

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

O.A. 050/00781/2016

CORAM

Hon'ble Shri A.K. Upadhyay, Member [A]
Hon'ble Shri J.V. Bhairavia, Member [J]

**Reserved on- 04.09.2017.
Date of pronouncement 14.11.2017**

1. Anant Prakash Dhiraj aged bout 28 years son of Thakur Prasad, Resident of Village Rajopur, P.O.- Katarmala Distt-Begusarai,Pin Code -851101.

.....Applicant

By Advocate : Shri N.N.Singh

Versus

1. The Union of India through the Secretary, Department of Posts Dak Bhawan, New Delhi- 110001.
2. The Chief Postmaster General, Bihar Circle, Patna -800001.
3. The Postmaster General (North Region), Muzaffarpur- 842001.
4. The Supdt. Post, Begusarai Division, Begusarai-851101.

.....Respondents

By Advocate: Shri Radhika Raman

O R D E R

Jayesh V. Bhairavia, M [J]: The applicant in this O.A is aggrieved by the order dated 12-08/09-2016 by which Rs.4000/- per month has been ordered to be deducted from the basic Time Related Continuity Allowance (hereinafter referred to as 'TRCA' for the sake of brevity) Scale. As against the impugned order, the applicant submitted representation on 04.10.2016 which did not elicit any response. Therefore , the applicant prays for refund of deducted amount and restraining further deduction by quashing and setting the impugned order dated 12-08/09-2016 (Annexure A/1).

2. The brief facts of the case, as submitted by the applicant to substantiate its claim, are as below :-

[i] The applicant, namely Shri Anant Prakash Dhiraj, was appointed on 09.04.2012 as Gram Dak Sevak (GDS) Branch Postmaster, Katarmala (Naokothi) in Begusarai Postal Division and hold of Civil Post.

[ii] In pursuance of D.G. Post letter No. 6-1/2009 P.E II dated 09.10.2009, circulated vide Chief PMG letter dated 14.10.2009, the TRCA of applicant was revised from TRCA 2745-50-4245 to 4575-85-7125 on the basis of 297.31 points of work of the Branch office vide letter dated 31.01.2013 (Annexure A/2) and the arrears on enhanced TRCA amounting to Rs.33,433/- was paid to the applicant for the period from 09.04.2012 to 31.01.2013. A copy of ACG 24 of March 2013 is Annexed as Annexure A/3.

[iii] That, the respondents, vide letter dated 12-08/09-2016 (Annexure A/1) issued order to refund Rs.33,433/- which was paid as arrears on grounds that it was an erroneous revision of TRCA by the then respondent no.4 since he was not competent for the same. The respondent no. 4 started recovery from TRCA @ 4000/- per month from the month of September 2016 without any show cause or reference of any undertaking given by the applicant. Pay slip of September 2016 is annexed as Annexure A/4.

[iv] The respondent no.4 also reduced the TRCA from pay scale of Rs. 4575-85-7125 to Rs 2745-50-7125/- of the applicant without assigning any reason

[v] Learned counsel for applicant submits that as per verification conducted by the Postal Inspector, East Sub Div.

Begusarai, the work of the PO is for five hours i.e more than the prescribed period for justification of maximum TRCA of Rs. 4575-85-7125 as per DG Post letter dated 09.10.2009 (Annexure A/5 series). He further submits that due to reduction of TRCA to the minimum pay scale and deduction as per impugned recovery i.e. @4000/- per month, the pay of applicant is now in negative (Annexure A/4).

[vi] Learned counsel submits that as per Rule 108 of Postal Manual, Vol III, the maximum amount which may be recovered from a delinquent officer on account of loss caused to the department through his negligence should be 1/3rd of his pay and for this purpose , only the basic pay should be taken into account. He further submits that the delinquent officer has not committed any loss, fraud or fraud or any misappropriation of govt. money for which such a heavy penalty of recovery has been imposed.

[vii] The applicant relied upon the following judgements :-

(1) **Sahib Ram Vs State of Haryana & Other [1995 SCC (L&S) 248]**, to submit that when upgraded scale was given due to wrong interpretation of any relevant order without any misrepresentation of the employees, in such circumstances the recovery of payment already made should not be effected.

(2) **P.H. Reddy & Ors Vs N.T.R.D & Ors , [JT 2002(2) SCC 483]**, in which the Hon'ble Apex Court has held infra "*The employee, applicant, who had been in receipt of a higher amount on account of erroneous fixation by the authority, should not be asked to repay the excess drawn, and therefore,*

that part of the order of authority is set aside, the direction of the appropriate authority requiring reimbursement of the excess amount is annulled."

(3) The order passed by the Hon'ble Principal Bench of the Tribunal in **All India Postal Employees Union Postman & Gr. D (HQ) Vs U.O.I & others** in OA 283/2003 decided on 12.07.2004 **[2005(2) ATJ 193]**, in which the Hon'ble Principal Bench held as under:

"If the over payment has been made as a result of no fraud or misrepresentation having been practiced by the applicant but because of any act of the respondent, they are not entitled to recover the amount paid to them."

In sum, the applicant submits that the impugned order passed by the respondents being arbitrary, illegal, inhuman as well as in violation of principle of Natural Justice, deserves to be quashed and set aside and the reliefs prayed for in this OA may be granted to the applicant.

3. The respondents have filed their written statement opposing the prayers made in the OA.. In the written statement, the respondents have put forth their as under:-

(i) The post of GDSBPM, Katarmala Branch Post Office in A/c with Naokothi S.O was felt vacant on 17.10.2010 due to death of permanent incumbent, the son of diseased i.e Shri Anant Prakash Dhiraj was appointed on 09.04.2012 in the TRCA slab of Rs. 2775-50-4275/- as GDS on relaxation ground vide letter dated 26.03.2012 on the basis of value return/workload (Est.S) of the said Branch P.O. prepared for the period March 2010, June 2010, September 2010 &

December 2010 and also on the basis of Estt. 6(a) i.e income/cost of the Branch Post office.

(ii) The applicant submitted a representation on 11.10.2012 requesting for revision of his TRCA on the strength of points earned in value return/workload. As per letter dated 11.10.2004 (Annexure R/3), the Branch Post Office concerned is required to assess income/cost of the office before considering revision of the TRCA, but TRCA of the applicant was revised to higher slab of TRCA Rs. 4575-85-7125 w.e.f. 01.01.2006 vide memo dated 31.01.2013, whereas Shri Dhiraj joined as GDS BPM on 09.04.2012. Thus, the arrears for the period, during which the applicant did not even work much less was the employee of the department, was paid to him and excess arrears to the tune of Rs.33,433 came to be paid to him as arrears of TRCA.

(iii) The revised TRCA of the applicant was reviewed at R.O. Muzaffarpur and found to be irregular as his revision was considered for the period before his joining. Hence, it was orally ordered to recover the entire amount of arrears drawn by the applicant as arrear of TRCA. In compliance of order of the competent authority, the Post Master, Begusarai HO vide SPOs Begusarai letter dated 14.09.2016 (Annexure R/1) ordered to recover the arrear amount Rs.33,433/- in easy instalments of Rs.4000/- per month from the TRCA.

In sum, the respondents submit that the TRCA revision made by the then SPOs, Begusarai vide memo No. A1/Estt/GDS/TRCA dated 31.03.2013 was irregular, hence revised TRCA slab was reduced to previous slab of TRCA. The respondents have prayed that the O.A. being devoid of any merit, be dismissed.

4. Rejoinder to the written statement has been filed reiterating the facts and grounds already mentioned in the OA.. Additionally, the following is submitted.

[i] The verbal order is no order unless and until confirmed by written order to follow up the action as per Govt of India DOPT OM No. 11013/4/88 Estt(A) dated 19th April 1988.

[ii] The impugned order dated 14.09.2016 (Annexure R/6 of w.s) is void ab initio. The same authority may not issue order for recovery of TRCA without cancellation of its own earlier order dated 31.01.2013 in pursuance of direction of higher Revisionary Authority or court of law/Tribunal.

5. Heard the learned counsels for the parties and perused the materials available on record. The thrust of the arguments of learned counsel for the applicant is that the respondents have reduced the TRCA of the applicants without any notice and without giving protection of the existing TRCA slab in terms of Annexure -A/2 series dated 31.01.2013) of the Department of Posts. According to him (Annexure -A/1 dated 12.08/09-2016) communication of respondent No. 3 reducing the TRCA of the applicants was made without conducting a proper review of the work. He submitted that the drop in the work load of the Branch Post Offices cannot be ascribed to the inefficiency of the applicants. The situation of gradual diminishing of business in post offices on account of the growth of alternative modes of communication and recent developments in the communication technology which have fast outdated the traditional functioning of post offices. He pointed out that because of the revolutionary growth of mobile phone technology and electronic mail

(e-mail), people who were the customers of Postal Departments for sending letters are now resorted to the new technology, downgrading the post offices to an archaic institution with consequential, natural reduction in the work load. He submitted that the Department is not justified in reducing the meagre TRCA being paid to the GDS employees on account of the reduction in the work load in Post Offices for the reasons not attributable to the applicants.

6. Learned ACGSC on the other hand relied on the administrative instructions and also the provisions of the GDS (Conduct & Engagement) Rules, 2011. He submitted that before reducing the TRCA of the applicants the respondents have conducted a review of the workload of the branch post offices where the applicants are working, as a part of triennial review envisaged in the administrative instructions. He pointed out that the TRCA payable to the applicant are in tune with Rule 5-A of GDS (Conduct & Engagement) Rules, 2011.

7. Learned advocate for the applicant argued that GDS employees are holders of civil posts as has been held by the Apex Court in the [Superintendent of Post Offices & Ors. v. P.K. Rajamma](#) (1977) 3 SCC 94. He submitted that their emoluments cannot be altered to their disadvantage in view of the protection under Rule 15 of Fundamental Rules. According to him Annexure R-4 is inconsistent with rule 15 of Fundamental Rules. He brought to our attention that the applicants were in the 2nd TRCA, not in the 1st TRCA as contended by the respondents.

8. Learned advocate for the respondents on the other hand submitted that the GDS are not regular civil servants even though they have been held by the Apex Court as holders of civil post. He argued that therefore the service rules and Fundamental Rules are not applicable to them. According to him the GDSs are entitled to TRCA and

other allowances prescribed by the government based on their workload. He submitted that depending on the workload there will be change in the TRCA payable to them.

9. After considering the aforesaid rival submissions of the counsels; it revealed that the only question to be considered in this OA is whether Annexure A1 order reducing the TRCA was issued in an unjust and arbitrary manner, violating the rights of the applicants or not? Applicants allege arbitrariness on the part of the respondents when they reduced TRCA. Respondents on the other hand stated that they have reduced the TRCA of the applicants as per the administrative instructions after conducting the triennial review. Rule 5-A of GDS (Conduct & Engagement) Rules, 2011 specifically state:

'5-A The Gramin Dak Sevaks shall be entitled to payment of Time Related Continuity Allowance and other allowances as may be prescribed by the Government on the basis of workload as per the standards of assessment decided by the Department from time to time.'

10. In the above circumstances we are of the view that the respondents are justified in conducting the periodical assessment of the work load of the branch post offices. Therefore, if the administrative action is in accordance with the rules and norms, it cannot be said to be arbitrary. Hence it appears to us that the order impugned in this OA is not mitigated by arbitrary exercise of power.

11. The next grievance of the applicant is that no notice was given to them before reducing their TRCA. As pointed out above the periodical review as per the administrative instructions is a norm followed by the Postal Department for assigning the work work load of GDS employees. Hence, it cannot be said that when each and every assessment is made the employees should be given prior notice. In our view no notice is necessary for conducting the triennial review of the work load of the branch post offices, which appears to have become a regular feature. Therefore, it cannot be said that there is violation of

principle of natural justice while assessment and conducting the triennial review of the workload of the employee.

The rate of TRCA based on the points also has been set in the administrative instructions. The respondents have pointed out that the applicant has been drawing the maximum TRCA based on the work load and hence there is no need for protection of their existing pay. We find that there is nothing illegal in the aforesaid stand of the respondents.

12. Taking stock of the facts and circumstances of the case and in the light of the clear administrative instructions, as well as existing rule as stated hereinabove, we do not find any merit in the case. Accordingly, we dismiss this OA being devoid of merit. No order as to costs.

(J.V. Bhairavia) M [J]

(A.K. Upadhyay] Member [A]

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