

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO.388/2010

Dated this the 21st day of July, 2010

C O R A M

HON'BLE MR.JUSTICE K. THANKAPPAN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

R. Sajeendran
BPM Irinchayam
Poovathur PO

..Applicant

By Advocate Mr. Vishnu S. Chempazhanthiyil

Vs

- 1 The Superintendent of Post Offices
Thiruvananthapuram South Postal Division
Thiruvananthapuram-14
- 2 Union of India represented by the
Chief Postmaster General
Kerala Circle
Thiruvananthapuram. ..Respondents

By Advocate Mr. A.D. Raveendra Prasad, ACGSC

The Application having been heard on 8.7.2010 the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant, a GDS, seeks protection of pay in the new post to which he is appointed consequent on abolition of his original GDS post.

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2 The applicant entered in service on 16.6.1995 as ED Messenger and later as GDS Mail Man at Nedumangad Sub Office, under the 1st respondent and was drawing pay of Rs. 1620 plus DA. When the post of GDS Mail Man was abolished in January, 2006, he was posted as GDS BPM, at Irinchayam, initially on provisional basis (A-1) and later on permanent basis (A-2). However, while fixing his pay, it was fixed at Rs. 1280 plus DA without protecting the pay drawn by him. Aggrieved, he filed this O.A to direct the respondents for protection of pay consequent on his posting as GDS BPM, Irinchayam. He has relied on the various orders of this Tribunal in O.A. 220/2007, 270/2006 , etc. in support of his case.

3 This O.A was admitted on 20.5.2010 and the Tribunal directed the respondents to file reply statement within six weeks. On 8.7.2010 when the matter was taken up for further orders, the respondents did not file reply statement. However, the learned counsel for the applicant submitted that identical matters have been considered and allowed by this Tribunal.

4 The question that comes up for consideration is whether a GDS when he is shifted from one post to another post consequent on abolition of the post, is entitled to protection of pay or not. The claim of the applicant is that under provisions of extant rules his emoluments should be protected. We find that in a series of cases in O.A. 941/2001, 704/2004, 220/2007 and 148/2009 the Tribunal has held that when a GDS is transferred to another GDS post in the same recruiting unit on account of abolition of the post or on request, protection of the allowances drawn by him is to be permitted.

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5 Further, a Full Bench of the Tribunal in O.A. 594/06 dealing with identical cases answered the reference as follows:

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 appointment to the post of GDS is concerned, the practice is that it is a sort of local recruitment with certain conditions of being in a position to arrange for some accommodation to run the office and with certain income from other sources and if an individual from one recruitment unit to another is shifted his move would result in a vacancy in his parent Recruitment Unit and the beneficiary of that vacancy would be only a local person of that area and not any one who is in the other recruitment unit. Thus, when one individual seeks transfer from one post to another (in the same category or other category) from one Recruitment Unit to another, he has to compete with others who apply for the same and in case of selection, he shall have to be treated as a fresh hand and the price he pays for the same would be to lose protection of his TRCA.

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.

6 In view of the above, we are of the view that this O.A can be finally disposed of following the orders of the Tribunal referred to above, without waiting for a formal reply of the respondents. Accordingly, we allow the O.A. The first respondent is directed to refix the TRCA of the applicant in the scale of Rs. 1280-35-1980, protecting Rs. 1620 drawn by the applicant in the scale of GDS Mail Man w.e.f the appointment of the applicant as GDS BPM Irinchayam with attendant annual increments. This shall be done within a period of two months

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from the date of receipt of a copy of this order. There shall be no order as to costs.

Dated 21st July, 2010.


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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JUSTICE K. THANKAPPAN
JUDICIAL MEMBER