CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 264/2005

Wednesday, this the 7th day of March, 2007.

CORAM:

HON'BLE Dr K.B.S RAJAN, JUDICIAL MEMBER

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

P.M.Janardhanan Nair,
Gramin Dak Sevak Mail Deliverer,
Elanthur.P.O.
Pathanamthitta. - Applicant

By Advocate Mr PC Sebastian

v.

1. The Superintendent of Post Offices,
Pathanamthitta Division,
Pathanamthitta - 689 645.

2. The Chief Postmaster General,
Kerala Circle,
Thiruvananthapuram.

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

By Advocate Mr P.J.Philip, ACGSC

The application having been heard on 30.1.2007, the Tribunal on 7.3.2007 delivered the following:

ORDER

HON'BLE MR N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant Shri P.M.Janardhanan Nair, Gramin Dak Sevak Mail Deliverer, Elanthur P.O is aggrieved by the non-receipt of higher rates of

allowances consequent to combination of duties.

2. He started working as Extra Departmental Messenger at Elanthur Post Office on a regular basis with effect from 23.3.1974. Vide A-1 order dated 9.6.99, sanction was granted for the combination of his duties as ED Messenger with those of the post of Extra Departmental Delivery Agent which fell vacant from 27.10.98. On such combination, his designation was changed as EDDA-cum-ED Messenger with effect from 28.10.98and the Time Related Compensatory Allowance (TRCA) was fixed at Rs.1740-30-2640. By a subsequent (impugned ) order A-2 dated 13.8.99, his designation was changed as ED Messenger/EDDA and his TRCA was reduced to 1545-25-2020, purportedly under orders from the CPMG. By an endorsement in that letter, excess paid if any was ordered to be recovered. Another order followed refixing TRCA at Rs.1375-25-2125, again ordering recovery of excess if any paid. According to the applicant as per instruction contained in DG, Posts letter No.41-437/87-PE dated 16.12.1987, dated 16.12.1987, combination of posts whenever done, should follow the nomenclature of that post with predominant duties. Going by this logic, A-1 orders, designating him as EDDA-cum-ED Messenger, and fixing the TRCA at Rs.1740-3-2640 was in order. Viewed in this perspective, A-2 and subsequent order dated 4.10.99 were unjust according to him. He made a representation A-3 requesting for the TRCA as allowable to a delivery agent with no response forthcoming. But, on 13.1.04, he was issued another memo (A-4) by virtue of which, consequent to the abolition of the post of Postman at Elanthur, the post of GDS Messenger/MD (which he was holding) was redesignated as GDSMD with a TRCA of 1740-30-2640. He made another representation dated 27.5.2004 (A-5) asking for higher TRCA with effect from 29.10.98 to 6.1.04. Therein, he made the following points:

i) On combination of the works of EDDA & ED Messenger, he was designated as EDDA-cum-ED M with TRCA of 1740-30-2640 with

effect from 28.10.98.

ii) In a reversal of designation as ED Messenger-cum-EDDA, the TRCA was fixed at 1375-25-2125 with effect from 4.10.99, and excess of Rs.2332 paid to him was being recovered at the rate of Rs.200 per month.

Iii) Consequent to the abolition of the Postman's post with effect from 7.1.04, he was redesignated as EDDA restoring to him the higher TRCA.

iv) As per the letter of the DG, Posts No.14-2/99-PCC/PAP dated 5.3.99, the TRCA of the post will be decided based on the predominant of the constituent units in the combination , such predominance to be decided based upon the prescribed norms.

v) In his case, his duties had a higher proportion of EDDA work than of EDM work, borne out by the statistics of workload of both these components at the time of merger.

vi) His request therefore was for the grant of TRCA of the EDDA with effect from 28.10.98.

3. This was rejected by the A-6 order dated 21.7.2004 (impugned). Aggrieved by both A-2 and A-6, he has approached this Tribunal.

4. He seeks the reliefs of

a) setting aside A-2 and A-6 orders.

b) declaration of entitlement to a higher TRCA with effect from 28.10.98.

c) refund of payment made by him towards excess pay and

d) ordering of proper work distribution.

5. He rests on the following grounds to sustain his claim.

i) The combination of post of EDDA with that of ED Messenger with the designation of EDDA-cum-Messenger is indicative of the fact that the former has a predominant weight.

ii) The unilateral recovery of alleged excess payment is contrary to the law laid down by the Apex Court in Union of India v. Shyam Babu Verma [1994 (2) SCC 521].

6. The respondents resist the application by contending that the A-1 order was only sought to be amended by the impugned A-6 order and such amendment was perfectly justifiable. Hence, A-6 letter is pefectly legal. The prayer relating to refund of recovery of excess allowance paid has been made very late and hence is barred by limitation.

7. Heard the parties and perused the documents, including the file No.A/71/IV Est. of the Department, dealing with O.A.264/2005.

8. The applicant's first relief relates to the proper combination of duties which would give him additional remuneration by way of TRCA. It is seen from the records and the file produced by the Department that he was working as Extra Departmental (ED) Messenger subsequently re-designated as Gramin Dak Sevak Mail Messenger. As on 26.10.98, the establishment at Elanthur Post Office included one Extra Departmental Delivery Agent (EDDA), subsequently re-designated GDS Mail Deliverer or GDSMD for short. On the termination of services of the previous incumbent, who was an EDDA, a proposal was mooted to combine that post with the post of ED Messenger held by the applicant. When such combination takes place, the resultant remuneration is fixed as that of the predominant component in such combination, such predominance being decided by works statistics. In the

appellation of the combination, such predominant constituent is mentioned first followed by the other. In the instant case, the applicant was given the combination of Messenger- EDDA with effect from 28.10.98 and the proposal to reverse the components was pending with the Circle Office and his TRCA was fixed at Rs.1375-25-2125 as seen in the letter dated March 1999. In fact as early as 15.3.99, the PMG's office had declined to combine the duties of ED Messenger with that of EDDA. Subsequently on 14.5.99, the PMG office approved the combination of the ED Messenger with EDDA subject to fulfilling the workload requirements. A-1 order was issued on 9.6.99 combining the duties of ED Messenger with EDDA with effect from 28.10.98. This gave the applicant higher TRCA associated with the EDDA. There is no evidence available of the assessment of the workload, while issuing this order. Perhaps that is why the respondents admit that it was issued by mistake. The CPMG pointed out in his letter dated 22.6.99 the mistake in ordering the combination vide the A-1 order. Finally, the CPMG issued the sanction on 10.8.99 for the combination of ED Messenger/EDDA on a TRCA of Rs.1545-25-2020. In pursuance of this, the impugned order A-2 was issued amending the A-1 order. This again shows that the latter was indeed issued under a mistake. It is also significant to note that the mistake was rectified in short time of about two months. This, we find is a reasonable exercise. Though this order was issued as long back as 1999, the applicant chose to challenge the same only in this O.A as late as 2005. In fact, the later of the impugned orders, viz, A-6 dated 21.7.2004 is a result of his representation dated 27.5.2004 (A-5). The cause of action for this representation arose with the A-4 orders passed by the respondents on 31.1.2004 with the abolition of the post of GDS Messenger/MD held by the applicant and redesignation thereof as GDSMD with effect from 7.1.2004, thus benefitting him with a higher TRCA. In the A-5 representation, the applicant had claimed uninterrupted TRCA at higher rates right from 28.10.98 instead of from 7.1.2004. Except making a bland statement about

working load, he had not substantiated his claim of uninterrupted higher TRCA from 28.10.98 to 6.1.2004. Had he been prejudicially affected by the combination of GDS Messenger/GDSMD, he should have represented shortly within the issue of the orders under A-2, failing which he should have approached this forum. This shows that he was very late in staking his claim and more importantly, he has no basis to substantiate his claim for higher TRCA. On a combination of these factors we find that no convincing case has been made out for awarding the relief asked for - he be declared to be entitled to get higher TRCA as applicable to the EDDA consequent to the combination of duties as per A-1 order with effect from 28.10.98.

9. The applicant has sought the relief to direct the respondents to refund the sum of Rs.2332 recovered pursuant to the impugned A-2 order. This he says is contrary to the orders of the Apex Court in Union of India v. Shyam Babu Verma [1994 (2) SCC 521] that over payments occurring not due to any misrepresentation on the part of the employee cannot be recovered on the plea of wrong fixation. The respondents oppose this relief by pointing out that the overpayment of Rs.2332 was recovered from the applicant during the period of September 1999 to August 2000. Four years and eight months have elapsed since the completion of the said recovery. The claim of the applicant to refund the amount is barred by limitation and not sustainable. The above points were elaborated at the time of argument by the learned counsel for the respondents. The learned counsel for the respondents drew our attention to that part of the file dealing with the recovery. It is seen that the applicant made a representation on 16.8.99 (pg 79 of the file) in which he had requested that the excess pay drawn by him be recovered from his salary in instalments, keeping the amount of such instalment at a minimum level. Based on some other precedent, such instalment was fixed at Rs.200 per month by the respondents and the excess recovered as mentioned above. It is significant to note that there was not only

no protest in his representation mentioned above but there was an acquiescence about the redesignation of the post.

10. Now an examination needs to be done about the claim of the applicant that such recovery is deprecated in view of the law laid down by the Apex Court. The operative part of the judgment of the Hon. Apex Court in Union of India v. Shyam Babu Verma [1994 (2) SCC 521]. is reproduced below:

> "*Although we had held that the petitioners were entitled only to the pay scale of Rsa.330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330-560 but as they have received the scale of Rs.330-560 since 1973 due to no fault of theirs and that scales being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same.*"

In a subsequent case (Sahib Ram v. State of Haryana [1995 Suppl (1) SCC 18) on a similar issue of recovery, the Apex Court passed the following order:

> *Admittedly the applicant does not possess the required educational qualification. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principal of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs.*

In yet another case [1995 Supp (3) SCC 722] on a similar issue, the following orders were passed:

> *"The learned counsel for the appellants has vehemently contended that the higher pay scale having been granted to them by the State Government on its own with the concurrence of the Finance Department , there was no justification whatsoever to have cancelled the same and ordered recovery from the appellants. He has further contended that no opportunity was afforded to them before passing the impugned order to their detriment. We are not inclined to interfere with the impugned judgment of the High Court. We agree with the High Court that unless there was an order of the Government sanctioning and granting revised pay scales to the appellants, they are not entitled to claim the same. But at the same time, we are of the view that the appellants cannot be blamed. The Anomaly Committee recommended grant of higher pay scales to them. The Finance Department also concurred with the same and as a result thereafter the appellants were given the pay scales and were disbursed the arrears as a lump sum. Having paid the arrears to the appellants,the State Government could not have reversed the same specially without complying with the rules of natural justice. It is not disputed that no opportunity was afforded to the appellants before passing the order of recovery. We, therefore, grant limited relief to the appellants to the extent that we quash the order directing recovery of the amount paid to the appellants in the year 1981. The State Government shall not effect recovery of the arrears in the revised pay scale for the period from 1.1.1976 to 1.1.1981. We, however, agree with the High Court that the appellants were not entitled to the revised pay scale and as such we hold that it was rightly withdrawn from them.*
>
> *We allow the appeal to the extent indicated above. No costs.*

The important point, in fact the common denominator in all the three above mentioned cases, including the one referred to by the applicant, is that only future recovery was deprecated and no amount already recovered was ordered to be paid back. Another important point we would like to reiterate here is that

the applicant had voluntarily paid the amount, his only request was to fix the monthly instalment at as low a level as possible and in any case, he is agitating the issue quite late in the day. We, therefore, find that no remedy of repayment of already recovered amount can be granted to him.

11. In the result the O.A is dismissed. No costs.

Dated, the 7th March, 2007.

N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

K.B.S.RAJAN
JUDICIAL MEMBER

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