

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH

Original
Application Nos.
1179/04,
1165/04,
65/05
and 66/05

Jabalpur, this the ~~6th~~ day of ^{May} ~~April~~, 2005

Hon'ble Shri M.P.Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

1. All India Postal Extra Departmental (GDS)
Karmachari Sangh, M.P.Circle
Through its Circle Secretary
Shri K.R.Sharma
S/o Shri Nand Ram Sharma
E.D.Stamp Vendor, Sub Office,
H.E.Hospital, Bhopal.
2. All India Postal Extra Departmental (GDS)
Karmachari Sangh, M.P.Circle
Through its Divisional Secretary
Sagar Division
Shri Ghanashyam Prasad Mishra
S/o Shri B.L.Mishra
E.D.Stamp Vendor
Head PO Sagar Cantt.
3. Dinesh Raibole
S/o Late C.R.Raibole
EDDA, Head Post Office
Sagar Cantt.

Applicants

(By advocate Shri S.Paul)

Versus

1. Union of India through
Its Secretary
Ministry of Communication
Department of Posts
Dak Bhawan
Sansad Marg, New Delhi.
2. Chief Postmaster General



M.P.Circle
Hoshangabad Road
Bhopal.

3. Senior Superintendent of Post Offices
Sagar Division
Sagar Cantt.

Respondents.

(By advocate Shri S.A.Dharmadhkari)

OA No.1165/04

1. All India Postal Extra Departmental (GDS)
Karmachari Sangh, M.P.Circle
Through its Circle Secretary
Shri K.R.Sharma
S/o Shri Nand Ram Sharma
E.D.Stamp Vendor, Sub Office,
H.E.Hospital, Bhopal.
2. All India Postal Extra Departmental (GDS)
Karmachari Sangh, M.P.Circle
Through its Divisional Secretary
Hoshangabad Division
Shri Shyam Pardeshi
S/o Shri Durga Prasad Pardeshi
Hoshangabad Head Post Office
3. Santosh Malviya
S/o Shri Gulab Chand Malviya
EDDA/ADMC and Branch Post Office
Samardha Timarni, Hoshangabad.
4. Kailash Prasad Soni
S/o Shri Prem Lal Soni
EDDA Karakwel Branch Post Office
Sankal, Dist.Hoshangabad.

Applicants.

(By advocate Shri S.Paul)

Versus

1. Union of India through
Its Secretary
Ministry of Communication
Department of Posts
Dak Bhawan
Sansad Marg, New Delhi.



2. Chief Postmaster General
M.P.Circle
Hoshangabad Road
Bhopal.
3. Senior Superintendent of Post Office
Hoshangabad Division
Hoshangabad

Respondents.

(By advocate Shri S.A.Dharmadhkari)

OA No.65/05

1. All India Postal Extra Departmental (GDS)
Karmachari Sangh, M.P.Circle
Through its Divisional Secretary
Shri Inderlal Raikwar
S/o Shri Chaturbhuj Raikwar
Head Post Office
Chhatarpur (MP).
2. All India Postal Extra Departmental (GDS)
Karmachari Sangh, M.P.Circle
Through its Circle Secretary
Shri K.R.Sharma
S/o Shri Nand Ram Sharma
E.D.Stamp Vendor, Sub Office,
H.E. Hospital, Bhopal.
3. Bhagwandas Sharma
S/o Shri Haricharan Sharma
EDDA, Padaria Branch Office
Sub Post Office, Satai.
Tahsil and Dist. Chhatarpur.

Applicants.

(By advocate Shri S.Paul)

Versus

1. Union of India through
Its Secretary
Ministry of Communication
Department of Posts
Dak Bhawan
Sansad Marg, New Delhi.
2. Chief Postmaster General
M.P.Circle
Chhatarpur Road



Bhopal.

3. Superintendent of Post Office
Chhatarpur Division
Chhatarpur

Respondents.

(By advocate Shri S.A.Dharmadhkari)

OA No.66/05

1. All India Postal Extra Departmental (GDS)
Karmachari Sangh, M.P.Circle
Through its Divisional Secretary
Shri Inderlal Raikwar
S/o Shri Chaturbhuj Raikwar
Head Post Office
Chhatarpur (MP).
2. All India Postal Extra Departmental (GDS)
Karmachari Sangh, M.P.Circle
Through its Circle Secretary
Shri K.R.Sharma
S/o Shri Nand Ram Sharma
E.D.Stamp Vendor, Sub Office,
H.E. Hospital, Bhopal.
3. Bhagwandas Sharma
S/o Shri Haricharan Sharma
EDDA, Padaria Branch Office
Sub Post Office, Satai.
Tahsil and Dist. Chhatarpur.

Applicants.

(By advocate Shri S.Paul)

Versus

1. Union of India through
Its Secretary
Ministry of Communication
Department of Posts
Dak Bhawan
Sansad Marg, New Delhi.
2. Chief Postmaster General
M.P.Circle
Chhatarpur Road
Bhopal.
3. Superintendent of Post Office



Chhatarpur Division
Chhatarpur

Respondents.

(By advocate Shri S.A.Dharmadhkari)

ORDER

By Madan Mohan, Judicial Member

Since the issue involved in all the OAs is common and the facts and the grounds raised are identical, for the sake of convenience, these OAs are being disposed of by this common order.

2. OA No.1179/04 will be treated as a leading case in which the applicants have claimed the following reliefs;

- (i) Set aside the notice (Annexure A3) and order dated 17.12.2004 (Annexure A4).
- (ii) Direct the respondents to provide all consequential benefits to the applicants as if the aforesaid orders are never passed.

3. The brief facts of the case are that the applicants 1 & 2 are registered and recognized trade unions and applicant No.3 is the affected employee for whose category the present application is being preferred in representative capacity. The department earlier decided to reduce the Time Rate Continuity Allowance (TRCA) payable to Extra Departmental Agents (now re-designated as GD Sevaks) working in the respondent department. The applicants and other similarly situated trade unions assailed that action by filing original applications before the Tribunal. The present applicants also filed OA No.393/03. These OAs were decided by a common order and recovery was held to be illegal. It was further directed that any recovery already made should be refunded to the employees within two months. Liberty was given to the department that if they intend to reduce TRCA, then a show cause notice should be issued to the affected employees and an



opportunity of hearing be afforded before taking a final decision in the matter. The respondents assailed the decision of the Tribunal by filing W.P.Nos. 5192, 5193 and 5194 of 2004 before the High Court and the High Court decided the aforesaid writ petitions in limine by order dated 19.8.2004. The Hon'ble High Court approved the decision of the Tribunal with a slight modification that in the event any recovery is decided to be made, the effective date of reducing the allowance shall be 28.5.2003 in such case. Sagar Division was not before the High Court. The Sehore Division decided to reduce the TRCA. The Sagar Division for which the present OA is being filed never decided to reduce the TRCA. Accordingly, the cut off date 28.5.2004 is not relevant for any other Division. Subsequently, the respondents issued identical show cause notices as to why the TRCA should not be reduced. The basis for reduction of TRCA has not been mentioned in the notice. In this notice, again the date 28.5.2003 is considered as cut off date, which is not relevant for Sagar Division. The identical representation of the applicants were rejected by a common order (Annexure A4), without application of mind and without assigning any reason. Hence the applicants have filed this OA claiming the aforesaid reliefs.

4. Heard the learned counsel for the parties. It is argued on behalf of the applicants that the writ petitions filed by the respondents were decided by the Hon'ble High Court vide order dated 19th August, 2004 by which the order passed by the Tribunal was upheld with a slight modification that in the event any recovery is decided to be made, the effective date of reducing the allowance shall be 28.5.2003 in such case. The date 28.5.2003 was mentioned with reference to the facts of one case and is not relevant for any other Division. The respondents have not issued any show cause notice to the applicants in compliance with the aforesaid order of the High Court and the Tribunal and they have



passed the impugned order dated 17.12.2004 (Annexure A4) which is apparently illegal. The respondents should have given an opportunity of hearing to the applicants by issuing a show cause notice before passing the impugned order, which they have failed to do. Hence the OAs deserve to be allowed.

5. In reply, the learned counsel for the respondents argued that the action of the respondents is legal and in accordance with law. The issue of fixation of TRCA stands discussed thoroughly in judgment dated 19.8.2004 in W.P.Nos.5192, 5193 and 5194. The points in issue were (i) giving an opportunity of hearing before refixing TRCA and (ii) the cut off date for recovery of excess paid amount is 28.5.2003. The GDS employees were given opportunity by way of notices issued between 25.11.2004 and 30.11.2004. No replies were received till 17.12.04. Hence it was presumed that they have nothing to represent and recovery orders were issued on 17.12.04. The learned counsel further argued that the respondents have issued a valid show cause notice to the applicants. These OAs have no merit and deserve to be dismissed.

6. After hearing the learned counsel for both parties and perusing the records, we find that the Tribunal by a common order dated 6.2.04 passed in OA Nos.622/02, 74/03, 393/03, 560/03 and 865/03 directed the respondents not to make any recovery of the alleged excess payment made to the applicant and in case any recovery has already been made by the respondents, the same shall be refunded to the applicants within 2 months. As regards recalculating their allowances, the respondents were directed to issue show cause notice to the applicants and to give an opportunity of hearing to them before taking a final decision in the matter. We have perused the order passed by the Hon'ble High Court in W.P.Nos. 5192, 5193 and 5194 of 2004, dated 19.8.2004, in which the High Court has held that "the bar regarding recovery



can only be in regard to the period when the employee was unaware that what was paid was a wrong excess payment. Once the employee is put on notice that a particular payment is an excess payment and thereafter the employee receives such excess payment on account of any procedural requirements or any order of Court, necessarily, the employee will have to refund the excess amount received from the date on which he was put on such notice that the payment is in excess. In this case, the employees were put on notice that the payment was in excess on 28.5.2003. Therefore, even if the order dated 28.5.2003 is quashed on the ground that it is opposed to the principles of natural justice, any subsequent order that may re-fix the allowance will be effective from 28.5.2003. The equitable principle evolved by the Supreme Court in Sahib Ram and other cases will not apply in respect of any excess payment received by the employee after he is put on notice that the payment made is in excess of what is due". We have also perused the order dated 1st February 2004, passed by the High Court in M.C.C.No.2054 and 2045 of 2004 in which the Hon'ble High Court has held that "the date 28.5.2003 was referred with reference to the facts of one case." Therefore, the cut off date is different for different divisions. The Hon'ble High Court has passed the order with regard to Sehore Division only and the High Court has clarified the position regarding the cut off date thereafter. We have perused the impugned order dated 17.12.04 which cannot be said to be legal in view of the observations made earlier. Hence it is liable to be quashed. We have perused Annexure A3 show cause notice, which cannot be said to have been issued in compliance with the order of the High Court.

7. In view of the foregoing discussion, we quash and set aside the impugned order dated 17.12.04 and the show cause notice and direct the respondents to refund any amount recovered from



the applicants within three months from the date of receipt of a copy of this order.

8. With the above directions, all the four OAs are disposed of. No costs.



(Madan Mohan)
Judicial Member



(M.P. Singh)
Vice Chairman

aa.

कृतंकन सं ओ/न्या.....जबलपुर, दि.....

पतिलिपि प्रतिलिपि:-

(1) सचिव, उच्च न्यायालय, जबलपुर

(2) सचिव, उच्च न्यायालय, जबलपुर

(3) सचिव, उच्च न्यायालय, जबलपुर

(4) सचिव, उच्च न्यायालय, जबलपुर

सूचना एवं जागरण

S. P. Singh (V)
S. P. Singh (V)
S. P. Singh (V)

जबलपुर

used
88
115/28