

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.135/2007


Thursday..... this the *17th* day of April, 2008.

CORAM:

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

1. K.A.Aniachan, GDS MM,
HRO, RMS 'EK' Division, Kochi - 682 016,
2. K.R.Manoj Kumar, GDS MM,
HRO, RMS 'EK' Division, Kochi - 682 016,
3. K.Saleem, GDS MM,
HRO, RMS 'EK' Division, Kochi - 682 016.
4. M.P.Satheesan, GDS MM,
HRO, RMS 'EK' Division, Kochi - 682 016.
5. C.R.Sivadasan, GDS MM,
HRO, RMS 'EK' Division, Kochi - 682 016.
6. M.K.Ramachandran, GDS MM,
HRO, RMS 'EK' Division, Kochi - 682 016.
7. K.K.Ambujam, W/o Rajappan, GDS MM,
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8. K.M.Sulekha, W/o Ayyappan, GDS MM,
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9. M.N.Usha, W/o Babu, GDS MM,
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10. N.K.Nandakumar, GDS MM,
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11. N. Radhakrishnan, GDS MM,
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12. K.R.Augustine, GDS MM,
HRO, RMS 'EK' Division, Kochi - 682 016.
13. K.Radhakrishnan GDS MM,
HRO, RMS 'EK' Division, Kochi - 682 016,
14. T.P.Lalitha Kumari, W/o C.K.Pankajakshan,
GDS MM, HRO, RMS 'EK' Division, Kochi - 682 016.
15. K.N. Sasikumar, GDS MM,
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16. K.P.Vasupillai, GDS MM,
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17. P.S.Shahid, GDS MM,
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18. V.K.Ananda Raju, GDS MM,
HRO, RMS 'EK' Division, Kochi – 682 016.
19. V.A.Ananda Kumar, GDS MM,
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20. K.B.Antony, GDS MM,
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21. P.G.Vijayalakshmi, GDS MM,
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22. M.K.Hema, GDS MM,
HRO, RMS 'EK' Division, Kochi – 682 016.
23. K.B.Radhakrishnan, GDS MM,
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24. P.R.Aravindash Panicker, GDS MM,
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25. V.S.Sivadas, GDS MM,
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26. P.B.Ravindran, GDS MM,
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27. E.U.Chandran, GDS MM,
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28. E.U.Ramakrishnan, GDS MM,
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29. K.P.Joseph, GDS MM,
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30. A.K.Sarala, W/o Mani, GDS MM,
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31. V.M.Remani, W/o V.V.Mohanan, GDS MM,
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32. V.R.Sudha, W/o R.Sasidharan Pillai, GDS MM,
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33. A.J.Jeleja, D/o Madhavan, GDS MM,
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 34. M.Balachandran, GDS MM,
HRO, RMS 'EK' Division, Kochi – 682 016.
 35. B.K.Usha, W/o Somasekharan K.K., GDS MM,
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 36. A.Ajith Kumar, GDS MM,
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 37. K.B.Sreedevi, W/o Ramesh Thambi, GDS MM,
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 38. M.S.Mary, W/o Josy, GDS MM,
HRO, RMS 'EK' Division, Kochi – 682 016.
 39. Mary Mable V.A., W/o K.X.Jude, GDS MM,
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 40. Leelamaniamma, W/o Balakumar, GDS MM,
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 41. P.M.Dilip Kumar, Mazdoor Staff,
HRO, RMS 'EK' Division, Kochi – 682 016.
 42. P.R.Manoharan, Mazdoor Staff,
HRO, RMS 'EK' Division, Kochi – 682 016.
 43. K.R.Anil Kumar, Mazdoor Staff,
HRO, RMS 'EK' Division, Kochi – 682 016.
 44. K.U.Mohanan, Mazdoor Staff,
HRO, RMS 'EK' Division, Kochi – 682 016.
 45. John Chacko, Mazdoor Staff,
HRO, RMS 'EK' Division, Kochi – 682 016.
 46. E.R.Yesoda, W/o Stalin, Mazdoor Staff,
HRO, RMS 'EK' Division, Kochi – 682 016.
 47. M.K.Saraswathy, W/o Vijayan, Mazdoor Staff,
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 48. V.M.Sulekha, W/o Radhakrishnan, Mazdoor Staff,
HRO, RMS 'EK' Division, Kochi – 682 016.
 49. P.R.Chellamma, W/o M.M.Padmanabhan, Mazdoor Staff,
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 50. K.Kumari, D/o Govindan, Mazdoor Staff,
HRO, RMS 'EK' Division, Kochi – 682 016.
 51. M.K.Subha, W/o Karunakaran, Mazdoor Staff,
HRO, RMS 'EK' Division, Kochi – 682 016.
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52. Komalam T.K., W/o Sugunan, Mazdoor Staff,
HRO, RMS 'EK' Division, Kochi – 682 016.
53. A.K.Parvathy, W/o Narayanan, Mazdoor Staff,
HRO, RMS 'EK' Division, Kochi – 682 016.
54. Dayanandan, Mazdoor Staff,
HRO, RMS 'EK' Division, Kochi – 682 016. Applicants

(By Advocate Shri M.R.Hariraj)

Vs.

1. Union of India, represented by
the Secretary to Department of Posts,
Ministry of Communication and Information Technology,
New Delhi- 110 001.
2. Ministry of Personnel, Public Grievances & Pensions,
Department of Personnel & Training, New Delhi -110 001.
3. Chief Post Master General, Kerala Circle,
Trivandrum 33.
4. Senior Superintendent, RMS 'EK' Division, Kochi 11.
5. Head Record Officer, RMS 'EK' Division, Kochi 16.Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC)

The application having been heard on 8.4.2008
the Tribunal on 17.4.2008 delivered the following:

ORDER

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

The question for consideration in this O.A. is, whether the benefit of merger of 50% of D.A. with the basic pay as provided for vide Annexure A-4 is available to the part time casual labourers/regular labourers who were also functioning as GDS.

2. Brief facts of the case are as under:

The Department of Posts issued a memorandum dated 10.2.1988 whereby Casual labourers engaged on casual basis are to be paid wages worked out on the basis of the minimum pay in the pay scale of regularly employed workers in the corresponding cadre but without any increment. Such casual labourer will also be entitled to DA and ADA, if any, on the minimum of pay scale. The term casual labourers would cover full time casual labour, part time casual labour and workers engaged on contingent basis.

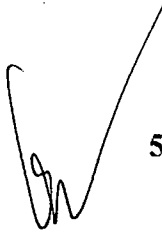
Vide Annexure A-2 order dated 22.3.1988, it has been clarified that, ED agents, who worked as Mazdoors may also be paid at the same rate as regular casual labourers and persons working as Postman/Group 'D' should be paid at daily rate basis at the minimum in the Postman's scale/Group 'D' irrespective of the fact whether work against leave short or other vacancies.

3. The Department of Personnel issued letter dated 7.6.88 relating to recruitment of casual workers. Para 5 of which deals with payment of wages to such workers at the same rate, as under:

“In cases where the work done by a casual worker is different from the work done by a regular employee, the casual worker may be paid only the minimum wages notified by the Ministry of Labour or the State Government/Union Territory Administration, whichever is higher, as per the Minimum Wages Act, 1948. However, if a department is already paying daily wages at higher rate, the preactive could be continued with the approval of its Financial Adviser.

4. Ministry of Finance, Department of expenditure issued O.M. dated 1.3.04 whereby 50% of Dearness Allowance was got merged with basic pay in respect of Central Government employees with effect from 1.4.2004. The Ministry of Personnel/Public Grievances and Pension vide A-4 O.M. dated 31.5.2004 clarified the position in respect of merger of 50% of DA with pay with regard to casual labourers as under:

“The matter has been considered in consultation with the Ministry of Finance and it has been decided that 50% of the Dearness Allowance merged with the basic pay will be admissible to casual labourers with temporary status and also to casual employees who are entitled to daily rate of wages with reference to the minimum of the pay scale for corresponding regular group 'D' official w.e.f. 1st April, 2004 for the purpose of computation of their daily rates of wages. The casual labourers entitled to daily wages, not linked to the minimum of the pay scale plus Dearness Allowance for corresponding Group 'D' employees / casual workers/contingent employees engaged on part time basis, shall not be entitled to the above benefit.”

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5. The applicants, who are working as GDS, are simultaneously also working as

part time casual labourers in the respondent organization and were initially extended the aforesaid benefit of merger of 50% of the DA with pay, but, later on the said benefits were withdrawn. Apart from withdrawal of the benefit, attempt was sought to be made for recovery as well of the alleged excess amount paid to them.

6. The applicants, have therefore, challenged the action on the part of the respondents in denying them the aforesaid benefit of merger of 50% DA with pay and also against the proposed recovery. By virtue of initial order dated 1.3.2007, recovery had been stayed. When the case was later on admitted on 28.3.2007, this Tribunal directed the respondents that operation of A-5 and A-6 order whereby recovery was to be effected and also the benefit of merger of 50% DA was denied to the applicants, is stayed till the disposal of the case.

7. Respondents have contested the O.A. According to them, clarification was received from the CIFA vide Annexure R-3 notings. In their reply the respondents have stated as under:

"5. With regard to para 4.2 of the Original Application it is submitted that the hourly rate is being calculated by taking the minimum of pay of Group 'D' plus the rate of DA without any increment. There is no dispute in this. Unlike post offices, RMS units are functioning round the clock. The peak hours in RMS offices or Mail Offices are spread over from 5 PM to 8 PM. As the mail bags are to be handed to the concerned trains in time, all the works namely defacing of postage stamps affixed to letters posted, distributing of letter mails, closing of bags etc are to be completed within the said time frame. The volume of receipt of mails from various linked post offices to RMS Offices in the evening peak hour time cannot be predicated. In this situation, some of the outsiders are to be engaged in mail offices or RMS Offices not against any particular post or establishment but for some urgent needs so as to cop-up with emergent circumstances. In this situation, the hourly rate as fixed above will be paid to them. The respondents have no dispute with respect to the payment of pro-rata wages to the casual labourers. The limited issue here is whether the applicants being casual workers/contingent employees engaged on part-time basis, are eligible for the benefit of merger of 50% of DA with basic pay for computation of daily wages of casual labourers. As per the R-1 clarification issued by the Ministry of Personnel, Public Grievances & pension it has been specifically stated that casual labourers entitled to daily wages not linked to

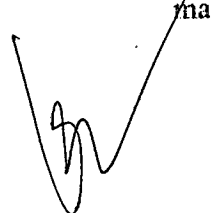
the minimum of the pay scale plus dearness allowance for corresponding group 'D' employees or casual workers/contingent employees engaged on part time basis shall not be entitled to the above benefit. Thus, it is clear that the applicants who are engaged purely on requirement and part time basis are not eligible for the benefits claimed.

With regard to Para 4.3 of the Original Application it is submitted that the averments are wrong and factually incorrect and hence the respondents vehemently deny the same. As a matter of fact, GDS are normally engaged as substitutes in casual leave vacancies of Postmen/Group'D' in keeping with the provisions contained in Appendix No.6 to P&T Manual Vol.IV. This is subject to the condition that the sanctioned strength of Group 'D' /Postman in such offices is 4 or less and when the sanctioned strength exceeds 4 the prior approval of the PMG is necessary for engagement of such substitutes. In this para it is stated by the applicants that Annexure A-2 order has been issued based on Annexure A-1 which is incorrect. Nowhere in Annexure A-2, Annexure A-1 order has been referred to. It is also shown in Annexure A-2 produced by the applicants that the same has been issued with reference to the enquiries received from Divisions about the rate of payment to ED Agents who themselves work as mazdoors on the weekly off/holiday of ED Agents. Annexure A-2 cannot therefore be generalized as has been attempted to in this para by the applicants."

8. The applicants have filed their rejoinder reiterating their stand while the respondents have filed additional reply.

9. Counsel for the applicant submitted that admittedly the applicants draw their emoluments calculated at the rate of the minimum of the pay scale attached to the pay scale of the Postman/Group'D' employee as the case may be. Thus, their case is covered by Annexure A-2 order. The counsel invited the attention of this Tribunal to Annexure R-3 notings of the CIFA, in particular, the following paragraphs.

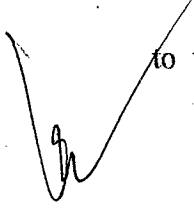
"As regards the queries raised by PMG, CR, it may be seen that Sweepers, Water Carriers, Scavengers and Casual Labourers (Full/Part Time) who are working in the existing establishment are eligible for the benefit of 50% merger of DA. Substitutes engaged against Postman/Group D are also eligible for the benefits. But it cannot be given to outsiders engaged on demand basis such as Mazdoors assisting Postman, mazdoor performing loading unloading and conveyance of materials and mazdoor engaged for delivery of telegrams. "



10. According to the counsel the applicants fall in that category for which the benefit of 50% merger of DA is available and they cannot be categorized as belonging to that group engaged 'on demand basis' such as Mazdoors assisting Postman or Mazdoor performing loading and unloading of conveyance material and mazdoor engaged for delivery of telegrams. In this regard attention was also invited to list of regular mazdoors annexed as Annexure A-10 in which the names of some of the applicants figure. It has been argued by the counsel that the applicants are regular mazdoors though on part time basis and they do the job as done by regular Group'D' employees in the RMS Division.

11. Senior Central Government Standing Counsel for the respondents reiterated the contentions of the respondents vide para 5 and 6 of their counter extracted above and also submitted that clarification has been given by the Ministry of Personnel vide Annexure R-1 Memorandum dated 31.5.2004.

12. Arguments were heard and documents perused. Admittedly, the applicants are Part time casual labourers though called mazdoors. They have been engaged all through the year and not called for performing the duties on "demand basis". Their job is, as stated in the application, to perform the work done by the regular group 'D' employees, and, all are paid wages computed, based on the minimum of the pay scale of Group'D' employees on the strength of Annexure A-1 to A-3 and were also paid Dearness Allowance and Additional Dearness Allowance of their pay. Thus the nature and character of the work extracted from these casual mazdoors is exactly the same as the work of a regular Group'D' employee. O.M. Dated 31.5.2004 clearly provides for admissibility of the benefit of merger of 50% DA to casual labourers who are entitled to daily rated wages with reference to the minimum of pay scale for corresponding regular group 'D' official. Once they fall within the above category, they cannot fall in the other category viz., casual labourers whose daily wages are not linked to the minimum of pay scale + Dearness Allowance for corresponding group 'D'

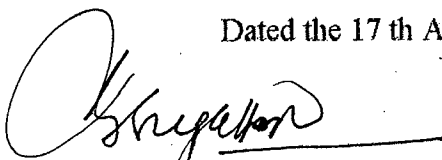


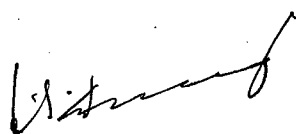
employees. In other words, in the case of the applicants, even though, they are employed on part time basis, they do not fall within the non-entitled category of part time casual labourers.

13. Under the above circumstances, we have no hesitation to hold that all the applicants and similarly situated part time casual labourers who are also working as GDSs are also entitled to the benefit of merger of 50% of the DA with pay. As such, the respondents shall ensure that, all the applicants are paid their wages with effect from 1.4.2004 taking into account the merger of 50% of DA. The difference in the pay due and drawn shall be made available to all applicants. Needless to mention that, if any amount on the basis of alleged excess payment had been recovered, the same shall be refunded to such applicants and similarly situated casual labourers. The above drill of working out the entitlement of emoluments taking into account the merger of 50% of DA with effect from 1.4.2004 and disbursement of the arrears (including refund of recovery if any made) shall be completed within a period of three months from the date of communication of this order. In case, any delay is anticipated in calculation/disbursement, the respondents shall, not only move an application for extension of time within the period of three months as stated above, but also shall have to undertake to pay interest on delayed payment @ 9% p.a. for the period beyond expiry of three months from the date of communication of this order.

14. O.A. is allowed. In the circumstances, no order as to costs.

Dated the 17 th April 2008.


Dr.K.S.SUGATHAN
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER