

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 204 of 2009

Tuesday, this the 5th day of January, 2010

CORAM:

Hon'ble Mr. George Paracken, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

1. All India Postal Extra Departmental Employees' Union (AIPEDU), Kerala Circle, P&T House, Trivandrum - 695 001, Through its Circle Secretary D. Sankarankutty, aged 47 years, S/o. S. Damodaran Pillai, Gramin Dak Sevak Mail Packer (GDSMP), Sasthamangalam P.O., Trivandrum - 10, Residing at : Adarsh, TC No. 9/1697, Sasthamangalam P.O., Trivandrum-10.
2. M.S. Sabu, aged 50 years, S/o. Sukumara Pillai, Gramin Dak Sevak Mail Deliverer (GDSMD), Yeandayar P.O., Kottayam District, Residing at : Madathil, Koottickal P.O., Kottayam District.
3. K.A. Aniachan, aged 46 years, S/o. Antony, Gramin Dak Sevak Mailman (RMS), Head Record Office, Ernakulam, Residing at: Kodavassery House, Haritha Nagar-II, Kochi University P.O., Ernakulam District, Pin:682 022. **Applicants**

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. Union of India, represented by The Secretary to the Government of India, Ministry of Communications & Information Technology, (Department of Posts), Dak Bhavan, Sansad Marg, New Delhi.
2. The Director (T&E), Ministry of Communications & Information Technology (Department of Posts), Dak Bhavan, Sansad Marg, New Delhi.
3. The Secretary to the Government of India, Ministry of Finance, Department of Expenditure, New Delhi.
4. The Chief Post Master General, Kerala Circle, Thiruvananthapuram. **Respondents**

(By Advocate – Mr. Sunil Jacob Jose, SCGSC)



The application having been heard on 05.01.2010, the Tribunal on the same day delivered the following:

ORDER

By Hon'ble Mr. George Parackal, Judicial Member -

The first applicant is All India Postal Extra Departmental Employees' Union (in short AIPEDU), Kerala Circle, P&T House, Trivandrum and represented through its Circle Secretary. The 2nd and 3rd applicants are aggrieved parties. Their grievance is against the Annexure A-7 order dated 20/24.2.2009 which reads as under:-

"Department of Posts, India
Office of Chief Postmaster General, Kerala circle,
Thiruvananthapuram-695033

To,

The Postmasters General,
Central Region, Kochi/Northern Region, Kozhikode
The SSPOs/SPOs (HQ Region)
The Director of Accounts (Postal), Thiruvananthapuram
The SSRM 'TV'/SRM'EK'/SRM'CT'Dns.
The Supdt. PSD Thiruvananthapuram
The Supdt. KCSD Ernakulam
The Manager, RLO, Thiruvananthapuram
The Executive Engineer, Postal Civil Dn., Thiruvananthapuram
The Asst. Engineer (Ele.), Postal Staff Quarters, Paruthipara, TVM.

NO.EST/31-4/2006-07 Dated at Thiruvananthapuram-33 24/20-2-2009

Sub: Productivity Linked Bonus for the accounting
years 2006-07 & 2007-08

Please refer to this office letter of even number dated 22.10.2008 on the above subject. References have been received from Regions/Divisions seeking clarification as to whether the Orders of Ministry of Finance on revised calculation ceiling are applicable to Gramin Dak Sewaks (GDS). Now Directorate has clarified that the Orders of the Ministry of Finance Vide OM NO.7(23)/E.III-A/2007 dated 10.10.2008 are applicable to eligible Central government Departmental employees only. A report on the amount of ceiling applied in the case of GDS while calculating the bonus (as per the



Orders dt. 22.10.2008) in respect of your Region/Division may be forwarded to this office.

Sd/-
(V. Kumara Krishnan)
Asst. Director (Establishment)"

2. According to applicants the aforesaid Annexure A-7 letter is totally arbitrary, discriminatory, contrary to law and hence violative of articles 14 and 16 of the Constitution. They have further submitted that maximum payment of bonus under Section 2(13) and Section 12 under Bonus Act, 1965 is Rs. 3,500/- with effect from 1.4.2006. Respondents are bound to extend the same ceiling limit in the case of the applicants' also. They have also submitted that the Group-D, Group-C, non-gazetted Group-B, Gramin Dak Sevaks and temporary status attained casual labourers, all constitute a homogenous class for the purpose of payment of bonus. There is no reason for classifying the Gramin Dak Sevaks differently from others in the matter of the maximum ceiling limit for the purpose of payment of bonus alone. The classification made in Annexure A-7 letter has no nexus to the object sought to be achieved.

3. The learned counsel for the applicants has relied upon the judgment of the Chandigarh Bench of this Tribunal in OA 256/PB/2009 - All India Postal ED Employees Union and others Vs. Union of India & Ors., dated 8.5.2009. The said application was filed by All India Postal ED Employees, through its Circle Secretary and 2 others. There the ground was that the respondents were making recovery of the productivity linked bonus paid to EDDAs for the years 2006-07 and 2007-08 in view of the order dated



9.2.2009 (Annexure R-3 in this OA) which reads as under:

"Government of India
Ministry of Communications & IT
Department of Posts
(Establishment Division)

No. 26-4/2008-PAP

Dak Bhavan,
New Delhi 110001
Dated 9.2.2009

All Heads of Circles,
All Regional Postmasters General.

Sub: Productivity linked bonus for the accounting years 2006-07 and 2007-08.

Sir,

I am directed to refer to this office letters of even dt. 15.10.2008 and 21.10.2008 on the above subject.

2. References have been received from the circles seeking clarification as to whether the orders of Ministry of Finance on revised calculation ceiling are applicable to Gramin Dak sevaks. It is reiterated that the orders of Ministry of Finance vide OM No. 7(23)/EIII-A/2007 dt. 10.10.2008 are applicable to eligible central government departmental employees only.

Yours faithfully,

Sd/-


(K. Rameswara Rao)
Asst. Director General (Estt)"

4. The Chandigarh Bench allowed the OA and the operative of the order is as under:

"We have heard the learned counsel for the parties and given our thoughtful consideration to the matter.

It is admitted case of the parties that GDS employees have all along been paid ad hoc bonus at the same rates, PLB is paid to the Central Govt. employees. Through letter dated 10.10.2008 (A-5), Ministry of Finance, Deptt. of Expenditure, New Delhi revised the calculation ceiling for various employees w.e.f. 1.4.2006 i.e. from the year 2006-07 as under:

Calculation ceiling



	Existing (emoluments)	Revised
PLB in Railways	Rs. 2500	Rs. 3500
PLB in other Deptts/Orgnizations	Rs. 2500	Rs. 3500
Ad hoc bonus for Employees not covered by PLB	Rs. 2500	Rs. 3500

Admittedly, the applicants were paid adhoc bonus/ex gratia at the revised rate of Rs. 3500/- for the years 2006-07 and 2007-08, which is being sought to be recovered from them on the basis of the impugned order at Annexure A-1.

A perusal of the order dated 9.2.2009 indicates that it contains no reasons for stoppage of Ad hoc bonus to GDS employees or for that matter recovery such amount paid to them for the year 2006-07 and 2007-08. All that the impugned order says is that orders of Ministry of Finance dated 10.10.2008 relating to revised calculation ceiling are applicable to eligible Central government departmental employees only. It nowhere says that GDES employees are not entitled to receive ad hoc bonus and that the payment already made to them is to be recovered. Rather, they are covered under the Ministry of Finance order dated 10.10.2008 where by calculation ceiling in respect of employees and covered under the PLB, has also been revised from Rs. 2500 to 3500. We, therefore, see no justification for making recovery of ad hoc bonus paid to the applicants or not paying them ad hoc bonus as usual. In view of judgment of the Apex court in Kameshwar Prasad's case (supra), it needs no mention that the EDDAs or GDS employees are government servants holding civil post under Union of India and they are entitled to protection of Article 311(2) of the Constitution.

In view of above discussion, the OA is allowed and the applicants are held entitled to grant of ad hoc bonus for the years 2006-07 and 2007-08 at the revised calculation ceiling mentioned in the order dated 10.10.08 (A-5). Recovery, if any, of the said amount made from the applicants should be refunded to them immediately and in any case not later than within one month from the date of receipt of a copy of this order. No costs."

5. Learned counsel for the applicants has also relied upon the order passed by the Madras Bench of this Tribunal in OAs Nos. 162 and 186 of 2009 - All India Postal Extra Departmental Employees' Union & Ors. Vs. Union of India & Ors. Following the order of the Chandigarh Bench the

Madras Bench has allowed the said OA. Its operative part is as under:

"4. We have heard the learned counsel on both sides and perused the pleadings and the materials on record.


5. While the OAs were taken up for admission, this Tribunal has granted an interim order to stay for the recovery of the overpayment of bonus consequent to the order dated 9.2.2009. During the hearing, learned counsel for the applicants brought to our notice the order dated 8.5.2009 passed by the Chandigarh Bench of this Tribunal in O.a. 256/PB/2009 wherein the applicants have challenged the very same order dated 9.2.2009. The said Bench relying on the decision of the Apex Court in the case of Union fo India and others Vs. Kameshwar Prasad, (1998 SCC (L&S) 447) observed that the applicants are Government employees holding civil posts under the Union and are entitled to protection of Article 311(2) like other Govt. Employees. They are, therefore, entitled to payment of bonus like other Central Government employees and the recovery being made from them is illegal, arbitrary and violative of Articles 14 and 16 of the Constitution. In these circumstances, the Chandigarh Bench held that the applicants entitled to grant of adhoc bonus for the years 2006-07 and 2007-08 at the revised calculation ceiling mentioned in the order dated 10.10.2008. Recovery, if any of the said amount made from the applicants should be refunded to them immediately and in any case not later than within one month from the date of receipt of a copy of the order.

6. Since the Hon'ble Supreme Court in Kameshwar Prasad's has already held that EDDAs or GDS employees are Government servants holding civil post under Union of India and they are entitled to protection of Article 311(2) of the Constitution and following the orders passed by the Chandigarh Bench of this Tribunal, we are of the view of the applicants herein are entitled to the grant of Productivity Linked Bonus and also enhanced bonus on revised calculation of ceiling. The same shall be paid to them. Interim order for the stay of recovery is made absolute. However, before passing the interim order by us if any recovery is made, the same shall be refunded to the applicants. The above direction shall be complied with within one month from the daet of receipt of a copy of this order. The OAs are allowed accordingly. In the circumstances, there will be no order as to costs."

6. The respondents have submitted that the prayer on the part of the applicants to equate themselves with the regular employees of the department cannot be allowed. This issue regarding parity of ED Agents to



that of regular government servants has already been settled by this Tribunal in its order in OA 156 of 2007 filed by Sri P. Prakasan & other GD Sevaks claiming pension and other service benefits at par with the departmental employees. In the said order, it was held 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 utilization 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 GDS 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 government is 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. Therefore, there is no legal validity for their claim that they should be given comparable service benefits. The principle of equal pay for equal work is not applicable in this matter. The applicants are seeking not the enforcement of an existing rule or right but creation of a new right. This is a matter that has to be decided by the executive.



7. We have heard the learned counsel for the parties. In our considered opinion, the present OA is fully covered by the order of the Chandigarh Bench in OA 256/PB/2009 (supra) followed by the order of Madras Bench in OAs Nos. 162 and 186 of 2009 (supra). The order of the Tribunal in OA 156 of 2007 (supra) relied upon by the respondents has no application in this case. We, therefore, allow this OA. Consequently, the impugned Annexure A-7 letter dated 20/24.2.2009 is quashed and set aside. It is declared that the applicants are entitled to the maximum ceiling limit of Rs. 3,500/- with effect from 1.4.2006. The respondents are directed to pay them accordingly. As regards recovery from the applicants in the name of excess/over-payment of bonus for the years 2006-07 and 2007-08, this has already been stayed by this Tribunal vide its order dated 1st April, 2009. The aforesaid interim order is made absolute. If any recovery was made earlier the said amount shall be refunded to the applicants forthwith. There shall be no order as to costs.


(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER


(GEORGE PARACKEN)
JUDICIAL MEMBER

"SA"