CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 383 of 2009
with
Original Application No. 385 of 2009
with
Original Application No. 386 of 2009
with
Original Application No. 427 of 2009
with
Original Application No. 384 of 2009

MONDAY, this the 19th day of October, 2009.

CORAM:
HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. **O.A. NO. 383 of 2009 :**

P.V. Suja Beegum,
GDSBPM, Padiripadam BO,
Manjeri Division, Malappuram,
Residing at "Thekkumpurathi House",
Chathanmoola, Padiripadom P.O.,
Malappuram District – 679 334. ... Applicant

(By Advocate Mr. Shafik M.A.)

versus

1. Union of India, represented by
The Chief Postmaster General,
Kerala Circle, Trivandrum.

2. The Superintendent of Post Offices,
Manjeri Division, Malappuram. ... Respondents

(By Advocate Mr. M.V.S. Nampoothiri)

2. **O.A. NO. 385 of 2009 :**

M. Soudabi, GDSBPM,
Chikkode BO, Manjeri Division,
Malappuram, Residing at "Molayil House",
Chelekode, Urangatiri P.O., Areakode,
Malappuram District – 679 639. ... Applicant

(By Advocate Mr. Shafik M.A.)

versus

1. Union of India, represented by
The Chief Postmaster General,
Kerala Circle, Trivandrum.

2. The Superintendent of Post Offices,
Manjeri Division, Malappuram. ... Respondents

(By Advocate Mrs. Mini R Menon, ACGSC)

3. **O.A. NO. 386 of 2009 :**

E. Kumaran, GDSBPM,
Amarambalam South, Manjeri Division,
Malappuram, Residing at "Aswathi",
Amarambalam South, Vaniyambalam Via,
Malappuram District – 679 339. ... Applicant

(By Advocate Mr. Shafik M.A.)

versus

1. Union of India, represented by
The Chief Postmaster General,
Kerala Circle, Trivandrum.

2. The Superintendent of Post Offices,
Manjeri Division, Malappuram. ... Respondents

(By Advocate Mr. Millu Dandapani, ACGSC)

4. **O.A. NO. 427 of 2009 :**

P. Sreeja, GDSBPM,
Ambalakkadavu BO, Kalikavu,
Manjeri Division, Malappuram,
Residing at "Vasudev Vilas",
Punnapala PO, Vandur,
Malappuram District – 679 328. ... Applicant

(By Advocate Mr. Shafik M.A.)

versus

1. Union of India, represented by
The Chief Postmaster General,
Kerala Circle, Trivandrum.

2. The Superintendent of Post Offices,
Manjeri Division, Malappuram. ... Respondents

(By Advocate Mrs. Aysha Youseff, ACGSC)

5. **O.A. NO. 384 of 2009 :**

V.M. Ramanunni,
GDSMP-1, NPSC, Malappuram HPO,
Manjeri Division, Malappuram,
Residing at "Pulari", Kavungal,
Malappuram District. ... Applicant

(By Advocate Mr. Shafik M.A.)

versus

1. Union of India, represented by
The Chief Postmaster General,
Kerala Circle, Trivandrum.

2. The Superintendent of Post Offices,
Malappuram Division, Malappuram. ... Respondents

(By Advocate Mr. George Joseph, ACGSC)

The applications having been heard on 12.10.2009 & 13.10.2009, the Tribunal on .....19-10-2009..... delivered the following:

ORDER

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

As the law point involved in all these cases is one and the same, these O.As have been dealt with and decided in this common order. The facts of each case are as in the succeeding paragraphs.

2. **OA 383/09:** The applicant joined the Department as EDDA, Vazhikkadavu on compassionate grounds on the demise of her father. The TRCA admissible to her was Rs.**1740-30-2640**. During 2008, on her seeking a transfer to Padiripadam BO on medical grounds, she was posted there. The TRCA admissible to that post is Rs.**1600-2400**. At the time of her transfer, the applicant was drawing a TRCA of **Rs.2040/-**, vide pay slip for the months of July 2008. However, her TRCA was reduced and fixed at Minimum of Rs.1600/- only vide pay slip for the month of September 2008.

The claim of the applicant is that her TRCA drawn prior to her transfer should be protected on the basis of a full bench judgment passed by this Bench in O.A. No. 270/2006 and connected O.As decided on 14th November 2008.

3. **OA No. 384/09** :The applicant joined the Valambur SO as EDDA II in the wake of a regular selection in 1999, in the TRCA of Rs.**1740-30-2640**. During 2001, the applicant sought a transfer to Kootilangadi due to personal problems and the same was acceded to and the applicant was posted to that place in May 2001. The said post carried the TRCA of Rs.**1220-1600**. He was placed only at the minimum of the TRCA, i.e. Rs.1220/-. Consequent to the mechanization of the post of GDSMC Kootilangadi, the post which the applicant was holding was abolished and the applicant was redeployed as GDSMP-1 at NPSC, Malappuram HO vide memo dated 22-11-2008. The TRCA at this place is Rs.1545–25–2020 and the applicant was placed at Rs.1545/- on his transfer from Kottilangadi. The applicant sought pay protection as he was drawing at Valambur, prior to his posting at Kootilangadi which however, was not granted to him.

4. **OA No. 385/2009**: The applicant was initially appointed at Thattilangadi as GDSMD after a regularly conducted selection w.e.f. 07-11-2001 in the TRCA of Rs.**1740-2640**. She had developed certain leg ailment, whereby she could not climb stairs and hence, she sought for a transfer and was posted as GDSBPM, Chikkode from July 2008. This post carries a TRCA of Rs.**1600 – 2400.** At the time of transfer, the applicant was in receipt of Rs.**1920/-** as Basic Allowance vide Annexure A-3, while the same was reduced to Rs.1600/- on transfer vide Annexure A-4. She had filed Annexure A-5 representation but without any success. Hence this O.A.

5. **O.A. No. 386/09:** The applicant joined the Department as EDDA of Karad SO in 1975 after regular selection, in the TRCA of Rs.**1740–2640**. On medical grounds, he had sought for a transfer and was posted to Amarambalam South BO in 2007 on medical grounds (spinal cord problems). At the time of his transfer he was drawing Rs.**2010**/- as basic allowance in the aforesaid scale. The post at Amarambalam South BO carried a TRCA of Rs.**1600 – 2400** only. He was placed in the stage of Rs.1600/- on his posting to the said place. His representation for protection of allowance did not yield any fruitful result. Hence this O.A.

6. **OA No. 427/09**: The applicant joined the Department in 2000 as EDDA Poongode after a regular selection in the TRCA of Rs.**1740–2640**. On medical ground, she sought for a transfer near the residence of her husband and was posted as GDSBPM, Ambalakkaddadavu as per memo dated 27-12-2002. At the time of her transfer she was drawing Rs.**1830**/- as basic Allowance in the above mentioned TRCA. The TRCA attached to the post of GDSBPM is Rs.**1600 – 2400**. On her posting to the above place, she was placed at Rs.1600/- in the afore said TRCA, without protecting her allowance. Hence, this O.A.

7. In all the above cases, the challenge is against non protection of the allowance already drawn at the time of transfer and the spinal ground is the decision by a Full Bench of this Tribunal vide order dated 14th November 2008 in O.A. No. 270 /2006 and other connected matters, as already referred to.

8. In all the cases, respondents have contested the O.A. by filing full fledged counter. The stand taken in the above cases includes that a declaration is undertaken from the applicants to the effect that he/she would accept the allowance of the new post prevailing and also if it is reduced with retrospective effect. In so far as the decision of the Full Bench is concerned, the same is under challenge in WP(C) No. 16376/2009 and the case is under consideration of the Hon'ble High Court. Protection of Allowance is admissible when there is a redeployment, as contained in the illustration in letter dated 11th October 2004 (Annexure R5 in O.A. No. 427/09). Where request is made for transfer, the same would be considered by the Head of the Circle provided the individual is willing to accept the emoluments of the new post. Higher emoluments in the present post will not be protected in such cases. (Letter from the Department of Post, addressed to the Chief Post Master General, Bihar Circle, dated 26-12-2002 at Annexure R2 in O.A. No.386/09 refers).

9. Counsel for the applicant invited the attention of the Tribunal to the Full Bench decision, which deals with transfer from one office to another and under various contingencies. The decision is as under:-

> "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."

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."

10. In the above decision, it has been clearly mentioned that pay protection is admissible for transfer within recruitment unit, irrespective of the transfer being at request or otherwise. All the contingencies have been considered therein.

11. Counsel for the respondents submitted that in view of the fact that the applicants got their transfer at their request, they cannot claim as a matter of right protection of allowance, and in this regard, reference was also made to a communication from the Department of Post to the Chief Post Master General, Bihar Circle (already referred to).

12. Arguments were heard and documents perused. Facts relating to service particulars as contained in the OA have not been denied. Denial is

on account of the fact that the applicants sought their transfer and had given an undertaking; that the full bench decision has been challenged before the High Court and that in one case the Department of Posts has informed the CPMG, Bihar Circle that Higher emoluments in the present post cannot be protected.

13. The points for consideration are:-

(a) Whether protection of emoluments drawn is admissible when there is a request transfer.

(b) Whether the order of the Department of Posts addressed to the Chief Post Master General applies to the present cases.

(c) Whether the challenge before the High Court of the Full Bench judgment amounts incapacitates one from following the same in other cases.

14. Pay Protection is a well established principle in Government service. Even on a request transfer, pay is protected, as held in the case of ***Surendra Singh Gaur v. State of M.P.,(2006) 10 SCC 214***, wherein the Apex Court had upheld the following decision of the Tribunal:

> *"**14.** The Tribunal further observed that the Irrigation Department had agreed to absorb the appellant on transfer only as an Assistant Engineer. The Irrigation Department was well within its right and justified in its stand that the appellant cannot be absorbed as an Executive Engineer in the Irrigation Department. However, having regard to the peculiar circumstances of the case, and **keeping in view the well-established principles of "pay protection" as applicable in government service**, it will be fair and proper that the Irrigation Department, without giving higher rank, should give the benefit of "pay protection" to the appellant. The Tribunal further directed that the difference between the pay drawn by the appellant as an Assistant Engineer, Irrigation and the pay fixed by the Agriculture Department in accordance with the directions given by the Tribunal may be treated as personal pay of the*

appellant. This difference (personal pay) will be absorbed in the future increments to be earned by the appellant in the Irrigation Department. The Tribunal also directed that the arrears of personal pay thus derived may be disbursed to the appellant within six months of the receipt of information from the Agriculture Department regarding his revised salary at the time of transfer of service to the Irrigation Department. (emphasis supplied)".

(This was a case, where an Executive Engineer from Agricultural department sought a transfer first to irrigation department and later wanted to go back to the Agricultural department. From the Agricultural department to Irrigation department, he was posted only as Assistant Engineer. The Tribunal protected his pay, but his request for transfer back to Agricultural Department was rejected. This decision was not interfered with by the Apex Court).

15. In one of the O.As, the respondents have annexed a copy of the order from the Department of Post in which request for transfer of one GDSMD had been considered and it was stated "Higher emoluments in the present post will not be protected in such cases." This letter which has been addressed to the Chief Post Master General, Bihar Circle, and not to all, **does not indicate whether the transfer is from one Recruiting Unit to another**. If it is to an entirely different recruiting unit, then the same does not apply to the facts of these cases as in that case, the engagement would be termed as appointment and not transfer. In the decision communicated in respect of a clarification sought by the Kerala circle, the DG Posts has in letter dated 11th February 1997 distinguished between shifting of a surplus within the same recruiting unit as transfer and outside the recruiting unit as appointment. Further, in the instructions relating to transfer on public interest, on the basis of the all such transfers have taken place, there is no condition as to non protection of allowance drawn prior to transfer. Thus, the letter from Department of Post addressed to the Chief Post Master General, Bihar Circle does not dilute the claim of the applicants.

16. The Full Bench decision if followed, would go to show that all the cases deserve to be allowed. However, the contention of the respondents is that the said decision is under challenge. Counsel for the applicant submitted that there has been no stay of the decision of the Full Bench. Thus, the decision has not been kept in abeyance by an order of stay, much less it is upset by the High Court. If there exists a stay, then also, the decision is not obliterated as held in the case of ***Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assn., (1992) 3 SCC 1***, wherein it has been held as under:-

> *"While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law....."*

17. When a challenge against an order of a lower court is made before the higher court and the same is admitted, in the event of no stay having been granted, the said judgment under challenge could well be followed.

This is evident from the decision of the Apex Court in the case of ***Dental Council of India v. Subharti K.K.B. Charitable Trust,(2001) 5 SCC 486*** . In that case, the High Court of Allahabad issued a mandamus to the Government in respect of admission to the Dental College for a particular year and the same was challenged before the Apex Court. Though the case was pending, no stay was granted. The High Court had on the basis of the said Mandamus issued further orders in respect of admission in the subsequent years and when the same was challenged, the Apex court has held as under:-

> *"**20.** Now, considering the aforesaid agreed order, the next question pertains to the students who are admitted by the respondent College for the academic years 1996-97, 1997-98, 1998-99 and 1999-2000. ....*
>
> ***21.** ..... learned Senior Counsel Mr Shanti Bhushan submitted that the institution has given admission to 100 students on the basis of the order passed by the High Court of Allahabad and, therefore it would not be just to hold that the institution has acted dehors the statutory regulations. He pointed out that this Court has not stayed the operation of the impugned order passed by the Allahabad High Court. .....*
>
> ***22.** In this case, the Central Government undisputedly has granted approval for establishing Dental College to the respondent Trust. The only question was whether students' strength should be 100 as contended by the Trust or 60 as contended by DCI. Hence, considering the peculiar facts of this case, particularly the order passed by the High Court of Allahabad on 5-9-1997 issuing a mandamus to accord approval to the Dental College for admitting annually a batch of 100 students instead of 60 students **and the fact that this Court has not stayed the operation of the said order** and also the further orders passed by the High Court on 26-2-1999 and 17-4-1999 in Writ Petition No. 8299 of 1999, we do not think that it would be just and proper to disturb the admissions granted by the Dental College.* (emphasis supplied)."

18. Taking into account the judgments of the Apex Court and the Full Bench order of this Tribunal, it is amply clear that a GDS, on transfer from

one post to another within the same recruitment unit shall have protection of his emoluments drawn as TRCA prior to transfer, in the new place of posting. This has, however, one exception. If the maximum of the TRCA in the new place of posting happens to be less than the allowance drawn by the GDS prior to his transfer, then the individual would be entitled to only the maximum of the TRCA applicable to that place. In the above cases, save in O.A. 384/09, there was only one transfer and all of them are such that the incumbents were drawing higher rate of TRCA in the previous place of posting and lower rate at the present place of posting. In all such cases, the applicants are entitled to the allowances drawn at the time of transfer from the old duty station, which may be restricted to the maximum in the TRCA in the new place of posting. In so far as applicant in O.A. 384/09 is concerned, he was first in the TRCA of Rs.1740 – 2640 when posted at Valambur, and on his transfer to Kootilangadi, his TRCA was Rs.1220 – 1600 and later on abolition of the said post and redeployment at Malappuram, his TRCA is Rs.1545 – 2020. Obviously, before the applicant was first transferred, at Valambur, he was drawing as allowance, amount much more than the maximum of the TRCA applicable at Kootilangadi. As the maximum of the TRCA at Kootilangadi is Rs.1600/-, his pay should thus be fixed at Rs.1600/- during his tenure at Kootilangadi. However, on his being posted at Malappuram where the TRCA is Rs.1545 – 2020, his TRCA would have to undergo a change and the question is as to what extent his allowance be protected – Allowance drawn at Valambur or that drawn at Kootilangadi. The applicant's entitlement is protection of allowance subject to the maximum in the TRCA at the new place of posting and because of that restriction his allowance at Kootilangadi was fixed at the maximum i.e. Rs.1600/-. However, since his tenure had been only for a short period at Kootilangai

coupled with the fact that the said post at Kootilangadi stood abolished and the applicant redeployed at Malappuram without depletion of any of the rights accrued to him, logically and legally, his original allowance should spring back and he should be fixed at the allowance drawn by him at Valambur.

19. The O.As are thus **allowed**. In all the above cases, the respondents, while passing suitable orders, may, if they feel so, clamp a rider that these orders are subject to the outcome of the Civil Writ Petition No.16376/2009 pending before the High Court of Kerala. They may also get an undertaking to the effect that in the event of the High Court reversing the Full Bench judgment of the Tribunal, the respondents are at liberty to recover the excess allowance paid to the applicants.

20. Respondents are directed to pass suitable orders and implementation of the order shall be made within a period of three months from the date of communication of this order. No cost.

(Dated, the 19th October, 2009.)

K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER

Dr. K.B.S. RAJAN
JUDICIAL MEMBER

rkr

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

CP/180/00082/2014 in O.A. NO. 384 OF 2009

Monday, this the 25th day of May, 2015

CORAM:

HON'BLE MR. JUSTICE N.K.BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE MR.R.RAMANUJAM, ADMINISTRATIVE MEMBER

V.M.Ramanunni
GDSMP -1, SPC, Malappuram HPO
Manjeri Division ... Petitioner

(By Advocate Mr.Shafik M.A)

versus

1. Mr.M.S.Ramanujan
Chief Postmaster General
Kerala Circle
Trivandrum – 695 033

2. Mr.A.Sudhakaran
Superintendent of Post Offices
Manjeri Division
Manjeri, Malappuram ... Respondents

(By Advocate Mr.N.Anil Kumar, Sr.PCGC(R))

The application having been heard on 25.05.2015, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR. JUSTICE N.K.BALAKRISHNAN, JUDICIAL MEMBER

The learned counsel for petitioner submitted that the order of this Tribunal has been complied with. Accordingly, Contempt Petition is closed.

Dated, the 25th May, 2015

R.RAMANUJAM
ADMINISTRATIVE MEMBER

N.K.BALAKRISHNAN
JUDICIAL MEMBER

vs