

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 220 of 2007

Wednesday..., this the 10th day of October, 2007

C O R A M :

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

M. Sethumadhavan,
S/o. Govindan Kutty Nair,
Gramin Dak Sevak Branch Postmaster,
Pullangode, Residing at Madathil House,
Pullengode P.O., Kalikavu : 676 525 Applicant.

(By Advocate Mr.P.C. Sebastian)

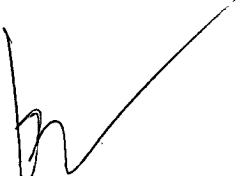
v e r s u s

1. The Superintendent of Post Offices,
Manjeri Division, Manjeri : 676 121
2. The Director General,
Department of Posts, New Delhi.
3. The Union of India represented by
Secretary to Government of India,
Ministry of Communications,
Department of Posts, New Delhi. Respondents.

(By Advocate Mrs. Aysha Youseff, ACGSC)

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The question in this case is as to whether the applicant is entitled to protection of pay when he shifted from the post of Extra Departmental Delivery Agent (now redesignated as GDS MD) to ED BPM (now GDS BPM) in the same Post Office. The claim of the applicant is that under the provisions of extant rules, his emoluments should be protected. The respondents' contention is that such a pay protection does not apply when the appointment as GD BPM is one of direct appointment.



2. Briefly stated, the case of the applicant as extracted from the O.A. is as under:

(a) The applicant was initially appointed as GDS MD at Pullengode P.O. From 1.8.1986. He was thereafter given appointment as GDS BPM, Pullengode, with effect from 15.5.1998 making it clear that his past service from 1.8.1986 to 14.5.1998 would count as qualifying service, vide Annexure A/1.

(b) On joining as GDS BPM, he was paid Rs. 535/- as basic allowance protecting the allowance he was already drawing as EDDA. With effect from 1.3.1998, he was granted revised TRCA at the rate of Rs. 1740/- and he continued to draw the same upto the month of June, 2000. But for the month of July, 2000, there was a shortage of Rs. 59/- in his allowances.

(c) He submitted Annexure A/2 representation dated 1.8.2000. He was informed vide letter dated 27.9.2000 (Annexure A/3) that the personal pay is not allowed to the BPMs appointed on or after 1.3.98 and that the overpayment was to be recovered from next month onwards. Applicant had been relentlessly pursuing his grievance through Service Union and he was given to understand that his case was under consideration. Since no positive action was forthcoming he submitted a detailed representation dated 11.1.2007 (Annexure A/4). Applicant's claim has now been finally rejected by the 1st respondent as per Annexure A/5 letter dated



30.1.2007 stating that he was not eligible for any protection of TRCA since his appointment as GDS BPM, Pullengode, was a fresh appointment. Hence this O.A.

3. Respondents have contested the O.A. and their version as contained in the reply is as under :

(a) The applicant was not awarded a transfer directly from the post of Extra Departmental Delivery Agent, Pullengode, to the post of Branch Postmaster, Pullengode, on his request as claimed by him. Applicant was directed to appear for the interview after preferring his formal application vide 1st respondent's letter No. B3/207 dated 30.4.98 (Annexure R-IV). He preferred his application (Annexure R-V) dated 4.5.98. He attended the interview held on 4.5.98 and was selected and then he was appointed as BPM, Pullengode, with effect from 15.5.1998 vide Annexure A/1 order issued by the 1st respondent.

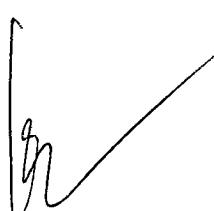
(b) Applicant's selection to the post of BPM, Pullengode, was not a transfer but a fresh appointment after observing all other appointment formalities alongwith other employment candidates. However, considering the instructions of the DG Posts contained in para 4 of the Annexure A.6(5) order, past service rendered by the applicant as EDDA, Pullengode, was ordered

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to be counted as qualifying service vide Annexure A/1 order issued by the 1st respondent.

(c) The basic allowance payable to the post of BPM, Pullengode, was already fixed as Rs. 535/- per month with effect from 13.07.94. The claim of the applicant that Rs. 535/- was paid to protect his EDDA allowance is wrong. Applicant's monthly EDDA allowance prior to his appointment as BPM, Pullengode, was Rs. 1368/- only. After being appointed to the post of BPM, Pullengode, with effect from 15.5.1998, the applicant was sanctioned monthly allowance of Rs. 1710/-. Hence, monthly allowance paid to the applicant after his appointment in the new post of BPM, Pullengode was higher than that of his old post. So there was not any question of protection of his allowance at that stage as claimed by the applicant. His averment that consequent on revision of allowance of ED Agents with effect from 1.3.98, his Time Related to Continuity Allowance (TRCA) was fixed as Rs. 1740/- upto June, 2000 is not correct.

(d) Consequent on implementation of the recommendations of "Justice Talwar Committee Report" with effect from 1.3.98, ED allowance of all the ED staff who were in service on or before 1.3.1998 was to be refixed. Accordingly, 1st respondent by its memo No. A1/ED/Revn/98 dated 22.1.99 (Annexure R-IX) refixed



TRCA payable to the post of BPM, Pullengode, as Rs. 1739/- by protecting Rs. 139/- in excess of Rs. 1600/- in the scale of pay of Rs. 1600-40-2400 as personal pay to be absorbed in future increments. But the applicant was not eligible for the said protection since he was not working as BPM, Pullengode on or before 1.3.98. He was appointed only on 15.5.98 and he is eligible only for the minimum of TRCA Rs. 1600/- in the scale of pay of Rs. 1600-40-2400.

4. The applicant has filed a rejoinder reiterating the contentions as in the O.A.

5. Learned counsel for the applicant submitted that the post of GDS BPM at Pullengode is tenable by a move from GDS MD (EDDA) or by direct recruitment. The incumbent to the post actually worked as GDS MD, and thus his past services shall have to be taken into account for various purposes including for fixation of pay. He has relied upon a decision of this Tribunal dated 19.10.2006 in O.A. No. 704 of 2004 and the relevant portion of the same reads as under :

"4 The Apex Court in the case of Inderpal Yadav V/s. Union of India (1985(2) SCC 648) was considering the case of Railway Employees who were substantively holding Group 'D' post working for a long period on Group 'C' post and it was held that though those Railway Servants were not entitled for regularisation in the Group 'C' post but were entitled to protection of pay last drawn by them even after repatriation to Group 'D' post. Though the applicant in the present case is not identically placed, the above principle laid down by the Apex Court shall apply here also. Though the applicant is not entitled to continue to get the higher pay scale

attached to the EDDA, yet he cannot be denied protection of pay in the lower scale attached to the post of EDBPM. That is what is stated by this Tribunal in the order in OA 941/2001 dated 1/3/2004 (Annexure A-3) also. The applicant in that case was an EDMC at Kalliyal falling within the Thiruvananthapuram South Division on Time Related Continuity Allowance in the scale of Rs.1545-25-2020. He sought a transfer as EDDA at Paruthippally and took over charge there as EDDA w.e.f. 6/9/2000. His TRCA was fixed in the scale of Rs.1740-30-2640 and he was drawing a monthly TRCA of Rs.2488/. While so, the applicant's TRCA was reduced to Rs.1998/- with retrospective effect from 6/9/2000 in the scale of Rs.1375-25-2125. This Tribunal while allowing the OA held that the applicant as EDDA would be entitled to the TRCA in the appropriate scale attached to the post of EDDA, namely, Rs.1375-25-2125 without ignoring the increments already drawn by him in his earlier post as EDMC, Kalliyal. In other words, the applicant's past service was to be taken into account for the purpose of fixing the TRCA in the appropriate scale of EDDA and accordingly the respondents were directed to refix the applicant's TRCA w.e.f. 6/9/2000 in the appropriate scale of Rs.1375-25-2125 reckoning the applicant's past service prior to his transfer to the post of EDDA at Paruthippally. The recruiting units of the two posts have no relevance in the matter for granting the monthly TRCA.

5. In the above view of the matter, the OA is allowed and we direct the respondents to refix the TRCA of the applicant in the scale of Rs.1600-40-2400 after taking into account the increments drawn by him in the scale of pay of Rs.1740-20-2640 and duly protecting his last pay drawn. The above direction shall be complied with within three months from the date of receipt of copy of this order. There shall be no order as to costs."

6. The facts of the case in the aforesaid O.A. match with those in the present O.A. and the legal issue is one and the same in these two cases. As such we are in respectful agreement with the decision dated 19.10.2006 in O.A. No. 704/04. Consequently, this O.A. deserves to be allowed which we order. It is declared that the applicant is entitled to Rs. 1740/- as TRCA from the month of July, 2000 and there shall be no recovery from the applicant's monthly allowance by



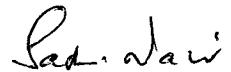
treating his TRCA as Rs. 1600/- . The respondents are directed to restore the applicant's TRCA at Rs. 1740/- with effect from July, 2000 with attendant annual increment. Consequently, any amount recovered in this regard should also be refunded to him.

7. The respondents shall pass suitable orders in this regard within a period of two months from the date of receipt of a copy of this order and within a further period of one month, the respondents shall make the payment due to the applicant.
8. Under the above circumstances, there shall be no order as to costs.

(Dated, the 10th October, 2007)



Dr. K B S RAJAN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

CWT.