

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**ORIGINAL APPLICATION NO 254/2013**

*Monday* this the <sup>15<sup>th</sup></sup> day of February, 2016

**CORAM:**

**HON'BLE MR. U. SARATHCHANDRAN JUDICIAL MEMBER  
HON'BLE MR. RUDHRA GANGADHARAN, ADMINISTRATIVE MEMBER**

1. K.K. Kochunarayanan, aged 59 years,  
S/o, V. Narayanan Nair,  
Multi Tasking Staff,  
Head Office, Chalakudy,  
Irinjalakuda Division, r/a at  
"Kunnath House." I.Q. Road,  
Chalakudy, Trichur District.
2. C.U. Rajeswary, aged 57 years,  
W/o Nandakumar, Multi Tasking Staff,  
"Thirunellath House",  
Vijayaraghavapuram P.O.  
Trichur District.
3. V.B. Sumathy, aged 56 years, D/o  
Bhaskaran Nair,  
Multi Tasking Staff,  
Head Office, Chalakudy,  
Irinjalakuda Division,  
r/a: "Punnakal House, Karur P.O.  
Trichur District.
4. C.P. Thresia, aged 56 years,  
D/o Paulose Multi Tasking Staff,  
Head Post Office, Irinjalakuda,  
Irinjalakuda Division, residing at  
"Kalliparambil" Noorukulam Road,  
Varandarapally, Trichur District.  
(Applicant by Mr. Shafik M.A., Advocate)

.... **Applicants**

vs.

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1. Union of India,  
represented by its Secretary to Government  
of India, Department of Posts, Ministry of  
Communications, New Delhi 110 001
  2. The Postmaster General  
Central Region,  
Department of Posts,  
Cochin 682 020
  3. The Senior Superintendent of Post Offices,  
Irinjalakuda Division,  
Irinjalakuuda 680121  
(By Mr. Sinu G.Nath, ACGSC)
- ..... Respondents

This application having been finally heard and Reserved for Orders on on 07.01.2016 the Tribunal on 15.02.2016. delivered the following:

**ORDER**

**Per: U.SARATHCHANDRAN, JUDICIAL MEMBER:**

Misc. Application No. 331/2013 for joining together the parties is allowed.

2. Applicants are presently working as Multi Tasking Staff (MTS). They commenced their service under the respondents as Gramin Dak Sevak ( "G.D.S." for short). Their appointment as M.T.S. was in accordance with the Annexure A./9 order that too in compliance with the orders of this Tribunal in O.A. 560/2008 and other connected cases. While granting appointment as M.T.S. they were given retrospective appointment notionally with effect from the date of arising of the vacancies in which they were posted. Hence all of them were appointed to the vacancies which arose on a date much prior to their actual posting in 2010 giving them the benefit of notional appointment from the date of arising of the vacancies. At the time of




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their promotion and posting to the present post, they were granted severance amount for the services they rendered as GDS. Applicant Nos.1 to 3 were granted severance amount at the rate of Rs. 48,000/- vide Annexure A./10 Memo. Applicant No.4 was sanctioned Rs. 46500 as severance amount vide Annexure A./11 Memo. However, by letter dated 16.1.2013 issued by respondent No.3, applicants were directed to credit an amount of Rs. 28,000/- by each as per Annexure Nos. A./1 to A./4. Being aggrieved by that demand for repaying a part of the severance amount they have already received, they sent Annexure Nos.A./12 to A./15 representations to the respondents. The representations were rejected by the respondents vide Annexure Nos.A./5 to A./8. According to the applicants they have been working as G.D.S. till the year 2010 and hence they are entitled to the severance amount at the rate that was applicable at the time of their actual severance from the G.D.S. According to them, the delay in posting them as M.T.S. was occurred due to the fault of the department and same should not be permitted to recoil on them. Hence they pray for the relief as under:

- (i) To call for the records relating to Annexures A.1 to A.15 and to quash A.1 to A.8 being illegal and arbitrary.
- (ii) To declare that the applicants are entitled for the severance amount at the rate prevailing on the date of their discharge from GDS service.
- (iii) To grant such other relief as may be prayed for and this Tribunal may deem fit to grant.

And

- (iv) To award costs of this Original Application.
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3. In the reply statement the respondents contend that the applicants were appointed as Group 'D' in various Post Offices under the Irinjalakuda Postal Division for the vacancies that arose from 2006 to 2008 in accordance with the seniority and that the appointment was made in the year 2010, giving notional effect from the date of occurrence of the vacancies without back wages to facilitate for counting the said period for pension as per the new pension scheme. Their pay and allowances were paid only from the date of joining the post. Under Rule 6 (2) of G.D.S (Conduct and Employment) Rules 2001, the G.D.Ss. are not entitled to any pension. However, with reference to the letter No.6-1/2009-PE II dated 9.10.2009 of Director General of Poss, severance amount was granted to the applicants. at the rate of Rs.1500/- for every completed year of employment subject to a maximum of RS.60,000/-. Prior to the aforesaid communication by the Director General of Posts, the lump sum severance amount paid to the G.D.S. on discharge was Rs. 30,000 on completion of 20 years of continuous employment and in the case of those. completing 15 years but less than 20 years of continuous employment the severance amount was limited to Rs.20,000/- A severance amount at the same rates was paid to a G.D.S. on absorption in a departmental post. Applicants were sanctioned severance amount at the rate of 15% per completed years vide Annexure Nos. A./10 and A./11 Memos. Subsequently the Chief Post Master General in letter No. ST/120/GDS GNL dated 05. 12.2011 instructed that "in respect of GDS who were appointed on notional basis respectively from dates varying from years 2005 to 2008 in compliance with the court



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orders since the period of notional promotion granted is reckoned for the purpose of service benefits in the cadre of M.T.S., such G.D.S. promoted on notional basis as above will be eligible to count the service rendered as G.D.S. only upto the date prior to the date of their notional promotion as M.T.S. And not upto the date of their actual appointment as M.T.S." Again in another letter No. ST/80-5/2011 dated 21.1.2012 it was further clarified that "the G.D.S. promoted from 2004 to 8.10.2009 are eligible for severance amount at the old rates only since the element of promotion/appointment on regular basis is mentioned". Accordingly, the applicants are eligible for Rs.20,000/- only in the light of the above instructions and hence they were directed to credit the excess amount paid within one month. The representations of the applicants were considered. As the applicant No.1 was due to retire on 31.5.2013 immediate action was required and hence applicants were directed to credit the excess amount. According to the respondents the department is entitled to recover the excess payments made. The date of severance for the purpose of calculating the severance amount in respect of the applicant is from the date immediately preceding the date of notional appointment. Respondents pray for rejecting the O.A.

4. A rejoinder was filed by the applicants stating that they are entitled to severance amount from the date of severance from the G.D.S. engagement and not from the date of notional appointment.

5. Additional reply statement was filed by respondent No.1 to 3 reiterating their contentions in the reply statement.

6. We have heard Mr. Shafik M.Ä., learned counsel for the Applicant and Mr. Sinu G. Nath, learned ACGSC for the respondents.

Perused the record.




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7. The issue calls for adjudication is from which date the applicants have to be treated as severed from the engagement as their G.D.S. for the purpose of taking up the present post and at what rate they are entitled to get the severance amount payable..

8. There is no dispute for the parties that till 9.10.2009, the rate of severance amount for the G.D.Ss on their discharge was a lump sum of Rs.30,000/- if they had completed 20 years of continuous employment and If the continuous employment is less than 20 years but above 15 years the severance amount was Rs.20,000/-. But from 9.10.2009, the severance amount . was revised at the rate of 1500/- for every completed years of employment subject to a maximum of Rs. 60,000/-. The minimum eligibility period was reduced to 10 years. According to the applicants they were promoted to the post of M.T.S. Vide Annexure A/9 order dated 22.07.2010 and they continued to work as G.D.S. till then and therefore they are entitled to the revised rate of severance amount at the rate applicable from 9.10.2009. The Applicants do admit that while granting appointment to them as M.T.S. they were given appointment notionally from the date of arising of vacancy as indicated in Annexure A/9, without back wages


9. According to the respondents since the applicants were given notional appointment from the date of arising of vacancies they got the pensionary benefits under the new pension scheme facilitating to count their qualifying service from the date of notional appointment ie.. from the date of arising of vacancies, the applicants need to be paid the severance amount at the rate that was prevailing on the date of their notional appointment.



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10. After hearing both sides we are of the considered view that the contention of the respondents that the applicants are entitled to severance amount only at the rate that was prevailing on the date of their notional appointment as M.T.S. appears to be correct. If severance amount at the enhanced rate applicable from 9-10-2009 is paid applicants would be getting the double benefit of the pension payable to them on the basis of the qualifying service counted from their retrospective date of appointment and also an enhanced severance amount brought into force from 9.10.2009. The argument of the applicants that since they worked till 2010 they are entitled to severance amount at the prevailing rate appears to be quite attractive. But in reality, the increase in the pension receivable by the applicants by reckoning the qualifying service from their notional date of appointment – the period during which they have not actually worked in the higher post – is more beneficial with cascading effects. Applicants who have approached this Tribunal seeking protection of their legal rights deriving from the equality clauses in Articles 14 and 16 of the Constitution of India have a corresponding duty to ensure that they do not make a claim that would tantamount to unjust enrichment which is antithetical to the principles of equity that embody Articles 14 and 16.

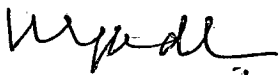
11. In the instant case we note that the applicants are getting the severance amount at the enhanced rate and the simultaneous pensionary benefit for a notional period during which they have not actually worked in the promoted post of M.T.S.



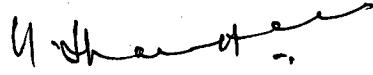
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12. Nevertheless, it is now settled law that it is legally impermissible to recover the excess payments made to employees in Group C & D and to the pensioners in the light of the Hon'ble Apex Court's decision in *State of Punjab and Ors v. Rafiq Masish (White Washer)* 2015 (4) SCC 334. Therefore, while holding that the applicants are entitled to severance amount only at the rate that is applicable to them on the date of their notional appointment, the respondents are directed not to recover the excess amounts already paid to the applicants by way of severance amount at the enhanced rate.

13. O.A. is disposed of accordingly. The parties shall suffer their own costs.



**(RUDHRA GANGADHARAN)**  
**ADMINISTRATIVE MEMBER**



**( U. SARATHCHANDRAN)**  
**JUDICIAL MEMBER**

sj