

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 605 of 2008

with

O.A. No. 606 of 2008

with

O.A. No. 697 of 2008

Tuesday, this the 20th day of October, 2009

CORAM:

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

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. O.A. No. 605 of 2008

A.M. Geetha Devi,
W/o. M. Girish Kumar,
GDSBPM, Omanur BO,
Cheruvayur, Manjeri Division,
Residing at 'Thanal', Kuniyil,
Kizhuparamba P.O., Areacode,
Manjeri : 673 639

... Applicant.

(By Advocate Mr. Shafik M.A.)

v e r s u s

1. Union of India, represented by
The Postmaster General,
Northern Region, Kozhikode.

2. The Superintendent of Post Offices,
Manjeri Division, Manjeri, Malappuram.

... Respondents

(By Advocate Mr. Sunil Jose, ACGSC)

2. O.A. No. 606 of 2008

P. Sailaja,
W/o. K. Devadas, GDSBPM,
Kolakatuchali BO, Chelambra,
Manjeri Division, Residing at
"Sobha Nivas", Kolakatuchali BO,
Chelambra, Manjeri : 673 634.

... Applicant.

(By Advocate Mr. Shafik M.A.)

v e r s u s

1. Union of India, represented by
The Postmaster General,
Northern Region, Kozhikode.

2. The Superintendent of Post Offices,
Manjeri Division, Manjeri, Malappuram. ... Respondents

(By Advocate Mrs. Aysha Youseff, ACGSC)

3. O.A. No. 697 of 2008

K.T. Sudheesh,
S/o. Late K.T. Ramachandran, GDSBPM,
Karad P.O, Malappuram District,
Residing at "Rose Garden", Karad P.O.,
Manjeri, Malappuram. ... Applicant.

(By Advocate Mr. Shafik M.A.)

v e r s u s

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 Mr. MVS Nampoothiry, ACGSC)

The Original Applications having been heard on 8.10.09, this Tribunal
on 20/10/09 delivered the following :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

As common question of law relating to grant of future increments and
bonus during the period of provisional engagement is involved in the above three
O.As , these have been considered and decided in this common order.

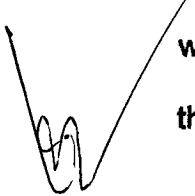
2. The facts in each of the above three cases are as under:-

(a) O.A. No. 605/08: On the regular incumbent to the post of GDSBPM,
Kizhuparamba having been put off duty w.e.f. 16-04-2001, the vacancy
was notified by the respondents for filling up the same on provisional
basis and the applicant was appointed on provisional basis w.e.f.
01.08.2001. The regular incumbent, on the basis of an order of the

Tribunal was to be reinstated w.e.f. 21-07-2007 in the said post, consequent to which, the applicant herein, who had by then rendered three years' service, was offered alternative regular appointment w.e.f. 21-07-2007 at Omanur. Applicant's past provisional service was counted for determining seniority, grant of gratuity/severance allowance and also for appearing in the departmental examinations, while, during the period from 01-08-2001 to 21-07-2007, bonus and future increments were not paid.

(b) O.A. No. 606/2008 : On the regular incumbent to the post of GDSBPM, Kolakkattuchali having been removed from service, w.e.f. 10-06-2002, the vacancy was notified by the respondents for filling up the same on provisional basis and the applicant was appointed on provisional basis w.e.f. 24-07-2002. Subsequently, when the vacancy was finally filled in on regular basis, the applicant was so appointed on regular basis w.e.f. 06-07-2006. Applicant's past provisional service was counted for determining seniority, grant of gratuity/severance allowance and also for appearing in the departmental examinations, while, during the period from 24-07-2002 to 05-07-2006, bonus and future increments were not paid.

(c) OA No. 697/2008: On the demise of Shri K.T. Ramachandran, G.D.S.B.P.M, Karad on 05-03-2005, his son, applicant in this O.A. had been engaged in the vacant post w.e.f. 11-05-2005, vide Annexure A-1. The applicant's mother approached the respondents for compassionate appointment of her son, and on due consideration, the applicant was offered the said post of GDSBPM, Karad on compassionate grounds w.e.f. 05-07-2007. Applicant claims annual increment, bonus etc., for the period from 11-05-2005 to 04-07-2007.



3. In all the above cases respondents have contested the O.A. asserting that increments and bonus are not available for provisional appointment. They have relied upon the decision of the Ministry of Communication & I.T., Department of Posts, vide order dated 7th August 2002 at Annexure R-2 in OA No. 606/08. Each side relied upon the decision of this Tribunal on the subject matter, which went in their respective favour.

4. In the past, the issue involved had been dealt with in a few cases and the same are as under:-

(a) **O.A. 576/2007:** 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/-.

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.

The Tribunal considered the case and held as under:-

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 at least 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.

10. In the above facts and circumstances of the case and in the light of the aforesaid judgments, 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."

(b) **OA No. 698/2007:** The applicant in this OA was appointed on a stop gap arrangement w.e.f. 12-09-1999 as GDSSV, Chavara, on the resignation of the regular incumbent and he continued in the said post till it was proposed to be terminated in 2003. The applicant then filed OA No. 82/2003 contending that the character of his engagement is 'provisional appointment' and as such, the benefits available therefor should be extended to him. The OA was allowed and his service from 1999 onwards were directed to be treated as provisional. Respondents had accordingly issued orders appointing the applicant on provisional basis with retrospective effect from 12-09-1999. Thereafter, the applicant was engaged on regular basis w.e.f. 19.05.2005. The applicant had claimed increment during the period of provisional appointment as well as bonus for that period. The Tribunal rejected the contention as under:-

"4. We have heard Shri M.R.Hariraj, counsel for applicant . and Shri P.A.Aziz, ACGSC for respondents. 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. There shall be no order as to costs."

5. The above two orders go in different directions and as such, the question arises as to which of the above two orders should be followed/differed for the later order had not taken into account the earlier orders. The earlier orders in fact, took into account previous decisions and thus consistency has been there since 2000. In OA No. 1197/2000, the Tribunal has held as under:-

"5. A close scrutiny of the clarification given would clearly indicate that from 1.3.1998 onwards the substitute and provisional ED Agents would be placed at the minimum of the TRCA. It does not mean that even if the provisional appointment continues for a number of years, the provisional appointee would remain in the starting stage itself. Even in the case of provisional employees, the drawal of annual increments are not prohibited. The case of substitutes may be different. We are of the considered view that the clarification only indicates that on 1.3.1998 a provisional ED Agent would be placed at the beginning of the TRCA and his progression in that scale would be on completion of one year.

6. Similarly, the denial of ex-gratia payment to the provisional ED Agent basing on the clarification contained in Annexure R-1[2] is also not justified. The query and clarification on points (vi) and (vii) are relevant in this case, which can be extracted as follows :

Query :

"(vi) Substitutes engaged to work in the place of Eds who are either working as Gr.D/Postman against leave vacancy"

Clarification:

"As the substitute working in such posts of EDs are not regular ED employees, they are not eligible for bonus."

Query:

"(vii) Substitutes working in place of EDAs who are put off duty"

Clarification:

"Such substitutes are not entitled for bonus as they are not regularly appointed to ED posts."

What is stated above is that substitutes, either engaged to work in the place of ED Agents who were on leave as Postman or work in the place of ED Agents who were put off duty, would not be entitled to bonus as they are not regularly appointed to ED posts. The said clarification does not speak anything about ED Agents who are provisionally appointed. Therefore, the denial of the ex-gratia payment/bonus to the applicant on the ground that he is only a provisional ED Agent also is not justified.

7. In the light of what is stated above, the Original Application is allowed, setting aside the impugned order Annexure A5 and declaring that the applicant is entitled to annual increments and ex-gratia payment/bonus for the years 1997-98, 1998-99 and 1999-2000. We direct 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. The above direction shall be complied with and payments made within a period of two months from the date of receipt of a copy of this order. No order as to costs."

6. The above order attained finality and was implemented by the Respondents (though after contempt petition No. CPC 19/03 was filed).

7. This situation thus leads to the next question, whether the earlier decision of this Bench be followed by holding the later decision as 'per incuriam' or the matter has to be referred to a larger bench, in case the said order is respectfully differed.

8. In *Sub-Inspector Rooplal v. Lt. Governor*, (2000) 1 SCC 644, the Apex Court has held as under:-

"If at all, the subsequent Bench of the Tribunal was of the opinion that the earlier view taken by the Coordinate Bench of the same Tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two Coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every presiding officer of a judicial forum ought to know, for consistency in

interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again that precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. A Coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement.

9. Again, in *Vijay Laxmi Sadho (Dr) v. Jagdish*, (2001) 2 SCC 247, it has been observed as follows :

"33. As the learned Single Judge was not in agreement with the view expressed in Devlal case it would have been proper, to maintain judicial discipline, to refer the matter to a larger Bench rather than to take a different view. We note it with regret and distress that the said course was not followed. It is well settled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether on the basis of 'different arguments' or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate, creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs."

10. In *State of Bihar v. Kalika Kuer*, (2003) 5 SCC 448, the aspect of 'per incuriam' has been discussed in detail and the same is as under:-

"5. At this juncture we may examine as to in what circumstances a decision can be considered to have been rendered per incuriam. In Halsbury's Laws of England (4th Edn.) Vol. 26: Judgment and Orders: Judicial Decisions as Authorities we find it observed about per incuriam as follows:

"A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow; or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force. A decision should not be treated as given per incuriam, however, simply because of a deficiency of parties, or because the court had

not the benefit of the best argument⁵, and, as a general rule, the only cases in which decisions should be held to be given per incuriam are those given in ignorance of some inconsistent statute or binding authority. Even if a decision of the Court of Appeal has misinterpreted a previous decision of the House of Lords, the Court of Appeal must follow its previous decision and leave the House of Lords to rectify the mistake."

Lord Godard, C.J. in *Huddersfield Police Authorities case* observed that where a case or statute had not been brought to the court's attention and the court gave the decision in ignorance or forgetfulness of the existence of the case or statute, it would be a decision rendered in per incuriam.

6. In a decision of this Court reported in *Govt. of A.P. v. B. Satyanarayana Rao* it has been held as follows:

"The rule of per incuriam can be applied where a court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or where a court omits to consider any statute while deciding that issue. ...We, therefore, find that the rule of per incuriam cannot be invoked in the present case. Moreover, a case cannot be referred to a larger Bench on mere asking of a party. A decision by two Judges has a binding effect on another coordinate Bench of two Judges, unless it is demonstrated that the said decision by any subsequent change in law or decision ceases to lay down a correct law."

7. According to the above decision, a decision of the coordinate Bench may be said to have ceased to be good law only if it is shown that it is due to any subsequent change in law.

8. In *State of U.P. v. Synthetics and Chemicals Ltd.* his Court observed:

"40. 'Incuria' literally means 'carelessness'. In practice *per incuriam* appears to mean *per ignoratium*. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. (*Young v. Bristol Aeroplane Co. Ltd.*) Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law."

9. In *Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.* this

Court observed:

"A prior decision of the Supreme Court on identical facts and law binds the Court on the same points of law in a later case. In exceptional instances, where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, the principle of per incuriam may apply. Unless it is a glaring case of obtrusive omission, it is not desirable to depend on the principle of judgment 'per incuriam'. It has to be shown that some part of the decision was based on a reasoning which was demonstrably wrong, for applying the principle of per incuriam.

10. Looking at the matter, in view of what has been *held to mean* by per incuriam, we find that such element of rendering a decision in ignorance of any provision of the statute or the judicial authority of binding nature, is not the reason indicated by the Full Bench in the impugned judgment, while saying that the decision in the case of *Ramkrit Singh* was rendered per incuriam. On the other hand, it was observed that in the case of *Ramkrit Singh* the Court did not consider the question as to whether the Consolidation Authorities are courts of limited jurisdiction or not. In connection with this observation, we would like to say that an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the court or more aspects should have been gone into by the court deciding the matter earlier but it would not be a reason to say that the decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways — either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits. Though hardly necessary, we may however, refer to a few decisions on the above proposition.

11. Keeping in view the fact that consistently this Tribunal having held that provisionally engaged GDS are entitled to future increments and Bonus, the lone exception being the decision in OA No. 698/2007, which in fact had perhaps no opportunity to consider its own earlier decision, we may observe that the said decision in OA No. 698/2007 has been rendered per incuriam. We are in respectful agreement with the decision in the earlier cases i.e. O.A. No. 576/2007.

(which was passed following the decisions of this Tribunal in OA No. 1197/2000 and 424/2003 as already referred). Thus, those applicants whose appointments were provisional after following the selection procedure are certainly entitled to the future increments as well as Bonus as prayed for.

12. In so far as the applicant in OA No. 697/2008, his initial appointment was immediately after the demise of his father. The Circle Relaxation Committee could decide to grant compassionate appointment only at a later date. From the date of the applicant's initial engagement till his regular appointment, the nature of service rendered, according to the respondents, and rightly so, was only a stop gap arrangement. The period did not go even upto 3 years. As such, his case is not covered as a provisional appointment.

13. In view of the above, OA Nos. 605/08 and 606/08 are allowed. It is declared that the applicants therein are entitled to future increments in the TRCA as also bonus for the years they were engaged on provisional basis. OA No. 697/2008, is however, dismissed.

14. No costs.

(Dated, the 20th October, 2009)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



Dr. K B S RAJAN
JUDICIAL MEMBER

cvt.