

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 405 of 2003

Tuesday, this the 12th day of August, 2003

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. K. Raveendran,
S/o Gopalan Nambiar,
Gramin Dak Sevak Mail Deliverer,
Edacheri North - 673 520,
residing at Kayanalath House,
PO. Cheekunnummal - 673 511Applicant

[By Advocate Mr. M.R. Rajendran Nair]

Versus

1. Union of India represented by its
Secretary to Government of India,
Ministry of Communications,
Department of Posts, New Delhi.
2. The Chief Post Master General,
Kerala Circle, Trivandrum.
3. The Superintendent of Post Offices,
Vadakara Division, Vadakara.
4. The Sub Divisional Inspector,
Vadakara North Sub Division,
Vadakara.Respondents

[By Advocate Mr. R. Madanan Pillai, ACGSC]

The application having been heard on 12-8-2003, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant, who has been working as Extra
Departmental Mail Deliverer, Cheekunnummal with effect from
1-4-1991, applied for a transfer to the post of Gramin Dak Sevak
Mail Deliverer (GDSMD for short), Edacheri North within the same
recruitment unit pursuant to a notification dated 14-5-2002

(Annexure A2). The applicant was selected for transfer and was transferred by Annexure A3 order dated 10-7-2002 as GDSMD, Edacheri North, wherein it was also stated that the transfer of the applicant having been made at his request, he would not be eligible for any TA/TP and he would not forfeit his past service for seniority. Finding that, on joining the post of GDSMD, Edacheri North, his TRCA was given at the lowest in the scale, the applicant submitted a representation seeking to grant him the due TRCA taking into account his past service. In reply to the above representation, the applicant received Annexure A1 order, which reads as follows:-

"... With reference to your above cited representation, it is informed that as your appointment to the post of GDSMD, Edacheri North by transfer is on your request, you are eligible for only the minimum of TRCA of the post of GDSMD, Edacheri North."

2. The applicant states that the action on the part of the respondents in not reckoning the increments earned by him and the TRCA which he was receiving prior to the transfer is unsustainable in law and the reason stated in the impugned Annexure A1 order is not based on any valid rule or instruction. It is also stated that the instructions contained in Annexure A5 provide that when a working ED Agent is transferred from one post office to another within the same recruiting unit, he would not forfeit his past service for any purpose including seniority. With these allegations, the applicant seeks to set aside the impugned order.

3. Respondents, on the other hand, seek to justify the impugned order on the ground that in terms of Annexure R2 letter dated 7th August, 2002, as there being no rule for transfer of

GDSs from one post to another post, those persons who have been transferred would not be entitled to protect the TRCA which was drawn in the previous station.

4. We have heard the learned counsel on either side and have perused the materials placed on record.

5. Learned counsel of the applicant argued that there was no indication in Annexure A2 notification that those who would be transferred would lose their past service for the purpose of drawing TRCA, that in Annexure A3 order by which the applicant was transferred also did not indicate that he would forfeit the increments drawn by him, that the instructions contained in Annexure A5 clearly indicate that when a working ED Agent is transferred from one post office to another within the same recruiting unit, he would not forfeit his past service for any purpose including seniority and that the impugned order is unjustifiable.

6. Shri R.Madanan Pillai, learned ACGSC appearing for the respondents, on the other hand, argued that Annexure A5 is not applicable in the case of the applicant because the transfer was effected after the new GDS (Conduct & Employment) Rules, 2001 which do not provide for any transfer liability and that the impugned order has been issued on the basis of Annexure R2 letter dated 7th August, 2002, wherein it has been stated that since the GDS (Conduct & Employment) Rules, 2001 makes it clear that the GDSs could not have any transfer liability, no question of protecting their all existing allowances on transfer and that therefore, the action has been taken well in conformity with the rules.

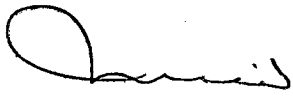
7. It is true that the new GDS (Conduct & Employment) Rules, 2001 do not provide for any transfer liability. The pre-existing instructions under which appointments were made to the ED posts also did not contain any rule regarding the transfer liability. What was conferred on the ED Agents was not a transfer liability, but an eligibility and a concession for transfer when vacancies arise within the same recruiting units without any loss of past service including seniority as has been explained in paragraph 4 of Annexure A5. In the notification Annexure A2, it was not stated that a person who applies for transfer would lose the past service for the purpose of drawal of TRCA, in case he is transferred on his request. It was in pursuant to this notice that the applicant had applied. In Annexure A3 order by which the applicant was transferred and posted as GDSMD, Edacheri North, also it was not mentioned that the applicant would draw TRCA only at the beginning of the scale. The clarification contained in Annexure A5 very clearly shows that GDSs on request transfers within the same recruiting units would not forfeit their past services for any purpose. Under these circumstances, the action taken by the respondents basing on Annexure R1 and Annexure R2 is either unjustified or unsustainable. A clarification cannot validly take away a benefit which the ED Agents have been enjoying.

8. In the light of what is stated above, the Original Application is allowed. The impugned order Annexure A1 dated 20-12-2002 is set aside and the respondents are directed to reckon the service of the applicant prior to his transfer to the post of GDSMD, Edacheri North for all purposes including protection of TRCA and increments earned. The respondents shall

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make available to the applicant the consequential monetary benefits within six weeks from the date of receipt of a copy of this order. No order as to costs.

Tuesday, this the 12th day of August, 2003



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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