CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A Nos. 270/ 2006, 493/2007, 349/2007 and 594/2006

Friday, this the 14th day of November, 2008

CORAM :

HON'BLE DR. K.B.S. RAJAN JUDICIAL MEMBER
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE DR K.S.SUGATHAN, ADMINISTRATIVE MEMBER

O.A. No. 270/2006

R.P. Hrishikeshan Nair,
GDSBPM, Veliyamcode.B.O,
Thiruvananthapuram South Division. ....Applicant

(By Advocate Mr. M.R. Hariraj)

vs.

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,
Thiruvananthapuram.

3. Superintendent of Post Office,
Thiruvananthapuram south Division,
Thiruvananthapuram. ....Respondents

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

O.A. No. 594/2006

T. Rajeevan,
S/o. the late K. Kunhiraman,
Gramin Dak Sevak Mail Deliverer,
Olat BO, Trikaripur (Via), Kasaragode,
Residing at Puthilot, P.O. Kodakkad,
Trikaripur (Via), Kasaragode District. ... Applicant.

(By Advocate Mr. O.V. Radhakrishnan, Sr. with Mr. Antony Mukkath)

vs.

1. Superintendent of Post Offices,
Kasaragode Postal Division,
Kasaragode : 671 121

2. Union of India represented by its
Secretary, Ministry of Communications.
New Delhi ... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

O.A.No. 349/2007

C.Sudheendra Bose,
Gramin Dak Sevak,
Branch Post Master,
residing at Kottoor,
Sivamayam, Kallikkad,
Mylakkara P.O.
695 572, Thiruvananthapuram. ... Applicant

(By Advocate Mr MR Hariraj)

vs.

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

2. Chief Post Master General,
Kerala Circle,
Thiruvananthapuram.

3. Superintendent of Post Office,
Thiruvananthapuram south Division,
Thiruvananthapuram-695 014. .... Respondents

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

O.A. No. 493/2007

M.D.George,
Gramin Dak Sevak Branch Postmaster,
Attachackal. .... Applicant

(By Advocate Mr. M.R. Hariraj)

vs.

1. Union of India represented by the Secretary to Government of India, Department of Posts, Ministry of Communications & Information Technology, New Delhi.

2. Chief Post Master General, Kerala Circle, Thiruvananthapuram.

3. Superintendent of Post Offices, Pathanamthitta Division, Pathanamthitta. .... Respondents

(By Advocate Mrs K Girija, ACGSC)

(The Original Applications having been heard on 15.10.2008, this Tribunal on 14-11-08 delivered the following) :

O R D E R

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

In view of the fact that there have been certain conflicting views over the entitlement of protection of Time Related Continuity Allowance (TRCA, for short)) in respect of the Gramin Dak Sevaks (G.D.S. for short) on transfer, the following two issues have been referred to the Full Bench:-

"(i) When a Gramin Dak Sevak drawing pay in a higher TRCA is transferred from one Post Office to another within the same recruiting unit or outside the recruitment unit with or without his request to a post with lower TRCA, whether he is entitled to protection of last pay drawn by him in the higher TRCA or not?

(ii) When a Gramin Dak Sevak is working against a post with higher TRCA is transferred on his request or otherwise to a post carrying lower TRCA within the same recruitment unit or outside, is entitled to fixation of his TRCA in terms of FR 22(1) (a)(i) or FR 22(1)(a) 2 or not"

2. There are in all four O.As that have been heard together. Of these, OA 594/2006 was not under consideration at the time when the above reference was made. Nevertheless, since in this case also, the issue involved is about protection of emoluments drawn by the applicant before transfer at the new duty station, this has also been clubbed with the other cases.

3. A vignette of the facts of the case with terse sufficiency being essential to have the hang of the issues involved, the same is succinctly given in the succeeding paragraphs.

Facts in OA No. 270/2006

4. The applicant was initially appointed as Extra Departmental Delivery Agent, re-designated as Gramin Dak Sevak Mail Deliverer (GDSMD for short), Kandala, with effect from 18-01-1980. The said post was carrying a TRCA of Rs 1740 – 30 – 2640/-. On his request, the applicant was appointed w.e.f. 16-03-2000 as Extra Departmental Post Master (EDBPM for short), Veliyamcode B.O. carrying the lower TRCA of Rs 1600 – 40 – 2400. The applicant was, at the time of his move as above, drawing Rs 1770/- per month as TRCA in the range of Rs 1740 – 2640/-. On the applicant's joining the post of EDBPM Respondents fixed his TRCA at Rs 1600/- which is the minimum in the range of Rs 1600 – 2400/-. Prior to his transfer, the applicant had been asked and hence given an undertaking to the effect that he was prepared to work in the TRCA attached to the post of ED BPM. As such, no protest was registered by the applicant against the above fixation of TRCA on his transfer. However, this Tribunal in OA 394/2003 considered an issue relating to protection of TRCA drawn prior to transfer from Karumalloor B.O. to Maliankara P.O. in the post of EDBPM. The

Tribunal has passed the following order:-

> *"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."*

4.1. On coming to know about the above case, the applicant preferred a representation to the respondents stating that in his case, the depletion in the TRCA being sizeable to the extent of Rs 200/- he should not be subjected to the loss on his transfer from one post office to another, in the same post, and within the same recruitment unit. His request for the same not having been acceded to, the applicant has approached the Tribunal for a direction to the respondents to fix his TRCA at Rs 1880 in the TRCA range of Rs 1600 – 40 – 2400 w.e.f. 16-03-2000 and payment of the difference in emoluments.

Facts in OA No. 349/2007

5. The applicant in this OA was working at Kuthirakulam as GDSMD and was transferred as GDSBPM, Kottoor on 5-9-1999. TRCA for GDSMD at Kuthirakulam was Rs 1740 – 2640, while that at Kottur for GDSBPM was Rs 1600 – 2400. On his transfer the applicant was fixed in the minimum of the above said TRCA i.e. 1600/-. Relying upon the decision in OA No. 394/2003, the applicant in this OA has also claimed his TRCA as per FR 22(1)(a)(i) on appointment as EDBPM to fix the pay at Rs 1880 in the TRCA of Rs 1600 –40 – 2400/- w.e.f. 05-09-1999.

Facts in OA No. 493/2007

6. The applicant was workming as Gramin Dak Sevak Mail Carrier (GDSMC for short), Kallely BO w.e.f. 17-01-1995 to 15-02-1997; as GDSBPM Elimullumplackal BO w.e.f. 16-2-1997 to 19-06-2007. He was appointed on transfer as GDSBPM Attachackal PO w.e.f. 20-06-2007. Prior to transfer he was drawing a basic allowance of Rs 2080 in the TRCA of Rs 1600 – 2400. On his posting on transfer at Attachackal in the same capacity he was granted TRCA of Rs 1280 – 35 – 1980 without any protection of his TRCA earlier drawn by him. On the same basis of the decision in OA No. 394/2003, the applicant has claimed protection of his TRCA drawn prior to his transfer.

Facts in OA 594/06

7. The applicant joined as GDS Mail Deliverer, Kanakapally B.O. on 11.07.1997 (where the TRCA is Rs 1740 – 2640) and on coming to know that a vacancy of GDS MD is available at Olat BO (where the TRCA is 1375 – 2125), he had applied for the same, as that place is proximate to the native place of the applicant. Respondents have acceded to his request and posted the applicant at Olat but took an undertaking that the applicant would be 'ready to work in the minimum salary of the present basic pay of GDS MD Olat'. The applicant joined the post at Olat on 22-08-2003 and has been paid the TRCA at the minimum of the range of TRCA 1375 – 2125 plus attendant dearness allowances etc.

7.1. The applicant came to know about the decision of this Tribunal in OA No. 394/2003 and as such, requested the authorities that he be also extended the benefit of the said order and his TRCA be fixed by protecting his emoluments

drawn before he joined Olat. Annexure A-10 refers. However, by Annexure A-11 order, the authorities have rejected the claim stating that protection of TRCA is not admissible to those surplus G.D.S who are redeployed on their own specific request and as such the applicant is not eligible for protection of TRCA on his being posted at his request to Olat. The applicant has come in challenge against the same.

7.2 As the issue regarding protection of TRCA was referred to a larger Bench, this was also clubbed along with the same.

8. The case of the respondents in all these cases may be summarized as hereunder.

(a) The applicant in the case of OA No. 270/06 at the time of application for transfer gave an undertaking that he would be ready to work in the pay of BPM. (Annexure R-1 of the OA)

(b) The applicant in the case of OA No. 594/06 had also furnished an undertaking that he would be ready to work in the new post without claiming protection of his earlier TRCA. Annexure R-1 of the said OA refers.

(c) Vide order dated 26-12-2002 of the Department of Posts in the Ministry of Communications, request of a GDS to another vacant post elsewhere could be considered only if the applicant is eligible for the same and is willing to accept the emoluments of the new posts. Higher emoluments in the present post will not be protected in such cases. Annexure R-3 in OA No. 594/2006 refers. This is on the analogy that in respect of redeployed GDS, the emoluments would be as available to the post and protection of allowance is not admissible.

(d) A Sevak shall not be eligible for transfer in any case from one post/unit to another post/unit except in public interest. Annexure R-2 of OA No. 594/2006 refers.

(e) As per the Order of the DG Posts, Time Related Continuity Allowance is based on hours of work involved in respect of a particular post in a Branch Post Office and as such, entitlement shall be only on that basis. Annexure R-4 in OA 270/2006 has been relied upon. (Also see para 4 of counter in OA No. 493/2007).

(f) GDS are not government servants and as per instructions below Rule 1(2)of GDS (Conduct & Employment) Rules 2001, vide Annexure R-5 in OA 270/2006, GDS would continue to be outside the civil service of the Union and shall not be treated at par with regular employees.

(g) This Tribunal has held that in case of transfer outside the recruitment unit, the GDS has to forget about his earlier emoluments in the earlier post and has to be satisfied with the emoluments attached to the post where he is transferred. Annexure R-7 of OA No. 270/2006 read with para 3 of the counter refers.

(h) The TRCA even otherwise is subject to variation depending upon the work-load as assessed at regular intervals. (Annexure R-7 of the Counter in OA No. 493/06.)

9. Rejoinder to the counter have also been filed.

10. The learned Senior Counsel for the applicant in OA No. 594/2006 at the very outset stated that this case has been linked with the other cases where reference to full Bench has been made. As per the reference, the issue to be answered included protection of TRCA when a G.D.S. is transferred either in the

same post or another G.D.S. post carrying a lower TRCA in another recruiting unit. However, the case of the applicant in the above O.A. relates to transfer within the same recruiting unit. Hence, as to the above aspect of transfer outside the recruiting unit, the learned Senior Counsel did not address the Court. The Learned Senior Counsel argued that the term 'G.D.S.' encompasses various categories of posts as contained in the definition clause vide 3(c) of the Department of Posts Gramin Dak Sevaks (Conduct and Employment) Rules, 2001 and initially as per the instructions these Gramin Dak Sevaks have no transfer liability. Subsequently, another instruction was issued to the effect that under certain conditions GDS could seek transfer. There has, thus, been introduced, 'Transfer Eligibility' of GDS. According to the Counsel, on such transfer, there should be no depletion in the emoluments of the transferred G.D.S. However, the respondents have denied the protection of TRCA and to legitimize their action, they have taken an undertaking from the applicant to the effect that in the event of transfer to his desired place, he would not claim protection of TRCA. The learned Senior Counsel argued that such an undertaking to accept the minimum of the TRCA cannot be held legally valid in view of the decision in ***Secy.-cum-Chief Engineer v. Hari Om Sharma, (1998) 5 SCC 87*** . Sec 23 of the Contract Act would apply to such cases. Again, the senior counsel argued that in so far as the applicant in that OA is concerned, rejection of his claim is on the ground that the rules do not provide for protection of emoluments in respect of surplus GDS, who are redeployed, vide Annexure A-11, whereas, the case of the applicant is not one of re-deployment but of a transfer within the provisions of the Rules.

11. The Learned Senior Counsel also submitted that in case the TRCA of a transferred employee is not protected, it would lead to an anamolous situation of junior drawing more TRCA than the senior and the same would not be congenial to the discipline of the organization.

12. The Learned Senior Counsel had cited a number of decisions of the Hon'ble High Court of Kerala and the Apex Court and the same are as under:-

(1) AIR 1975 SC 538, Para 24
(2) 1985 (2) SLR 248, Para 5
(3) 1993 (1) SCC 182, Para 14
(4) 1993 SUPPL (2) SCC 375, Para 11
(5) JT 2001 (9) SC 463, Para 10
(6) 2002 (1) KLT 157, Paras 6 to 8
(7) (1998) 5 SCC 87, Para 8

13. Counsel for the other O.As, while adopting the line of arguments of the senior counsel in OA No. 594/06, also submitted as under:-

(a) A reading of the orders referred to in the common order dated 25th April, 2008 in OA No. 270/06 and connected O.As when analysed would lead to a situation that read harmoniously, there is no conflicting view in such orders.

(b) In so far as transfer of G.D.S. is concerned, there would be two broad classification – (i) Transfer within the same recruitment unit and (ii) Transfer outside the recruitment units.

(c) Under the above two broad categories, there would be many an intermediate category of transfer as under:-

	From	*To*	*With*	*Unit*
(a)	One Post	The same post	Identical TRCA	Within Rectt Unit
(b)	One Post	The same post	Different TRCA	Within Rectt Unit
(c)	One Post	Another post	Identical TRCA	Within Rectt Unit
(d)	One Post	Another Post	Different TRCA	Within Rectt Unit
(e)	One Post	The same post	Identical TRCA	Outside Rectt Unit
(f)	One Post	The same post	Different TRCA	Outside Rectt Unit
(g)	One Post	Another post	Identical TRCA	Outside Rectt Unit
(h)	One Post	Another Post	Different TRCA	Outside Rectt Unit

14. In so far as the cases in hand are concerned, all are with reference to transfer within the recruitment unit and as such, issue on transfer outside the recruitment units is not discussed. Thus, the discussion is restricted to (a) to (d) above.

15. As regards (a) and (c) above, the learned counsel argued that transfer to same or another post **with identical TRCA** would not join the issue for, protection of TRCA is already available as per the extant Rules. Of course, such transfer, if outside the recruitment Unit may have to be dealt with in another fashion.

16. Regarding (b) and (d) above,the learned counsel submitted that the term 'different TRCA' could either be from lower to higher TRCA and vice Versa and that when the transfer is from one post to the same or another post, **involving higher TRCA,** then, as held by the High Court of Kerala in the case of **Senior Superintendent of Post Offices vs. Raji Mol,** 2004 (1) KLT 183, such a transfer itself is not feasible.

17. **Thus, the issue being discussed is narrowed down to transfer from one post to the same or another post within the same Recruitment Unit but**

involving different TRCA, i.e. from higher TRCA to lower TRCA.

18. The counsel submitted that in so far as issue at para 1(a) above, he adopts the arguments advanced by the Senior Counsel in the other OA. Thus, he would be treading only with respect to issue at para 1(b) above, with particular reference to applicability of Fundamental Rule i.e. Rule 22 in fixation of pay on transfer from one post to the same or another post involving different TRCA (from higher to lower) within the same recruitment unit.

19. F.R. 22 deals with regulation of initial pay of a Government servant in the time scale of pay. Thus, the conditions to be fulfilled are that one must be a Government servant; that he should be in a time scale of pay and he must be entitled to pay as defined in the F.R. Thus, according to him, F.R. 22 has to be applied if it is proved that a GDS is a government servant and that he draws monthly pay in a time scale of pay.

20. As regards pay, the same has been defined in F.R. 9(21) as under:-

"9(21) Pay means the amount drawn monthly by a Government servant as-

(i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre; and

(ii)overseas pay,special pay and personal pay; and

(iii)*any other emoluments which may be specifically classed as pay by the President."*

Again, time scale of pay, as defined in F.R. 9 (31) is as under:-

"9(31) (a) Time scale pay means pay which, subject to any condition prescribed in these rules, rises by periodical

increments from a minimum to a maximum. It includes the class of pay hither to known as progressive.

(b) Time scales are said to be identical if the minimum, the maximum, the period of increment and the rate of increment of the time scales are identical.

(c) A post is said to be on the same time-scale as post on a time-scale if the two time-scales are identical and the posts fall within a cadre, or a class in a cadre, such cadre or class having been created in order to fill all posts involving duties of approximately the same character or degree of responsibility, in a service or establishment or group of establishments, so that the pay of the holder of any particular post is determined by his position in the cadre or class and not by the fact that he holds that post."

21. The counsel argued that the above two definitions apply fully with reference to a G.D.S. For, he is paid monthly emoluments and the same is in a prescribed scale, with a minimum and a maximum, with annual increments called annual increase. It has been submitted by the counsel at this juncture that though the definitions fully fit in, for reasons best known to the government, the emoluments applicable to a G.D.S. are described as TRCA and not pay and annual increments are termed as "annual increase" but the same should not be mistaken as a distinct class, different from the term pay from the point of view of constitutional concept of equality. Thus, the emolument drawn by a GDS, by whatever name is called, is pay, like a rose by whatever name it is called would smell as sweet, argued the counsel. And, the pay is in a time scale with a minimum and maximum, and uniform annual increase.

22. As regards the status of a G.D.S. as a government servant the counsel relied upon the decision of the Apex Court in the case of ***Supdt. of Post Offices v. P.K. Rajamma, (1977) 3 SCC 94*** and particularly invited the attention of the Tribunal to para 3, 4 and 5 thereof. It has been argued that the Apex

Court has clearly held that an Extra Departmental Agent is a person holding a civil post and consequently, he is entitled to the protection afforded under the proviso to Art.311 of the Constitution of India. And, those who are covered by proviso to Art. 311, are equally covered under the attendant provisions such as Art.309 and 310 as well and thus, a G.D.S. is a government servant.

23. Thus, according to the counsel for the applicants, the status of a G.D.S. being one of a government servant, his emoluments drawn being one on monthly basis, and the emoluments also being in the nature of a time scale, all the requirements as contained in F.R. 22 are fulfilled and hence, all the G.D.S. are entitled to the initial fixation of pay under F.R. 22.

24. The counsel for the applicants has relied upon the following decisions to hammer home the above points:-

(1) 2000 (3) KLT 541
(2) 1973 (1) SLR 366
(3) 1977 (3) SCC 94, Para 4
(4) AIR 1971 SC 359, Para 10

25. Arguments were heard and documents perused. In so far as the entire G.D.S. service is concerned, in the judgment of ***Union of India v. Kameshwar Prasad, (1997) 11 SCC 650,*** the Apex Court has held as under:-

> *"2. The Extra Departmental Agents system in the Department of Posts and Telegraphs is in vogue since 1854. The object underlying it is to cater to postal needs of the rural communities dispersed in remote areas. The system avails of the services of schoolmasters, shopkeepers, landlords and such other persons in a village who have the faculty of reasonable standard of literacy and adequate means of livelihood and who, therefore, in their leisure can assist the Department by way of gainful avocation and social service in ministering to the rural communities in their postal needs, through maintenance of simple accounts and adherence to*

minimum procedural formalities, as prescribed by the Department for the purpose."

26. The G.D.S. are governed by Gramin Dak Sevak (Conduct and Employment) Rules, 2001. Earlier, it was the 1964 Rules that was holding the fort. Both the above Rules were framed by the Government and not under the provisions of proviso to Art. 309 of the Constitution. The entire scheme of the service had been succinctly brought out by the Apex Court in the case of ***Sub-Divisional Inspector of Post, Vaikam v. Theyyam Joseph, (1996) 8 SCC 489***, as under:-

"7. The appointment of the respondent is governed by the Rules in Section III of the compilation of Swamy's Service Rules for Extra-Departmental Staff in Postal Department. The Rules provide the method of recruitment thereunder. The age qualification has been prescribed between 18 to 65 years. The educational qualifications have been prescribed with. Matriculation as minimum qualification for Extra-Departmental ED Sub-Postmasters and ED Branch Postmasters, VIII Standard as minimum educational qualification has been prescribed for ED Delivery Agents, ED Stamp Vendors and all other categories of EDAs and preference is given to the candidates with Matriculation qualification. Income limit and holding of property have been regulated in Rule 3 thereof. It is mentioned that the persons who take over the agency must be one who has an adequate means of livelihood and is a resident of the place as mentioned in the Rules. The persons are selected under the specified conditions, any appointment made is in the nature of a contract liable to be terminated by notice given in writing. Sub-rules (3) to (5) prescribe the verification of the antecedents and medical examination etc. Rule 6 provides that employment to disabled ex-service personnel is to be given. Rule 7 gives preference to the SC and ST in appointments. Rule 8 fixes the percentage of posts for the recruitment of the Scheduled Caste and Scheduled Tribe candidates. Rule 9 gives right to appoint even the teachers as Extra-Departmental Agents. Rule 10 prescribes the method of appointment of the teachers as Extra-Departmental Agents. Rule 11 prohibits employment of a near relation in the same office. Rule 12 prescribes appointment of ED Branch Postmaster by Inspectors. Rule 13 prescribes provisional appointment of Extra-Departmental Agents.

8. The scale of pay has been prescribed in Section V and for calculation of consolidated allowance instructions are issued from time to time under Rule 2.1 dealing with Extra-Departmental Sub-Postmasters/ED Stores/ED Sub-Record Clerks. The basic allowance payable to them shall be subject to a minimum of Rs.385 per month and a maximum of Rs 620 per month The workload of them has been mentioned in Rule 2.1(b), (c) and (d), Rule

6 prescribes for office maintenance allowance and Rule 5 for cycle allowance. Rule 7 relates to fixed stationery charge. It would thus be seen that payment of salary has been regulated under these rules elaborated in further rules.

9. Section II provides for EDA Conduct and Service Rules. Rule 6 deals with power of termination and reads as under:

"6. Termination of services.—(a) The services of an employee who has not already rendered more than three years' continuous service from the date of his appointment shall be liable to termination at any time by a notice in writing given either by the employee to the appointing authority or by the appointing authority to the employee;

(b) the period of such notice shall be one month:

> *Provided that the service of any such employee may be terminated forthwith and on such termination, the employee shall be entitled to claim a sum equivalent to the amount of his basic allowance plus dearness allowance for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or, as the case may be, for the period by which such notice falls short of one month.*
>
> *Note.— Where the intended effect of such termination has to be immediate, it should be mentioned that one month's basic allowance plus dearness allowance is being remitted to the ED Agent in lieu of the notice of one month through money order."*

27. Initially, there was no provision for transfer of a G.D.S. It was introduced sometimes in 1988, provisions thereof are as hereunder.

(a) DG. Posts, letter No.43-27/85-Pen. (EDC & Trg.) dated 12th September, 1988 :

> "Normally, EDAs are to be recruited from local area and they are not eligible for transfer from one post to another; but in cases where a post has been abolished, EDAs are to be offered alternative appointment within the sub division in the next available vacancy in accordance with Order No.43-24/64-Pen dated 12.4.1964 and further clarified in Order No.43-4/77-Pen., dated 23.2.1979 (Sl.No.29). As per orders, those of EDAs who are held as surplus consequent to the abolition of ED posts are to be adjusted against the posts that may occur subsequently in the same office or in the neighbouring offices. In view of this, it will not be correct to allow transfer of EDAs freely from one post to other. However, it has now been decided that exception may be made in the following cases:
>
> (i) When an ED post falls vacant in the same office or in any office in the same place and if one of the existing EDAs prefers to work against that post, he may be allowed to be appointed against that vacant post without coming through the

Employment Exchange, provided he is suitable for the other post and fulfils all the required conditions.

(ii)In cases where EDAs become surplus due to abolition of posts and they are offered alternative appointments in a place other than the place where they were originally holding the post, to mitigate hardship, they may be allowed to be appointed in a post that may subsequently occur in the place where they were originally working without coming through Employment Exchange."

(b) Order dated 11-08-1994 (Clarificatory)

(c) Order dated 28-08-1996 (-d o-)

(d) As some clarifications were sought from the D.G. Post regarding recruiting unit for the purpose of transfer, the same has been given in the order dated 11th February, 1997 and the same is as below:

D.G. 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 O.As 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 Offices 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 ED BPM and ED SPM 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 teated 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.

(e) In terms of the amendment to Rule 3 of GDS (Conduct and Employment) Rules, 2001, carried out by the Department of Posts, Gramin Dak Sevak (Conduct and Employment) Rules, 2004, "*a GDS is not eligible for transfer in any case from one post/unit to other post/unit except in public interest.*" However, vide Department of Posts vide letter No. 19-10/2004-GOS dated 17.7.2006, limited transfer facility to GDS on "public interest" has been allowed. The said letter reads as under:

"Subject: Limited Transfer Facility to Gramin Dak Sevaks -

As per the order contained in Directorate letter No.43-27/85-Pen (EDC & Trg) dated 12.9.1988, the ED Agents, now called Gramin Dak Sevaks (GDS) were allowed limited transfer facility from one post to another without coming through the agency of employment exchange in exceptional circumstances viz. When an ED post falls vacant in the same office or in any office in the same place or where ED Agent becomes surplus due to abolition of the post and he/she is offered alternate appointment in a place other than the place where he/she was holding the post.

2. In terms of amendment to Rule 3 of GDS (Conduct & Employment) Rules 2001, "a GDS is not eligible for transfer in any case from one post/unit to another post/unit except in public interest". What constitute a "public Interest" has been interpreted differently by different Circles. In order to have a uniform criteria, it has been decided to allow limited transfer facility to GDS from a post/unit to another under the existing provision of amended Rule 3 of GDS (Conduct & Employment) Rules 2001 on the following grounds:

I. A GDS who is posted at a distant place on redeployment in the event of abolition of the post.

II. GDS appointed on compassionate grounds and posted at distant place.

III. Woman GDS on her marriage/remarriage.

IV. Where the GDS himself/herself suffers from extreme hardship due to a disease and for medical attention/treatment, such transfer may be allowed on production of a valid medical certificate from the medical officer of a Government hospital.

V. Where the GDS is looking after the welfare of a physically handicapped/mentally handicapped person/dependent and he/she requires to move to different places to give support to such physically/mentally challenged person/dependent.

3. The limited transfer facility to GDS from post/unit to another will be subject to fulfillment of the following conditions. The conditions mentioned below are only illustrative.

(i) A GDS will normally be eligible for only one transfer during the entire career.

(ii)(Request for such transfer will be considered against the future vacancies of GDS and that too after examining the possibility of recombination of duties of GDS.

(iii)TRCA of the new post shall be fixed after assessment of the actual workload of the post measured with respect to the cycle beat in respect of GDS MD/MC/Packer/Mail Messenger in terms of Directorate letter No.14-11/97-PAP dated 1.10.1987.

(iv)Past service of the GDS will be counted for assessing the eligibility for appearing in departmental examination. GDS will not have any claim to go back to the previous recruitment unit/division. When a GDS is transferred at his own request and the transfer is approved by the competent authority irrespective of the length of service, he/she will rank junior in the seniority list of the new unit to all the GDS of that unit who exist in the seniority list on the date on which the transfer is ordered. A declaration to the effect that he/she accepts the seniority on transfer in accordance with this should be obtained before a GDS is transferred.

(v)Transfer will be at the cost and expenditure of GDS. No expenditure whatsoever on this account will be borne by the Department under any circumstances.

(vi)Request for transfer of the GDS will be confined to transfer within the same Circle.

(vii)No transfer request will be entertained within 3 years of initial recruitment.

4. Power in this regard will vest with the Heads of Circles who will decide each and every individual case on merit keeping in view aforementioned criteria and standard of "public interest".

28. In all the above, though the position relating to seniority of a transferred

G.D.S. has been given or explained, the orders are silent about protection of T.R.C.A. on such transfer except that in respect of new post, the TRCA would be worked out after assessment of the work load, vide para 3(iii) of order dated 17-07-2006.

29. A look at the schedule of TRCA as admissible to various posts/categories is appropriate and the same is as under:-

	Category	*Workload*	*TRCA*
1.	*EDMCs*	*Upto 3 hrs. 45 mts.*	*Rs. 1,220-20-1,600*
	ED Packers	*More than 3 hrs.45 mts.*	*Rs.1,545-25-2,020*
	ED Runners	" "	"
	ED Messengers	" "	"
2.	*EDDAs*	*Upto 3 hrs. 45 mts.*	*Rs. 1,375-25-2,125*
	EDSVs	*More than 3 hrs. 45 mts.*	*Rs. 1,740-30-2,640*
3.	*EDBPMs*	*Upto 3 hrs.*	*Rs.1,280-35-1,980*
		More than 3 hrs.	*Rs. 1,600-40-2,400*
4.	*EDSPMs*		*Rs. 2,125-50-3,125*

30. In so far as transfer within the same recruitment unit, to the same post, with different TRCA, order No. 14-16/2001/PAP(Pt) dated 11th October, 2004, provides as under :

"Ministry of Communications
Department of Posts
(Estt. Division)
Dak Bhawan, Sansad Marg, New Delhi : 110 001

No. 14-16/2001/PAP(Pt) Dated: 11th Oct., 2004

To:

All Heads of Postal Circles

Sub: Fixation of Time Related Continuity Allowance (TRCA) of Gramin Dak Sevaks (GDS) on reduction of work load.

To ensure optimum utilization of existing manpower, mechanism is available with the Department to carry out establishment review exercises at regular intervals. Requirement of work force of an office depends on the workload to be assessed through such exercises. Heads of the circles are competent to redeploy the surplus posts of Groups C, D and also Gramin Dak Sevaks, as per operational requirement.

2. Clarifications continue to be sought for by many circles as to how the TRCA of Gramin Dak Sevaks should be fixed, whenever a change takes place in the workload warranting revision in the Time Related Continuity Allowance (TRCA).

3. In order to adopt uniform policy with reference to para 2 above, the matter has been extensively examined by this office and following instructions are issued :

(i) In case of drop in the work load of GDS BPM as a result of Triennial Establishment Review, possibility of entrusting additional work by way of combination of duties of mail delivery and mail conveyance may be examined for justifying retention of the higher TRCA. If GDS happens to be in the lower TRCA and there is further drop in the workload then the recombination of duties of mail delivery/ mail conveyance with the work of GDS BPM / GDS SPM would be unavoidable and the only choice available. However, while ordering such an arrangement care should be taken that the total workload of the post does not exceed 5 hours and while combining the duties of GDS Delivery Agent/Mail Carrier with the GDSBPM for protection of allowance no separate combined duty allowance will be payable to the GDSBPM.

(ii) If the combination of duties is not possible, then the GDS may be brought from the second TRCA to the first TRCA by protecting the stage of the 1st TRCA. If the specific stage is not available in the lower TRCA, then he may be placed in the lowerst. Difference will be protected as personal allowance to be absorbed against future entitlement, provided that 1st TRCA and personal allowance do not exceed maximum of 1st TRCA. If on subsequent review, the workload of the post increases, then the higher stage of TRCA be restored from a prospective date which would be determined with respect to the date of completion of Triennial Review.

<u>Illustrations</u>

(a) If an GDS DA/SV is at the stage of Rs. 1920 in the 2nd TRCA (Rs. 1740-30-2640/-) as on 1.4.2004 and his workload is reduced to less than 3 hrs. 45 minutes, he will be placed in the 1st TRCA (Rs. 1375-25-2125) at the stage of Rs. 1900 plus Rs. 20 as personal allowance.

(b) EDMC is at the stage of Rs. 1695/- in the 2nd TRCA (Rs.1545-25-2020/-) as on 1.4.2004, in case of reduction in workload, he will be placed in 1st TRCA (Rs. 1220-20-1600/-) at the maximum of the TRCA i.e. Rs. 1600/- only. No personal allowance would be admissible in such cases.

(iii) In case of redeployment of staff, the stage should be protected, as indicated in (ii) above. However, protection of Time Related Continuity Allowance is not extended to those surplus Gramin Dak Sewaks who are redeployed on their own specific requests. The TRCA of such GDS may be fixed at the minimum of the 1st or 2nd TRCA corresponding to the actual workload.

(iv) In the case of discharge of the GDS and fresh recruitment or recruitment made on provisional basis from the employment exchange, in that situation a fresh review of the BO should be undertaken and the TRCA fixed accordingly based on the actual workload.

4. While implementing the above instructions, following may be kept in view:-

(a) There should not be any additional financial implication and, if any, may be met by matching savings.

(b) When duties and functions of the posts are merged in order to increase the workload to pay higher TRCA or to retain existing TRCA, one of the two posts will be abolished simultaneously, in consultation with Circle IFA/REgional IFA and incumbent holding the post redeployed.

5. This is in supersession of all previous instructions issued on the subject.

6. This issues with the concurrence of Finance Advisor (Postal) vide their Diary No. 448/FAP/2004/CS dated 8th Oct., 2004."

31. As stated earlier, the senior counsel argued that a G.D.S. transferred from one post to the same post in another post office or to a different post in the same or different post office is entitled to have his TRCA protected for the same would ensure that his emoluments are not less than those of his juniors. According to the senior counsel, junior drawing more emoluments is an anomaly and should not be allowed to perpetuate, as held by the Apex Court in the case of Dr. S.M.

Ilyas vs Indian Council of Agricultural Research (1993) 1 SCC 182. Again, the learned senior counsel argued that by getting a mere undertaking, the respondents cannot legalise an otherwise illegal act. In this regard also, judgment by the Apex Court in ***Secy.-cum-Chief Engineer v. Hari Om Sharma, (1998) 5 SCC 87*** has been cited. Further it has been argued that when in OA 394/2003, the applicant therein has been afforded protection of TRCA, the same shall not be denied to similarly situated. The decision in the case of **Amritlal Berry (AIR 1975 SC 538)** has been cited by the senior counsel. The above arguments have been adopted by the counsel in other O.As as well.

32. A look at the decisions relied upon by the learned senior counsel and the learned counsel in the other O.A.s would be appropriate at this juncture.

*(a) **S.M. Ilyas (Dr) v. Indian Council of Agricultural Research, (1993) 1 SCC 182.** In this case, the observation of the Apex Court is inter alia as under:-*

> *14. We have considered the arguments advanced by learned counsel for both the parties and have thoroughly perused the record. It is no doubt correct that while introducing a new scheme of pay-scales and fixing new grades of posts, some of the incumbents may have to be put to less advantageous position than others, but at the same time the granting of new pay-scales cannot be allowed to act arbitrarily and cannot create a situation in which the juniors may become senior or vice versa.*

(b) In ***Secy.-cum-Chief Engineer v. Hari Om Sharma, (1998) 5 SCC 87,*** the Apex Court has held as under:-

> *8. Learned counsel for the appellant attempted to contend that when the respondent was promoted in stop-gap arrangement as Junior Engineer I, he had given an undertaking to the appellant that on the basis of stop-gap arrangement, he would not claim promotion as of right nor would he claim any benefit pertaining to that post. The argument, to say the least, is preposterous. Apart from the fact that the Government in its capacity as a model employer cannot be permitted to raise such an argument, the undertaking which is said to constitute an agreement between the parties cannot be enforced at law. The respondent being an employee of the appellant had to break his period of stagnation although, as we have found earlier, he was the only*

person amongst the non-diploma-holders available for promotion to the post of Junior Engineer I and was, therefore, likely to be considered for promotion in his own right. An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in the instant case, a stop-gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy. It would, therefore, be unenforceable in view of Section 23 of the Contract Act, 1872.

(c) In Amrit Lal Berry v. CCE, (1975) 4 SCC 714, the Apex Court has held as under:-

We may, however, observe that when a citizen aggrieved by the action of a government department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to court.

(d) In ***Gopal Krishna Sharma v. State of Rajasthan, 1993 Supp (2) SCC 375,*** the observation of the Apex Court is as under:-

We need hardly clarify that the benefit of this Court's order will be available to all Research Assistants/ Associates even if not joined as parties hereto.

(e) In V. Jagannadha Rao vs State of A.P. and Others (JT 2001 (9) SC 463) the Apex Court has held as under:-

"*Though definitions may differ and in many cases transfer is conceived in wider terms as a movement to any other place or branch of the organization, transfer essentially is to a similar post in the same cadre as observed by this Court in B. Varadha Rao v. State of Karnataka*

(f) In 1985 (2) SLR 248, ***Inder Pal Yadav v. Union of India,*** the Apex Court has held as under:- :

5. The scheme envisages that it would be applicable to casual labour on projects who were in service as on January 1, 1984. The choice of this date does not commend to us, for it is likely to introduce an invidious distinction between similarly situated persons and expose some workmen to arbitrary discrimination flowing from fortuitous court's order. To illustrate, in some matters, the court granted interim stay before the

workmen could be retrenched while some others were not so fortunate. Those in respect of whom the court granted interim relief by stay/suspension of the order of retrenchment, they would be treated in service on January 1, 1984 while others who fail to obtain interim relief though similarly situated would be pushed down in the implementation of the scheme. There is another area where discrimination is likely to rear its ugly head. These workmen come from the lowest grade of railway service. They can ill afford to rush to court. Their Federations have hardly been of any assistance. They had individually to collect money and rush to court which in case of some may be beyond their reach. Therefore, some of the retrenched workmen failed to knock at the doors of the court of justice because these doors do not open unless huge expenses are incurred. Choice in such a situation, even without crystal gazing is between incurring expenses for a litigation with uncertain outcome and hunger from day to day. It is a Hobson's choice. Therefore, those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court. Burdened by all these relevant considerations and keeping in view all the aspects of the matter, we would modify Part 5.1(*a*)(*i*) by modifying the date from January 1, 1984 to January 1, 1981. With this modification and consequent rescheduling in absorption from that date onward, the scheme framed by Railway Ministry is accepted and a direction is given that it must be implemented by recasting the stages consistent with the change in the date as herein directed.

(g) In 2002 (1) KLT 157, Kamala Devi vs. Kerala State Financial Enterprises Ltd., the High Court of Kerla has held as under:

6. Art. 14 guarantees equality before law and equal protection of laws, but the same does not prohibit classification. A classification will not be hit by Art. 14, if the same satisfies the twin tests:-

(1) there is an intelligible differentia between those included in one group and those excluded from it;

(2) it has a rational nexus with the object of the law.

The Supreme Court has held that if the classification suffers from the vice of under- inclusiveness, the same will be hit by Art. 14. The Supreme Court has explained the said principle pithily in In Re Special Courts Bill, 1978, in the following words (AIR 1979 (1) SC 478):

120. The Court in *Mohammad Shujat Ali* v. *Union of* India has explained the constitutional facet of classification: (SCC p. 103, paras 24 and 25)

"This doctrine recognises that the legislature may classify for the purpose of legislation but requires that the classification must be reasonable. It should ensure that persons or things similarly situated are all similarly treated. The measure of reasonableness of a classification is the degree of its success in treating similarly those similarly situated.

But the question is: what does this ambiguous and crucial phrase 'similarly situated' mean? Where are we to look for the test of similarity of situation which determines the reasonableness of a classification? The inescapable answer is that we must look beyond the classification to the purpose of the law. A reasonable classification is one which includes all persons or things similarly situated *with respect to the purpose of the law.*"

121. After having stated the general proposition the Court struck a note of warning which is the main crux of the present controversy: (SCC p. 104, para 26)

"The fundamental guarantee is of equal protection of the laws and the doctrine of classification is only a subsidiary rule evolved by courts to give a practical content to that guarantee by accommodating it with the practical needs of the society and it should not be allowed to submerge and drown the precious guarantee of equality. The doctrine of classification should not be carried to a point where instead of being a useful servant, it becomes a dangerous master, for otherwise, as pointed out by Chandrachud, J., in *State of Jammu & Kashmir* v. *Triloki Nath Khosa* "the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well marked classes characterised by different and distinct attainments". ... That process would inevitably end in substituting the doctrine of classification for the doctrine of equality: The fundamental right to equality before the law and equal protection of the laws may be replaced by the overworked methodology of classification. Our approach to the equal protection clause must, therefore, be guided by the words of caution uttered by Krishna Iyer, J., in *State of Jammu & Kashmir* v. *Triloki Nath Khosa* (at p. 42) "Mini-classifications based on micro-distinctions are false to our egalitarian faith and *only substantial and straightforward classification plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality*". (emphasis added)

122. Mathew, J., in *Ambica Mills*, placed the same accent from the angle of under-inclusion: (SCC p. 675, paras 53 to 55)

"The equal protection of the laws is a pledge of the protection of equal laws. But laws may classify.... *A reasonable classification is one which includes all who are similarly situated* and none who are not. The question is what does the phrase 'similarly situated' mean? The answer to the question is that we must look beyond the classification to the purpose of the law. The purpose of a law may be either the elimination of a public mischief or the achievement of some positive public good.

A classification is under-inclusive when all who are included in the class are tainted with the mischief but there are others also tainted whom the classification does not include. In other words, a classification is bad as under-inclusive when a State benefits or burdens persons in a manner that furthers a legitimate purpose but does not confer the same benefit or place the same burden on others who are similarly situated, A classification is over-inclusive when it includes not only those who are similarly situated with respect to the purpose but others who are not so situated as well." (emphasis added)

33. All the above decisions do support the case of the applicant. As rightly pointed out by the counsel, when the transfer does not involve any difference in the TRCA, and within the same unit, it poses no problem and the TRCA drawn prior to transfer gets protected.

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)

36. We fully endorse the above decision that when transfer is from one recruitment unit to another recruitment unit in the same or different post and with identical TRCA or otherwise, such a transfer would be treated only as a fresh appointment and no protection of TRCA would be allowed.

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.

38. The last question to be answered is whether the provisions of FR 22 (a)(1) or 22(a)(ii) are applicable when a G.D.S. is transferred within the same recruitment unit from one post to the same post or another, carrying different TRCA (i.e. From higher TRCA to lower TRCA)

39. As stated earlier, according to the counsel for the applicant, FR 22 applies in view of the fact that a G.D.S. is a person holding a civil post, vide P.K. Rajamma and thus he is a government servant and that his TRCA is in the time scale with annual increments and the same is drawn monthly. Hence, all the

requirements as contained in FR 22 are fulfilled. The same is under consideration from hence.

40. As to the status of a G.D.S., in P.K. Rajamma *(supra)*, the Apex Court has held as under:-

> *4. It is thus clear that an extra departmental agent is not a casual worker but he holds a post under the administrative control of the State. It is apparent from the rules that the employment of an extra departmental agent is in a post which exists "apart from" the person who happens to fill it at any particular time. Though such a post is outside the regular civil services, there is no doubt it is a post under the State. The tests of a civil post laid down by this Court in Kanak Chandra Dutta case are clearly satisfied in the case of the extra departmental agents.*
>
> *5. For the appellants it is contended that the relationship between the postal authorities and the extra departmental agents is not of master and servant, but really of principal and agent. The difference between the relations of master and servant and principal and agent was pointed out by this Court in Lakshminarayan Ram Gopal and Son Ltd. v. Government of Hyderabad . On p. 401 of the report the following lines from Halsbury's Laws of England (Hailsham Edn.) Volume 1, at p. 193, Article 345, were quoted with approval in explaining the difference:*
>
> > *"An agent is to be distinguished on the one hand from a servant, and on the other from an independent contractor. A servant acts under the direct control and supervision of his master, and is bound to conform to all reasonable orders given to him in the course of his work; and independent contractor, on the other hand, is entirely independent of any control or interference and merely undertakes to produce a specified result, employing his own means to produce that result. An agent, though bound to exercise his authority in accordance with all lawful instructions which may be given to him from time to time by his principal, is not subject in its exercise to the direct control or supervision of the principal. An agent, as such is not a servant, but a servant is generally for some purposes his master's implied agent, the extent of the agency depending upon the duties or position of the servant."*
>
> *The Rules make it clear that these extra departmental agents work under the direct control and supervision of the authorities who obviously have the right to control the manner in which they must carry out their duties. There can be no doubt therefore that the relationship between the postal authorities and the extra departmental agents is one of master and servant.*

41. The above case dealt with the question " whether the respondent (therein)

held a civil post as contemplated in Article 311 of the Constitution; if he did, dismissal or removal, as the case may be, would be unquestionably invalid for non-compliance with Article 311(2)."

42. In the above case, the Apex Court distinguished a casual labour service from the services of an Extra Departmental Agent and held that by virtue of the fact that there exists a master-servant relationship, and there existing a post against which an individual could be engaged, an Extra Departmental Agent is holder of a civil post. The said decision has not, either expressly or tacitly indicate whether an Extra Departmental Agent is a government servant. In fact the Apex Court clearly observed, **"such a post is outside the regular civil services".**

43. Rajamma's decision has been cited in a number of cases as under:-

(a) (1980) 4 SCC 653 – State of Gujarat vs Raman Lal Keshav Lal.
(b) (1992) 1 SCC 441 – C.E.S.C. Ltd vs Subhash Chandra Bose.
(c) (1996) 7 SCC 577 – Ashwani Kumar vs State of Bihar
(d) (1997) 11 SCC 650 – Union of India vs Kashwar Prasad.
(e) (2001) SCC 78 – State of UP vs Chandra Prakash Pandey
(f) (2006) 2 SCC 482 – UPSC vs Girish Jayanti Vaghela.
(g) (2007) 11 SCC 681 – State of Karnataka vs Ameerbi.

44. In all the above, reference to the decision in Rajamma has been made with regard to the focal point viz. distinction between casual labour and persons holding a post and that when can a person be stated as a person holding a civil post. Whether Fundamental Rules are applicable to such persons holding a civil post, or not, have not been discussed.

45. Well before the decision in the case of Rajamma was pronounced, in the case of Dinabandhu Sahu vs Jadumoni Mangaraj (1955) 1 SCR 140 (AIR 1954 SC 411), the Apex Court had *inter alia* considered a question whether the extra departmental agents are "government servants". That was a case where challenge was made regarding adopting corrupt practices in some elections. Apart from contending as to violation of Section 123(1) and 123(6) of the Representation of People's Act, there was alleged contravention of Section123 (8) of the Act as assistants of the Extra Departmental Agents in the Branch post offices for canvassing purposes was obtained which was not permitted as they were government servants. While refusing to interfere with the findings of the Election Tribunal with regard to contravention of the provisions of Sec 123(1) and 123(6), as regards the provisions of Sec. 123(8) of the Act, the Apex Court observed, "*With reference to the last of the findings, it is possible to urge with some force that Extra Departmental Agents and Presidents of Chaukidari Union are not, having regard to their functions, government servants, and that accordingly there was no contravention of Section 123(8)"* (Emphasis supplied).

46. The above decision, coupled with the observation in the judgment in Rajamma that **such a post is outside the regular civil services** would go to show that the **G.D.S. are not government servants** for the purpose of applicability of Fundamental Rules.

47. In fact, if Fundamental Rules are applicable to the G.D.S. then, not only Rule 22 (fixdation of initial pay) but also other provisions would apply. In the Rules applicable to G.D.S., there is no reference to Fundamental Rules. In fact they are governed by an entirely different set of rules which are

comprehensive and self-contained rules. The following would illustrate that none of the provisions of the Fundamental Rules would be applicable to the case of the G.D.S:-

"(a) As regards applicability or otherwise of F.R. 9(21) and 9(31) in so far as the GDS are concerned, first it should be noted that the G.D.S. are paid only Time Related Continuity Allowance which fluctuates according to the workload. Again, the respondents have consciously used the term TRCA and nowhere the term 'pay' has been used. Similarly, for increment which are periodical increase in respect of pay, here, it is called 'annual increase'.

(b) When a government servant is under suspension, he is said to be under suspension and the monthly emoluments he receives is called 'subsistence allowance' whereas a G.D.S. is kept under 'put off duties' and emoluments granted to them during the period of put off duties are known as 'ex-gratia' payment and not subsistence allowance. In Kameshwar Prasad case (supra), the Apex Court has held as under:-

> *The provision in Rule 9 enabling an employee being put off duty may be akin to the power of suspension in the sense that during the period he is put off duty no work is assigned to the employee. But it does not mean that dehors the provisions contained in the Rules an employee who is kept off duty would be entitled to allowances for the period he was kept off duty. Even in a case where a government servant is placed under suspension during the pendency of departmental proceedings initiated against him the payment of salary and allowances for the period of suspension after the termination of the departmental proceedings is governed by the relevant rules. Here the matter is governed by Rule 9(3) of the Rules which prescribes in express terms that an employee shall not be entitled to any allowance for the period for which he is kept off duty. The said provision does not envisage an exception in the matter of payment of allowances for the period the employee was kept off duty if the employee is exonerated in the departmental proceedings. (emphasis supplied)*

The above would go to show that consciously distinction between suspension of a Government servant and put off duties of a G.D.S. has been made. Suspension, subsistence allowance are the subject matter in F.R. 53 and 54, and these are also NOT applicable to the G.D.S.

(d) Grant of Leave to the G.D.S. is not governed by the C.C.S. (Leave) Rules, which are part of Fundamental Rules (Chapter X).

(e) The age of retirement of a G.D.S. is 65 years, while as per Chapter IX of the Fundamental Rules, every government servant shall retire at the age of sixty.

48. In addition, there are a number of other distinctions between a Government Servant and a G.D.S. As for example, there is always an age limit for recruitment to any post whereas, there is no such age limit for a G.D.S. Only the age of retirement is specified. Again, there is no condition stipulated in respect of any government servant, that he should have income from other sources, whereas, such a requirement is insisted for a G.D.S. Further, a Government servant is a full time employee, while a G.D.S. does the work for a maximum of five hours. Also, a Government servant cannot function in any other capacity while, a G.D.S. could be a teacher etc., These are pointers to prove that a G.D.S. cannot claim parity with a Government Servant under the provisions of F.R.

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).

(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 appoinment 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.

50. Reference made before us having been answered as above, it is felt appropriate that instead of referring the O.As to be disposed of , to Division Bench, the same may also be disposed of through this order.

51. The reliefs sought by the applicants in various O.As are to be considered and the same are as under :

(a) O.A. No. 270/2006

(i) To declare that the applicant is entitled to have his pay fixed as aper FR 22(I)(a)(1) on appointment as EDBPM and to direct the respondents to fix the pay of the applicant at Rs.1880/- in the TRCA of Rs.1600-40-2400 with effect from 16.3.2000 and to pay him the difference of pay and allowances drawn by him with interest at the rate of 18% per annum, or in the alternative,

(ii) To declare that the applicant is entitled to his pay fixed as per FR 22(I)(a)(2) on appointment as EDBPM and to direct the respondents

to fix the pay at Rs.1800/- in the scale Rs.1600-40-2400 with effect from 16.3.2000 and to pay him the difference of pay and allowances drawn by him with interest at the rate of 18% per annum.

(b) O.A. No. 349/2007

(i) to declare that the applicant is entitled to have his pay fixed as per FR 22(I)(a)(1) on appointment as EDBPM and to direct the respondents to fix the pay of the applicant at Rs.1880/- in the TRCA of Rs.1600-40-2400 with effect from 5.8.1999 and to pay him the difference of pay and allowances drawn by him with interest at the rate of 18% per annum;

(ii) Alternatively, to declare that the applicant is entitled to his pay fixed as per FR 22(I)(a)(2) on appointment as EDBPM and to direct the respondents to fix the pay at Rs.,1760/- in the scale Rs.1600-40-2400 with effect from 5.8.1999 and to pay him the difference of pay and allowances drawn by him with interest at the rate of 18% per annum;

(iii) To call for the records leading to the fixation of the pay of the applicant at RS.1600 in the TRCA 1600-40-2400 with effect from 5.8.1999 and quash the same to the extent it refuses protection of pay and fixation in accordance with the statutory rules.

(c) O.A.493/2007

(i) to quash Annexure A1 to the extent it refuses the pay of Rs. 2080 on the TRCA of 1640-40-2400 to the applicant;

(ii) to direct the respondents to protect the pay and TRCA of the applicant on transfer to the post of GDS BPM, Attachackal, and to fix his basic pay at Rs. 2080/- in the TRCA 1600-2400 with all consequential benefits including arrears of pay with interest @ 18% from the date on which the amount fell due till date of payment.

(d) O.A. No. 594/2006

(i) to declare that on transfer of the applicant as GDS MD, Olat BO, he is entitled to get TRCA in the scale of Rs. 1740-30-2640 at the stage he was drawing as GDS MD, Kanakapally immediately before his transfer and that the action of the 1st respondent in reducing the TRCA of the applicant to initial start of the scale on his transfer as GDS MD, Olat is illegal, arbitrary, unauthorised and violative of Articles 14, 16, 23 and Article 300-A of the Constitution of India;

(ii) to call for the records leading to Annexure A-11 and to set aside the same;

(iii) to direct the 1st respondent to restore the TRCA of the applicant in the scale of pay of Rs. 1740-30-2640 with effect from 21.08.2003 with annual progression by granting annual increments;

(iv) to direct the 1st respondent to pay the applicant the arrears of TRCA becoming payable on restoration of the TRCA with annual progression for the period from 22.08.2003 till the date of restoration with annual increments with interest.

51. As provisions of F.R. 22(1)(a)(i) or (ii) are not applicable, prayer for declaration to the effect that the applicant is entitled to have his pay fixed as per F.R. 22(1)(a)(i) or (ii) is rejected. However, it is declared that the TRCA drawn shall be protected and the same fixed in the TRCA applicable to the transferred post and if there is no such stage, the TRCA shall be fixed at at the stage below theTRCA drawn, the balance being treated as personal allowance, to be adjusted in future annual increase.

52. All the O.As are disposed of acordingly. No costs.

(Dated, the 14th day of November, 2008)

(Dr. K.S. Sugathan)
Administrative Member

(George Paracken)
Judicial Member

(Dr. KBS Rajan)
Judicial Member

cvr.

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A Nos. 270 of 2006, 349 and 493 of 2007

Friday, this the 25th April, 2008.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE DR K.S.SUGATHAN, ADMINISTRATIVE MEMBER

O.A.270/2006

R.P.Hrishikeshan Nair,
GDSBPM, Veliyamcode.B.O,
Thiruvananthapuram South Division. ....Applicant

(By Advocate Mr MR Hariraj)

v.

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,
Thiruvananthapuram.

3. Superintendent of Post Office,
Thiruvananthapuram south Division,
Thiruvananthapuram. ....Respondents

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

O.A.349/2007

C.Sudheendra Bose,
Gramin Dak Sevak,
Branch Post Master,
residing at Kottoor,
Sivamayam, Kallikkad,
Mylakkara P.O.
695 572, Thiruvananthapuram. - Applicant

(By Advocate Mr MR Hariraj)

v.

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

2. Chief Post Master General,
Kerala Circle,
Thiruvananthapuram.

3. Superintendent of Post Office,
Thiruvananthapuram south Division,
Thiruvananthapuram-695 014. ....Respondents

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

O.A.493/2007

M.D.George,
Gramin Dak Sevak Branch Postmaster,
Attachackal. ....Applicant

(By Advocate Mr MR Hariraj.)

1. Union of India represented by the
Secretary to Government of India,
Department of Posts,
Ministry of Communications &
Information Technology,
New Delhi.

2. Chief Post Master General,
Kerala Circle,
Thiruvananthapuram.

3. Superintendent of Post Offices,
Pathanamthitta Division,
Pathanamthitta. ....Respondents

(By Advocate Mrs K Girija, ACGSC.)

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The questions of laws involved in these 3 O.As filed under Section 19 of the Administrative Tribunals Act, 1985 are as under:

"(i) When a Gramin Dak Sevak drawing pay in a higher TRCA is transferred from one Post Office to another within the same recruiting unit or outside the recruitment unit with or without his request to a post with lower TRCA, whether he is entitled to protection of last pay drawn by him in the higher TRCA or not?

(ii) When a Gramin Dak Sevak is working against a post with higher TRCA is transferred on his request or otherwise to a post carrying lower TRCA within the same recruitment unit or outside is entitled to fixation of his TRCA in terms of FR 22(1)(a)(I) or FR 22 (1) (a) 2 or not."

Facts in O.A.270/2006:

2. The applicant was initially appointed as an Extra Departmental Delivery Agent (EDDA for short), re-designated as Gramin Dak Sevak Mail Deliverer (GDSMD for short), Kandala, with effect from 18.1.1980. The said post was carrying the TRCA Rs.1740-30-2640. While working in the said capacity, on his request, he was appointed as EDBPM, Veliyamcode B.O. carrying the lower TRCA of Rs.1600-40-2400 vide Anenxure A-1 letter dated 2.5.2000 with effect from 16.3.2000. On the said date of his transfer, he was drawing Rs.1770/- per month in the TRCA of Rs.1740-30-2640. Respondents fixed his TRCA at Rs.1600/- in the scale of Rs.1600-40-2400 resulting in reduction in allowance to him. But the applicant did not make any protest against such reduction in his allowance. In fact, his transfer as EDSPM, Veliamkode was on the basis of his Annexure R-1 undertaking that he was prepared to work in the pay of BPM without raising any complaint. However, after about 6 years, relying upon the Annexure A-3 order of this Tribunal in O.A.394/2003 dated 22.11.2005 he made the Annexure A-4 representation dated 2.3.2006 stating that there was a reduction of Rs.200/- in his allowance in the new post and since his placement as EDA was from one Post Office to another within the same recruiting unit, he

should not have been subjected to any lose of benefits including seniority and allowance.

3. According to the applicant, going by the definition of the words " "Time Scale of Pay" in the Fundamental Rules and Supplementary Rule Part I, TRCA, is a time scale pay, and therefore, his pay should have been fixed in terms of the provisions contained in the FR & SR governing fixation of pay as in the case of a Government servant who is appointed from one post to another. He has placed reliance on the DG Posts letter No.19-51/96 ED & Trg. dated 11.2.1997 wherein it has been clarified that if the placement of EDAs from one Post Office to another within the same recruiting unit, the same will be treated as transfer and EDAs concerned will not forfeit his past service for any purpose including seniority. He has also submitted that as held by the Apex Court in the case of **Superintendent of Post Offices & others v. P.K.Rajamma** [(1997) 3 SCC 94] the EDAs are employees holding civil post and the FR would apply in their case. He, therefore, contended that his pay should have been fixed under FR 22(I)(a)(1) at the stage of the time scale which is equal to his pay in respect of the old post held by him and applying that principle, on appointment as EDBPM, Veliyiamkode, his pay should have been fixed at Rs.1800/- in the time scale of Rs.1600-40-2400, as there is no stage of Rs.1770/- in that scale. He has, therefore, sought the following main relief:

> To declare that the applicant is entitled to have his pay fixed as per FR 22(I)(a)(1) on appointment as EDBPM and to direct the respondents to fix the pay of the applicant at Rs.1880/- in the TRCA of Rs.1600-40-2400 with effect from 16.3.2000 and to pay him the difference of pay and allowances drawn by him with interest at the rate of 18% per annum, or in the alternative,
>
> To declare that the applicant is entitled to his pay fixed as per FR 22

(I)(a)(2) on appointment as EDBPM and to direct the respondents to fix the pay at Rs.1800/- in the scale Rs.1600-40-2400 with effect from 16.3.2000 and to pay him the difference of pay and allowances drawn by him with interest at the rate of 18% per annum.

4. The applicant has also relied upon the order of this Tribunal in O.A.394/2003 – K.P.Pyari v. Senior Superintendent of Post Offices & another dated 22.11.2005 wherein it was held as under:

> "4. We have heard the learned counsel on both sides. Counsel for the parties had taken us to various pleadings, evidence and material placed on record. Counsel for applicant argued that Maliankara P.O and Elanthikkara B.O. are within the same recruiting Unit and reducing the TRCA of the applicant to the minimum of Rs.1600/- on her transfer to Elanthikkara B.O without notice and without any authority is, arbitrary and illegal. As evidenced by A-8, DG Posts letter dated 11.2.1997, 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. There is no valid rule or instruction empowering to reduce the pay of a GDS to the minimum of TRCA on transfer within the same division. Reduction of TRCA entails penal consequences and the applicant will be put to great hardship.
>
> 5. Learned counsel for the respondents, on the other hand, argued that the TRCA as per A-8 is not applicable in the case of applicant. He also brought to our notice the decision of this Bench of the Tribunal in O.A.1234/99 dated 7.11.2001 (Annexure R-1).
>
> 6. The question arose for consideration in this O.A is, whether the lower TRCA that has been granted to the applicant on transfer to another B.O is justified or not? Admittedly, in the reply statement the respondents have contended that, the two branch Post Offices, where the applicant was working and transferred to, are in the same postal division and in the same recruiting unit and the transfer was offered in the light of Annexure A8 instructions without forfeiting the past service. For better elucidation, it is profitable to quote Annexure A-8 (D.G Posts letter dated 11th February, 1997) as below:
>
> > D.G. 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 O.As 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 Offices 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 ED BPM and ED SPM 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 teated 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.

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? Leaned 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, A-8 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.

9. O.A is allowed as indicated above. In the circumstance no order as to costs."

5. He has also relied upon the order of this Tribunal in O.A.704/2004 dated 19.10.2006 (Annexure A-5) [**A Prakashan v. Superintendent of Post Offices & others**] in which the respondents were directed to refix the TRCA of the applicant therein in the scale Rs.1600-40-2400 after taking into account the increment drawn by him in the scale of pay Rs.1740-20-2640 and his last pay drawn. The operative part of the said order is as under:

"3. We have heard Shri Sasidharan Chempazhanthiyil and Shri George Joseph ACGSC for the applicant and the respondents respectively. It is clear from the facts of the case that the applicant while working as EDDA was drawing a higher monthly TRCA of Rs.1740-30-2640 and on his appointment as EDBPM, he would be entitled to TRCA in the lower scale of Rs.1600-40-2400. It is well settled position of law that the pay drawn by a Government servant cannot be reduced except as a punishment. If the Government servant is opting to join a post with a lower scale of pay, of course, he would not earn increments in the higher scale from the date of joining the post with the lower scale but the pay he was drawing in the higher post/scale has to be protected. In other words, the same pay which he was drawing in the higher pay scale has to be granted to him in the lower scale of pay if it is available and in case it is not available, he would be granted the last pay drawn and the next increment shall be in the lower scale at the next stage.

4. The Apex Court in the case of Inderpal Yadav v. Union of India (1985(2) SCC 648) was considering the case of Railway Employees who were substantively holding Group'D' post working for a long period on Group'C' post and it was held that though those Railway Servants were not entitled for regularisation in the Group'C' post but were entitled to protection of pay last drawn by them even after repatriation to Group'D' post. Though the applicant in the present case is not identically placed the above principle laid down

by the Apex Court shall apply here also. Though the applicant is not entitled to continue to get the higher pay scale attached to the EDDA, yet he cannot be denied protection of pay in the lower scale attached to the post of EDBPM. That is what is stated by this Tribunal in the order in O.A.941/2001 dated 1.3.2004 (Annexure A-3) also. The applicant in that case was an EDMC at Kalliyal falling within the Thiruvananthapuram South Division on Time Related Continuity Allowance in the scale of Rs.1545-25-2020. He sought a transfer as EDDA at Paruthippally and took over charge there as EDDA w.e.f. 6.9.2000. His TRCA was fixed in the scale of Rs.1740-30-2640 and he was drawing a monthly TRCA of Rs.2488/-. While so, the applicant's TRCA was reduced to Rs.1998/- with retrospective effect from 6.9.2000 in the scale of Rs.1375-25-2125. This Tribunal while allowing the O.A held that the applicant as EDDA would be entitled to the TRCA in the appropriate scale attached to the post lof EDDA, namely, Rs.1375-25-2125 without ignoring the increments already drawn by him in his earlier post as EDMC, Kalliyal. In other words, the applicant's past service was to be taken into account for the purpose of fixing the TRCA in the appropriate scale of EDDA and accordingly the respondents were directed to refix the applicant's TRCA w.e.f. 6.9.2000 in the appropriate scale of Rs.1375-25-2125 reckoning the applicant's past service prior to his transfer to the post of EDDA at Paruthippally. The recruiting units of the two posts have no relevance in the matter for granting the monthly TRCA.

5. In the above view of the matter, the O.A is allowed and we direct the respondents to refix the TRCA of the applicant in the scale of Rs.1600-40-2400 after taking into account the increments drawn by him in the scale of pay of Rs.1740-20-2640 and duly protecting his last pay drawn. The above direction shall be complied with within three months from the date of receipt of copy of this order. There shall be no order as to costs."

6. The respondents submitted that the TRCA for GDSMDs are different from that for GDSBPMs. At the time of his transfer he had submitted written willingness (Annexure R-1) to work as BPM, at Veliyamcode with lower TRCA and it was on that basis he was appointed. They have also submitted that for the last six years, the applicant was drawing the allowance fixed for the post as BPM, Veliyamcode and he made a representation only on 2.3.2006 for protection of the allowance which he was getting against the post of GDSMD before his transfer. They have also submitted that as per the rules, if one GDS is transferred from one post to another at his request, he is entitled for the allowance fixed for the new post only and there is no provision for protection of the old allowance.

7. They have relied upon the order of this Tribunal in O.A.1234/1999 dated 7.11.2001 – **Lakshmikutty Amma v. Union of India and others** (Annexure R-3) in which it was held as under:

> "... It is evident from Annexure R1 that the applicant has preferred to work as EDBPM when she was likely to be retrenched or retrained as an Extra Departmental Packer. On her appointment as EDBPM she could be given only the allowances attached to that post. We are not shown any rules or instructions in force at the time of the applicant's appointment to the present ED post which provided for any protection of the allowances drawn by the applicant as EDSPM. The contention of the applicant that she did not voluntarily give the request at Annexure R1 and that it was extracted by the ASP, Kollam under coercion cannot be accepted as true because if it had been so, the applicant would have averred it in this application itself. As a matter of fact the applicant is guilty of suppression of the material fact of his making Annexure R1 request for appointment as EDBPM."

Facts in O.A.349/2007

8. The applicant was working as GDSMD, Kuthirakulam. On his request, he was transferred as GDSBPM, Kottoor on 5.9.1999. While the TRCA of GDSMD, Kuthirakulam was Rs.1740-2640, the TRCA of GDSBPM, Kottoor was Rs.1600-2400. At the time of his transfer, he was drawing the pay at the initial stage of Rs.1740/- as GDSMD, Kuthirakulam. On his transfer his pay was fixed at Rs.1600/- in the TRCA of Rs.1600-2400. While he was working so as GDSPM, Kottoor from 1999, he came across the order of this Tribunal in O.A.704/2004 dated 19.9.2006 – **A Prakasan v. Superintendent of Post Offices** (Annexure A-2) (supra). He has also relied upon the order of this Tribunal in O.A.394/2003 decided on 22.11.2005 – **K.P.Pyari v. Senior Superintendent of Post Offices** (supra). He has, therefore, sought the following reliefs:

(i) to declare that the applicant is entitled to have his pay fixed as per FR 22(I)(a)(1) on appointment as EDBPM and to direct the respondents to fix the pay of the applicant at Rs.1880/- in the TRCA of Rs.1600-40-2400 with effect from 5.8.1999 and to pay him the difference of pay

and allowances drawn by him with interest at the rate of 18% per annum.

(ii) Alternatively, to declare that the applicant is entitled to his pay fixed as per FR 22(I)(a)(2) on appointment as EDBPM and to direct the respondents to fix the pay at Rs.,1760/- in the scale Rs.1600-40-2400 with effect from 5.8.1999 and to pay him the difference of pay and allowances drawn by him with interest at the rate of 18% per annum.

(iii) To call for the records leading to the fixation of the pay of the applicant at RS.1600 in the TRCA 1600-40-2400 with effect from 5.8.1999 and quash the same to the extent it refuses protection of pay and fixation in accordance with the statutory rules.

9. However, the respondents have relied upon the order of the Tribunal in O.A.552/2005 – **G.K.Anitha Kumari v. Senior Superintendent of Post Offices & others** decided on 11.4.2007. The operative part of the said order 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.

18. In view of the above, the applicant's case fails and is therefore, dismissed. No cost.

10. In both the cases, we heard Shri M.R.Hariraj counsel for applicant and Shri TPM Ibrahim Khan, SCGSC for respondents. There were no provisions for transfer for the EDAs in the unamended "Posts and Telegraph ED Agents (Conduct and Service) Rules, 1964". As an exception to the aforesaid position, the respondents themselves have identified certain circumstances under which the EDAs may be appointed against vacant post in the same office or any office in the same place, as contained in DG. Posts, letter No.43-27/85-Pen. (EDC &

Trg.) dated 12th September, 1988 which is extracted below:

> "Normally, EDAs are to be recruited from local area and they are not eligible for transfer from one post to another; but in cases where a post has been abolished, EDAs are to be offered alternative appointment within the sub division in the next available vacancy in accordance with Order No.43-24/64-Pen dated 12.4.1964 and further clarified in Order No.43-4/77-Pen., dated 23.2.1979 (Sl.No.29). As per orders, those of EDAs who are held as surplus consequent to the abolition of ED posts are to be adjusted against the posts that may occur subsequently in the same office or in the neighbouring offices. In view of this, it will not be correct to allow transfer of EDAs freely from one post to other. However, it has now been decided that exception may be made in the following cases:
>
> (i) When an ED post falls vacant in the same office or in any office in the same place and if one of the existing EDAs prefers to work against that post, he may be allowed to be appointed against that vacant post without coming through the Employment Exchange, provided he is suitable for the other post and fulfils all the required conditions.
>
> (ii) In cases where EDAs become surplus due to abolition of posts and they are offered alternative appointments in a place other than the place where they were originally holding the post, to mitigate hardship, they may be allowed to be appointed in a post that may subsequently occur in the place where they were originally working without coming through Employment Exchange."

The above position has been further clarified vide D.G Posts letter No.19-51/ED. Trg. dated 11.2.1997 (supra). In para 4 of the said letter, 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. Now, in terms of the amendment to Rule 3 of GDS (Conduct and Employment) Rules 2001 carried out by the Department of Posts, Gramin Dak Sevak (Conduct and Employment) Rules, 2004, "*a GDS is not eligible for transfer in any case from one post/unit to other post/unit except in public interest.*" However, vide Department of Posts vide letter No.19-10/2004-GOS dated 17.7.2006, allowed limited transfer facility to GDS on "public interest". The said letter reads as under:

> "Subject: Limited Transfer Facility to Gramin Dak Sevaks
>
> As per the order contained in Directorate letter No.43-27/85-

Pen(EDC & Trg) dated 12.9.1988, the ED Agents, now called Gramin Dak Sevaks (GDS) were allowed limited transfer facility from one post to another without coming through the agency of employment exchange in exceptional circumstances viz. When an ED post falls vacant in the same office or in any office in the same place or where ED Agent becomes surplus due to abolition of the post and he/she is offered alternate appointment in a place other than the place where he/she was holding the post.

2. In terms of amendment to Rule 3 of GDS (Conduct & Employment) Rules 2001, "a GDS is not eligible for transfer in any case from one post/unit to another post/unit except in public interest". What constitute a "public Interest" has been interpreted differently by different Circles. In order to have a uniform criteria, it has been decided to allow limited transfer facility to GDS from a post/unit to another under the existing provision of amended Rule 3 of GDS (Conduct & Employment) Rules 2001 on the following grounds:

I. A GDS who is posted at a distant place on redeployment in the event of abolition of the post.

II. GDS appointed on compassionate grounds and posted at distant place.

III. Woman GDS on her marriage/remarriage.

IV. Where the GDS himself/herself suffers from extreme hardship due to a disease and for medical attention/treatment, such transfer may be allowed on production of a valid medical certificate from the medical officer of a Government hospital.

V. Where the GDS is looking after the welfare of a physically handicapped/mentally handicapped person/dependent and he/she requires to move to different places to give support to such physically/mentally challenged person/dependent.

3. The limited transfer facility to GDS from post/unit to another will be subject to fulfillment of the following conditions. The conditions mentioned below are only illustrative.

(i) A GDS will normally be eligible for only one transfer during the entire career.

(ii) Request for such transfer will be considered against the future vacancies of GDS and that too after examining the possibility of recombination of duties of GDS.

(iii) TRCA of the new post shall be fixed after assessment of the actual workload of the post measured with respect to the cycle beat in respect of GDS MD/MC/Packer/Mail Messenger in terms of Directorate letter No.14-11/97-PAP dated 1.10.1987.

(iv) Past service of the GDS will be counted for assessing the eligibility for appearing in departmental examination. GDS will not have any claim to go back to the previous recruitment unit/division. When a GDS is transferred at his own request and the transfer is approved by the competent authority irrespective of the length of service, he/she will rank junior in the seniority list of the new unit to all the GDS of that unit who exist in the seniority list on the date on which the transfer is ordered. A declaration to the effect that he/she accepts the seniority on transfer in accordance with this should be obtained before a GDS is transferred.

(v) Transfer will be at the cost and expenditure of GDS. No

expenditure whatsoever on this account will be borne by the Department under any circumstances.

(vi)Request for transfer of the GDS will be confined to transfer within the same Circle.

(vii)No transfer request will be entertained within 3 years of initial recruitment.

4. Power in this regard will vest with the Heads of Circles who will decide each and every individual case on merit keeping in view aforementioned criteria and standard of "public interest".

Both the aforesaid letters are clarificatory in nature and they are not in supersession to any previous orders. Therefore, the position that emerges is that 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 theincrements 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. The applicant in O.A.704/2004 (supra) was working as EDDA, Puthukulangara in the TRCA of Rs.1740-30-2630 and he was transferred as EDBPM in the same Post Office in the TRCA of Rs.1600-40-2400. On his appointment as EDBPM, the respondents ignored the increments drawn by him while working as EDDA. His contention was that he was entitled to have the increments earned by him counted while fixing his TRCA in Rs.1600-40-2400. He had relied upon the earlier .orders of this Tribunal in O.A.405/2003 and O.AS.941/2007 in which it was held that the ED Agents on request transfer within the same recruiting unit would not forfeit their past service for any purpose. Considering that there was merit in the above contentions, the Tribunal allowed the O.A and directed the respondents to refix the TRCA of the applicant the scale of Rs.1600-40-2400 taking into account the increments already drawn by him in the scale of Rs.1740-20-2600. However, the orders of this Tribunal in O.A.1234/1999(supra) and O.A.552/2005 are on different footings. The applicant in O.A.1234/1999 (supra) was a surplus an Extra Departmental Sub Post Master (EDSPM) in Sub Office, Veliyam and he was appointed on his own request as EDBPM, Nadumancavu as a fresh appointee and hence she was

entitled only to the allowance attached to that post. Again the applicant in O.A.552/2005 (supra) was on placement from one post office to another outside his own recruiting unit and therefore he was treated as a fresh appointee having forfeited his past service.

Facts in O.A.493/2007

11. The applicant is aggrieved by the Annexure A-1 order dated 6.7.2007 by no protection of his last drawn basic allowance was given to him while appointing him on transfer to the post of Gram Dak Sevak Branch Post Master (GDSBPM for short) Attachackal BO in account with Payyanamon SO under Pathanamthitta HO. He has, therefore, sought the following reliefs in this O.A:

i) To quash Annexure A1 to the extent it refuses the pay of Rs.2080/- on the TRCA of Rs.1600-40-2400 to the applicant.

ii) To direct the respondents to protect the pay and TRCA of the applicant on transfer to the post of GDSBPM, Attachackal, and to fix his basic pay at Rs.2080/- in the TRCA Rs.1600-2400 with all consequential benefits including arrears of pay with interest @ 18% from the date on which the amount fell due till date of payment.

12. The brief facts of the case are that, the applicant was working as GDSMC, Kallely BO with effect from 17.1.1995 to 15.2.1997 as GDSBPM, Elimullumplackal BO with effect from 16.2.1997 to 19.6.2007. He was appointed on transfer as GDSBPM, Attachackal PO with effect from 20.6.2007. Prior to his transfer he was drawing a basic allowance of Rs.2080/- in the TRAC of RS.1600-40-2400 in his capacity as GDSBPM, Elimullumplackal BO. On his appointment on transfer as GDSBPM, Attachackal, he was granted the TRCA of Rs.1280-35-1980. The applicant has raised two issues in this O.A, (i) that he is entitled to protection of his allowance on transfer as held by this Tribunal in O.A.394/2003 dated 22.11.2005 and (ii) the Attachackal Branch Office works from 10 AM to 2

PM with receipt of Mail at 10 hours and last clearance at 1345 hours and despatch at 14 hours and therefore he is entitled to the TRCA of Rs.1600-40-2400 based on the workload of the Branch Post Office.

13. The respondents in the reply have submitted that the second respondent had taken a decision to transfer him from Elimullumplackal BO to Attachackal BO in terms of the provisions contained in the Annexure R-1 guidelines issued by the Department of Post letter No.19-10/2004 GDS dated 17.7.2006 which is reproduced as under:

> "Sub: Limited Transfer Facility to Gramin Dak Sevaks
>
> As per the order contained in Directorate letter No.43-27/85.Pen(EDC & Trg) dated 12.9.1988, the ED Agents, now called Gramin Dak Sevaks (GDS) were allowed limited transfer facility from one post to another without coming through the agency of employment exchange in exceptional circumstances viz, when an ED post falls vacant in the same office or in any office in the same place or where ED Agent becomes surplus due to abolition of the post and he/she is offered alternate appointment in a place other than the place where he/she was holding the post.
>
> 2. In terms of amendment to Rule 3 GDS (Conduct & Employment) Rules 2001, "a GDS is not eligible for transfer in any case from one post/unit to another post/unit except in public interest." What constitute a "Public Interest" has been interpreted differently by different Circles. In order to have a uniform criteria, it has been decided to allow limited transfer facility to GDS from a post/unit to another under the existing provision of amended Rule 3 of the GDS (Conduct & Employment) Rules 2001 on the following grounds:
>
> 1. A GDS who is posted at a distant place on redeployment in the event of abolition of the post.
> 2. GDS appointed on compassionate grounds and posted at distant place.
> 3. Woman GDS on her marriage/remarriage.
> 4. Where the GDS himself/herself suffers from extreme hardship due to a disease and for medical attention/treatment, such transfer may be allowed on production of a valid medical certificate from the medical officer of a Government hospital.
> 5. Where the GDS is looking after the welfare of a physically handicapped/mentally handicapped person/dependent and he/she requires to move to different places to give support to such physically/mentally challenged person/dependent.

conditions mentioned below are only illustrative.

(i) xxxxx xxxxx xxxxxx

(ii) Request for such transfer will be considered against the future vacancies of GDS and that too after examining the possibility of recombination of duties of GDS.

(iii) TRCA of the new post shall be fixed after assessment of the actual workload of the post measured with respect to the cycle beat in respect of GDSMD/MC/Packer/Mail Messenger in terms of the Directorate letter No.14-11/97-PAP dated 1.10.1987.

(iv) Past service of the GDS will be counted for assessing the eligibility for appearing in departmental examination. GDS will not have any claim to go back to the previous recruitment unit/division. When a GDS is transferred at his own request and the transfer is approved by the competent authority irrespective of the length of service, he/she will rank junior in the seniority list of the new unit to all the GDS of that unit who exist in the seniority list on the date on which the transfer is ordered. A declaration to the effect that he/she accepts the seniority on transfer in accordance with this should be obtained before a GDS is transferred.

(v) Transfer will be at the cost of expenditure of GDS. No expenditure whatsoever on this account will be borne by the Department under any circumstances.

(vi) Request for transfer of the GDS will be confirmed to transfer within the same Circle.

(vii) No transfer request will be entertained within 3 years of initial recruitment.

4. Power in this regard will vest with the Heads of Circles who will decide each and every individual case on merit keeping in view aforementioned criteria and standard of "**Public interest**".

Sd/-
[A.K.Sharma]
Deputy Director General(ESTT)"

The respondents have further submitted that the applicant was given lesser TRCA because of the lesser workload in Attachackal B.O. They have further clarified that the applicant was working as BPM, Elimullumplackal and as per the workload of that post he was granted TRCA of Rs.1600-40-2400 and he was drawing Rs.2080/- at the time of his transfer. They have also submitted that when he was transferred as BPM, Attachackal, the workload of that post was assessed and calculated based on the workload it was decided to fill up the post on lower TRCA of Rs.1280-35-1980 and his pay was fixed accordingly. Therefore, they have contended that the applicant's claim for higher TRCA

based on the workload of Attachackal BO is totally misconceived as the TRCA is not calculated based on the working hours of the B.O. and it is based on the assessment actual workload of the post measured with respect to the cycle beat in respect of GDSMD/MD/Packer/Mail Messenger in terms of the Directorate's letter (Annexure R-2) standard for revision of allowances of ED Agents fixed by the respondents. According to the assessment of workload in the post of GDSBPM, Attachakkal done by the respondents and the working hours attached to that post was calculated as 2 hours 40 minutes and the points earned at 64.37 only. They have also submitted that the applicant was transferred within the same unit and it will not affect his seniority and in terms of workload assessed, he is not entitled for the maximum TRCA and hence it was decided to fill up that post in lower TRCA and accordingly his allowance was reduced. They have also submitted that the order of this Tribunal in O.A.394/2003 dated 22.11.2005 [**K.P.Pyari v. Senior Superintendent of Post Offices and others**] relied upon by the applicant is no more relevant as the rule itself has undergone change. They have, on the other hand, relied upon the order (Annexure R-6) of this Tribunal dated 11.4.2007 in O.A.552/2005 [**G.Anithakumari v. Senior Superintendent of Post Offices and others**] in which it has been observed that the person transferred has to sacrifice his past TRCA and has to be placed at the scale available in that post to which he or she is transferred as this is the scale available for performing the duties in that post office. They have also relied upon the observation made in that order that the entitlement of an individual on transfer from another recruitment unit would also be to the extent of the TRCA correlated to the workload and the same is independent of his past entitlement in the previous unit. Nothing less; nothing more. The other submission of the respondents is that the protection of pay is normally given only when a retrenched employee is posted to work in a post with lower TRCA and it is not given to officials transferred at request.

14. In view of the conflicting view of two Benches of this Tribunal, it has been necessary to refer the matter to the Full/Larger Bench for reference formulated in para 1 of this order.

15. The Registry shall transmit these 3 files to the Principal Bench for constitution of Full/Larger Bench by Hon'ble Chairman to consider the issues and to deal with the cases.

Dated, the 25th April,2008.

DR K.S.SUGATHAN
ADMINISTRATIVE MEMBER

GEORGE PARACKEN
JUDICIAL MEMBER

trs