

Reserved
(On 11.10.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the **06th** day of **December** 2018

Original Application No 330/01496 of 2010

Hon'ble Mr. Gokul Chandra Pati, Member – A
Hon'ble Mr. Rakesh Sagar Jain, Member – J

1. Sri Prakash Pandey, S/o Krishna Pandey, R/o Village and Post Office, Pauhar, District Banda.
2. Ghanshyam Tripathi, S/o Baldev Prasad Tripathi, R/o Village and Post Office Titchira, District Chitrakoot.
3. Rajawa Yadav, S/o Surya Das, R/o Village and Post Office, Balan, District, Banda.

. . . Applicants

By Adv: Sri K.R. Singh

V E R S U S

1. Union of India through the Secretary, Department of Posts and Telegraph, Dak Bhawan, Parliament Street, New Delhi.
2. Post Master General, Kanpur.
3. The Superintendent of Post Office, Banda Division, District Banda.
4. Chief Post Master General, Uttar Pradesh Circle, Lucknow.

. . . Respondents

By Adv: Sri Raghuvendra Pratap Singh

O R D E R

By Hon'ble Mr. Gokul Chandra Pati, Member – A

The applicants have filed this OA under section 19 of the Administrative Tribunals Act, 1985 (in short Act) and have prayed for the following reliefs:-

- “i. Issue a writ order or direction, directing the respondents to pay the same pay scale as that is given to departmental employees.*
- ii. Issue a writ order or direction, treating persons appointed under Gramin Dak Sewak Scheme as a full time employees under the Department.*
- iii. Issue a writ order or direction for quashing Revised Time Related Continuity Allowance as being violative of Article 14 of the Constitution.”*

2. The facts of the case in brief are that three applicants of this OA are working as Gramin Dak Sevak (in short GDS) and discharging their duty at different places. Their grievance is that although they are being entrusted with the duty of 8 hours daily instead of maximum permissible daily engagement of 5 hours for the GDS as per the rules and discharging their duty against regular Group D vacancy, they are being paid pay as TRCA at a rate much less than the pay being paid to regular employees of the department doing the same work. The applicants claim that this is a violation of the Article 14 of the Constitution of India and have prayed for equal pay for equal work.

3. A Civil Miscellaneous Application No. 4232/2010 (in short MA) has also been filed by the applicants under the rule 4(5) of the Central Administrative Tribunal (Rules of Practice) 1987 (as stated in the MA) to permit the applicants to file the OA jointly. The MA, which should have been under the rule 4(5) CAT (Procedure) Rules, 1987, has not been decided by the Tribunal. On 8.10.2010, learned counsel for the respondents raised a preliminary objection about maintainability of the OA, stating that OA challenges a policy of the respondents and it has been filed on behalf of all the employees in the GDS cadre. On this issue, both the parties were directed to file objection and Rejoinder on this issue for a decision, observing that the prayer made in this OA has far fetching effect in the service. Accordingly, the Supplementary Affidavit was filed by the applicants and Counter Affidavit was filed by the respondents. The applicants filed Rejoinder and in reply to the Rejoinder the respondents filed Supplementary Counter Affidavit (in short SCA) on 22.6.2012 and another SCA filed on 14.12.2012. Supplementary Rejoinder has also been filed by the applicants on 13.12.2012. It is seen that in the Counter Affidavit and SCAs filed by the respondents no point has been raised on the preliminary objection regarding maintainability of the OA. In the Counter and SCAs, the respondents have opposed the OA on merit mainly on the ground that the applicants are not engaged more than 5 hours per day and that the applicants' working hour and duty are different from regular employees and they are governed under separate rules.

4. We heard learned counsels for both the parties who broadly reiterated the contentions in their respective pleadings. Learned counsel for the applicants has filed "written submission". Learned counsel for the respondents has also filed his "written argument", but no issue regarding

maintainability of the OA was raised by the learned counsel for the respondents.

5. Since the issue of maintainability of the OA had been raised by the respondents on the first date, we would like to deal with the issue first before examining the merits of the case. It is obvious that the OA challenges the respondent-department's policy regarding the rules governing the engagement of the GDS for discharging various work of the department. But it is seen from the para 8 of the OA (which specifies the reliefs prayed for in the OA), there is no specific rule or the order which has been impugned in this OA, although it prays for quashing of the revised Time Related Continuity Allowance (in short TRCA). Further, the prayer has been made on behalf of all the GDSs without furnishing any document to prove that the applicants have necessary authority to represent all the GDSs before this Tribunal.

6. It is a settled law that this Tribunal has no jurisdiction to consider the PILs. The disputes relating recruitment or service conditions as per the details under section 14 of the Act can be adjudicated by the Tribunal, which include the general policy or the rules affecting the service conditions of the applicant. Section 14(1) of the Act states as under:-

“14. Jurisdiction, powers and authority of the Central Administrative Tribunal.—(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to—

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning—

(i) a member of any All-India Service; or

(ii) a person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any defence services or a post connected with defence, and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation [or society] owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation [or society] or other body, at the disposal of the Central Government for such appointment.

§[Explanation.—For the removal of doubts, it is hereby declared that references to “Union” in this sub-section shall be construed as including references also to a Union territory.]”

Section 19(1) of the Act states as under:-

“19. Applications to tribunals.—(1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance. Explanation.—For the purposes of this sub-section, “order” means an order made—

(a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation [or society] owned or controlled by the Government; or

(b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation [or society] referred to in clause (a).”

From above, it is clear that the application under section 19 of the Act can be made by a person, if he is aggrieved by any order pertaining to the matter within jurisdiction of the Tribunal as specified under section 14 of the Act. There is no scope for a person to file application on behalf of other persons unless he is duly authorized for such action. Thus the applicants can impugn a policy or rule by which they are aggrieved, but they cannot come before the Tribunal with a general grievance without being authorized for the purpose.

7. In view of the position as discussed above, this OA is not maintainable under the law as it stands for all the GDSs under the respondents. However, there is no difficulty to adjudicate the OA, if the reliefs prayed for are considered limiting these reliefs to the applicants, since it is an issue relating to the service condition of the applicants.

8. Accordingly, we hold that the OA is maintainable under section 19 read with the section 14 of the Administrative Tribunals Act, 1985 if the reliefs as applicable to the applicants only are considered. Accordingly, the MA under the rule 4(5) of the CAT (Procedure) Rules, 1987 is allowed permitting the applicants to jointly pursue the OA as the reliefs sought for in the OA and the cause of action are common for all the applicants and we proceed to consider the merits of the OA.

9. The grounds mentioned in the OA for filing the OA are the following:-

- (i) Action of the respondents to treat the GDS employees as part time employees belonging to different category, is arbitrary and unreasonable.
- (ii) The work done by the GDSs including the Branch Post Masters who are GDSs, is same as the work done by the departmental employees. Hence, the principle of ‘equal pay for equal work’ is applicable in this case and not allowing equal pay as the regular employees of the department is violative of the Article 14 and 16 of

the Constitution of India. Hence, the TRCA allowed for the GDSs instead of regular pay scale violates Article 14 of the Constitution.

- (iii) The TRCA being given to the GDSs is on the basis of the pro-rata basis is a violation of the Article 14 of the Constitution of India. Similarly, section VI of the GDS (Conduct and Employment) Rules, 2001 is violative of the Article 14 of the Constitution of India.

10. The respondents have filed Counter Affidavit stating the following:-

- (i) Government of India had set up fourth successive one man Committee headed by Mr. Justice Charanjeet Talwar to go into the service conditions of the GDSs working in the Department of Post. After a detailed study, the Committee submitted its report to Government. The recommendations made by the Committee in respect of revision of their remuneration is under consideration of Government.
- (ii) GDS employees are governed by set of the service rules different from the rules applicable for the regular employees. GDSs are also eligible for appointment as regular employee subject to the provisions in the respective Recruitment rules including the Group D employees. GDS are to work for minimum 3 hours and maximum 5 hours per day, where as a regular employee is to work for 8 hours a day. Hence, the GDS cannot be treated as regular employee.
- (iii) As per the provisions of the GDS (Conduct and Employment) Rules, 2001, a GDS does not perform duty beyond 5 hours daily and he needs to have alternative independent source of income preferably from landed property. They are part time employees of the department.
- (iv) The documents enclosed with the OA are not proof of his working for 8 hours daily. The examples of more than 8 hours of working are not correct. In no case, the GDSs have working hours beyond 5 hours in a day. The averments in the OA regarding the workload are misleading.

11. The applicants have filed Rejoinder denying the averments in the Counter Affidavit and reiterating the contentions of the OA. It is stated that instead of filling up the regular vacancies, the respondents are getting the

work done through the GDSs. The respondents have filed Supplementary Counter Affidavit reiterating the averments in the Counter Affidavit.

12. We heard learned counsel for the applicants who stressed on the fact that the applicants, as GDS, are doing duty of 8 hours daily with the workload similar to departmental employees and the applicants are working against vacant regular posts attending to the same duty. Hence, he argued that the applicants are entitled for the same pay as the regular employees. Learned counsel for the respondents argued that the duty hour of the GDSs are below 5 hours in a day as per the rules and it is incorrect to say that they are working for more than 5 hours daily. He also reiterated the averments in the Counter Affidavit.

13. The status of the GDS employees has been examined by Hon'ble Apex Court in the case of Y.Najithamol & Ors vs Soumya S.D.& Ors (indiankanoon.org/doc/14703218), in which it was held as under:-

“In the case of Union of India v. Kameshwar Prasad[2], this Court held as under:

“2. The Extra Departmental Agents system in the Department of Posts and Telegraphs is in vogue since 1854. The object underlying it is to cater to postal needs of the rural communities dispersed in remote areas. The system avails of the services of schoolmasters, shopkeepers, landlords and such other persons in a village who have the faculty of reasonable standard of literacy and adequate means of livelihood and who, therefore, in their leisure can assist the Department by way of gainful avocation and social service in ministering to the rural communities in their postal needs, through maintenance of simple accounts and adherence to minimum procedural formalities, as prescribed by the Department for the purpose. [See: Swamy's Compilation of Service Rules for Extra Departmental Staff in Postal Department p. 1.]”

Further, a three-judge Bench of this Court in the case of The Superintendent of Post Offices & Ors. v. P.K. Rajamma[3] held as under:

“It is thus clear that an extra departmental agent is not a casual worker but he holds a post under the administrative control of the State. It is apparent from the rules that the employment of an extra departmental agent is in a post which exists "apart from" the person who happens to fill it at any particular time. Though such a post is outside the regular civil services, there is no doubt it is a post under the State. The tests of a civil post laid down by Court in Kanak Chandra Dutta's case (supra) are clearly satisfied in the case of the extra departmental agents.” (emphasis laid by this Court)

A perusal of the above judgments of this Court make it clear that Extra Departmental Agents are not in the regular service of the postal department, though they hold a civil post.”

Thus, the Extra Departmental Agents or the GDSs are not in regular service of the postal department and as per the rules, they are to be engaged on a part time basis. As stated by the respondents in the Counter

Affidavit, the GDSs are governed by a separate rule i.e. the GDS (Conduct and Employment) Rule, 2001 under which they are to be engaged for maximum 5 hours per day. Thus the terms and conditions of the service of the GDSs are different from the terms and conditions of service.

14. The applicants have averred that they are being engaged for same work as the regular employees as in the case of the applicant no. 1 who is working as a Branch Post Master in Pauhar, he is the only employee in Pauhar and he is doing the work of Branch Post Master and GDS mail packer since last 18 years. He is to distribute the mail in 14 villages which takes 5 hours daily on bicycle, but he has to sit in the post office for 3 hours daily. These facts come out clearly from the inspection report dated 28.5.2010 (Annexure A-5 to the OA). Similarly, the applicant no. 2 is working as a Branch Post Master as well as mail distributor for which he is working for 8 hours daily. The applicant no. 3 is employed as GDS packer and is currently posted against Group D departmental post. He also works regularly for 8 hours per day. Thus, the applicants' workload is same as the regular employees of the department. But they are being paid TRCA which is much less than the pay being given to the regular employees.

15. It is noticed that the applicants have not furnished any document in support of their contention that they are being engaged for more than 5 hours per day. Their claim that they are being engaged for 8 hours a day is not substantiated by any evidence on record. An inspection report dated 28.5.2010 (Annexure A-5) has been enclosed with the OA by the applicants. On perusal of the said inspection report reveals that it does not have anything to prove that the applicants are being engaged for more than 5 hours every day. Similarly, other inspection report enclosed with the OA do not mention anything to prove that the applicants are being engaged for more than 5 hours per day. The applicants have furnished "Due Mail and Sorting List of Badausa S.O" which is enclosed with the Rejoinder. It shows the working hours from 800 hrs to 16 hrs and other details. It does not show that the working hour of any of the applicant is 8 hours or more than 5 hours. There is no document in support of the contention of the applicants that they are being engaged for more than 5 hours.

16. Learned counsel for the applicant also submitted 'written submissions' enclosing the following judgments in support of the applicants' case:-

- i. AIR 1998 SC 1504 – Jaipal and others vs. State of Haryana and others (alongwith other connected cases)*
- ii. (2008) 1 SCC 586 – Union of India vs. Dineshan K.K.*
- iii. (2008) 12 SCC 219 – State of Kerala vs. B. Renjith Kumar and others*
- iv. (2010) 7 SCC 739 – Uttarpradesh Land Development Corporation and another vs. Mohd. Khursheed Anwar and another*
- v. (2010) 12 SCC 44 – Haryana State Industrial Development Corporation vs. Shakuntla and others (alongwith other connected cases)*

17. In the case of Jaipal (supra), the issue was parity of pay between the instructors working for the Adult and Non-formal Education Scheme under Govt. of Haryana and the squad teachers who were also imparting education to illiterates like the instructors. After the squad teachers were regularized by Government giving them the pay scaled applicable for the primary school teachers, the instructors also claimed similar benefit. In this case, undisputedly, the instructors were full time employees and they perform similar duty as the squad teachers. It was held the doctrine of 'equal pay for equal work' was applicable in this case irrespective of the fact that both the categories of the employees were appointed on different procedure.

18. In the case of Dineshan K.K. (supra), the Ministry of Home Affairs had decided to rationalize the rank structure in central paramilitary forces. The issue was whether the benefit of equal pay for the Radio Mechanic in Assam Rifles can be refused after such decision of the Ministry. It was held that after such decision by the authorities, the discrimination with regard to the pay of the Radio Mechanic of Assam Rifles cannot be perpetuated, in absence of any specific plea regarding difference in duties between the Radio Mechanics of Assam Rifles with that of other Central paramilitary forces.

19. In the case of B. Renjith Kumar (supra), the dispute was between two different cadres of judicial officers whose duties were similar and who

were enjoying same pay scale till revision of pay scale of judicial officers in 1998. It was held that looking into the nature of duties and functions, they cannot be treated differently.

20. In the case of Mohd. Khursheed Anwar (supra), the respondents were appointed on contractual basis although some regular posts were vacant. It was held that the respondents cannot have claim to the vacant post since they were appointed separately. But it was held that since there was no material produced to show any difference in duties of the respondents with the duties of Assistant Engineers, the respondents were entitled for the minimum of the pay scale prescribed for the Assistant Engineers.

21. In the case of Shakuntala (supra), it was held by Hon'ble Apex Court that Article 14 applies to Government Policy, which should be fair non-arbitrary. Every state action must be informed by reason and an act uninformed by reason would be arbitrary.

22. In the judgments discussed in paragraphs from 17 to 20 above, it is held by Hon'ble Apex Court that the principle of equal work would apply if the nature of duties between two categories of employees is same or similar. As discussed earlier, there is no evidence with the pleadings on record in this OA to prove that the applicants, as GDS, are doing duties which are similar to the duties of the regular employees of the department. There is no evidence furnished to show that they are doing duty beyond 5 hours per day and to contradict the averment of the respondents in their pleading. Hence, the ratio of the decisions as per the judgments cited by the applicants' counsel will not apply to the present OA. Moreover, the specific rules according to which the applicants' service conditions are regulated, have not been impugned in this OA. Hence, it cannot be said that these rules for governing the service conditions of the applicants are arbitrary or violate the Article 14 of the Constitution of India.

23. In view of the facts and circumstances as discussed above, we do not find any merit in the OA, which is dismissed as a result. No order as to costs.

(Rakesh Sagar Jain)
Member (J)

(Gokul Chandra Pati)
Member (A)

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