

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 261 of 2010

Original Application No. 836 of 2010

Friday, this the 1st day of April, 2011

Hon'ble Mr. George Paracken, Judicial Member

Hon'ble Mr. K. George Joseph, Administrative Member

1. Original Application No. 261 of 2010 -

Sri P.K. Sasidharan, aged 56 years, S/o. Kunjukutty,
Working as GDS, MD, Mannimala P.O., Residing at
Palathinal House, Kannimala P.O.,
Erumely-686 509.

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Applicant

(By Advocate – Mr. P.C. Sebastian)

V e r s u s

1. The Postmaster General, Central Region, Kochi-682 018.
2. The Supdt. of Post Offices, Changanassery Division,
Changanassery.
3. The Inspector of Posts, Mundakkayam Sub Division,
Mundakkayam P.O.
4. The Union of India, represented by Secretary to Govt. of
India, Ministry of Communications, Department of Posts,
New Delhi.

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Respondents

(By Advocate – Mr. Millu Dandapani, ACGSC)

2. Original Application No. 836 of 2010 -

Aneeshkumar N., Aged 31 years, S/o. Balan,
Working as Gramin Dak Sevak Branch Postmaster,
Kilinnanyam P.O., Vadakara, Residing at Nagath
House, Eravattoor P.O., Perambra-673 525.

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Applicant

(By Advocate – Mr. P.C. Sebastian)

V e r s u s

1. The Chief Postmaster General, Kerala Circle,



Thiruvananthapuram-695 033.

2. The Supdt. of Post Offices, Vadakara Division,
Vadakara-673 101.
3. The Union of India, represented by Secretary to Govt. of
India, Ministry of Communications, Department of Posts,
New Delhi.

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Respondents

(By Advocate – Mr. M.K. Aboobacker, ACGSC)

These applications having been heard on 01.04.2011, the Tribunal on the same day delivered the following:

ORDER

By Hon'ble Mr. George Parackal, Judicial Member –

Both these Original Applications are identical in nature and therefore, they are disposed of by this common order.

2. Facts in OA No. 261 of 2010 -

2.1 The applicant was appointed as a EDDA (now GDS MD), Mukkulam East P.O. on regular basis with effect from 1.4.1991. Consequent on the introduction of the Time Related Continuity Allowance (in short TRCA) to ED agents as per Department of Posts OM No. 26-1/97-P.C. & ED Cell, dated 17.12.1998 the applicant was granted the TRCA in the scale of pay of Rs. 1740-30-2640/- with effect from March, 1998. While he was working in the said post, the 3rd respondent has issued Annexure A-1 notification dated 7.1.2002 inviting applications from eligible and willing ED officials under him for the post of GDS MC Inchiyani in the scale of TRCA of Rs. 1220-20-1600/-. The applicant applied for the same and on his selection he was appointed to the said post with effect from 29.1.2002. Even though, at the time of his joining, he was drawing Rs.



1860/- being basic TRCA in the scale of Rs. 1740-30-2640/-, he was not given any protection of his pay in the transferred post but he was only given the minimum of Rs. 1220/- in the scale of TRCA of Rs. 1220-20-1660/-. According to the applicant he has been making several oral representations to the 2nd and 3rd respondents to protect his basic pay of Rs. 1860/- from the date of his joining in the lower TRCA from 29.1.2002.

2.2 Thereafter, the 3rd respondent, vide Annexure A-2 letter dated 18.3.2002, invited applications from eligible and willing GDS in his sub division for posting as GDS MD Kannimala P.O., on transfer. Since the post carried higher TRCA of Rs. 1740-30-2640/- which he was originally drawing as GDSMD Mukkulam East, he applied for transfer to the aforesaid post and he was posted there with effect from 15.5.2002, vide Annexure A-3. Thereafter his basic TRCA was fixed at Rs. 1740/- in the scale of Rs. 1740-30-2640/-.

2.3 Mr. P.C. Sebastian, the learned counsel for the applicant has submitted that his pay should have been protected on both occasions i.e. (i) when he was transferred as GDS MC Inchiyani in the TRCA of Rs. 1220-20-1660/- while he was drawing basic TRCA of Rs. 1860/- as GDS MD Mukkulam PO in the scale of Rs. 1740-30-2640/- and (ii) when he was transferred as GDS MD Kannimala in the scale of Rs. 1740-30-2640/-. He has also submitted that the applicant's case is fully covered by the order of this Tribunal in OA No. 148 of 2009 – N. Sugandhi, GDS BPM Vs. The Sr. Supdt. of Post Offices & Anr., dated 21st August, 2009. In the said OA the applicant therein was working as GDS (Stamp Vendor) at



Vakkom Sub Post Office with effect from 25.2.1982 in the TRCA of Rs. 1740-30-2640/-. Consequent upon the abolition of that post she was posted as GDSMD, Vennicode in the same TRCA of Rs. 1740-30-2640/-. However, she expressed her inability to join that post because of her physical conditions and requested for an alternative posting. Considering her request, she was posted as GDSBPM, Kavalayur in the lower TRCA of Rs. 1600-40-2400/-. Her grievance was that while she was drawing an allowance of Rs. 1920/- plus DA in the TRCA of Rs. 1740-30-2640/- as GDSSV, Vakkom her pay has been reduced to Rs. 1600/- plus DA which is the minimum of the TRCA of Rs. 1600-40-2400/-. However, this Tribunal following its earlier orders in OAs Nos. 394 of 2003, 704 of 2004 and 220 of 2007 allowed the said OA and directed the respondents to protect her basic allowance which she drawn last against the post of GDS (Stamp Vendor) at Vakkom Sub Post Office in the TRCA of Rs. 1740-30-2640/- on her transfer to Kavalayur as GDSBPM, in the TRCA of Rs. 1600-40-2400/-. Learned counsel for the applicant has also relied upon the judgment of the Full Bench of this Tribunal in OA No. 270 of 2006 and other connected cases where various scenario of transfers has been considered and the following decisions was taken:-

“49. Now, the entire situation would be summarised and references duly answered as under:-

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

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(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.

(d) In respect of transfer from one post to another within the same recruitment unit but with different TRCA (i.e. from higher to lower), pay protection on the same lines as in respect of (b) above would be available.

(e) In so far as transfer from a post carrying lower TRCA to the same category or another category, but carrying higher TRCA, the very transfer itself is not permissible as held by the High Court in the case of Senior Superintendent of Post Offices vs. Raji Mol, 2004 (1) KLT 183. Such induction should be as a fresh recruitment. For, in so far as appointment to the post of GDS is concerned, the practice is that it is a sort of local recruitment with certain conditions of being in a position to arrange for some accommodation to run the office and with certain income from other sources and if an individual from one recruitment unit to another is shifted his move would result in a vacancy in his parent Recruitment Unit and the beneficiary of that vacancy would be only a local person of that area and not any one who is in the other recruitment unit. Thus, when one individual seeks transfer from one post to another (in the same category or other category) from one Recruitment Unit to another, he has to compete with others who apply for the same and in case of selection, he shall have to be treated as a fresh hand and the price he pays for the same would be to lose protection of his TRCA."

3. Learned counsel Shri Millu Dandapani for the respondents have strongly opposed the contentions of the applicant's counsel. He has submitted that the applicant had applied for transfer to the post of GDSMC, Inchiyani, which carried a lower scale of pay while he was already working in a higher TRCA in the scale of Rs. 1740-30-2640/- as GDSMD Mukkulam East PO. He has also submitted that even though the applicant has been drawing the minimum in the TRCA of Rs. 1220-20-1660/- from the date of his posting as GDSMC, Inchiyani with effect from 29.1.2002, he did not make any representations for protection of his pay till 7.8.2006 (Annexure A-4). He has also relied upon the instructions issued by the Department of Posts vide Annexure R-1 dated 6th February, 2001, according to which protection of allowances is not applicable to those cases where EDAs are redeployed voluntarily on other ED posts, allowances for which are determined by

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specific considerations relating to such ED posts specifically. Further, he has brought the Annexure R-4 dated 21/22.7.2010 to our notice, wherein it has stated as under:-

“(iii) However on transfer to a new post, the Gramin Dak Sevaks cannot have any claim for protection in their Time Related Continuity Allowance drawn in the old Post. His/her Time Related Continuity Allowance will be fixed at the minimum of the Time Related Continuity Allowance slab of the transferred post, depending upon the work load of the said post. In the case of Mail carrier/Mail deliverer/packer, the work load has to be assessed on cycle beat. The transfer has to be approved only if the Gramin Dak Sevak is willing for this condition of fixation of his/her Time Related Continuity Allowance at the minimum of the new post, and an undertaking to this effect has to be obtained and kept on record. This condition is provided to prevent the misuse of the limited transfer facility so that it can be availed only by those who genuinely need it.”

3.1 Learned counsel for the respondents has also raised the question of limitation in these cases as the applicant was posted as GDS MD, Inchiyani on 29.1.2002 in the lower scale of TRCA with basic of Rs 1220/- but did not make any representation regarding his grievance till 7.8.2006. Hence, the claim is belated. He has also refuted the contention of the applicant that his case is covered by the decision of the Full Bench of this Tribunal in OA No. 270 of 2006 (supra) relied upon by the learned counsel for the applicant.

4. Facts in OA No. 836 of 2010 -

4.1 In this case the applicant while working as GDS MC at Nut Street Post Office in Vadakara was transferred to the post of GDS BPM Kilinnanyam in the same recruitment unit w.e.f. 21.8.2009. He was drawing Rs. 3960/- as basic TRCA in the revised scale of Rs. 3635-65-5585/- in the post of GDS MC. But in the transferred post of GDS BPM his basic TRCA was fixed at Rs. 3660/- i.e. at the minimum of the scale of Rs. 3660-70-5760/- resulting in undue reduction and

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loss of increments. According to him, he is entitled to get the benefit of protection of higher TRCA which he was drawing at the time of transfer.

5. Heard the learned counsel for the parties and perused the pleadings and records of the case.

6. As far as the question of limitation raised by the learned counsel for the respondents is concerned, we are of the view that relief sought by the applicants are in the nature of continuous cause of action and therefore, it does not arise.

7. Further on merits, in our considered view, both these cases can be disposed of on the basis of the decision of the Full Bench of this Tribunal in OA No. 270 of 2006 and other connected cases (supra). This Tribunal has analysed the various scenario which has arisen in the transfer of GDS from the higher TRCA to lower TRCA, referred to above. In the case of the applicant in OA No. 261 of 2010 he was initially working as GDS MD, Mukkulam in scale of TRCA of Rs. 1740-30-2640/- with effect from 1.4.1991. He was posted as GDS MD, Inchiyani in the lower scale of TRCA of Rs. 1220-20-1660/- on 29.1.2002 and as on date he was drawing the basic TRCA of Rs. 1740/- in the scale of TRCA of Rs. 1740-30-2640/-. However, the respondents have granted him the minimum of TRCA on both occasions i.e. while he was transferred from Mukkulam to Inchiyani and from Inchiyani to Kannimala. In terms of the orders of this Tribunal in the Full Bench referred to above in OA No 270 of 2006 and other connected matters (supra), the respondents ought to have fixed the pay of the applicants in terms of paragraph 49(d) quoted above. Accordingly, the pay of the applicant in OA No. 261 of 2010 with effect from 29.1.2002 in the scale of TRCA of Rs. 1220-20-

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1660/- should have been fixed at Rs. 1660/- i.e. maximum of the TRCA in the transferred unit. However, when the applicant has been transferred again as GDS MD, Kannimala in the very same higher scale of TRCA of Rs. 1740-30-2640/- with effect from 17.5.2002 the respondents ought to have granted him the last basic allowance of Rs. 1860/- drawn by him in the scale of pay of Rs. 1740-30-2640/- while he was working as EDDA, Mukkulam East Post Office. Accordingly, they should have fixed his pay at Rs. 1860/- on 17.5.2002.

8. We therefore, allow these Original Applications with the following directions:-

- a) The respondents should fix the pay of the applicant in OA No. 261 of 2010 with effect from 29.1.2002 as GDS MD, Inchiyani in the scale of Rs. 1220-20-1660/- and grant him the basic pay of Rs. 1660/- from the said date.
- b) When the applicant in OA No. 261 of 2010 was transferred to GDS MD, Kannimala in the scale of TRCA of Rs. 1740-30-2640/- with effect from 17.5.2002 they should restore the basic pay of Rs. 1860/- which he was already drawing in the aforesaid scale while he was working as EDDA, Mukkulam East P.O.
- c) In the case of applicant in OA No. 836 of 2010 his TRCA shall be re-fixed in the basic of Rs. 3960/- in scale of TRCA of Rs. 3660-70-5760/- with effect from 21.8.2009 which he was drawing earlier in the lower scale of TRCA of Rs. 3635-65-5585/- while working as GDS MC at Nut Street Post Office in Vadakara.



d) The TRCAs of both the applicants shall be re-fixed as ordered above and the arrears arising out of such re-fixation shall be made available to them within a period of three months from the date of receipt of a copy of this order.

9. There shall be no order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(GEORGE PARACKEN)
JUDICIAL MEMBER

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