

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. No. 156/2007

FRIDAY THIS THE 28<sup>th</sup> DAY OF MARCH, 2008.

C O R A M

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

- 1 A Prakasan s/o K. Achuthan  
GDS BPM, Puthukulangara Post Office  
Nedumangad  
residing at Kaniyamvilakkathu Veedu  
Paruthikuzhi PO, Nedumangad
- 2 S. Rajagopalan Nair S/o Sivarama Pillai  
GDS MP, Vettanadu  
residing at Geethanjali, Valiyara  
Vellanadu
- 3 Padma Kumar PS S/o P. Sadasivan Pillai  
GDSBPM Parandode Post Office  
Aryanad-695 542  
residing at Padma Bhavan, Valiyakalam Eravoor  
Aryanad-65542
- 4 P. Reghu S/o K. Ponnan  
GDS MD, Mancha Branch Office,  
Nedumangad-695 541  
residing at Panchami Near THS  
Mancha PO, Nedumangad-695 541
- 5 K. Ambii D/o Kochugovindan M.  
GDS BPM, Mancha BO  
residing at Vishnu Bhavan, Mancha BO.
- 6 D. Babu S/o J. David  
GDS TM, Nedumangad Post Office  
r/o West View Near GHS Karuppura PO  
Nedumangad-695 541
- 7 B. Omana Amma D/o P. Sukumaran Nair  
GDS MD Karupur Post Office  
Nedumangad  
residing at Ramapurathu veedu, Karupur,  
Nedumangad-695 541.
- 8 N. Chandrasekharan Nair S/o N. Narayana Pillai  
GDS MD, Karupur Post Office,  
Nedumangad  
residing at Ramaurathu Veedu,  
Karupur PO, Nedumangad-695 541

- 9 Albert P. S/o Pathros S  
GDS MD II, Karupur Post Office  
Nedumangad -695541  
residing at Hebron, Kakkothamangalam,  
Mundela PO, Vellanad -695 543
- 10 K. Vasanthakumaran S/o Krishna Pillai S.  
GDS MD, Puthukulangara post Office  
Nedumangadu  
residing at Pongath Veedu,  
Puthukulangara PO  
Nedumangad.
- 11 Prabhakaran KS S/o Sukumaran  
GDS MD, Puthukulangara Post Office  
Nedumangadu  
residing at Karippurmukal veedu  
Vattappara PO  
Trivandrum -28
- 12 P. Gopalakrishnan Nair S/o K. Padmanabhan Nair  
GDS MD, Paruthikuzhi Post Office,  
Nedumangad  
residing at Anju Bhavan, Puliyoor, Paruthikuzhi PO  
Via Nedumangad.
- 13 S.B. Sarabheswari D/o P. Sreedharan Nair  
GDS SPM Anad Post Office  
residing at Amritha Bhavan,  
Anad PO-695 544
- 14 J. Chandrika D/o A. Velayudhan GDS MD  
Anad Post Office  
residing at Lavanya Nivas,  
Pankod Anad PO-695 544
- 15 Murali K. S/o Kuttan  
GDSMD, Chullimanojor Post Office  
Nedumangad  
residing at K.K. Nivas, Karinga Colony  
Paruthikuzhi PO-695 541
- 16 PG Remadevi D/o A. Gopala Pillai  
GDS BPM, Mannoorkonam BO  
residing a t Anizham Mannoorkonam BO  
Trivandrum.
- 17 Sasildharan A S/o Appukuttan K.  
GDSMD, Mannoorkonam BO  
Nedumangadu  
residing at SR Bhavan,  
Paruthikuzhi PO  
Nedumangadu.

- 18 A. Shrafudeen S/o Abdul Azeez  
GDSMD, Tholikode  
Nedumangadu  
residing at Shameem Manzil,  
Mannurkonam, Thkalikkode PO  
Via Nedumangad-695 541
19. R. Mohanan Pillai S/o M. Raghavan Pillai  
GDSMD, Elavattom Post Office,  
Pacha  
residing at Poriyathu veedu  
Kurupuzha, Elavattom PO  
Pacha- 695 562
- 20 A. Thulasi D/o Y. Asirvadam  
GDS MD, Elavattom Elavattom BO  
Pacha  
residing at Payattadiparamughalil veedu  
Palode  
Pacha PO-695 562.
- 21 R. Syamala D/o Raghavan Nadar,  
BPM, Elavattom  
residing at Ranju Bhavan  
Anappara PO
- 22 P. Omana Amma D/oi C. Chellappan Pillai  
GDS BPM, Panayamuttom PO  
Pazhakutty -695 561
- 23 Sukdhakaran Pillai S/o Janardhanan Pillai R.  
GDS MD, Kanayakuttom  
residing at Abhilash Bhavan,  
Panayamuttom PO  
Pazhakutty.
- 24 K. Nelson S/o Kunjan  
GDSMD, Perayam Post Officer Pacha  
residing at Thatlikunnu Thadatharikkat veedu  
Sasthamkaavu, Vithura PO-695 563
- 25 T. Lekha D/o P. Rajan  
GDS BPM, Peerayam PO  
Pacha  
residing at Thadathinuthazhuvasathu veedu  
Sasthamkavu, Vithura PO  
695 551
- 26 Sarangadharan S/o Bhaskaran Pillai  
GDSMD, Karimankode BO  
Pacaha SO  
residing at Thliruvathira Karimankode PO  
Pacha, Palodu-695 562

- 27 Unnikrishnan Nair K. S/o Kochusankaran Nair  
GDS MD, Vattakkarakkam PO-695 562
- 28 Thomas Cherian S/o Cherian,  
GDS MD  
Vattakkarakkam BO, Pacha SO  
residing at Cherukara Veedu  
Vattakkarakkam PO-695 562
- 29 S. Muralidharan Nair S/o Sudhakaran  
GDS M, Meenmutty BO, Pacha  
residing at Aniltha Bhalavan,  
Chkellanchi Pereayam PO
- 30 K. Sreekumar S/o K. Kuttan Pillai  
GDS MD, Panayam, Planayam Post Office,  
Panavoor -695 568  
residing at Kallidukkil chanvila Veedu  
Panayam PO, Panavoor.
- 31 N. Vijayan Pillai S/o V. Narayana Pillai  
GDS MD, Panangode Post Office  
Peringamala  
residing at Sastha Neyyappalli,  
Placha PO-695 562
- 32 V. Sundaran S/o Vasu K.  
GDS BPM, Meenmutty BO  
residing at SRS Bhavan, Choondal,  
Meenmutty PO-695 562
- 33 A. Sakunthala D/o Madhavan Kanail  
ED BPM, Panacode BO  
Aryanad SO residing at  
Edamala Kariyamcode  
Panacode PO-695 542
- 34 B. Sreedharan S/o P. Bharadhan Panicker  
ED DA, Panacode BO, Aryanad SO  
residing at Lekha Sadhanam, Kavinpuram  
Panacode PO, Aryanad-695 542
- 35 A. Lekshmy D/o Sankarakumaru Chettiar  
GDS BPM, Vinobhanikethan Post Office,  
Aryanad A/o Thycadu HO, Trivandrum South  
Dn., residing at Lakshamivilasam,  
Meppukkada, Malaylinkeezhu PLO  
Trivandrum.
- 36 K. Syleswaran S/o Krishna Pillai  
GDS MD, Aryanad  
residing at Sivanandha Cottage, Eravoor,  
Aryanadu PO-695 542

37 S. Syamala D/o Subbayyan  
GDS Pacaker, Aryanad  
residing at Revathy Bhavan,  
Plalai Koinam, Aryanadu PO-695 542

38 S. Vijayakumaran Nair S/o Sukumaranan Nair K.  
GDS MD  
Aryuanad, residing at Vyshnalayam, Changa PO  
Chklanga, Aryanad-695 542

39 C. Selvanose S/o A. Chellappana  
GDS MDMarangad BO, Aryanad  
residing at Soumyalayam, Kaviyacode  
Changa PO  
Aryanad -Trivandarum. 695 542

40 M. Nab neesa Beevi D/o Mytheen Pitcha  
GDS MC, Marangad BO  
Aryanadu  
residing at Laila Cottage, Pallivetta  
Aryanad PO  
Trivandrum-695 542

41 R. Chandrika D/o A. Damodharan Pillai  
GDS BPM, Marangad BO,  
Aryanadu, residing at Ushus  
Marangad PO  
Aryanad -695 542

42 Y. Sebastian S/o Yohannan GDS MD  
Vinobanikhetan PO  
A/o Aryanad, Thycaud HO,  
Trivandrum south Division,  
residing at Sajith Bhavan  
Palayathinmughal,  
Vinobhanikethan PO  
Aryanad-695 542

43 M. Sivaprasad S/o A. Madhavan Pillai  
GDS MC, Mundela PO, Vellanad  
residing at Vysak, Kottavila, Mundela PO

44 R. Nagappan S/o Raman Naira  
GDS MD, Mithranikethan PO,  
Vellanad  
residing at Cherikkonam Kizhakkumkara Veed  
Mithranikethan PO, Vellanad.

45 S. Sathyabhamma Amma D/o K. Kunjan Pillai  
GDS BPM, Changa, Changa PO  
residing at Manikarnika  
Vellanad PO-695 5453

46 M. Vimala D/o K. Govindapillai  
ED BPM, Punalal, Poovachal  
residing at Edvin cottage, Kalpladakuzhy  
Punalal PO, Poovachal-695 575

47 S. Sailanse S/o Simsol,  
GD BPM, Punalal, Poovachal,  
residing at Edvin Cottage, Kalpladakukzhy,  
Punalal PO, Poovachal -695 575

48 D. Simonson S/o J. Devadasan  
GDS MD, Punalal Poovachal  
residing at Sajan Cottage,  
Chakkippara, Punalal PO  
Poovachal -695 575

49 B. Chandramathy Amma D/o M. Ayyappan Pillai  
GDS SPM, Myakkara  
residing at Mannukkara Veedu, Kallikkadu  
Myakkara PO

50 M.J. Austin S/o M. James  
GDS, Mylakkara Post Office  
residing at M.J. Bhavan, Myakkara PO  
Via Kattakada -695 572

51 K.P. Sreekumari Amma D/o V.P. Krishna Pillai  
GDS BPM, Neyyar Dam  
r/o Nisha Nivas, Kallikkad,  
Myakkara PO

52 Samual S/o Devadasan  
GDS MD, Veeranakkave  
residing at Anila Bhavan, Veeranaklave PO

53 D. Bhasi S/o Damodar  
GDS MD, Veeranakkav PO  
Kattakkada  
residing at Indhu Bhavan, Anchal PO  
Kattakkada -695 572

54 A. Jonson S/o L. Enkrose  
GDS MD, Vembayam PO  
residing at Satheesh Bhavan,  
Narickal Konchira PO  
Vembayam -695 615

55 K. Mohanachandran S/o K. Parameswaran  
GDS MP, Vembayam PO  
residing at Kuzhivila Veed  
Thekkada, Cheeranikara PO  
Vembayama-695615

- 56 V. Sasidharan S/o M. Velu  
GDS MD, Konchira Post Office,  
residing at Thavarathuputhanveedu,  
Idukkumthala, Konchira PO, Vembayam.
- 57 G. Jayakumar S/o N. Gangadharan  
GDS MD, Munnanakuzhi BO, Vembayam  
residing at Vazhavilaveedu,  
Chumaduthagi, Munnanakuzhi PO  
Vembayam.
- 58 B. Suselamma D/o Velayudha Kurupu E.  
GDS BPM, Konchira BO, Vembayam  
residing at Rohini Nilayam, Konchira  
Konchira PO, Vembayam.
59. C. Rajan S/o P. Chellappan  
GDS MD, Konchira BO, Vembayam  
residing at Kanavila Veedu  
Chiramukku, Poovathur PO  
Pazhakutti.
- 60 V. Sasidharan S/o K. Velayudhan  
GDS BPM, Kuthirakulam Post Office  
Vembayam residing at  
Ambalathumkuzhi Thadatharikathu Veedu  
Uzhamalakkal, Puthukulangara PO  
Nedumangadu.
- 61 V. Mohanan S/o G. Vishwambharan,  
GDS Branch Postmaster,  
Munnanakuzhi BO, Vembayam  
residing at Akhil Niwas, Vazhode,  
Punavoor PO-695 568
- 62 P.G. Mukund S/o P. Gopala Pillai  
GDS MD, Cheeranikkara Post Office  
Vembayam residing at Mukundalayam  
Cheeranikkara PO, Vembayam-695 568
- 63 K. Madhusoodhanan Nair S/o P. Kuttanpillai  
GDS MD, Kuthirakulam PO  
Vembayam, Trivandrum  
residing at Mollarikonam Kuthirakulam PO  
Vembayam.
- 64 F. Johnykytty S/o C. Fensam  
GDS MD Panavoor Post Office  
residing at Sudhir Bhavan,  
Poovathur PO  
Pazhakutti -695 561
- 65 J.R. Girija D/o V. Ramanpillai  
GDS BPM, Paluvalli PO

Bhagavathi Vilassom Pacha,  
Paluvalli PO

- 66 C. Sasidharen Pillai S/o R. Chellappan Pillai  
GDS MD, Irinjayam BO  
Pazhakutti SO  
Thiruvananthapuram south  
residing at Manju Bhavan, Uliyoor,  
Pazhakutti PO-695 561
- 67 B. Indira D/o Vasudevan  
GDS MC, Meenangal  
residing at Pottanchira  
Thadatharikathu veedu  
Parangode
- 68 L. Sathyabhamma D/o Narayanan  
GDS BPM, Meenangal  
residing at CS Sadanam,  
Meenangal.

By Advocate Mr. M.R. Hariraj

Vs.

- 1 Union of India represented by the  
Secretary to Government of India  
Department of Posts, New Delhi.
- 2 Director General of Posts  
Department of Posts  
Dak Bhavan, New Delhi.
- 3 Chief Post Master General,  
Kerala Circle, Trivandrum. Respondents

By Advocate Mr. Varghese P. Thomas, ACGSC

The Application having been heard on 20.2.2008 the Tribunal on  
delivered the following:

**ORDER**

**HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

The applicants in this O.A. are working as Gramin Dak Sevaks in  
various post offices in the state of Kerala. They are aggrieved by the  
denial of service benefits such as pension, medical reimbursement,

Assured Career Progression, etc. under the Gramin Dak Sevak (Conduct and Employment) Rules, 2001.

2 The applicants have sought the following reliefs through this O.A.:

- (i) To declare that rules 6 & 12 of the Gramin Dak Sevaks (Conduct and Employment) Rules 2001 are illegal, ultra vires the Constitution of India and the Statutory Rules and hence not enforceable against the applicants, and to direct the respondents not to enforce those rules as against the applicants.
- (ii) Declare that the applicants as Gramin Dak Sevaks are entitled to pension and other benefits under the CCS (Pension) Rules, 1965 and to direct the respondents to grant the applicants all the benefits available under the said rules on their retirement; OR in the alternative, to declare that the applicants are entitled to be granted the benefits accruing under the Employees Provident Fund and Miscellaneous Provisions Act and direct the respondents to grant the applicants the benefits under the said Act:
- (iii) To declare that the applicants as Gramin Dak Sevaks are entitled to be governed by the provisions of CCS (Leave) Rules, and to direct the respondents to grant the applicants the benefits under the said rules.
- (iv) To declare that the applicants as Gramin Dak Sevaks are entitled to the benefits of the CCS(MA) Rules and the CGHS Scheme, and to direct the respondents to grant the applicants benefits under the said rules.
- (v) To declared that the applicants as Gramin Dak Sevaks are entitled to pro rata wages as are available to the persons working on comparable departmental posts and to direct the respondents to refix the pay and allowances of the applicants accordingly with effect from the dates of commencement of service of the applicants and to pay them the arrears of pay due under such refixation with interest 18% per annum.
- (vi) To declare that as a Government servant, the applicants who are Gramin Dak Sevaks are entitled to at least promotion in their career and to direct the respondents to consider formulation and implementation of an appropriate assured career progression scheme for the Gramin Dak Sevaks so as to ensure the above benefit to the applicants.
- (vii) To declare that the applicants as Gramin Dak Sevaks are entitled to be governed by the Fundamental Rules for all purposes including subsistence allowance,

pay fixation, etc. and to direct the respondents to govern the applicants by said rules.

(viii) grant such other reliefs as may be prayed for and the court may deem fit to grant and,

(ix) grant the costs of this Original Application

3 In support of the reliefs claimed the applicants have contended that as per the judgment of Hon'ble Supreme Court in Superintendent of Post Offices Vs. P.K. Rajamma (1977 3 SCC 94) there is master servant relationship between the Gramin Dak Sevaks (earlier called as Extra Departmental Agents) and the Department of Posts. According to the said judgment they are holders of civil posts. The CCS Pension Rules are applicable to Government servants including civilian government servants in the Defence service appointed substantively to the civil service and posts in connection with the affairs of the union. Though it is mentioned in Rule 2(h) of the CCS (Pension)Rules that these rules shall not apply to persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law for the time being in force, the rules governing their conduct and employment cannot be construed as "any other law" envisaged under this sub section. They are therefore entitled for pension as any other departmental employees. If the pension scheme is not applicable to them, they are entitled to benefits under the EPF Miscellaneous Provisions Act. The applicants carry out the same type of duties as PA/SPM/Postmaster/Departmental Stamp Vendor. They are appointed after following proper procedure. However, they are discriminated in matters regarding leave entitlement, medical reimbursement. There are no promotional avenues available to them. The ACP scheme is not made applicable to them. During the "put off duty" (equivalent to suspension of regular employees) they are only

paid 25% of the salary as subsistence allowance as against 50% of pay admissible to regular employees.

4 The respondents have contested the O.A. It is their contention that the system of Extra Departmental Agents for the purpose of providing postal service in rural and remote areas has been in existence for more than 100 years. These GDSs (EDAs) are deployed to provide postal services where regular post office is not viable from the point of view of work load. Consequently, the system of engaging part-time employees has been adopted since several decades. They are called agents. The decision of the Hon'ble Supreme Court in Supdt. of Post Offices Vs. P.K. Rajamma was in the context of disciplinary proceedings and the Apex Court has directed that provisions of Article 311 of the Constitution should be followed in taking disciplinary action against EDAs since they were declared as holders of civil post. The Hon'ble Apex Court has also observed that these EDAs are outside the regular civil service. The Government has made several improvements in the service conditions of the GDS from time to time. Several recommendations of the **Justice Talwar Committee** have been implemented. The Basic Monthly Allowance previously paid to the GDSs have been changed as "Time Related Continuity Allowance (TRCA)." It was also decided to pay Dearness Allowance on par with regular employees. They were also granted paid leave of ten days every six months. Promotional prospects of EDAs have been provided for by earmarking 75% of the vacancies in the Gr. D cadre and 50% of the vacancies in the cadre of postman in Gr.C. Relevant Recruitment Rules relating to Postal Assistant/Sorting Assistant cadres have also been amended to accommodate suitable and sufficiently qualified GDS candidates having minimum three years service

in the cadre of Postal Assistant/Sorting Assistant. The O.A. seeks multiple reliefs which is against the provisions of Rule 10 of the Administrative Tribunals Procedure Rules. The applicants do not constitute a homogeneous category. The application is also bad in law in as much as it is requesting the Tribunal to assume executive functions of the Government. The GDS employees are not treated on the same footing as Government servants as they are not civil servants and are employed on contract basis to attend to limited postal functions mostly in rural areas. Their total working hours do not exceed five hours per day. Separate set of rules have been framed for regulating their service conditions. The GDS employees are not entitled to pension as they are part time employees and they cannot therefore be treated on par with regular employees. In any case under the new pension scheme introduced by the Government no pension will be paid to those employees recruited after 1.1.2004 from the Consolidated Fund of Government of India. Financial assistance for medical expenses are extended to GDS for major surgery and prolonged illness. The GDS employees are paid only 25% of their salary as subsistence allowance during the period of put off duty as they are not full time employees. Since they are not full-time regular employees of the Government they cannot compare their salary and allowances and other service benefits with those of the regular departmental employees. The conditions of engagement of EDAs are quite different and they do not come through the rigorous system of selection applicable to regular departmental employees. The qualification and age limit are also different. They also have other work and means of livelihood. Their retirement age is 65 years. Part-time employees are also expected to support the new initiatives of the department like mutual fund, UTI, etc. to increase the

revenue of the department and they cannot complain that they are being forced to undertake these tasks. They are also eligible to get commission for this additional work. During suspension they are free to be engaged in other business or avocation whereas a suspended regular employee cannot engage himself in any kind of employment during the period of suspension. Therefore, they cannot claim for parity in subsistence allowance. In its judgment in O.A. 1010/2003 & 1023/2003, the Bangalore Bench of the Tribunal has held that GDS and Government employees are two different and distinct categories and they are not comparable. There is therefore no discrimination in not extending all service the benefits available to regular departmental employees. There is no violation of Article 14, 16 and 21 of the Constitution.

5 We have heard the learned counsel for the applicant Shri M.R. Hariraj and the learned counsel for the respondents Shri Varghese P. Thomas. We have also perused the documents on record. The learned counsel for the applicant relied on the following citations during the argument:

- (i) The Supdt. Of Post Offices & Others Vs. P.K. Rajamma (1977) 3 SCC 374
- (ii) State of Tripura Vs. K.K. Roy (2004) 9 SCC 65/AIR 2004 SC 1249
- (iii) Raghunath Prasad Singh Vs. Secretary, Home Department, Govt. of Bihar and Ors.(AIR 1988 SC 1033)
- (iv) Anam Mallik and Others Vs. UOI & Ors (1995 30 ATC 380)

6. After the arguments were heard and orders reserved, the respondents have filed reply to the rejoinder. In view of the fact that due notice was not given to the applicants in respect of such reply, all that can be taken from the reply is only the gazette notification annexed at R2

and order dated 27<sup>th</sup> July, 2007 in OA No. 153/94 of Allahabad Bench; the other factual information are not being considered.

7 The issue for consideration in this O.A. is whether the denial of service benefits such as pension, medical reimbursement, leave, ACP and so on to the GDS are discriminatory or not. The service conditions of the Gram Dak Sevaks are now governed by the Gram Dak Sevaks (Conduct and Employment) Rules, 2001. It is the contention of the applicants that in terms of the decision of the Hon'ble Supreme Court in Superintendent of Post Offices Vs. P.K. Rajamma they are holders of civil post and therefore they should be treated on par with regular employees and extended the same benefit such as pension, medical reimbursement, etc. which are available to the regular departmental employees.

8 We have carefully studied the judgement of the Hon'ble Supreme Court in PD Rajamma's case. The question involved in that matter was whether the extra departmental agents held a civil post contemplated in Article 311 of the Constitution and if they he did, the dismissal or removal without complying the provisions of Article 311 (2) was valid. The Apex Court held that there is master servant relationship between the Government and the Extra Departmental agents and that they are holders of civil posts and consequently they are entitled to the protection provided in Article 311. Article 311(1) and (2) of the Constitution reads as follows:



**311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State –** (1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or recovered by an authority subordinate to that by which was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

9 It would be seen from the above that Article 311(1) uses the specific words "civil posts" for the purpose of entitlement to the protection envisaged in the Article 311 (2). This is to distinguish such persons from holders of 'defence' posts for whom, such a protection may not be available or different types of protection are provided for. The issue in this OA is not whether the applicants are holders of civil posts, but whether they are similarly placed in comparison to regular departmental employees for the purpose of claiming equal service benefits.

10 The facts and circumstances of two other citations referred to by the learned counsel for the applicants are entirely different. In AIR 1988 SCC 1033 the observations of the Hon'ble Supreme Court was in the context of the absence of promotional opportunities in the Wireless organisation of the Bihar Police, which consist of regular government employees. In AIR 2004 SC 1249 the matter involved was the non-availability of ACP benefits to full time state government employees in Tripura.

11 It is not in dispute that the GDSs are part time employees and their working hours does not exceed five hours. The method and the

procedure that have to be followed for recruitment are different. The age of retirement is also different. It is 65 years in the case of GDS as against 60 years for regular departmental employees. The GDS are allowed to have their own separate means of livelihood.

12 The issue of discrimination in service benefits available to ED Agents was extensively considered by the Cuttack Bench of this Tribunal in Anam Mallik and Others Vs. Union of India and Others (1995 30 ATC 380). It is also relied on by the applicants. After discussing the issue in great detail and relying on various Hon'ble Supreme Court judgments, the Cuttack Bench of this Tribunal had concluded:

"What Article 14 prohibits is class legislation and not reasonable classification for the purposes of legislation. If the legislature takes care to reasonably classify persons for legislative purposes and if it deals equally with all persons belonging to a "well defined class" it is not open to the charge of denial of equal protection on the ground that the law does not apply to other persons. It is also well laid down that in order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that, the differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may feature at different places, such as geographical or may be according to difference in time. What the least is necessary is that there must be nexus between the basis of classification and the object of the Act under consideration."

...Considered in the light of these decisions we are of the view that the principle of "equal pay for equal work" is not squarely attracted in the facts and circumstances of the case. There is reasonable classification of the ED Agents as a different category and it fulfills the test prescribed by the Supreme Court time and again. Therefore, that part of the prayer of the applicants that a direction be issued to the Central Government that they should be treated as members of regular civil service cannot be acceded to."

In the judgment supra the Tribunal had only struck down clause 9 (3) of the relevant rule that existed at that time. This rule had provided that the EDAs shall not be entitled to any allowances for the period for which they are kept off duty.

13 We are inclined to agree with the view taken by the Cuttack Bench of the Tribunal in the judgment supra. It is evident that the GDS employees are governed by a separate set of rules. The executive in its wisdom has found it advisable to have a system of part time employees to cater to the needs of rural areas where full-fledged and full-time post offices are not found viable from financial point of view. It is the function of the executive to arrange for public utility services in remote areas through optimum utilisation of the financial resources. Admittedly the applicants are part time employees. The conditions of their engagement are also different compared to regular departmental employees. When there is a specific set of rules governing the employment of Gram Dak Sevaks, they are not entitled to claim benefits which are not part of these rules. It is immaterial whether these rules are framed under Article 309 of the Constitution or by way of executive instructions. The GDS (Conduct and Employment) rules or any provisions therein does not become unconstitutional merely because some benefits available to regular government employees are not included therein. It is entirely upto the Government to decide what service benefits are to be extended to what category of employees, and the Tribunal cannot interfere as long as there is no discrimination. The applicants have not been able to establish that they are similarly placed in comparison to regular government employees. There is therefore no legal validity for their claim that they should be given comparable service benefits. The principle of equal of pay for equal work

is not applicable in this matter. The argument that there is violation of Article 14 or 16 cannot thus be sustained. What the applicants are seeking is not the enforcement of an existing rule or right, but for creating of a new right. This is a matter that has to be decided by the Executive. It is observed from the reply of the respondents that there has been improvement in the service conditions from time to time. Some of these improvements have been mentioned in the earlier paragraphs.

14. Allahabad Bench of this Tribunal in O.A. 1532/94 has dealt with extensively about the pay aspect. It has ultimately come to the conclusion that it is neither possible nor advisable to give the GDS the status of a Departmental employee. The logical corollary of the decision is that if the employees are not entitled to regular pay in the pay scale but are only entitled to TRCA, pension would not be admissible to them as basically pension is payable on the basis of pay and not on allowances.

15 The issue involved in this case is one of policy matter, viz., admissibility or otherwise of the terminal benefit to the GDS employees. The authority competent to take the decision is only the Government. Already the Government has set in motion the task of analyzing as to whether the Gramin Dak Sevaks should be entitled to social security scheme for providing provident fund and retirement benefits vide resolution dated 23<sup>rd</sup> July, 2007 annexed as Annexure-R/2 to the additional reply to the rejoinder. As per the resolution, the Committee shall go into the various aspects including the above. In all expectation, the Committee shall take into account all the relevant points to arrive at a logical conclusion on the basis of which its recommendation would be made. The appointment of retired member of the Postal Service Board in



the Board goes to show that the Government is keen to see that the matter is dealt with by a Committee, which is well versed with the entire system. In all probability, the Committee might call for the comments / suggestions from various segments. If that be so, the Department may consider forwarding all such representations from the serving / retired GDS to the Committee after ascertaining that the Committee shall entertain such suggestions. That would apart from providing the Committee various data/information, give an opportunity to GDS to effectively articulate their grievances before an expert body. The above observations be not treated as a direction to the respondents.

16 In view of the above discussion we are not inclined to grant the reliefs claimed by the applicants except in respect of the subsistence allowance. In respect of subsistence allowance, as per the GDS Conduct and Employment Rules of 2001 the GDS employees are entitled to 25% of their salary (TRCA) during the period of put off duty. The period of "put off" duty is comparable to the period of suspension in respect of regular employees. The argument advanced on behalf of the respondents against comparable subsistence allowance is that GDS employees are allowed to pursue their own business/avocation during the period of put off duty whereas the employees under suspension is not allowed to pursue any other business for employment. It is not possible to accept this argument because this freedom to pursue other business is not restricted only during the period of put off duty. It is available to GDS as part of their service conditions even when they are on duty. Further, what is being sought in this relief is only a comparable ratio. The regular departmental employees are entitled to 50% of the salary during



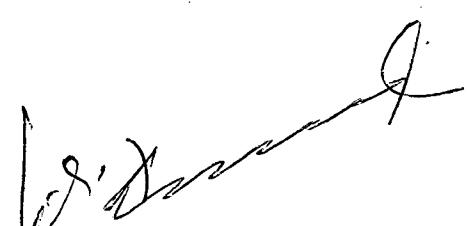
the period of suspension. It is logical to argue that having decided to extend the benefit of subsistence allowance during periods of suspension, the same ratio should have been applied to GDS also. This relief has therefore nothing to do with the issue of parity with emoluments as such, but it is concerned with the parity of the ratio. We are of the considered view that having accepted the need for providing subsistence allowance during the period of put off duty there is no justification to give a lower percentage as compared to the regular departmental employees.

17 For the reasons stated above, the reliefs claimed under the O.A. cannot be granted except the one relating to the subsistence allowance. The O.A. is therefore dismissed except in respect of the relief relating to subsistence allowance. The respondents are directed to consider enhancement of subsistence allowance during periods of put off duty to 50% of the TRCA through suitable amendment to clause 12(3) of GDS (Conduct and Employment) Rules. No costs.

Dated 28th March, 2008.



DR. K.S. SUGATHAN  
ADMINISTRATIVE MEMBER



DR. K.B.S. RAJAN  
JUDICIAL MEMBER

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