

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No. 82/2000

Monday, this the 11th of March, 2002.

CORAM

HON'BLE MR G. RAMAKRISHSAN, ADMINISTRATIVE MEMBER
HON'BLE MR K.V. SACHIDANANDAN, JUDICIAL MEMBER

S. Kalyana Sundaram Pillai,
Extra Departmental Delivery Agent,
Anad P.O., Nedumangad.

Applicant

[By Advocate Mr Thomas Mathew]

Vs.

1. The Post Master,
Head Post Office, Thycaud,
Trivandrum-14.
2. The Chief Post Master General,
Kerala Circle,
Trivandrum.
3. The Director General,
Department of Posts,
New Delhi.
4. Union of India rep. by its Secretary,
Department of Posts,
New Delhi.

Respondents

[By Advocate Mrs. S. Chitra, ACGSC]

The application having been heard on 4.2.2002, the
Tribunal delivered the following order on 11.3.2002.

ORDER

HON'BLE MR K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant is a provisional appointee to the post of Extra Departmental Delivery Agent (EDDA, for short), Anad Post Office in Trivandrum South Postal Division and he continued in that post since 28.10.97 in the vacancy caused on the appointment of the permanent incumbent to Group-D cadre and deputed to Army Postal Service. As per order dated 10th June, 1998 of this Bench of the Tribunal in O.A.453/98 the applicant is continuing in the post till a regular appointment is made. The Government of India, Department of Posts as per letter No.26-B/99-PAP dated 13.10.99 notified sanction of the President of India to grant the payment of Productivity Linked



Bonus equivalent to 48 days emoluments in cash for the accounting year 1998-99 to the staff of Department of Posts in Group C and D and all non-gazetted staff in Group-B without ceiling on emoluments for eligibility. It is also notified that ED Agents will be eligible for ex-gratia payment as per para-4 of the said letter dated 13.10.99 (Annexure A-1). Accepting the recommendations of Justice Talwar Committee, it was decided to pay bonus to the applicant and hence an amount of Rs.3377/- was paid to him as Productivity Linked Bonus (PLB) for the accounting year 1998-99 taking into account the service rendered by him in the accounting year 1998-99.

2. As per order dated 24.12.99 (Annexure A-2) the 1st respondent is trying to recover the said amount of Rs.3377/- (PLB) from the applicant on the ground that he was holding the post on provisional basis and the incumbent is not eligible for drawl of PL Bonus, which is under challenge. The applicant has sent a reply dated 17.1.2000 (Annexure A-3) to the 1st respondent stating that he is not liable to pay back the amount and may be exempted from paying the amount already paid to him as Bonus. Subsequently having came to know that the 1st respondent has initiated action to recover the amount of Bonus already paid to him from his pay for the month of January, 2000, he filed this O.A. seeking the following reliefs:

- (a) "declare that the applicant is entitled to PLB/ex-gratia payment for the year 1998-99 and direct the respondents accordingly;
- (b) call for the records leading to the issue of Annexure A-2 and quash the same;
- (c) pass such other orders or direction as deemed just, fit and necessary in the facts and circumstances of the case; and
- (d) award costs of and incidental to this application."



3. Respondents have filed a reply statement stating that productivity linked bonus (PLB) is only eligible to regularly appointed ED Agents. Since the applicant is only working in the post on a stop-gap basis, he is not entitled for the same and the amount of Rs.3,377/- paid to him was by mistake on the part of the respondents. The 2nd respondent respondent communicated the matter to him as per letter dated 7.5.90 (Annexure R1(a) making it clear that productivity linked bonus is entitled to only regular employees of this department. Substitutes working on a stop-gap basis are not regular employees and thus they are not entitled for bonus. In furtherance to R1(a), A-2 notice was sent to the applicant directing to credit the amount under U.C.R.

4. Applicant has filed a rejoinder stating that Annexure A-1 issued by the competent authority does not contain any condition that only regularly appointed ED Agents are eligible for bonus. In fact bonus is being deferred wages and the applicant who worked continuously on a regular basis throughout the year 1998-99 became eligible for ex-gratia as per Annexure A-1 and payment was made to him and also to others. Annexure R-1(a) produced by the respondents in support of their contention has not relevance in the case of the applicant. Annexure R-1(a) clearly shows that it was a clarification made long years back regarding payment of productivity linked bonus to the employees of the department of Posts for the year 1986-87 and in the facts and circumstances of that circular is different from Annexure A-1 order and Annexure R-1(a) is to be rejected. Annexure A-2 notice was issued without any prior notice denying an opportunity to the applicant to be heard. In the circumstances Annexure A-2 cannot be sustained and is liable to be quashed. The payment of ex-gratia which is based on the productivity earned by the applicant also took part and



therefore, the payment made as ex-gratia to the applicant cannot be termed as a mistake as alleged. Hence the ex-gratia payment has been rightly paid to the applicant for the duty performed throughout the year as per Annexure A-1 order and the applicant is not liable to pay back the amount.

5. We have heard the counsel for the applicant as also the respondents and perused the materials placed on record and the documents produced thereof. Annexure A-1 is a basis upon which the amount towards productivity linked bonus was paid to the applicant. This payment is admittedly made to the applicant like other employees of the Department of Posts in Group C, D and all non-gazetted staff in Group B without any ceiling on emoluments for eligibility. It further states that ED Agents will be eligible for ex-gratia payment as per para 4 of this letter, but no bonus is admissible to reserved trained pool or part-time workers. ED Agents cannot be treated as part-time workers. Para 4.1 of Annexure A-1 reads as follows

"4.(i) Extra Departmental Agents will be eligible for ex gratia payments calculated for Fortyeight days based on their actual monthly emoluments. For this purpose in respect of ED employees who were on duty throughout the year 1998-99 the actual average monthly emoluments will be calculated taking into account the time related continuity allowance plus corresponding Dearness Allowance drawn by them for the period from 1.4.1998 to 31.3.1999 (and not from 1.3.1998 to 28.2.1999) by applying the procedure prescribed in Para 3 above. It may also be added that for the purpose of calculating average emoluments, while the period for which substitute, if any, was employed during the absence of the ED Agents will be taken into account but the emoluments drawn by the substitute will be excluded.

(ii) If an ED Agent has been on duty for a part of the year by way of either a fresh appointment or being put off duty or had left service, he will be paid ex gratia bonus calculated by applying the procedure prescribed in Para.8 of this letter.

(iii) In respect of those ED Agents who were appointed in short term vacancies in Postman/Group 'D' cadre, the clarificatory order issued vide Directorate letter No.26-6/89-PAP dated 6.2.1990 and No.26-7/90-PAP dated 4.7.1991 will apply."



6. Nowhere in Annexure A-1 it is stated that this payment is not payable to substitutes or those who are not regular ED employees. Therefore, Annexure A-3 cannot be sustained. / Annexure R1(a) is only a clarificatory letter issued a long back i.e. on 7.5.90 pertaining to the years 1979-80 and 1986-87 and they are not applicable in this case and has no relevance. We find considerable force in the arguments advanced by the learned counsel for the applicant stating that the applicant had worked continuously for the concerned period and became eligible for ex-gratia payment and he has had contribution to the productivity process and this payment cannot be denied to him since this is based on the productivity earned and therefore it cannot be termed as a mistake for making payment of bonus to the tune of Rs.3,377/-. Moreover, learned counsel for the applicant submitted that the above payment was made not on account of any misrepresentation made by the applicant. Learned counsel for the applicant also drew our attention to the decision reported in Sahib Ram Vs. State of Haryana and others [1995 Supp (1) SCC 18] in which the Hon'ble Supreme Court has laid down the principle that extra payment given due to wrong construction of relevant order by the authority concerned without any misrepresentation by the employee the recovery of the payment already made be restrained. In this particular case even if it is construed that Annexure A-2 is issued on wrong construction of the relevant orders by an authority concerned and admittedly there was no misrepresentation by the applicant/employee, it cannot be recovered based on the findings of this judgment. Therefore, there is no justification as per law, for Annexure A-2 notice calling upon the applicant to re-pay the amount. This was also issued without giving an opportunity to the applicant, therefore, not in conformity with the natural justice.



7. In the conspectus of facts and circumstance we find that Annexure A-2 is unsustainable and hence we quash the same and allow the application. Accordingly we direct the respondents not to recover the said amount from the applicant. There will be no order as to costs.

Dated the 11th of March, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

P.

I N D E X

APPLICANT'S ANNEXURE

A-1 True copy of Government of India, Department of Posts, Circular letter No.26-3/99-PAP dated 13.10.99.

A-2 True copy of Order No.AC/ED/D1g/Thy. dated 24.12.99 issued by the 1st respondent.

A-3 True copy of applicant's representation dated 17.1.2000 issued to the 1st respondent.

RESPONDENTS ANNEXURE

R-1(a) True copy of the letter dated 7.5.90 issued by the 2nd respondent.