

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHO.A No. 223/ 2007Wednesday, this the 17th day of September, 2008.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

K.Gee Varughese,
GDS Branch Postmaster,
Valichikala.P.O.
(Residing at: Thekkethottathil Kizhakeveedu,
Adchavelloor.P.O.
Kollam-691 573)Applicant

(By Advocate Mr PC Sebastian)

v.

1. The Senior Superintendent of Post Offices,
Kollam Division,
Kollam-691 001.
2. The Director General,
Department of Posts,
Govt. of India,
New Delhi.
3. The Union of India represented by
Secretary to Govt. of India,
Ministry of Communications,
Department of Posts,
New Delhi.Respondents

(By Advocate Mr TPM Ibrahimkhan, SCGSC)

This application having been finally heard on 27.8.2008, the Tribunal on 17.9.2008 delivered the following:

ORDER**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

The undisputed facts in this case are that the applicant was initially appointed as Branch Post Master, Vellimon West under Kollam Division with

effect from 13.4.1996. When the post of Branch Post Master, Velichikala became vacant consequent to the promotion of the incumbent as Postman, the applicant applied for a transfer to that post but the same was rejected on the ground that it was not governed under the existing rules. Therefore the applicant challenged the aforesaid decision of the respondents before this Tribunal in O.A.124/2005 and the same was disposed of by directing the respondents to consider his request for transfer as GDS, Velichikala. Accordingly, his request was considered again and he was transferred and posted as GDS BPM, Velichikala with effect from 21.6.2006. At the time of his transfer, he was in the Time Related Continuity Allowance (TRCA for short) of Rs.1600-12400 plus admissible allowances. The TRCA for the post of GDSBPM, Velichikkala was also in the scale of Rs.1600-2400. Therefore, the respondents had fixed at the the minimum of the scale treating his appointment as a fresh one. The applicant made Annexure A-2 representation dated 4.9.2006 requesting the respondents to restore his pay and allowances at Rs.2040/- plus usual allowances to which he was entitled. However, by the impugned letter dated 2.11.2006, his aforesaid representation dated 4.9.2006 was rejected stating that protection of allowance is not permissible since the transfer was at his own request.

2. According to the applicant, he was entitled for protection of allowances already drawn by him as GDSBPM, Vellimon West to that of GDSBPM, Velichikkala as both the posts were carrying the same TRCA and they were within the same recruitment unit. He has also submitted that the 10 years service rendered by him as GDS cannot be struck down by the respondents in such an unjust, arbitrary and illegal manner. He has also submitted that the action of the respondents in not acceding to his request was in violation of the DG Posts letter No.19-51/ED & Trg. Dated 11.2.1997. He has also relied upon the Annexure A-4 order of this Tribunal in O.A.394/2003 – K.P.Pyari v. Senior

Superintendent of Post Offices dated 22.11.2005.

3. We have heard Advocate P.C. Sebastian for applicant and Advocate TPM Ibrahimkhan, SCGSC for respondents. The issue for consideration in this O.A is whether a GDS is entitled to protection of his TRCA on his transfer to another post of GDS with the same TRCA in the same recruiting unit. DG, Posts letter No.19-51/ED & Trg. Dated 11.2.1997 relied upon by the applicant deals with the issue which reads as under:

"DG Posts No.19-51-ED & Trg. Dated the 11th February, 1997.

Clarification regarding Recruiting Unit transfer of ED officials:
Attention is invited to letter No.43-27/85-Pen. ED & Trg., dated 12.09.1988, No.19-21/94-ED & Trg., dated 11.8.1994 and No.17-60/95-ED & Trg., dated 28.8.1996 wherein certain points have clarified regarding transfer of ED officials.

2. In the context of the provisions contained in this office letters under reference, a reference has been received from the Postmaster General Kochi Region, on the subject in OAs referred to above. The matter has been examined and following point wise position is clarified below:

- (i) Definition of the term 'Recruiting Unit' in respect of different categories of ED Agents;
- (ii) Whether the "placement of an ED Agent in one Post Office to another be treated as "transfer or as on "appointment"?

3. The points raised have been examined. In so far as (i) above is concerned, kind attention is invited to this office letter No.17-60/95-ED & Trg. Dated 28.8.1996 wherein it has already been inter alia, clarified that the recruiting unit for the posts of EDBPM and EDSPM is the Division and that for the other categories of ED Agents, the same is the Sub Division.

4. In so far as (ii) 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 juniormost to all the regularly appointed ED Agents of that unit.

5. It is however, reiterated that this type of transfer requests should be discouraged at all costs."



This Tribunal has considered the issue in O.A.394/2003 (supra) and held that on transfer of a GDS to another post carrying the same TRCA in the same recruiting unit he is entitled for protection of allowances in terms of the aforesaid letter dated 11.2.1997. The operative part of the said order of the Tribunal is as under:

"In paragraph 4 of the said rule, it is made clear 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 juniormost to all the regularly appointed ED Agents of that unit. On going through the facts of this case, we find that the respondents have no case that the applicant has been appointed as a fresh hand to the transferred post. On the other hand, Annexure A-8 instruction has been invoked and transfer has been granted. In such an event, we are of the view that the applicant cannot forfeit his past service for any purpose including seniority.

7. On a perusal of the records, we find that the applicant was drawing higher TRCA before she was transferred to the new place and when she has been transferred, her TRCA has been reduced. The question is, whether it is justified or not? Learned counsel for the respondents took us to the judgment in O.A.1234/99 (Annexure R-1) and tried to canvass the position in support of their contentions. On going through the said judgment, we find that, it was on a different footing. It was a case where a retrenched EDBPM was given a transfer, but not by way of transfer and no protection of allowance was extended to him. Since that O.A was on a different footing, we are of the view that the judgment in that O.A is not squarely applicable in this case. The argument of the respondents is that TRCA with annual increments came into effect from 1.3.1998 and Annexure A-8 came into existence w.e.f. 11.2.1997, and therefore, it cannot be applicable in the applicant's case. Since A-8 memo dated 11.2.1997 is still in existence, it will be continued to be in operation and in such circumstances, we are of the view that, the applicant succeeds and the reliefs that has been sought in the O.A to be granted.

8. In the conspectus of facts and circumstances, we allow the O.A and direct the 1st respondent to restore the TRCA of the applicant to Rs.1840/- that she was drawing earlier in the pay scale of Rs.1600-40-2400 with effect from 8.11.2001, and to continue to pay TRCA to her at that rate with annual increments admissible thereon with consequential benefits including arrears of TRCA being the difference between the reduced TRCA and the TRCA which she was drawing before her transfer."



4. In our considered opinion, the present case is covered by all fours by the aforesaid order of this Tribunal dated 22.11.2005 in O.A.394/2003. We therefore, allow this O.A. The respondents are directed to restore the applicant's TRCA with attendant benefits to the stage which he was actually drawing in the post of GDSBPM, Vellimon West at the time of his transfer as GDSBPM, Velichikkala and to pay him arrears due thereon. The aforesaid direction shall be complied with within a period of two months from the date of receipt of this order.

5. There shall be no order as to costs.

Dated, the 17th September, 2008.


K NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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