

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No. 207 of 2013.

with

M.A.No. 336 of 2013

THURSDAY, this the 31st day of July, 2014

C O R A M :

**HON'BLE Mr. U.SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE Ms. MINNIE MATHEW, ADMINISTRATIVE MEMBER**

T.V.Sathiamma, aged 57 years,
w/o late Shri Divakaran,
working as GDS BPM Eravinelloor P.O.,
residing at Mullackal House, Manganam P.O.,
Kottayam, Pin -686 018. Applicant

(By Advocate Mr.P.C.Sebastian)

versus

- 1 The Union of India, represented by
Secretary to Govt. of India,
Ministry of Communications,
Department of Posts,
New Delhi -110 001.
- 2 The Chief Postmaster General, Kerala Circle,
Thiruvananthapuram -695 033.
- 3 The Sr.Supdt. of Post Offices, Kottayam Division,
Kottayam -686 001.
- 4 The Sr. Postmaster, Kottayam H.O.,
Pin -686 001. Respondents

(By Advocate Ms. Jishamol Cleetus, ACGSC)

This application having been heard on 21.07.2014, the
Tribunal on 31-07-14 delivered the following:-

O R D E R

HON'BLE Ms. MINNIE MATHEW, ADMINISTRATIVE MEMBER

The applicant while working as Gramin Dak Sevak Mail Deliverer
(GDSMD) in Paduva Branch Post Office in Kottayam Postal division was

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transferred as GDS Branch Postmaster Eravinelloor Post Office in the same recruiting unit. Her grievance is that at the time of her transfer, she was drawing Time Related Continuity Allowance (TRCA) at the stage of Rs.4670/- in the scale of Rs. 4220-75-6470. However, after joining the post of GDS BPM Eravinelloor, her TRCA was reduced to Rs. 3660/- which was the minimum TRCA in the scale of Rs. 3660—70-5760, without issue of any notice to her.

2 The applicant has filed an M.A. No. 336 of 2013 for condonation of 1808 days delay in filing the O.A. She submits that she was under the wrong impression that she would not be entitled to get the benefit of protection of TRCA as the transfer was on her request. It was only recently that she came to know about the decision of a full Bench of the Tribunal to the effect that in the event of a transfer within the same recruiting unit, GDS are entitled to get protection of TRCA irrespective of whether the same is on request or otherwise. She prayed for the indulgence of this Tribunal as the delay was not due to any wilful laches or deliberate negligence.

3 The respondents have opposed the M.A. stating that no valid reasons have been given for the inordinate delay in redressing her grievance. They pointed out the settled position that relief can be denied on the ground of delay even though relief is granted to other similarly situated persons who approached the court in time.

4 Having considered the arguments of both sides and taking into consideration the circumstances stated in the M.A., we are of the view that the M.A. shall be allowed and the delay condoned in the interest of justice. Accordingly, M.A. No. 336/2013 is allowed.

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5 The applicant has filed this Original Application seeking a direction to the respondents to restore the reduced TRCA with effect from the date of reduction and pay her the arrears due to her within a time limit. The applicant's claim for protection of TRCA rests on a full Bench decision of this Tribunal in O.A.No.270/2006 dated 14.10.2008 in a batch of cases filed by similarly placed persons. This order was challenged in the Hon'ble High Court of Kerala by the respondents in WP(C) 16376/2009. The Hon'ble High Court has upheld the orders of the full Bench in which it has been declared that "TRCA drawn shall be protected and the same fixed in the TRCA applicable to the transferred post and if there is no such stage, the TRCA shall be fixed at the stage below the TRCA drawn, the balance being treated as personal allowance, to be adjusted in future annual increase".

6 The respondents have contested the O.A. by filing reply statement. They have contended that GDS in the Department of Posts are not liable for transfer and therefore when public interest is not involved, they are given the limited transfer at their request only. As per DG Posts letter No. 14-16/2001-PAP(Pt) dated 11.10.2004, Gramin Dak Sevaks redeployed to other posts on their specific requests will not be eligible for protection of TRCA and they will be eligible for TRCA applicable to the new post, as per the assessment based on the workload of that office. The applicant applied for transfer under the limited transfer facility available to Gramin Dak Sevaks on medical grounds. It was specifically mentioned in the transfer order A2 that she is eligible to TRCA of the new post as per the workload of the post. She submitted a declaration that she is willing to accept drawal of lower TRCA. Having accepted the conditions in the transfer order as early as in the year 2008, the applicant is estopped from

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questioning the same at this point of time.

7 The respondents further contend that since in the transfer order itself it was mentioned that the applicant is entitled to the TRCA of the new post, there is no requirement of a separate notice to be issued to the applicant. They have stoutly denied the contention of the applicant that arrears due to her from 01.01.2006 have been adjusted against alleged excess payment made to her. The respondents have categorically stated that no recovery has been made from the applicant.

8 The applicant filed a rejoinder stating that since the matter involved wrong fixation of pay on transfer which is a continuous wrong having recurring cause of action, she has a right to file the O.A. She has expressed her apology for giving an erroneous statement that the arrears due to her in the revision of TRCA were adjusted / recovered.

9 Having perused the record and submissions made by both sides, it is evident that the full Bench of this Tribunal has considered in detail two issues which covers the matter under consideration in this O.A. The specific issue as far as this O.A. is concerned, is as hereunder:

"When a Gramin Dak Sevak is working against a post with higher TRCA is transferred on his request or otherwise to a post carrying lower TRCA within the same recruitment unit or outside, is entitled to fixation of his TRCA in terms of FR 22 (1) (a) (i) or FR 22(1)(a)(ii) or not".

This question has been answered as below:

"(a) As per the rules themselves, in so far as transfer within a



recruitment unit and in the same post with identical TRCA, there shall be no depletion in the quantum of TRCA drawn by the transferred individual.

(b) *In so far as transfer from one post to the same post with different TRCA and within the same Recruitment Unit, administrative instructions provide for protection of the same vide order dated 11th October, 2004, subject only to the maximum of the TRCA in the transferred unit (i.e. maximum in the lower TRCA).*

(c) *In so far as transfer from one post to a different post but with same TRCA and within the same Recruitment Unit, as in the case of (a) above, protection of TRCA is admissible".*

10 After considering the matter in detail, the full Bench has given a finding that the drawal of TRCA shall be protected and the same fixed in the TRCA applicable in the transferred post. It is also seen that the Hon'ble High Court has upheld the decision of this Tribunal after examining the matter with respect to the clarification issued by the Department of Posts in para 4 of letter No. 19-51/96- ED & Trg. dated 11.2.1997:

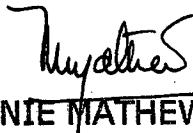
"4. In so far as (ii) above is concerned, it is clarified that if the placement of an ED Agent is from one Post Office to another within the same recruiting unit, the same will be treated as transfer and the ED Agents concerned will not forfeit his past service for any purpose including seniority. However, if the placement is from one Post Office to another outside his own recruiting unit, in such an event, the placement

will be treated as fresh appointment and the ED Agent concerned will forfeit his past service for seniority and will rank junior most to all the regularly appointed ED Agents of that unit".

11 In view of the above findings, we hold that this matter is squarely covered by the orders of the Hon'ble High Court of Kerala in WP(C) No. 16376/2009 dated 12.01.2012. Consequently, the O.A. is allowed and the respondents are directed to issue appropriate orders for restoration of the reduced TRCA of the applicant with effect from the date of reduction and pay ~~her~~ the arrears due to her within a ~~70~~ period of 3 months from the date of receipt of a copy of this order.

12 The parties shall suffer their own costs.

(Dated, this the 31st day of July, 2014)


MINNIE MATHEW
ADMINISTRATIVE MEMBER

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U.SARATHCHANDRAN
JUDICIAL MEMBER