annexure R-3) which provides that on request transfer an ED agent who joins another post without any break is entitled to take into account the past service for taking up departmental examination and for sanction of gratuity. (Another communication dated 26-12-2002 filed by the respondents with the additional reply was found to have been withdrawn).

6. The applicant filed his additional rejoinder with which he had annexed a copy of the latest orders (dated 17-07-2006) relating to transfer of GDS.

7. Respondents have filed further additional reply, annexing copy of order dated 01-10-1987 relating to allowances applicable to ED employees at the material point of time.

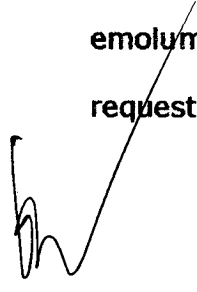
8. Counsel for the applicant emphasized that in the same paragraph 4 of order dated 11-02-1997, two distinct terms have been used as under:-

".... It is clarified that if the placement of an ED Agent is from one Post Office to another within the same recruiting unit, the same will be treated as transfer and the ED Agents concerned will not forfeit his past service for any purpose including seniority. However, if the placement is from one Post Office to another outside his own recruiting unit, in such an event, the placement will be treated as fresh appointment and the ED Agent concerned will forfeit his past service for seniority and will rank juniormost

to all the regularly appointed ED Agents of that unit."

9. According to the counsel, the former term is wider than the latter and when an individual is transferred at his request, the price he pays is only the limited part i.e. Past service for seniority which means that his past service for any other purpose than seniority remains intact and since his TRCA rate at Rs 1920 is as a result of his past service, which remains intact, on his transfer, he is entitled to receive the TRCA without any truncation. As regards the term "fresh appointment", the counsel submitted that the same shall also relate only with reference to seniority and not for fixation of TRCA. To hammer home his point, the applicant has relied upon the decision of the Apex Court in the case of Renu Mullick vs Union of India, (1994) SCC L & S 570 wherein the term used was "new entrant" and in which case, the Apex Court has defined the extent of loss in seniority on Inter Collectorate Transfer. Another case relied upon by the applicant's counsel is (1999) SCC (L&S) 486.

10. Counsel for the respondents submitted that an individual on request transfer has to be treated purely as a fresh appointee which would mean placement at the minimum of the TRCA. Again, since at the time when the order dated 11-02-1997 came to be passed there was only fixed amount of allowance for EDS employees, there was no need to specify as to the emoluments that an individual would be entitled to on his being posted, at his request, to another recruitment unit.



11. Arguments were heard and documents perused. Admittedly, at the time when order dated 11-02-1997 was passed there was no TRCA, much less any increase in rates of TRCA corresponding to the past service. The term "for any purpose including seniority" as available in the order dated 11-02-1997 would embrace items like entitlement to sit for the examination, entitlement to gratuity and of course, seniority. This seniority is a factor which is reckoned for the purpose of promotion on the basis of seniority to any Group D post, such as Postman. Thus, on inter-recruiting-unit transfer, an individual would stand to lose his seniority and the consequence of loss of seniority would be that his past services cannot be taken into account for the purpose of seniority in the new unit. His entitlement to sit for examination and for gratuity would, however, remain intact. In other words this would mean that the concessions available to the applicant based on past service for the purpose of sitting for examination and for gratuity, as provided for in order dated 06-05-1985 (Annexure R-3) remains intact even on request transfer to another Recruiting Unit. Of course, there is no controversy about the same. What is in dispute is whether there would be any impact on the TRCA and if so, to what extent.

12. The 1998 order whereby for the first time, TRCA had been introduced talks of difference TRCA for different GDS. Again, for the same GDS (say, GDS BPM), there are two rates as under:-

(1) Rs 1,280 -35- 1960 For those with workload upto 3 hours.

(2)Rs 1,600 - 40 - 2400 : For those with workload more than 3 hours.

13. Since the TRCA cannot be increased in respect of any ED Post Office unless the workload increases, it has to be seen whether the contention of the applicant could hold good when the restriction is that there shall be no increase in the TRCA save when there is increase in the workload. If a GDSBPM working in a particular ED Post Office which carries a TRCA of Rs 1,600 - 40 - 2400 (and where he is drawing the TRCA at the maximum of Rs 2,400/- or for that matter more than Rs 1,960/- ) requests for a transfer to another ED Post Office where the TRCA is only Rs 1,280 - 35 - 1960, what should be his TRCA in case of his transfer to the new unit? Should it be in the grade of Rs 1,600 - 40 - 2,400? or Rs 1,280 - 35 - 1960? and if latter, should there be any protection of last TRCA drawn? Obviously, the person so transferred has to sacrifice the past TRCA and has to be placed at the scale of Rs 1,280 - 35 - 1,960 as this is the scale available for performing the duties in that post office and here again, he cannot be paid any amount over and above Rs 1,960/-. And since the placement of a GDS employee on request is not a "transfer" but only an "appointment" (see the clarification sought at para 2 of order dated 11-02-1997) and the same is not a mere appointment, but only a **"fresh appointment"**, there is no scope for TRCA of the earlier unit either retained or the extent of TRCA already drawn being protected. It has necessarily to be at the minimum of the TRCA. That such a placement would be only a fresh appointment would be evident even as per the latest orders on limited transfer, vide order dated 17-



07-2006 vide para 3(II) where it is stated **"Request for such transfer will be considered against the future vacancies of GDS"**. And, para 3(III) stipulates, **"TRCA of the new post shall be fixed after assessment of the actual workload of the post ...."** This would mean that any future vacancies when in the normal circumstances would be filled by fresh appointment, would be filled up by such placement from one recruitment unit to another at the request of the GDS employee. And, in respect of TRCA, the workload shall have to be assessed and paid. As such, when the respondents oblige an individual by acceding to his request for a transfer, they are under no obligation to suffer payment of higher TRCA. Thus the logical consequence of **"fresh appointment"** is not only that the individual has to lose his seniority as explicitly spelt out in the order dated 11 - 02-1997 but also he cannot be better placed than any other fresh appointee and from that point of view, the TRCA cannot but be only at the minimum of the TRCA applicable to that unit.

14. One more aspect has to be seen. A GDS employee seeking transfer within the same recruitment unit is entitled to retain his TRCA intact. Transfer within the same recruitment unit stands in a different footing from a transfer outside the recruitment unit. This difference has to be maintained. If the contention of the applicant is accepted, it would obliterate such a difference. Mere loss of seniority would not constitute a marked difference for such a loss in seniority does not mean anything as the individual is entitled to appear in the departmental examination and the past service is also counted for gratuity. The only consequence of loss of seniority may be in matter of promotion, which is






rare and Infrequent.

15. Now as to the case laws relied upon by the applicant. In the case of Renu Mullick, (supra) It was a case of Inter collectorate transfer and the question that arose was whether on such Inter collectorate transfer, apart from the loss of seniority, the extent of experience for the purpose of eligibility to higher post also gets obliterated. The Apex Court held in negative. The Apex Court has held as under:-

*A bare reading of para 2( ii ) of the executive instructions dated May 20, 1980 shows that the transferee is not entitled to count the service rendered by him/her in the former collectorate for the purpose of seniority in the new charge. The later part of that para cannot be read differently. The transferee is to be treated as a new entrant in the collectorate to which he is transferred for the purpose of seniority. It means that the appellant would come up for consideration for promotion as per her turn in the seniority list in the transferee unit and only if she has put in 2 years service in the category of UDC. But when she is so considered, her past service in the previous collectorate cannot be ignored for the purposes of determining her eligibility as per Rule 4 aforesaid. Her seniority in the previous collectorate is taken away for the purpose of counting her seniority in the new charge but that has no relevance for judging her eligibility for promotion under Rule 4 which is a statutory rule. The eligibility for promotion has to be determined with reference to Rule 4 alone, which prescribes the criteria for eligibility. There is no other way of reading the instructions aforementioned. If the instructions are read the way the Tribunal has done, it may be open to challenge on the ground of arbitrariness.*

16. The Apex Court was considering only with reference to the eligibility condition for promotion in the above case and not with reference to pay scale or pay. Similarly, in the other case relied upon, i.e. of (1999) L & S 486, it was a



case where time bound promotion was the subject matter and the Apex Court has held that by losing seniority, the experience gained does not get eclipsed and the Apex Court has relied Inter alia on the decision in the case of Renu Mullick. Thus, the two cases relied upon by the applicant are distinguishable.

17. Counsel for the applicant laboured a lot to establish that what has not been spelt out cannot be fed into the rules and here since the orders are silent about TRCA, the respondents cannot introduce the same to reduce the TRCA that the applicant was earlier drawing. We decline to agree for twin reasons. First, as rightly pointed out by the counsel for the respondents, as also spelt out in the counter, "At the time of issuance of Annexure A-9, GDSs were not entitled to annual increments. Secondly, para 3(II) and 3(III) of order dated 17-07-2006 also spells out that the placement shall be against a vacancy and that the TRCA shall have to be assessed. In other words, the entitlement of an individual on transfer from another recruitment unit would also be to the extent of the TRCA correlated to the workload and the same is independent of his past entitlement in the previous unit. Nothing less; nothing else.

18. In view of the above, the applicant's case fails and is therefore, dismissed. No cost.

Dated the 11<sup>th</sup> April 2007.

  
**Dr. K.B.S. RAJAN**  
**JUDICIAL MEMBER**

  
**SATHI NAIR**  
**VICE CHAIRMAN**

cvr.