

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 18th day of April, 2011

CORAM:

**HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)**

Original Application No. 175/2008

Dilip Singh
s/o Shri Sohan Singh
r/o Village and Post Barakhur
via Jaghina, Distt. Bharatpur and
presently working as Gramin
Dak Sewak Branch Post Master,
Branch Post Office, Pipala (Jaghina),
Distt. Bharatpur.

..: Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India
Through the Secretary to the Government of India,
Department of Posts,
Ministry of Communication &
Information Technology,
Dak Bhawan,
New Delhi
2. Chief Post Master General,
Rajasthan Circle,
Jaipur.
3. Superintendent of Post Offices,
Bharatpur Postal Division,
Bharatpur.
4. Assistant Superintendent of Post Offices,
Bharatpur Sub Division,
Bharatpur.

.. Respondents ..

(By Advocate: Shri Gaurav Jain)

Original Application No. 253/2007

Rameshwar Dayal Sharma
 s/o Shri Bhajan Lal Sharma,
 r/o village and Post SInnsini (Kumher),
 Distt. Bharatpur and
 presently working as Gramin Dak Sevak,
 Branch Post Master/Mail Carrier/Delivery Agent,
 Badangarh Branch Post Office under
 Deeg Head Post Office,
 District Bharatpur.

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India
 Through the Secretary to the Government of India,
 Department of Posts,
 Ministry of Communication &
 Information Technology,
 Dak Bhawan,
 New Delhi
2. Chief Post Master General,
 Rajasthan Circle,
 Jaipur.
3. Superintendent of Post Offices,
 Bharatpur Postal Division,
 Bharatpur.
4. Sub Divisional Inspector (Post),
 Nadbai Sub Division,
 Nadbai, District Bharatpur

.. Respondents

(By Advocate: Shri B.N.Sandu)

Original Application No. 259/2008

Prakash Chand Tiwari
 s/o Shri Devi Ram Sharma
 r/o Basan Gate Bharatpur,
 presently working as Gramin Dak Sevak,
 Mail Carrier Sewar Sub Post Office
 (Bharatpur Head Post Office),
 District Bharatpur.

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India
 Through the Secretary to the Government of India,
 Department of Posts,
 Ministry of Communication &
 Information Technology,
 Dak Bhawan,
 New Delhi
2. Chief Post Master General,
 Rajasthan Circle,
 Jaipur.
3. Superintendent of Post Offices,
 Bharatpur Postal Division,
 Bharatpur.
4. Assistant Superintendent of Post Offices,
 Bharatpur Sub Division,
 Bharatpur.

.. Respondents

(By Advocate: Shri Tej Prakash Sharma)

Original Application No. 295/2009

Mahendra Kumar Gera
 s/o Shri Jhangi Ram
 r/o Atal Bandh Mandi,
 Aman Mohalla, Bharatpur,
 presently working as Gramin Dak Sevak,
 Branch Post Master,
 Dhanwara (Kumher) Post Office,
 Distt. Bharatpur.

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India
Through the Secretary to the Government of India,
Department of Posts,
Ministry of Communication &
Information Technology,
Dak Bhawan,
New Delhi
2. Chief Post Master General,
Rajasthan Circle,
Jaipur.
3. Superintendent of Post Offices,
Bharatpur Postal Division,
Bharatpur.

.. Respondents

(By Advocate: Shri Gaurav Jain)

ORDER (ORAL)

All the OAs involving similar question of law and facts are being decided by this common judgment.

2. The applicants preferred the aforesaid OAs seeking writ, order or direction directing the respondents to protect their allowances.
3. On 15.4.2011, the matter was argued at length by the respective parties and during the arguments, the learned counsel appearing for the applicant submitted that the controversy involved in these OAs is covered by the order passed by the Central Administrative Tribunal, Ernakulam Bench in the case of

R.P.Hrishikeshan Nair and Ors. vs. Union of India and Ors., reported at 2009 (2) SLJ (CAT) 281. Copy of the judgment rendered by the CAT-Ernakulam Bench was also made available to the learned counsel appearing for the respondents to study whether the controversy involved in these OAs is covered by the aforesaid judgment or not.

4. Today, the matter came up for further hearing. The respondents after studying the judgment are unable to satisfy this Tribunal as to how the controversy involved in these OAs is not covered by the above judgment since in all the aforesaid OAs, the applicants mainly sought relief to protect the allowances with all consequential benefits including arrears.

4. We also carefully examined the judgment rendered by the CAT-Ernakulam Bench in the case of R.P.Hrishikeshan Nair (supra). In the present OAs the applicants were also appointed as Extra Departmental Agents now designated as Gramin Dak Sevak.

5. The controversy arose when the respondents without any base reduced the allowance of the applicants in spite of the fact that the applicants are entitled for the same because post offices were closed in the interest of department, whereas applicants are being penalized by way of posting far away from their native places and further reducing their allowances. The same controversy was before the CAT-Ernakulam and Ernakulam Bench held that as per the rules 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 and In so far as transfer from one post to the same post with different 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 of the lower TRCA). In so far as transfer from one post to a different post with same TRCA and within the same recruitment unit, protection of TRCA is admissible and in respect of transfer from one post to another within the same recruitment unit but with different TRCA (i.e. from higher to lower) protection of TRCA is admissible. In so far as transfer from a post carrying lower TRCA to the same category to another category, but carrying higher TRCA, the very transfer itself is not permissible. Such induction should be as fresh recruitment.

6. The CAT-Ernakulam Bench after thoroughly considering the circulars and orders issued by the respondents in the light of the judgment rendered by the Hon'ble Apex Court and observed 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 Different Post but with same TRCA and within the same Recruitment Unit, as in the case of (a) above, protection of TRCA is admissible.

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- (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 v. Raji OI, 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 another 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.

7. In the light of the judgment passed by the Ernakulam Bench, the reliefs claimed in the present OAs are to be considered which are reproduced as under:-

OA No.175/2008

- (i) That the entire record relating to the case be called for and after perusing the same respondents may be directed not to reduce the allowance of the applicant and applicant be allowed to draw his allowance as Rs. 1650/- with yearly increments as being drawn by him up to 28/2/2004 in the scale Rs. 1545-25-2020 instead of scale Rs. 1280-35-1980 with all consequential benefits including arrears of pay and allowances by quashing provisions of letter dated 11/10/2004 to the extent of not allowing protection on specific request with the letter dated 1/4/2008 (Annexure A/1).
- (ii) That the respondents may be further directed not to treat the applicant as fresh appointee and to count his services with effect from 5/7/2001 by counting period

1/3/2004 to 5/3/2004 and 9/3/2007 to 30/4/2007 as spent on duty for all purposes and not to treat the applicant as provisional appointee on the present post of GDSBPM Pipala by issuing order in favour of the applicant.

OA No.253/07

- (i) That the entire record relating to the case be called for and after perusing the same respondents may be directed not to reduce the allowance of the applicant and applicant be allowed to draw his allowance as Rs. 1800/- plus admissible D.A. as being drawn by him up to 15/12/2005 with all consequential benefits including arrears with effect from 15/12/2005 to 20/5/2006 as the case may be.
- (ii) That the respondents be further directed to release pay and allowance for the period 15/12/2005 to 19/5/2006 in which applicant remained out of job and declared surplus.

OA No.259/2008

- (i) That the respondents be directed not to reduce the allowance of the applicant and applicant be allowed to draw his allowance as Rs. 1890/- plus admissible D.A. with yearly increased as being drawn by him since last six years in the scale of Rs. 1740-30-2640 by quashing memo dated 14/3/2008 (Annexure A/1) with the instructions 3(iii) dated 11/10/2004 (Annexure A/11) with all consequential benefits including arrears with effect from 26/9/2004.
- (ii) That respondents be further directed to release pay and allowance for the day 26/9/2004 (Sunday) treating the same as spent on duty being Sunday by quashing decision of treating as break in service.

OA No.295/2009

- (i) That the respondents may be directed to protect the allowances of the applicant as Rs. 2375/- w.e.f. 16/6/2004 instead of Rs. 1980/- with yearly increase by modifying memo dated 11/1/2007 at Annexure A/10 and by quashing letter dated 3/5/2007 (Annexure A/1) with all consequential benefits including arrears with effect from 16/6/2004.

8. The CAT-Ernakulama Bench observed in the above referred case that as provisions of F.R. 22(I) (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(I) (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.

9. Since the controversy in the present cases is squarely covered by the controversy decided by the Ernakulam Bench, as such, 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.

10. All the OAs stand disposed of in the aforesaid terms with no order as to costs.

11. The registry is directed to place a copy of this judgment in each case file.

(ANIL KUMAR)
Admv. Member

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(JUSTICE K.S.RATHORE)
Judl. Member