

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.394/2003

Tuesday this the 22nd day of November 2005.

CORAM:

**HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR. N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

K.P.Pyari,
D/o the late V.A.Gangadharan,
GDS Branch Post Master, Elanthikkara B.O.,
Aluva Division, residing at Earezhath House,
Puthenvelikkara, North Parur. Applicant

(By Advocate Shri. O.V.Radhakrishnan)

Vs.

1. Senior Superintendent of Post Offices,
 Aluva Postal Division, Aluva 683 101.
2. Union of India, represented by its
 Secretary, Ministry of Communications,
 New Delhi.


(By Advocate Shri.TPM Ibrahim Khan, SCGSC)

The application having been heard on 22.11.2005
the Tribunal on the same day delivered the following

ORDER (Oral)

HON'BLE MR. KV SACHIDANANDAN, JUDICIAL MEMBER

The applicant was initially appointed as ED BPM Karumalloor B.O. and then she was transferred to Maliankara P.O.on 22.7.1995. It is averred in the O.A. that the Government of India, Department of Posts, had issued OM No.26-1/97-PC ED Cell dated 17.12.1998, on the recommendation of the Justice Talwar Committee on Extra Departmental Agents in respect of the revision of their remuneration, that they are entitled to get remuneration. The applicant's TRCA was fixed at Rs.1600/- w.e.f. 1.3.1998 and she was given the arrears of pay. She made



a representation on 20.6.97 to the 1st respondent requesting for a transfer and posting as GDS BPM, Elanthikkara B.O. which is very near to her residence, against the vacancy arose on 2.9.2001. Against non-consideration of her request by the respondents she filed O.A.489/2001. In furtherance of the said O.A. she was selected for appointment as GDSBPM, Elanthikkara by virtue of A-6 dated 7.11.2001 and directed her to join at Elanthikkara without any break in service. The applicant was transferred and appointed on 15.11.2001 vide A-7 memo with effect from 8.11.01. The applicant made another representation dated 1.11.2002 (A-11) to the 1st respondent stating that, as per A-8, if the placement of the ED Agents from one Post Office to another within the same recruiting unit, it should be treated as transfer and the ED Agents concerned will not forfeit his past service for any purpose including seniority and therefore, granting her pay at the minimum of the TRCA is unjustified and illegal. Aggrieved by the said reduction in TRCA, the applicant has filed this O.A. seeking the following main reliefs:

i. To declare that on her transfer as GDSBPM, Elanthikkara, the applicant is eligible and entitled to get TRCA in the scale of Rs.1600-40-2400 at the same rate which she was drawing as GDS BPM, Maliankara immediately before her transfer and that the action of the 1st respondent in reducing the TRCA of the applicant to the minimum of the scale on her transfer as GDSBPM, Elanthikkara is illegal, arbitrary, unauthorised and violative of Articles 14, 16 and Article 300-A of the Constitution of India.

ii. To direct the 1st respondent to restore the TRCA of the applicant to Rs.1840/- w.e.f.8.11.2001 and to continue to pay TRCA to her at that rate, with annual increments admissible.

iii. To direct the 1st respondent to pay the applicant the arrears of TRCA being the difference between the reduced TRCA and the TRCA which she was drawing before her transfer with increments from the date on which it became due till the date of payment with 18% interest.

2. The respondents have filed a detailed reply statement contending that, at the time of transfer the applicant was drawing Rs. 1840/- in the pay scale of 1600-40-



2400 in the former post. On appointment to the new post, the Postmaster, Aluva had drawn the allowance to the applicant at the minimum of the pay scale i.e.Rs.1600/- plus other allowances considering the transfer as a new appointment in the post on request. Applicant's transfer was made on her own request, hence the question of protection of allowance and further increment accrued in the pay scale (identical in both posts) does not arise. The applicant was informed vide memo dated 7.11.2001 that, she was selected for appointment as GDS BPM, Elanthikkara and directed to join in the post without break. She had joined in the post on 8.11.2001 and the formal appointment order was issued vide A-7 dated 15.11.2001. It is true that Maliankara and Elanthikkara Branch Post Offices are in the same Postal Division and in the same recruiting unit and the transfer was offered in the light of Annexure A8 instruction without forfeiting the past service. In this connection, it was contended that A-8 is dated 11.2.1997. At that time, allowance of ED Agent was fixed without annual increments. Time Related Continuity Allowance (TRCA for short) with annual increments came into effect from 1.3.1998 and therefore, A-8 is not applicable in respect of protection of allowance. In the representation submitted, the applicant has requested to restore the TRCA to Rs.1840/- as on date of transfer and to disburse the arrears due to her. As the pay drawn is at minimum of the pay scale of the post and the transfer/posting was at request of the applicant, no question of protection of allowance arises and hence, no reply was given. This Tribunal vide its order dated 7.11.2001 in O.A.1234/99(Annexure R-1) held that, no rules or instructions which provide protection of the allowance drawn by the applicant in the former post has been shown. In the appointment order, it was specified that she will be paid such allowance as admissible for the post from time to time. ✓

Her past services had not been forfeited.




3. Shri O.V.Radhakrishnan, learned counsel appeared for the applicant and Shri TPM Ibrahim Khan, SCGSC appeared for the respondents.

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 A8 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 lowering 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 11-08-1994 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 Office 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.-08-1996 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? Learned counsel for the respondents took us to the judgement in O.A.1234/99 (Annexure R-1) and tried to canvass the position in support of their contentions. On going through the said judgement, 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 judgement 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

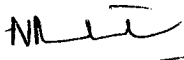


has been sought in the O.A.to be granted.

8. In the conspectus of facts and circumstances, we allow the O.A. and direct the Ist 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.

Dated the 22nd November, 2005



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.V.SACHIDANANDAN
JUDICIAL MEMBER