

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.180/00475/2014

Tuesday, this the 3rd day of April, 2018

CORAM:

Hon'ble Mr.U.Sarathchandran, Judicial Member
Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member

P. Hareesh,
Aged 34 years, S/o. Narayanan Nair,
Gramin Dak Sevak Mail Carrier,
Kadanchery EDSO, Malappuram District,
Residing at 'Cherooli House', Nariparamp P.O.,
Malappuram District – 679 573. **Applicant**

(By Advocate – Mr. Shafik M.A.)

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**

[By Advocate – Mr. N. Anilkumar, Sr. PCGC (R)]

This Original Application having been heard on 20.03.2018, the Tribunal on 03.04.2018 delivered the following:

O R D E R

Per: MR. U.SARATHCHANDRAN, JUDICIAL MEMBER -

This is the fourth time the applicant is having tryst with this Tribunal. He was working in the Kadanchery Sub Post Office as a Gramin Dak Sevak Mail Carrier (GDS MC for short) appointed on a provisional basis from 15.9.2003 and had been working uninterruptedly. He approached this Tribunal for the first time with OA No. 764 of 2006 when his request for considering him in the regular post of GDS MC in that post office evoked no

reply and when he faced a threat of being thrown out. Vide Annexure A1 order dated 25.6.2007 passed in that OA he was permitted to continue in as GDS MC in the same post office till a regular selection was made. As he had completed more than three years of service as a provisional GDS MC invoking the provisions of DG Posts letter No. 43-4/77-Pen. dated 18.5.1979 the applicant approached this Tribunal again with OA No. 610 of 2007. During the pendency of that case the applicant was selected to the regular post vide Annexure A2 order. Therefore, OA No. 610 of 2007 was closed vide Annexure A3 order dated 10.6.2008 granting him liberty to take up his grievance of counting the earlier Time Related Continuity Allowance (for short TRCA) for fixing the pay in the regular post. On his appointment as GDS MC vide Annexure A2 he was entitled to draw increment. As he was appointed as a provisional hand with effect from 15.9.2003 he claimed increment with effect from September, 2004 at the specified rate of Rs. 25/- but the respondents did not give any increments although he had completed more than 4 years service in the post even before Annexure A2 order. The applicant states that as per the Talwar Committee's recommendation the TRCA attached to the post he was holding was Rs. 1,545-25-2,020/-. The respondent was giving only a salary of Rs. 1,545/- without granting any increments. However, from December, 2007 the applicant was placed in the TRCA of Rs. 1,220-20-1,600/- and was being paid only minimum of the same. He was not paid any increments or bonus, payable to him and hence he approached this Tribunal again with OA No. 516 of 2009 for a declaration of his entitlement to increments and bonus with effect from 15.9.2003. There were varied opinions existing in the earlier decisions of this Tribunal

regarding the aforesaid issue, and therefore, the aforesaid OA was referred to a Larger Bench vide Annexure A7 order dated 3.6.2010. The Larger Bench vide Annexure A8 order dated 13.8.2010 decided the issue holding that provisionally appointed GDS who have been appointed following all the procedures and formalities prescribed for regular appointment and who have completed one year or more service would be entitled to TRCA and productivity linked bonus that were awarded to the regular GDS. Based on Annexure A8 decision of the Full Bench OA No. 516 of 2009 was allowed vide Annexure A9 order dated 17.9.2010 and accordingly, the applicant was granted arrears of increment from 5.10.2004 to 7.12.2007 vide Annexure A10 order of respondent No. 2 which has granted arrears of bonus also. The applicant states that however no orders as to protection of his pay when he joined the post again in 2007 was passed by the respondents in spite of a specific request. The applicant has submitted periodic representations for protection of his pay from the time of his earlier engagement but no action was taken by the respondents. This has resulted in subjecting him to draw only a lower TRCA. Hence, he has approached this Tribunal with the present OA seeking the relief as under:

“(i) To call for the records relating to Annexure A1 to A14 and to declare that the applicant is entitled for fixation of his TCRA as per illustration (B) under Sub Clause (II) of Clause 3 of A-14 instructions, in the scale of Rs. 1220-20-1600, and to direct the respondents to fix his pay in the scale of Rs. 1220-20-1600, reckoning the stage in the scale of pay of Rs. 1545-25-2020, with effect from the date of appointment, with all consequential benefits including arrears of such fixation, with 18% penal interest;

(ii) To direct the respondents to reckon the TRCA which the applicant was drawing with the increments in the scale of TRCA of 1545-25-2020 as on the date of A-2 appointment order and to refix the TRCA of the applicant by protecting the TRCA drawn as per the implementation of prayer (i) with effect from the date of drawal of TRCA as per A-2 appointment;

(iii) To direct the respondents to reckon the service of the applicant as GDSMC Kadancheri with effect from 15.09.2003 as qualifying regular service for all

purposes;

(iv) To issue such other appropriate orders or directions this Honourable Court may deem it, just and proper in the circumstances of the case; and

(v) To grant the costs of this Original Application.”

2. Respondents filed reply contending that the applicant is not a provisional appointee but was only engaged to discharge the functions of the regular incumbent who retired from service, purely on a stop gap arrangement without observing the normal recruitment formalities. According to the respondents they cannot reckon the service rendered by the applicant with effect from 15.9.2003 as he was not appointed to any post from that date. It is further contended by the respondents that the reduction in TRCA of the post was the result of the periodical review of work in the Kadanchery Branch Post Office conducted in 2007. The present TRCA of the post is Rs. 2,870-50-4,370/- corresponding to the work load of more than three years up to 3 hours 45 minutes as per Annexure R2 work load calculation sheet. TRCA of Rs. 1,220-50-1,660/- was the pre-revised TRCA of Rs. 2,870-50-4,370/-. At the time of appointment of the applicant the post of GDS MC Kadanchery was having the TRCA of Rs. 1,220-20-1,600/- which was revised with effect from 1.1.2006 to Rs. 2,870-50-4,370/-. As the applicant was appointed on stop gap arrangement he is not now eligible for annual increment or bonus for the service rendered by him from 15.9.2003 to 5.12.2007. It is further stated by the respondents that the service rendered by him prior to 6.12.2007 cannot be counted for subsequent periods “even though he was selected for a regular post as per CAT orders”.

3. A rejoinder was filed by the applicant. It is stated by the applicant that it was held in the Full Bench decision dated 14.11.2008 in OA No. 270 of 2006 that in so far as transfer from one post to the same post with different TRCA and within the same recruitment division the administrative instruction provide for protection of the same vide order dated 11.10.2004, subject only to the maximum of the TRCA in the transferred unit (i.e. the maximum in the lower TRCA). The applicant points out that the aforesaid administrative instruction dated 11.10.2004 has been produced by him as Annexure A14.

4. Additional reply statement was filed by the respondents reiterating the contentions in the reply statement.

5. We have heard Shri Shafik M.A. learned counsel appearing for the applicant and the learned Central Government counsel appearing for the respondents. We have also perused the record including the Full Bench decision of this Tribunal dated 14.11.2008 in OA No. 270/2006 and connected cases.

6. The operative portion of the full Bench decision in OA No. 270/2006 and connected cases reads as follows:

“51.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.”

Shri Shafik M.A. learned counsel for the applicant submitted that this position has been clearly mentioned in Annexure A14 administrative instructions issued by the Department of Posts on 11.10.2004 also wherein by way of illustration B the similar situation as in the case of the applicant has been narrated. The illustration B in Annexure A14(i) regarding the revision of TRCA on the basis of change in work load reads:

“b. EDMC is at the stage of Rs. 1695/- in the 2nd TRCA (Rs. 1545-25-2020/-) as on 1.4.2004, in case of reduction in workload, he will be placed in 1st TRCA (Rs. 1220-20-1600/-) at the maximum of the TRCA i.e. Rs. 1600/- only. No personal allowance would be admissible in such cases.”

7. The thrust of the contentions of learned counsel appearing for the Central Government was that the applicant cannot claim the benefit of the protection of his previous TRCA since his engagement as GDS can be considered as regular only with effect from 6.12.2007. According to the respondents the engagement prior to 6.12.2007 was purely a stop gap arrangement and hence cannot be treated even as a provisional appointment. However, we are of the view that such a contention is not sustainable because this issue has already been adjudicated by this Tribunal in OA No. 516 of 2009 wherein the applicant here in was claiming increment and productivity linked bonus. Based on the Full Bench decision in Annexure A8 that provisionally appointed GDS who have been appointed following the procedures and formalities for regular appointment and who have completed one year or more service would be entitled for increment and also productivity linked bonus OA No. 516 of 2009 filed by the applicant was allowed by Annexure A9 order. It is significant to note that Annexure A9 order of this Tribunal was complied with by respondent No. 2 in respect of

the applicant herein by granting him arrears of increment from 5.10.2004 to 7.12.2007. Annexure A10 reads :

“DEPARTMENT OF POSTS, INDIA
OFFICE OF THE SUPERINTENDENT OF POST OFFICES,
TIRUR DIVISION, TIRUR – 676 104.,

Memo No. WP/05/09 dated at Tirur-676104 the 30.12.2010

In compliance with the orders (dated 17.09.2010) of Hon. CAT, Ernakulam Division Bench in OA 516/2009 filed by Shri. P. Hareesh, sanction of the Superintendent of Post Offices, Tirur Division, Tirur – 676104 is hereby accorded for the payment of Rs. 23919/- (Rs. Twenty three thousand nine hundred and nineteen only) being the arrears of increment from 05.10.2004 to 07.12.2007 and arrears of PLB for the years from 2003-2004 to 2007-2008 (arrears of increment Rs. 3536 + arrears of bonus Rs. 20383 = Rs. 23919/-) to Shri P. Hareesh, GDSMC, Kadancheri.

Sd/-
M.P. Nirmal Kumar
Superintendent.”

8. It appears surprising and strange to us that even after complying with Annexure A9 order the respondents are again taking a view that the applicant's appointment from 15.9.2003 to 6.12.2007 was a stop gap arrangement. Indeed Annexure A10 compliance order acts as estoppel on the part of the respondents to raise such contentions. The issue cannot be re-agitated by the respondents since the principles of *res judicata* will apply especially in the light of the fact that Annexure A8 order of the Full Bench and Annexure A9 order of the Division Bench have adjudicated the issue.

9. Suffice it to say that in the above circumstances the applicant is entitled to the benefit of Full Bench order of this Tribunal in OA No. 270/2006 declaring that the TRCA drawn shall be protected and the same is fixed in the TRCA applicable to the transferred post and if there is no such stage the TRCA shall be fixed at the stage lowest and the balance shall be treated as personal allowance to be adjusted in future increments. Annexure A14

administrative instructions also reiterate this position. We hold that the respondents are bound by the above decisions of this Tribunal and also Annexure A14 administrative instructions wherein the applicant's case is similar to the illustration B (extracted above). Ordered accordingly.

10. In the result the OA is allowed. The interest payable to the applicant shall be only 6% and the monetary benefits shall be limited to the arrears due 3 years prior to the date of filing of this OA i.e. 03.07.2014. No order as to costs. This order shall be complied within 2 months from the date of receipt of a copy of this order.

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

**(U.SARATHCHANDRAN)
JUDICIAL MEMBER**

“SA”

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List of Annexures of the applicant

- Annexure A-1** - True copy of the Order dated 25.06.2007 of this Hon'ble Tribunal in O.A. No. 764/2006.
- Annexure A-2** - True copy of the Order Memo No. GDSMC/ Kadancheri dated 6.12.2007 issued by the IPO, Ponani Sub Division.
- Annexure A-3** - True copy of the Order dated 10.06.2008 of this Hon'ble Tribunal in O.A. No. 610/2007.
- Annexure A-4** - True copy of the Representation dated 21.07.2008 submitted before the 1st Respondent.
- Annexure A-5** - True copy of the salary slip of the applicant for the month of September 2006.
- Annexure A-6** - True copy of the salary slip of the applicant for the month of December 2007.
- Annexure A-7** - True copy of the Order dated 3.6.2010 of this Hon'ble Tribunal in O.A. No. 516/2009.
- Annexure A-8** - True copy of the Order dated 13.08.2010 of this Hon'ble Tribunal in O.A. 516/2009.
- Annexure A-9** - True copy of the Order dated 17.09.2010 of this Hon'ble Tribunal in O.A. No. 516/2009.
- Annexure A-10** - True copy of the Memo No. Writ Petition/05/09 dated 30.12.2010 issued by the 2nd respondent.
- Annexure A-11** - True copy of the letter No. GL/24/2013 dated 31.05.2013 issued by the Inspector of Posts, Ponani Sub Division, Ponani.
- Annexure A-12** - True copy of the Representation dated 6.6.2013 submitted before the Inspector of Posts, Ponani Sub Division, Ponani.
- Annexure A-13** - True copy of the Representation dated 21.10.2013 submitted before 2nd respondent.
- Annexure A-14** - True copy of the Letter No. 14-16/2001/PAP(P+) dated 11.10.2004 issued by the Director General, Posts.

List of Annexure of the Respondents

- Annexure R-1** - True copy of the Memo No. A1/26A dated 03.04.2007.
- Annexure R-2** - True copy of the Work calculation sheet of GDSMC Kadancheri BO.

-X-X-X-X-X-X-X-X-