

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHO.A Nos. 270 of 2006, 349 and 493 of 2007Friday, this the 25th April, 2008.

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HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

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

O.A.270/2006R.P.Hrishikeshan Nair,
GDSBPM, Veliyamcode.B.O,
Thiruvananthapuram South Division.

....Applicant

(By Advocate Mr MR Hariraj)

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.349/2007C.Sudheendra Bose,
Gramin Dak Sevak,
Branch Post Master,
residing at Kottoor,
Sivamayam, Kallikkad,
Mylakkara P.O.
695 572, Thiruvananthapuram.

Applicant

OA 270/349/07 & 493/07

(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,
 Attachakkal.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:

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"(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 Annexure 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

OA 270/349/03 & 493/07
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should not have been subjected to any loss 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 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.

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 of 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

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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 the transferee unit and only if she has put in 2 years of 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 correlated 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 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. 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.A.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

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 Attachakkal 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 xxxxx
- (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 Attachakkal 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, Attachakkal, 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

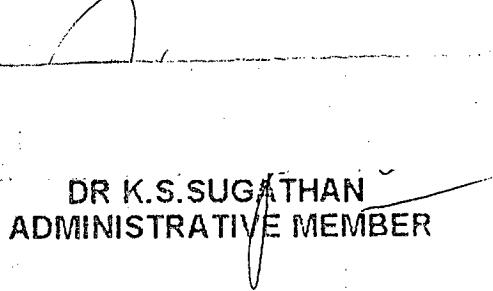
based on the workload of Attachakkal BO is totally misconceived as the TRCA is not calculated based on the working hours of the B.O. and it is based on the assessment actual workload of the post measured with respect to the cycle beat in respect of GDSMD/MD/Packer/Mail Messenger in terms of the Directorate's 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.

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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