CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.834/09, O.A.No.164/10,
O.A.No.256/10 & O.A.No.533/10

Monday this the 16th day of August 2010

C O R A M :

HON'BLE Mr.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

O.A.No.834/09

V.K.Padmini,
D/o.late Krishnan Ezhuthachan,
G.D.S.Branch Postmaster, Payyanadam B.O.,
in account with Mannarkad College S.O.
Residing at Parakotel House, Perumbadari P.O.,
Mannarkad – 678 582, Palakkad District. ...Applicant

(By Advocate Mr.K.Ramachandran)

V e r s u s

1. Superintendent of Post Offices,
   Ottapalam Division, Ottapalam – 679 101.

2. Chief Postmaster General,
   Kerala Circle, Thiruvananthapuram.

3. Union of India represented by its Secretary,
   Ministry of Communication, New Delhi. ...Respondents

(By Advocate Mr.M.V.S.Nampoothiry,ACGSC)

O.A.No.164/10

V.B.Mohammed,
S/o.Bava,
Gramin Dak Sevak Mail Packer (GDSMP),
Kattoor Post Office, Irinjalakuda Postal Division.
Residing at Valiyakath House, Kattoor,
Irinjalakuda – 680 702. ...Applicant

(By Advocate Mr.P.A.Kumaran)

Versus

1. Union of India represented
by the Secretary to Government,
Department of Posts,
Ministry of Communication, New Delhi.

2. Chief Post Master General,
Kerala Circle, Trivandrum – 33.

3. Superintendent of Post Offices,
Irinjalakuda Postal Division, Irinjalakuda. ...Respondents

(By Advocate Mr.George Joseph,ACGSC)

O.A.No.256/10

Jayachandran.K.K.,
S/o.K.C.Kumaran,
Working as GDS Branch Postmaster, Pravithanam P.O.
Residing at Kandathinkara House, Ullanad,
Pravithanam – 686 651. ...Applicant

(By Advocate Mr.P.C.Sebastian)

Versus

1. Superintendent of Post Offices,
Kottayam Division, Kottayam.

2. Postmaster General,
Central Region, Kochi – 682 018.

3. Union of India represented by its Secretary,
Ministry of Communications,
Department of Posts, New Delhi. ...Respondents

(By Advocate Mr.George Joseph,ACGSC)

O.A.No.533/10

N.V.Pankajam,
D/o.late Narayana Marar,
GDS Branch Postmaster, Naduvathoor,
Koyilandi Bazar – 673 620.
Residing at Ushas, Post Thuvvakkode,
Chemancherry (Via), Koyilandy - 673 304. ...Applicant

(By Advocate Mr.O.V.Radhakrishnan,Sr along with Ms.Radhamani Amma)

Versus

1. Superintendent of Post Offices,
Vadakara Division, Vadakara – 673 101.

2. Postmaster General,
Northern Region, Calicut.

3. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

4. Union of India represented by its Secretary,
Ministry of Communication & Information Technology,
New Delhi. ...Respondents

(By Advocate Mr.S.Jamal,ACGSC)

These applications having been heard on 16th August 2010 this Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

The common question arose for consideration in these Original Applications is that whether lowering the TRCA that has been granted to the applicants on transfer to another station is justified or not. This question has been already considered by this Tribunal in a batch of Original Application Nos.270, 594 of 2006 and 493, 349 of 2007. In the above batch of applications this Tribunal in paragraphs 34 and 35 of the order held as follows :-

> 34. The question is as to when the transfer involves different TRCA (from higher TRCA to lower TRCA), whether the individual should be given any protection of TRCA or should be placed at the lowest stage of the TRCA at the transferred unit. Here the matter has to be analyzed in two parts (a) Transfer outside the Recruitment Unit and (b) Transfer within the Recruitment Unit.

35. In the case of transfer to a different recruitment unit, the placement of such a transferred GDS shall have to be at the minimum of the TRCA without any consideration to the extent of TRCA drawn by him in the previous post. This has been amply explained in O.A. No. 552 of 2005 in the case of **G.K.Anitha Kumari v. Senior Superintendent of Post Offices & others** decided on 11.4.2007. The said order inter alia is as under :

"11. Arguments were heard and documents perused. Admittedly, at the time when order dated 11-02-1997 was passed there was no TRCA, much less any increase in rates of TRCA corresponding to the past service. The term " for any purpose including seniority" as available in the order dated 11-02-1997 would embrace items like entitlement to sit for the examination, entitlement to gratuity and of course, seniority. This seniority is a factor which is reckoned for the purpose of promotion on the basis of seniority to any Group D post, such as Postman. Thus, on inter-recruiting-unit transfer, an individual would stand to lose his seniority and the consequence of loss of seniority would be that his past services cannot be taken into account for the purpose of seniority in the new unit. His entitlement to sit for examination and for gratuity would, however, remain intact. In other words this would mean that the concessions available to the applicant based on past service for the purpose of sitting for examination and for gratuity, as provided for in order dated 06-05-1985 (Annexure R-3) remains intact even on request transfer to another Recruiting Unit. Of course, there is no controversy about the same. What is in dispute is whether there would be any impact on the TRCA and if so, to what extent.

12. The 1998 order whereby for the first time, TRCA had been introduced talks of difference TRCA for different GDS. Again, for the same GDS (say, GDS BPM), there are two rates as under:-

(1) Rs 1,280 -35- 1960 For those with workload upto 3 hours.
(2) Rs 1,600 – 40 – 2400 : For those with workload more than 3 hours.

13. Since the TRCA cannot be increased in respect of any ED Post Office unless the workload increases, it has to be seen whether the contention of the applicant could hold good when the constriction is that there shall be no increase in the TRCA save when there is increase in the workload. If a GDSBPM working in a particular ED Post Office which carries a TRCA of Rs 1,600 – 40 – 2400 (and where he is drawing the TRCA at the maximum of Rs 2,400/- or for that matter more than Rs 1,960/-) requests for a transfer to another ED Post Office where the TRCA is only Rs 1,280 – 35 – 1960, what should be his TRCA in case of his transfer to the new unit? Should it be in the grade of Rs 1,600 – 40 – 2,400? or Rs 1,280 – 35 – 1960? and if latter, should there be any

protection of last TRCA drawn? Obviously, the person so transferred has to sacrifice the past TRCA and has to be placed at the scale of Rs 1,280 – 35 – 1,960 as this is the scale available for performing the duties in that post office and here again, he cannot be paid any amount over and above Rs 1,960/-. And since the placement of a GDS employee on request is not a "transfer" but only an "appointment" (see the clarification sought at para 2 of order dated 11-02-1997) and the same is not a mere appointment, but only a ***"fresh appointment"****, there is no scope for TRCA of the earlier unit either retained or the extent of TRCA already drawn being protected. It has necessarily to be at the minimum of the TRCA. That such a placement would be only a fresh appointment would be evident even as per the latest orders on limited transfer, vide order dated 17-07-2006 vide para 3(ii) where it is stated* ***"Request for such transfer will be considered against the future vacancies of GDS"****. And, para 3(iii) stipulates,* ***"TRCA of the new post shall be fixed after assessment of the actual workload of the post ...."*** *This would mean that any future vacancies when in the normal circumstances would be filled by fresh appointment, would be filled up by such placement from one recruitment unit to another at the request of the GDS employee. And, in respect of TRCA, the workload shall have to be assessed and paid. As such, when the respondents oblige an individual by acceding to his request for a transfer, they are under no obligation to suffer payment of higher TRCA. Thus the logical consequence of* ***"fresh appointment"*** *is not only that the individual has to lose his seniority as explicitly spelt out in the order dated 11 – 02-1997 but also he cannot be better placed than any other fresh appointee and from that point of view, the TRCA cannot but be only at the minimum of the TRCA applicable to that unit.*

14. One more aspect has to be seen. A GDS employee seeking transfer within the same recruitment unit is entitled to retain his TRCA intact. Transfer within the same recruitment unit stands in a different footing from a transfer outside the recruitment unit. This difference has to be maintained. If the contention of the applicant is accepted, it would obliterate such a difference. Mere loss of seniority would not constitute a marked difference for such a loss in seniority does not mean anything as the individual is entitled to appear in the departmental examination and the past service is also counted for gratuity. The only consequence of loss of seniority may be in matter of promotion, which is rare and infrequent.

15. Now as to the case laws relied upon by the applicant. In the case of Renu Mullick, (supra) it was a case of inter collectorate transfer and the question that arose was whether on such inter collectorate transfer, apart from the loss of seniority, the extent of experience for the purpose of eligibility to higher post also gets obliterated. The Apex Court held in negative. The Apex Court has held as under:-

A bare reading of para 2(ii) of the executive instructions dated May 20, 1980 shows that the transferee is not entitled to count the service rendered by him/her in the former collectorate for the purpose of seniority in the new charge. The later part of that para cannot be read differently. The transferee is to be treated as a new entrant in the collectorate to which he is transferred for the purpose of seniority. It means that the appellant would come up for consideration for promotion as per her turn in the seniority list in th e transferee unit and only if she has put in 2 years□ service in the category of UDC. But when she is so considered, her past service in the previous collectorate cannot be ignored for the purposes of determining her eligibility as per Rule 4 aforesaid. Her seniority in the previous collectorate is taken away for the purpose of counting her seniority in the new charge but that has no relevance for judging her eligibility for promotion under Rule 4 which is a statutory rule. The eligibility for promotion has to be determined with reference to Rule 4 alone, which prescribes the criteria for eligibility. There is no other way of reading the instructions aforementioned. If the instructions are read the way the Tribunal has done, it may be open to challenge on the ground of arbitrariness.

16. The Apex Court was considering only with reference to the eligibility condition for promotion in the above case and not with reference to pay scale or pay. Similarly, in the other case relied upon, i.e. of (1999) L & S 486, it was a case where time bound promotion was the subject matter and the Apex Court has held that by losing seniority, the experience gained does not get eclipsed and the Apex Court has relied inter alia on the decision in the case of Renu Mullick. Thus, the two cases relied upon by the applicant are distinguishable.

17. Counsel for the applicant laboured a lot to establish that what has not been spelt out cannot be fed into the rules and here since the orders are silent about TRCA, the respondents cannot introduce the same to reduce the TRCA that the applicant was earlier drawing. We decline to agree for twin reasons. First, as rightly pointed out by the counsel for the respondents, as also spelt out in the counter, "At the time of issuance of Annexure A-9, GDSs were not entitled to annual increments. Secondly, para 3(ii) and 3 (iii) of order dated 17-07-2006 also spells out that the placement shall be against a vacancy and that the TRCA shall have to be assessed. In other words, the entitlement of an individual on transfer from another recruitment unit would also be to the extent of the TRCA corelated to the workload and the same is independent of his past entitlement in the previous unit. Nothing less; nothing else. " (Emphasis supplied)

2. Further it is held in paragraph 37 as follows :-

> 37. Now, as regards transfer within the same recruitment unit, vide para 4 of D.G Posts letter No.19-51/ED. Trg. dated 11.2.1997 (supra) it has been made clear that if the placement of the ED Agent is from one Post Office to another within the same recruiting unit, the same will be treated as a transfer and the ED Agents will not forfeit his past service for any purpose. Thus, transfer of a GDS from one post to another within the same recruitment unit will not forfeit his past service for any purpose which include the increments drawn by him in the previous post. It is in such circumstance that this Tribunal allowed the O.A.394/2003 (supra) and directed the respondents to restore the TRCA of the applicant. We respectfully affirm the above decision of the Division Bench.

3. And finally came to the conclusion that when the transfer involves different TRCA but where transfers are within the recruitment unit the employees are entitled for the same TRCA. The same principle laid down by the Full Bench of this Tribunal has been followed in a subsequent decision in O.A.No.148/09 reiterating further that if any transfer is within the recruitment unit and even on request, the same TRCA can be allowed to the employees.

4. In the light of the above principles laid down by this Tribunal all these Original Applications stand allowed declaring that the applicants herein are entitled for protection of their TRCA with all consequential relief, if any, required. It is also made clear that if any applicant has already been retired from service they are entitled for their arrears with all consequential revision, if any, to be made.

(Dated this the 16th day of August 2010)

K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER

JUSTICE K.THANKAPPAN
JUDICIAL MEMBER

asp