

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 404 of 2009
Original Application No. 406 of 2009

Tuesday, this the 2nd day of March, 2010

CORAM:

Hon'ble Mr. George Paracken, Judicial Member
Hon'ble Ms. K. Noorjehan, Administrative Member

1. Original Application No. 404 of 2009 -

M. Sreeja, aged 38 years, W/o. Lakshmanan, GDSBPM,
 Valiyakunnu BO, Tirur Division, residing at 'Mattumal
 Kalarickal House', Panniyoor, Anakkara PO,
 Palakkad District 679 551.

Applicant

2. Original Application No. 406 of 2009 -

K. Sunil Kumar, aged 32 years, S/o. Velayudhan, GDSBPM,
 Valavannur BO, Tirur Division, residing at 'Kollathedathu House',
 Thekkankuttur, Kalpakancherry via, Tirur.

Applicant

(By Advocate – Mr. Shafik M.A. in both OAs)

V e r s u s

1. Union of India, represented by the
 Chief Postmaster General, Kerala Circle,
 Trivandrum.
2. The Superintendent of Post Offices,
 Tirur Division, Tirur.

**Respondents
 in both OAs**

**(By Advocates – Mr. Varghese P. Thomas, ACGSC in OA 404/2009 &
 Mr. A.D. Raveendra Prasad, ACGSC in OA 406/2009)**

These applications having been heard on 2.3.2010, the Tribunal on the
 same day delivered the following:

ORDER

By Hon'ble Mr. George Paracken, Judicial Member -

The challenge in both these Original Applications is against non-protection of Time Related Continuity Allowances (in short TRCAs) which were being drawn by applicants at the time of their transfers. The contention of the Applicants as agreed to by the Respondents in these cases is also that they are fully covered by the decision of the Full Bench of this Tribunal dated 14.11.2008 in OA No. 270 of 2006 - R.P. Hrishikeshan Nair & Ors.

Vs. Union of India & Ors. and connected matters. However, the respondents have further stated that they have challenged the aforesaid order of this Tribunal before the Hon'ble High Court of Kerala in WP(C) No. 16376 of 2009 and the same is still pending. We, therefore, dispose of them by this common order.

2. Facts of both cases are as follows:-

OA 404 of 2009 -

2.1 The applicant joined the respondent department as GDSBPM, Chullipara in January, 1993. After she got married she sought a transfer to any nearby Post Offices near her husband's residence. Respondents have granted her request vide the Annexure A-1 letter No. ST/120/8/NR/06 (Pt.V), dated 28.9.2007 transferring her as GDSBPM, Veliyakunnu. Both the posts of GDSBPM, Chullipara and GDSBPM, Veliyakunnu are in the TRCA of Rs. 1600-40-2400/- and she was drawing the basic monthly allowance of Rs. 2080/- at the time of her transfer. After her posting at Veliyakunnu, the respondents continued to pay her in the same TRCA at the

same monthly allowance as she was drawing at Chullipara, thereby protecting her last pay drawn. However, suddenly respondents reduced her TRCA to Rs. 1600/- i.e. the minimum of the scale of Rs. 1600-40-2400/- from March, 2009 onwards and decided to recover the over payments made to her from the date of her posting at Veliyakunnu. Against the said sudden reduction, applicant made the Annexure A-5 representation dated 2.4.2009. As the respondents did not consider the aforesaid representation, she filed the present OA seeking a declaration that she is entitled and eligible to TRCA of GDSBPM, Chullipara which she was drawing at the time of transfer as GDSBPM, Valiyakunnu, with effect from 17.10.2007 in the scale of pay of Rs. 1600-40-2400/- and the denial of the same is illegal and arbitrary. The contention of the respondents was that as per Para 3(iii) of the Annexure R-3 DG Posts letter No. 14-16/2001/PAP(Pt) dated 11.10.2004, Gramin Dak Sevaks redeployed to other posts on their specific requests, will not be eligible for protection of TRCA, and they will be eligible for TRCA applicable to the new post, as per assessment based on the work load of that office. Again, as per the Annexure R-1, Department of Posts, Ministry of Communications and IT letter No. 19-10/2004-GDS dated 17.7.2006, implementing the transfer facility to GDS, TRCA of the new post on transfer should be refixed based on the assessment of workload of the new post. Further^o according to Annexure R-2 DG Posts letter No. 17-103/2002-GDS dated 26.12.2002, transfer to other posts on their own requests will be granted to Gramin Dak Sevaks, if and only if they are willing to accept emoluments of the new posts and the higher emoluments in the present post will not be protected in such cases. Hence, after

assessment of the work load of the new post (GDS BPM, Valiyakunnu), the applicant was found eligible only for the minimum of the TRCA (II TRCA) of the post i.e. 1600-40-2400 and accordingly her TRCA was fixed at the initial stage w.e.f. 17.10.2007 and at Rs. 1640/- after completion of one year in the new post. They have further submitted that protection of TRCA is not extended to those GDSSs who are redeployed on their own specific requests and their TRCA is fixed at the minimum of the 1st or 2nd TRCA corresponding to the actual workload.

OA 406 of 2009 -

2.2 The applicant was initially appointed as GDSMD, Thekkankuttur with effect from 1.6.1996 in the TRCA of Rs. 1740-30-2640/. He was transferred as GDSBPM, Valavannur vide Annexure A-1 order No. B2/TFR/Misc. dated 18.6.2007. At the time of his transfer he was drawing the said TRCA at the stage of Rs. 2010/- and he continued to get the same TRCA in the same stage at the transferred place also. However, from the month of March, 2009 his salary was reduced to Rs. 1600/- i.e. the minimum of the TRCA of Rs. 1600-40-2400/. He made the Annexure A-5 representation against the aforesaid reduction and since the respondents have not taken any action on it, he filed this Original Application seeking a declaration that he is entitled and eligible to TRCA of GDSBPM Valavannur which he was drawing at the time of transfer reckoning the increments which he earned as GDSMD, Thekkankuttur, in the scale of pay of 1600-40-2400 and denial of the same is illegal and arbitrary. The respondents contention was that the post of GDSMD, Thekkankuttur was in

the TRCA of Rs. 1740-30-2640/- and the post of BPM, Valavannur is in the TRCA of Rs. 1600-40-2400/-. Therefore, in terms of DG Posts letter No. 14-16/2001/PAP(Pt) dated 11.10.2004 his TRCA has been reduced after assessment of the workload to the minimum of TRCA of the new post i.e. Rs. 1600. They have also submitted that in terms of DG Posts letter No. 17-103/2002-GDS, dated 26.12.2002 (Annexure R-2), transfer to other posts on their own requests will be granted to Gramin Dak Sevaks, only if they are willing to accept the emoluments of the new post and in terms of the subsequent letter No. 19-10/2004-GDS, dated 17.7.2006 (Annexure R-1), the TRCA of the new post on transfer should be fixed after assessing the work load. According to them the applicant's TRCA should have been reduced with effect from his date of joining itself, but it was not done so, due to over sight.

3. As regards the applicability of the decision of the Tribunal in OA 270 of 2006 in the case of the applicant, they submitted that though the said decision is in favour of the applicant, but they have challenged it before the Hon'ble High Court of Kerala vide WP(C) No. 16376 of 2009 and it is still pending.

4. We have heard learned counsel for the parties. The reply of the respondents in both these Original Applications are on identical lines. One of the grounds taken by the applicants in both these OAs is that the Full Bench of this Tribunal has already decided the issue in OA No. 270 of 2006 - R.P. Hrishikeshan Nair & Ors. Vs. Union of India & Ors. and

connected matters, dated 14.11.2008 having its operative part as under:-

"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.

51. The reliefs sought by the applicants in various O.As are to be considered and the same are as under :

(a) O.A. No. 270/2006

- (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 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,
- (ii) 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.

(b) O.A. No. 349/2007

- (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.

(c) O.A.493/2007

- (i) to quash Annexure A1 to the extent it refuses the pay of Rs. 2080 on the TRCA of 1640-40-2400 to the applicant;
- (ii) to direct the respondents to protect the pay and TRCA of the applicant on transfer to the post of GDS BPM, Attachakkal, and to fix his basic pay at Rs. 2080/- in the TRCA 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.

(d) O.A. No. 594/2006

- (i) to declare that on transfer of the applicant as GDS MD, Olat BO, he is entitled to get TRCA in the scale of Rs. 1740-30-2640 at the stage he was drawing as GDS MD, Kanakapally immediately before his transfer and that the action of the 1st respondent in reducing the TRCA of the applicant to initial start of the scale on his transfer as GDS MD, Olat is illegal, arbitrary, unauthorised and violative of Articles 14, 16, 23 and Article 300-A of the Constitution of India;
- (ii) to call for the records leading to Annexure A-11 and to set aside the same;
- (iii) to direct the 1st respondent to restore the TRCA of the applicant in the scale of pay of Rs. 1740-30-2640 with effect from 21.08.2003 with annual progression by granting annual increments;
- (iv) to direct the 1st respondent to pay the applicant the arrears of TRCA becoming payable on restoration of the TRCA with annual progression for the period from 22.08.2003 till the date of restoration with annual increments with interest.

51. As provisions of F.R. 22(1)(a)(i) or (ii) are not applicable, prayer for declaration to the effect that the applicant is entitled to have his pay fixed as per F.R. 22(1)(a)(i) or (ii) is rejected. However, it is declared that the TRCA drawn shall be protected and the same fixed in the TRCA applicable to the transferred post and if there is no such stage, the TRCA shall be fixed at the stage below the TRCA drawn, the balance being treated as personal allowance, to be adjusted in future annual increase.

52. All the O.As are disposed of accordingly. No costs."

5. The respondents have agreed that the decision of this Tribunal in the aforesaid OA is in favour of the applicants but they have challenged the same before the Hon'ble High Court of Kerala in WP No. 16376 of 2009 and the same is still pending. This Tribunal has considered same issue later also in OA 383 of 2009 & connected matters - P.V. Suja Beegum & Ors.

Vs. Union of India & Ors., dated 19.11.2009. The operative part of the said order is as under:-

"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."

6. In view of the above position, we hold that these OAs are fully covered by the Full Bench judgment of this Tribunal in OA 270 of 2006 and connected cases (supra) and, therefore, we allow them. In OA 404 of 2009 the respondents shall restore the TRCA of the applicant to Rs. 2080/- in the scale of Rs. 1600-40-2400/- w.e.f. February, 2009 and continue to pay in the same scale with periodical increments. Similarly, in OA 406 of 2009, the respondents shall restore the TRCA of the applicant to Rs. 2010/- in the scale of pay of Rs. 1600-40-2400/- as on February, 2009 and continue to pay in the same scale with periodical increments. The respondents shall comply with the aforesaid directions within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.

(K. NOORJEHAN)
ADMINISTRATIVE MEMBER

"SA"

(GEORGE PARACKEN)
JUDICIAL MEMBER