

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/01054/2014

Dated this Monday, the 13th day of August, 2018

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

Annamma Thomas, W/o. P.A. Thomas, Aged 48 years,
 GDS MD, Elampazhanjoor BO, Chadayamangalam,
 Department of Post, Kollam – 691 534,
 Residing at Parapattu Thadathil Veedu, Chadayamangalam,
 Kollam – 691 534. **Applicant**

(By Advocate : Mr. V. Sajithkumar)

V e r s u s

1. Union of India, represented by the Secretary to the Government,
 Department of Posts, Ministry of Communications,
 Government of India. New Delhi – 110 001.
2. The Chief Postmaster General, Kerala Circle,
 Trivandrum – 695 101.
3. The Senior Superintendent of Post Offices,
 Kollam Postal Division, Kollam – 691 001. **Respondents**

(By Advocate : Mr. N. Anilkumar, Sr. PCGC (R))

This application having been heard and Reserved for orders on 03.08.2018,
 the Tribunal on 13.08.2018 delivered the following:

ORDER

Per: Ashish Kalia, Judicial Member:

The applicant has filed this O.A. seeking the following reliefs in this

O.A. :-

- (i). To direct the respondents to revise the Workload Assessments of the years 2010 and 2011 by awarding appropriate points to the left over item and strictly in accordance with the norms fixed by the Central Government and grant justified TRCA and other consequential benefits to the applicant.

(ii). Alternatively, extend the benefit of protection as per Annexure A4 and continue to pay the protected TRCA to the applicant and grant other consequential benefits.

(iii). Direct the respondents to revise the pay revision in accordance with justified TRCA drawn by her on the relevant date and to disburse the benefits with interest at the rate of 12% from the date of entitlement.

(iv). Grant such other reliefs as may be prayed for and as the Court may deem fit to grant, and

(v). Grant the cost of this Original Application.

2. Brief facts of the case leading to this O.A. as narrated by the applicant is that the applicant commenced her service as GDS MC, Kuttikkad Branch Office in Kottarakkara Sub Division with effect from 26/07/2002. Thereafter she was appointed as GDS MD I, Elampazhanjoor Branch Office with effect from 02/07/2005 on retrenchment from earlier post. Vide Annexure A.1 applicant submits that he was drawing permissible higher TRCA in the post of GDS MD I, at Elampazhanjoor.

3. According to the applicant she was drawing the allowances in the higher slab from the year 2005. However, without any notice, her pay was reduced in April 2010, to the lower slab of R. 3330-60-5310 and her TRCA was fixed at Rs. 3570/- vide Annexure A.3. It is submitted by the applicant that there is no justification for reducing the TRCA even in the case of reduction of workload. She was entitled to protection of her then existing pay even in the lower TRCA slab in terms of Annexure A.4 letter of GI, Department of Posts, Lr. No. 14-16/200/PAP(Pt) dated 11.10.2004. The contention of the applicant is that the reduction of her pay was effected without considering the Annexure A4 letter. It is contended by the applicant that as per Annexure A.5 both GDs were eligible of higher TRCA. According to the applicant in terms of Annexure A5, workload has been assessed as 10 hours and 12 minutes. But when review was conducted in the year 2010, without any change in the delivery area, the distances to be travelled and various other parameters were dropped. Resulting in a reduction or workload to 8 hours and 12 minutes as revealed by Annexure A.6.

4. In Annexure A6, the distance to be travelled had been shown as 33 kms

whereas the 2008 Review provided distance to be travelled as 40Kms. There was no change in the delivery area. The proper counting of time factor will make the workload at 10 hours and 16 minutes making both GDSs eligible for higher TRCA.

5. According to the applicant 2011 Review also failed to take care of appropriate points entitled by a GDS MD. At Column No.6, the applicant was eligible for 3 points availed for VP letters. But no point is seen awarded. Similarly at Column No.8, the applicant was eligible for 6.16 minutes (1.6×3.85). For column No. 11, the applicant was eligible for 6.2 minutes (3.1×2). For Column No. 15, she was eligible for 20 minutes. Thus the total workload will be $202.8 + 3.0 + 6.16 + 6.2 + 20 = 237.44$ points. However, the 2011 statistics failed to take into account the relevant points and obtained a wrong workload based on erroneous application of time factors.

6. It is submitted by the applicant that there are systematic irregular actions on the part of the respondents in showing that the applicant does not have sufficient workload. Even when implementing Nataraja Moorthy Commission Recommendations, the arrears of pay revision was fixed in the lower slab. Undisputedly, the workload was above 10 hours with basic pay of rs. 4520/- as on January 2010. However, she was denied the arrears of pay corresponding to the pay drawn by her. Annexure A9 reflects the fixation of TRCA in new slab issued by the postmaster Kottarakara H.O.. The revised pay fixed with reference to the pre-revised TRCA 3330-60-5130 when the 3rd respondent had issued a communication to fix the pay of the applicant in the scale corresponding to 4220-75-6470. According to the applicant she had made various representations vide Annexure A11 and annexure A12 seeking justice. Since no positive action was coming up, she obtained material particulars and requested to rectify the undue injustices done to her.

7. The applicant is aggrieved by the reduction of her pay in spite of the justified workload for the higher TRCA and the denial of protection of pay permissible under the instructions issued by the 1st respondent. Hence this O.A.

8. Notices were issued and the respondents put their appearance and filed the detailed reply statement.

9. In the written statement it was submitted on behalf of the respondents that the applicant was engaged as GDS Mail Carrier (GDSMC for short), Kuttikad B.O. In Kottarakara Sub Divsiion on 26.07.2002 and was redeployed as GDS Mail Deliverer (GDSMD), Elampazhanur B.O under Chandayamangalam SO with effect from 02.07.2005 in the Time Related Continuity Allowance (TRCA for short) slab of Rs. 1375-25-2125. While so, the recommendations of the Natarajamoorthy Commission Report in respect of the TRCA of the GDS were implemented in 2009 retrospectively with effect from 2006. According to the respondents the TRCA of the applicant was fixed in the slab of Rs. 4220-75-6470 in terms of Annexure A10.

10. It was contended on behalf of the respondents that a Annexure R.1 clarification was issued by the 1st respondent on 10.12.2009 stating that the existing incumbents may be placed in the replacement TRCA slabs corresponding to the pre-revised TRCA. Accordingly revised TRCA slabs based on Annexure R.1 was issued fixing the applicant's TRCA in the slab of Rs. 3330-60-5130 which is the replacement TRCA slab of Rs. 1375-25-2125.1 Orders were issued vide Annexure R.2 and R3. It is contended on behalf of the respondents that the applicant was granted higher TRCA for a certain period of time based on Annexure A10 and the first installment of arrears of TRCA was also disbursed to the applicant based on the higher TRCA slab. After adjusting the over payments to the applicant 2nd installment of arrears was disbursed in terms of Annexure R2 and R.3.

11. It is contended on behalf of the respondents that the issue has already been decided by this Tribunal in O.A. 903/2009 and connected cases vide Annexure R.4 order dated 17.06.2011 by holding that reduction in the TRCAs of the applicants is not in violation but in accordance with the OM dated 9.10.2009 read with the clarification dated 10.12.2009. Only these two documents are valid to confer any right on the applicants. It is contended by the respondents are fully within their right to recover the excess amount paid to the applicants on account of incorrect and invalid fixation.

12. The respondents contested the claim of the applicant that she was denied the entitled benefit by non-awarding of eligible points to her work load and wrong

calculation of the work load. It is claimed by the respondents that during 2010 it was found that the work load projected was very high i.e. foot beat of 13 km and cycle beat of 20 km on daily basis. Hence TRCA was not revised based on these figures also. It is further submitted on behalf of the respondents that work hours depend on the number of postal articles received for delivery and the averment that the work hours are constant if delivery area remains the same is baseless. It is contended that the distance to be travelled depends on the number of postal articles received for delivery and the averment that the work hours are constant if delivery area remains the same is baseless. Respondents submitted that the number of postal articles for delivery varies from day to day. Work load is arrived at on the basis of Annexure R.6 letter issued by R.1.

13. It is further submitted on behalf of the respondents that the applicant is presently drawing TRCA in the slab of Rs.3330-60-1530, which is the eligible TRCA for GDSMD having work load upto 3 hours 45 minutes as per Annexure R-5 letter No. 6-1/2009-P\E-II dated 9.10.2009 issued by the 1st respondent.

14. It is contended by the respondents that the applicant is trying to mislead the Tribunal by producing the pay slips of the two months when she was erroneously granted higher TRCA than what was eligible to her. Admittedly, the respondent issued Annexure A-10 while implementing the recommendations of the Nataraja Moorthy Commission. As per Annexure A10, the TRCA of the applicant was fixed in the slab of Rs. 422-75-6470. However, on receipt of Annexure R1 clarification, the inadvertent error was to be set right and accordingly, Annexures R-2 and R-3 were issued by this respondent and the applicant's TRCA was re-fixed in the slab of Rs. 3330-6-5130, which is the replacement TRCA slab of Rs. 1375-25-2125. The stand of the respondents has been upheld by this Tribunal vide Annexure R4. There is no meaning in saying that this revision was done without notice since this has already been decided by the Tribunal in Annexure R.4.

15. The respondents while refuting the claim of the applicant submitted that the applicant has very cunningly fabricated the statistics of GDSMD-II as the statistics pertaining to the applicant to gain undue advantage. The actual statistics in respect of the applicant during the periodical review of 2011 is produced with Annexure R.7.

Comparing R7 and A7/2, it can be seen that the respondents have granted correct points to the applicant while calculating the work load. Work load of the applicant has been correctly worked out to 3 hours 22 minutes for delivering 48 ordinary letters, 2 registered letters and 2 unpaid letters. The justified TRCA slab for the work load of 3 hours 22 minutes is Rs.3330-60-5130 which has been correctly drawn. The applicant has cleverly tried to manipulate the documents to mislead this Tribunal.

16. It is further submitted by the respondents that the initial fixation of TRCA upon implementation of the recommendation of the Nataraja Moorthy Commission Report was to be done on the basis of the TRCA drawn in the pre-revised Scale. The replacement slab for the pre-revised scale of Rs. 1375-225-2125 was Rs. 3330-60-5130. TRCA was not revised based on the statistics for 2008 and 2010 because the work hours were unbelievably inflated to procure higher TRCA. Subsequent review done in 2011 shows that the work load was 3 hours 22 minutes only and as such, the applicant is placed in the right TRCA slab only. It is further submitted that the applicant was erroneously placed in the higher TRCA slab by this respondent and the 1st installment of arrears was also granted on the basis of this fixation. However, when this inadvertent mistake was identified, it was the bounden duty of the respondents to ensure that the excess paid amount was adjusted in the subsequent arrears payment. The applicant has also given declaration to the Drawing and Disbursing Officer i.e. Postmaster, Kottarakara HO that in the event of any overpayment, the applicant would be liable for repayment of excess amount granted by mistake. The applicant had never raised any objection during 2010 towards recovery of excess payment and has strangely come up with frivolous claims at this point of time.

17. It is further submitted on behalf of the respondents that TRCA was not revised based on the statistics for 2008 and 2020 because the work hours were unbelievably inflated to procure higher TRCA. Subsequent review done in 2011 shows that the work load was 3 hours 22 minutes only and as such, the applicant is placed in the right TRCA slab only.

18. It is contented by the respondents that none of the grounds raised by the

applicant is tenable either in the eyes of law or on facts. The protection of TRCA as envisaged in Annexure A4 is not applicable to the instant case because the reduction in this case has happened not due to the reduction in work load but due to irregular fixation of TRCA to GDS which had to be rectified on the basis of Annexure R.1. This reduction in TRCA had nothing to do with any establishment review, but was solely based on the TRCA drawn by the applicant prior to 01.01.2006. No reduction of work load was carried out in respect of the applicant. The applicant was only placed in the correct TRCA slab corresponding to the pre-revised slab of TRCA she was drawing. The work load assessments were carefully and correctly done by the respondents with a view to guard against any possible over fixation of TRCA and undue expenditure to the public exchequer. The applicant's case is an erroneous initial fixation of TRCA upon implementation of the recommendations of the Nataraja Moorthy Committee Report and this Tribunal upheld the act of the respondents vide Annexure R.4.

19. It is contended by the respondents that the O.A. is devoid of any merit and the applicant is not entitled to get any other reliefs sought for in the O.A. and is liable only to be dismissed with costs.

20. Heard the learned counsel for the parties Shri Sajithkumar and Mrs. Tanuja with Mr.N. Anilkumar, Sr.PCGC(R), perused the record and the judgements cited by them.

21. The first issue raised by the applicant regarding the load or work incidentally has already been decided by this Tribunal in O.A. No. 903/2009 and connected cases and it is held as under:

“The wrong fixation of TRCA has taken place only in 15 Divisions out of 440 Divisions in the country. This must have happened due to misinterpretation in good faith or inadvertently. Such a mistake on the part of the concerned respondent officials cannot crystallise any legal right for the applicant to claim unintended and undue benefits to them. The letter of 10.12.2009 clarifies, it does not alter the O.M. dated 9.10.2009. The clarificatory letter was not issued for the applicants alone but for all GDSBPM throughout India whose workload was more than 75 points as on 1.1.2006. Hence it is not arbitrary, unjust or illegal. On the other hand, if it is not made applicable to them, then it would be discriminatory to the rest of the GDSBPMs in India. “

The workload was more than 75 points as on 1.1.2006. Hence it is not

arbitrary, unjust or illegal . On the other hand if it is made applicable to them then it would be discriminatory on rest of the GDSBPM in India. The workload of the applicant assessed before and after the division not only remains the same but wrong and irrelevant because it is not based on a new point system and first assessment as pointed out earlier is defective too. Reduction in TRCAs of the applicant is not in violation but in accordance with the OM dated 9.10.2009 read with the clarification dated 10.12.2009. Only these two documents are valid to confer any right on the applicants. Any order issued which is in consistent with them is null and void. Therefore, the respondents are fully within their right to recover the excess amount paid to the applicant in accordance with the incorrect and invalid fixation. The applicant do not have any right to retain the excess amount paid. Moreover, the applicants had given an undertaking that any excess payment found to have been made as a result of incorrect fixation of TRCA would be refunded to the Government. The decision of the Principal Bench of this Tribunal in O.A. 283/2003 dated 13.9.2004, and the decision of the Hon'ble Kerala High Court in WP(C) No. 437/1993 confirmed by the Hon'ble Supreme Court in the case of *O.K. Udayasankar and Ors v. Union of India and Ors 1996 AIR 1901* upheld the respondents right to effect recovery of excess payment made. No hardship will be cause to the applicants on account of recovery as they will get higher emoluments on account of the revised replacement scales of TRCA from 1.1.2006 onwards.

22. In view of the above, the applicant's contentions in the present original applicant that there is reduction in pay scale is not tenable for the simple reason that the applicant has wrongly given statistics of GDS MD II

whereas the applicant is working as GDSMD I . The replacement slab for pre revised slab of Rs. 1375-225-2125 was Rs. 3330-6-5130 which was given to the applicant as is evident from Annexure R.3 itself. So the applicant's bone of contention that reduction in lower grade of pay is incorrect and does not stand in the eye of law and having no merit whatsoever. The applicant was erroneously given the pay scale of Rs. 4220-75-6470 by way of a wrong fixation instead of Rs. 3330-60-5130 earmarked for GDS MD I. It is also not the case of the applicant that she is working as GDS MD-II and she has not been given the slab of Rs. 4220-75-6470. She is working as GDS MD I and pay scale for the said post has duly been granted to her. The applicant is not entitled for a new slab or enhancement of salary in the scale of Rs. 4220-75-6470 which is given and earmarked for GDS MD II w.e.f. 1.1.2006.

23. To sum up, for the reasons stated above, the present O.A., fails to convince this Tribunal and the same is dismissed being devoid of any merits. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

sj*

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APPLICANT'S ANNEXURES

- Annexure A1** – A true copy of salary slip for the month of October 2009 of the applicant.
- Annexure A2** – A true copy of salary slip for the month of January 2010 of the applicant.
- Annexure A3** – A true copy of the salary slip of the applicant for the month of April 2010.
- Annexure A4** – A true copy of the GI, Department of Posts, Lr. No. 14-16/200/PAP (pt) dated 11.10.2004.
- Annexure A5** – A true copy of the 2008 Review of workload of GDS-MD, Elampazhanor.
- Annexure A6** – A true copy of the relevant pages of 2010 Review of workload GDS-MD, Elampazhanor.
- Annexure A7** – A true copy of the relevant pages of 2011 Review of workload GDS-MD-I Elampazhanor.
- Annexure A8** – A true copy of the relevant pages of 2011 Review of workload GDS-MD-I Elampazhanor.
- Annexure A9** – A true copy of the fixation of TRCA in new slab issued by the postmaster, Kottarakara H.O.
- Annexure A10** – A true copy of the communication dated 23.10.2009 of the 3rd respondent released to the applicant under RTI Act by letter dated 02.09.2014.
- Annexure A11** – A true copy of the representation dated 04.08.2014 submitted by the applicant to the 3rd respondent.
- Annexure A12** – A true copy of the representation dated 04.09.2014 submitted by the applicant to the 3rd respondent.

RESPONDENTS' ANNEXURES

- Annexure R1** – True copy of the 1st respondent's letter No. 6-1/2009-PE-II dated 10.12.2009.
- Annexure R2** – True copy of the letter No. A/TRCA dated 23.02.2010 of the 3rd respondent.
- Annexure R3** – True copy of the letter No. A/TRCA dated 07.07.2010 of the 3rd respondent.
- Annexure R4** – True copy of the order of the Hon'ble Tribunal in OA No. 903/2009.
- Annexure R5** – True copy of the 1st respondent letter No. 6-1/2009-PE-II dated 09.10.2009.
- Annexure R6** – True copy of the 1st respondent letter No. 9-1/2005-W.S.I/PE-I dated 05.02.2010.
- Annexure R7** – True copy of the actual statistics in respect of the applicant during the periodical review of 2011.
- Annexure R8** – True copy of calculation sheet.
- Annexure R9** – True copy of the relevant pages of classified list of post offices.

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