

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 138/2000

MONDAY, THIS THE 25th DAY OF MARCH, 2002.

C O R A M

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

S. Joseph S/o Souriyar
ED Branch1 Postmaster,
Pampanapalam (Via) Kanjikode
residing at Sebasthli House
Kanalpirur, Pampanapalam Post
Palghat.

Applicant

By Advocate Mr. M.R. Rajendran Nair

Vs.

1. The Senior Superintendent of Post Offices
Palghat Division
Palghat.
2. The Postmaster General,
Northern Region
Calicut.
3. Union of India represented by Secretary
to the Government of India
Ministry of Communications
New Delhi.

Respondents

By Advocate Mr K. Shri Hari Rao, ACGSC

The Application having been heard on 14.2.2002 the Tribunal
delivered the following on 25.3.2002.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant aggrieved by A-1 memo dated 22.11.99
issued by the second respondent filed this Original
Application seeking the following reliefs:

(i) To declare that the applicant is entitled to get
the revised allowance as applicable to the post of
Extra Departmental Sub Postmaster as and when it was
revised and direct the respondent to pay the revised
maximum allowance of the post of Extra Departmental
Sub Postmaster to the applicant with the entire
arrears thereon with 18% interest per annum.

(ii) Direct the 2nd respondent to pay exemplary cost
to the applicant as may be fixed by this Hon'ble
Tribunal and also to pay the cost of this Original
Application.

(iii) Grant such other reliefs as may be prayed for and the Court may deem fit to grant

2. According to the applicant's averment in the O.A. he commenced service as EDSPM, Pampanpallam w.e.f. 25.6.84. The ED Sub Office was downgraded into ED Branch office w.e.f. 1.2.85 pursuant to the policy of the Department. At the time of down-gradation of the Sub Office he was drawing a consolidated allowance of Rs. 285/- p.m. which was the maximum allowance at that time and the applicant's allowance was protected on down gradation of the post. In support of this he produced A2 memo dated 14.1.95 issued by the first respondent. The applicant was "put off duty" w.e.f. 18.6.85 and was removed from service w.e.f. 25.2.87 pursuant to a departmental disciplinary action taken against him on the charge of unauthorised absence and that he entrusted office work to an unapproved outsider. The second respondent exonerated the applicant from the charge and ordered reinstatement in service and accordingly he was reinstated as EDBPM Pampanpallam w.e.f. 12.6.92 and he was continuing as such. Later as per A-3 order of this Tribunal in O.A. 872/93 the applicant received the back wages also. According to the applicant though he was entitled to get allowances of EDSPM at the time of reinstatement which was the allowance being paid to him immediately before he was put off he was paid the maximum allowance applicable to the post of EDBPM. His representation requesting for allowances payable to EDSPM was rejected by A-4 order dated 7.2.96. The applicant claimed that the order of the Postmaster General rejecting the representation of the applicant was unjust and illegal. According to him when the allowance was fixed applicant was entitled to get the allowance at the revised rate as and when it was revised. Accordingly w.e.f. 1.3.98 applicant was entitled to get Rs. 3,125/- which was the maximum payable to EDSPM and also the DA and other benefits admissible thereon.



He relied on A-5 order of this Tribunal in O.A. NO. 157/98 in support of his case. The applicant submitted a representation to the third respondent requesting him to consider the above aspect and issue appropriate direction for payment of revised allowances as applicable to EDSPM to him with arrears thereon and with 18% interest on such arrears. He filed O.A. 983/99 praying for a declaration that he was entitled to the revised allowance as applicable to EDSPM as and when it was revised and for consequential benefits which was disposed of by this Tribunal by A-6 order dated 9.9.99. Pursuant to A-6 the applicant made A-7 representation dated 20.9.99 before the second respondent. A1 memo was issued thereafter. Aggrieved he has filed this Original Application seeking the above reliefs. According to the applicant A-1 order was unjust, improper and unsustainable as it did not consider his entitlement as to the revised pay as applicable to the post of EDSPM inspite of the direction of this Tribunal. He has assailed the reasons given in the impugned order and also sought a declaration that he was entitled to get revised allowance as applicable to EDSPM.

3. Respondents filed reply statement resisting the claim of the applicant. They have justified A-1 order. According to them the applicant even when his petition to the Director General of Posts was pending approached this Tribunal through O.A. NO. 187/99, A1 order was self explanatory. In view of the pendency of the similar petitions on the very same matter before the DG(P) and the pendency of the SLP No. 11227/95 in O.A. NO.872/93 before the Apex Court the second respondent while passing the Annexure A1 order promised to re-examine the case and issue appropriate orders after the disposal of the SLP and disposal of the representation dated 15.5.99 by the Directorate. On merits it was submitted that allowances



of Rs. 285/- paid to the applicant prior to put off was revised to Rs. 440/- w.e.f. 1.1.86. The applicant was getting Rs. 285/- at the time of downgradation of the ED Sub Office into ED Branch Office. He was getting the same as a protected allowance as per DG's letter dated 12.8.83 right upto the date of his being put off on 18.6.85. The allowance of Branch Postmaster was revised to Rs. 440/- w.e.f. 1.1.86, the maximum for a Branch Postmaster. Since this amount was higher than what the applicant was getting prior to his being put off which itself was a protected allowance there was no need to give any protection for the allowance on his reinstatement. He could not claim the allowances of EDSPM inspite of being EDBPM. It was not the post that was protected but it was the amount of allowance that was protected. Further the claim for TRCA payable to Extra Departmental Sub Postmaster was not tenable. The applicant was not entitled to protection of the Extra Departmental Sub Postmaster's post and the allowance due to such post. It was not for the respondents to commend on the decision of the Tribunal in O.A. 157/98. The applicant's entitlement to backwages would come up for decision by the Apex Court in the SLP filed against the order of this Tribunal and the entitlement of allowance to EDSPM will be decided by the Directorate while disposing of the representation. While the matter was pending before the Apex Court a decision on the matter could not be taken by the second respondent. Protection of allowance means non-allowance of drop in the amount received as allowance only. It would be absorbable in future increases that come about. This point is expected to be clarified and confirmed by the Directorate while disposing of the applicant's representation dated 15.5.99. The position was made clear in para 4 in A2.



4. The applicant filed rejoinder reiterating the points made in the application. He submitted that after accepting the direction in A6/^{order}second respondent could not take a stand that he would not consider the representation. In the light of the categorical statement in A-5 the Director General could not take a different stand. When a judgment of the Court is delivered and is accepted without agitating before the appellate forum the mandate of the Article 14 require that the benefit of the said order extended to all similarly placed. The respondents could not insist that each employee should agitate it independently and obtain an order.

5. Heard learned counsel for the parties.

6. The learned counsel for the applicant took us through A-5 order of this Tribunal in O.A. 157/98. He submitted that the case of the applicant was exactly similar to the applicant in OA 157/98. He referred to para 5 and 6 of the above order in support of his case and when this Tribunal directed the second respondent to consider the representation of the applicant keeping in view A-8 order in O.A. 157/98, the second respondent was bound to follow the said order and he could not now turn back and state that he is awaiting orders from the third respondent and pendency of SLP before the Supreme Court. According to him the said SLP has no connection to the applicant's prayer for grant of revised allowances admissible to EDSPM. The learned counsel for the respondents took us through the reply statement.

7. We have given careful consideration to the submissions made learned counsel for the parties, rival pleadings and have perused the documents brought on record.

A handwritten signature in black ink, appearing to be a stylized 'R' followed by a horizontal line and a small flourish.

8. The applicant approached this Tribunal through O.A. No. 983/99. The said O.A. was disposed of as follows:

"2. When the Original Application was taken up, the learned counsel appearing for the applicant submitted that it is suffice to permit the applicant to submit a representation for redressal of his grievance before the 2nd respondent and to direct the second respondent to dispose of the same bearing in mind A-4 order dated 2nd April, 1998 in O.A. 157/98.

3. The learned counsel appearing for the respondents submitted that there is no objection in adopting such a course.

4. Accordingly, the applicant is permitted to submit a representation to the 2nd respondent through proper channel within three weeks from today. If such a representation is received, the 2nd respondent shall consider the same and pass appropriate orders bearing in mind A-4 order, within two months from the date of receipt of the representation.

5. Application is disposed of as above. No costs."

It will be evident from the above that it was a conceded order. The counsel for respondents having agreed for the disposal of the representation submitted by the applicant bearing in mind A-4 order dated 2.4.98, the second respondent could not now turn round and give the reasons for not considering the representation of the applicant on merits bearing in mind this Tribunal order in O.A. 157/98. The order in O.A. 983/99 having become final and the same being a agreed order, the impugned order dated 22.11.99 passed by the second respondent cannot be sustained and is liable to be set aside and quashed. We do so accordingly.

9. Basically what the applicant prays in this O.A. is that he is entitled to get revised allowances as applicable to EDSPM and not the one which is applicable to EDBPM as is being contended by the respondents. We find on a perusal of the order of this Tribunal in O.A. 157/98, that the



applicant in this O.A. is similarly situated like the applicant in that O.A. In that order, this Tribunal held as follows:

"4. After hearing the learned counsel on either side and on a perusal of the pleadings and materials on record including Annexure A-4 order of this Tribunal in OA 1408/96, we find little merit in the contention of the respondents that the applicant is not entitled to the revised allowance corresponding to the one which was being paid to him on downgrading of the office.

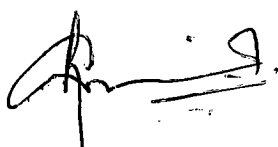
5. In the Annexure A-3 order by which EDSPO was downgraded as EDBPO, the following stipulation has been made:

"There will, be no change in the establishment of EDBOs but the posts of EDSPMs will be redesignated as EDBPMs on the same allowance. The incumbent BPM will be paid the same allowances last drawn by him/her as EDSPM until he/she vacates the post of EDBPM of that office or the EDBO in question qualifies to be upgraded as an EDSO under the new standard whichever is earlier."

6. It is evident from the above extract that the rate of allowance payable to the incumbent would remain the same despite the downgrading of the EDSPO to EDBPO as long as he continues in that office. Once that rate is revised, it goes without saying that he would get the rate of allowance at the corresponding revised rate. There is no justification at all in saying that on revision, his allowance would be reduced to that of EDBPM. The same question was considered by the Tribunal in OA 1408/96 and the Tribunal has upheld the claim of the applicants and directed the respondents to pay revised rate of allowance with interest at 18% per annum.

7. We do not find any justification in taking a different view in this case because we are in respectful agreement with the decision taken in that case. The contention of the respondents that the applicant not being a party to OA 1408/96 is not entitled to the benefit of the judgment, to our mind, appears to be a cantankerous one which the Government is not generally expected to take. The Government being a model employer has to treat all its employees without discrimination. Just because the applicant is not a party in O.A. 1408/96, it is absolutely unjust to deny him his real due.

10. We are in respectful agreement with the above ruling. Thus following the ruling of this Tribunal in O.A. 157/98 and the earlier O.A. 1408/96 we declare that the applicant is entitled to get revised allowance as applicable to the



EDSPM from the respective dates of revision namely 1.1.86, 1.1.93 and the subsequent date of revision if any. However, as the applicant has approached this Tribunal for the first time in this matter only through OA 983/99 and in that OA he did not pray for adjudication by this Tribunal and this OA has been filed on 1.2.2000 he will be entitled for arrears on the above account for a period of one year counted backwards from the date of filing of this O.A. Respondents are directed to pay the difference between what is admissible as per the declaration above and what had already been paid to him with 12% interest thereon from the respective dates from which they became due till today within a period of three months from the date of receipt of a copy of this order.

11. The Original Application is allowed in part as above with no order as to costs.

Dated the 25th March, 2002.



K. V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

kmn

A P P E N D I X

Applicant's Annexures:

1. A-1 : True copy of the Memo No.CC/9-5/99, dated 22.11.1999, issued by the 2nd respondent to the applicant.
2. A-2 : True copy of the Memo No.A73/EDR/SO/GL dt.14.1.1985 issued by the 1st respondent.
3. A-3 : True copy of the order dated 27.5.1994 in OA 872/93 of this Hon'ble Tribunal.
4. A-4 : True copy of the order No.EST-3/5007, dated 7.2.1996 issued by the 2nd respondent.
5. A-5 : True copy of the order dated 2.4.1998 in OA 157/98 of this Hon'ble Tribunal.
6. A-6 : True copy of the order dated 9.9.1999 in OA 983/99 of this Hon'ble Tribunal.
7. A-7 : True copy of the representation dated 20.9.1999 submitted by the applicant to the 2nd respondent.

npp
25.3.02