

CENTRAL ADMINISTRATIVE TRIBUNAL.
AMHEDABAD BENCH

**Original Application No. 38/2014
Ahmedabad, this the 16th of April, 2019**

Date of Reserve : 07/01/2019
Date of Order : 16 /04 /2019

CORAM :

**Hon'ble Ms. Archana Nigam, Member (Administrative)
Hon'ble Mr. M.C. Verma, Member (Judicial)**

Girish Shivaprasad Vyas aged about 50 years, Residing at Bhram Pole, Nr. Shiyani Darwaja, Lakhtar, District Surendranagar.

Applicant
VERSUS

1-The Chief Postmaster General, Gujarat Circle, Khanpur, Ahmedabad – 380 001.
2-The Superintendent of Post Office, Surendranagar Division, Surendranagar – 363 002.
3-Union of India Notice to be served through the Secretary, Postal Department, Government of India, Dak Bhawan, New Delhi – 110001.

Respondents

O R D E R

Per M.C.Verma, Member (J) :

1. This O.A. has been preferred, assailing legality of order, at Annexure-A issued by the respondents and to quash said order. Annexure-A is the order dated 22.05.2013 whereby claim of the applicant for combined duty allowance has been rejected by the respondents. It has also been prayed to direct the respondents to pay

the applicant all consequential benefits payable to a regular Group D employee, along with interest.

2. The facts of applicant's case, as has been set out in the OA, in short are that applicant joined postal services, on 17.5.1984 as Extra Departmental Agent (herein after referred as EDA} at village Zamar. Vide order dated 15.6.1988 (**Annexure-A/1**) his appointment was regularised w.e.f 17.5.1984. That vide order dated 13.4.2013 (**Annexure-A/2**) SDO North Sub Division Surendernagar he was directed to work as Extra Departmental Delivery Agent (herein after referred as EDDA} and Extra Departmental Carrier (herein after referred as EDC) and he was issued Railway pass (Annexure-A/3). That to discharge duty of EDDA & EDC he had to go from Lakhtar to Dhanki to carry postal bags for Dhanki. It is pleaded that while working at Zamar he was paid salary, computing for 3.1/2 hours daily duties, however, applicant had to report at 9.00 AM at Lakhtar HQ from where he has to carry postal bags and take train at 10.10 am and reaches Dhanki at 10.30 am. After sorting mails, he used to deliver the same, he used to start for arriving back at about 4.30 pm and reached back at Lakhtar at 5.00 pm thus in this way, his duty hours are from

9.00 am to 5.00 pm i.e. about 7-8 hours whereas, he was being paid for 3.1/2 hours.

2.1 It is also pleaded that earlier a full time class IV employee was posted at Dhanki and on his transfer, same work was assigned to him. Applicant on receipt of duty list and working hours, which was found to be physically not possible and thereupon he sent a letter on 18.9.2015 (Annex. R/6) to respondents stating that Cycle Beat assigned to him is of 34 kms. per day over and above delivery of post and by this method it is next to impossible to perform the duties. No employee can be given bicycle beat which requires to travel 34 kms. per day over and above the delivery work of posts. Applicant represented on 27.5.2013 and 3.9.2013 for increase in his salary vide Annex.A/4 which were rejected, hence this O.A. stating that impugned decision to pay less salary to applicant than payable to a unskilled labourer of the respondents is discriminatory and violative and against the rules.

2.2 Applicant also has pleaded that he is performing the duties of Group D, of unskilled nature being GDSMC. He has enclosed copy of instructions regarding payment of wages to the GDS Staff on hourly basis as Annexure A/3/1 and copy of similar instructions of the

State of Gujarat for payment to its part time employee on hourly basis as Annexure A/3/2 and added that Hon'ble High Court of Gujrat has declared as illegal instructions of the State of Gujarat for payment to its part time employee on hourly basis and it directed to pay the incumbents minimum wages prescribed by the Government instead of on hour basis. He also has pleaded that Hon'ble Supreme Court has also declared as ultravires to pay less than the amount payable to a Group IV employee of the department to the employees on basis of number of hours in case of daily rated employees of P&T Department and that pursuant thereto DoP&T issued order regarding daily wager stipulating that a daily wager if he works for a month, he should get equivalent amount of pay of Class -IV employee of the department. Copy of order of DoP&T is annexe of O.A. as Annexure A/3/3. That applicant has represented the respondents for increase of salary, his representations dated 27.5.2013 and 3.9.2013 are Annexure -A/4 but same were rejected vide impugned order and hence is the O.A.

2.3 During pendency of O.A. respondents passed order dated 4.9.2015, Annexure A/3/4, whereby sanction to revise and reaffix the scale of TRCA has been accorded and scale of applicant was revised from Rs. 2870-50-4370 to 3635-65-5585 w.e.f. 4.9.2015. Rout map

Dhanki to Laskar and assigning cycle beat schedule chart of 5 hrs duty being done by the applicant, Annexure A/3/5, was also attached with afore said communicated dated 4.9.2015. Applicant on receipt of order dated 4.9.2015 made representation on 18.9.2015, copy Annexure A/3/6. In his representation Annexure A/3/6 applicant has stated that the rout list shown aggregate of 34 Kms. Distance of up & down from Dhanki to Lakhtar and such a long cycle beat has not been given to any other employee and it is not possible to travel such long distance every day and that working hours has only been shown as 5 hrs whereas Cycle journey alone from Lakhtar to Dhanki it takes at least three hours in addition to time consumed in taking & sorting the mail and in affecting delivery and physical strain also needs to be taken note of. Applicant in said representation have requested to reconsider his beat taking note of situation of road, two rivers enroute and his old age. Anyhow after this order dated 4.9.2015 O.A. was amended and above said Annexures- A/3/4, A/3/5 & A/3/6 were brought on record adding into the pleading that It is that earlier a full time class IV employee was posted at Dhanki and on his transfer, same work was assigned to him. Applicant on receipt of duty list and working hours, which was found to be physically not possible sent a

letter on 18.9.2015 (Annex.R/6) to respondents stating that Cycle Beat assigned to him is of 34 kms. per day over and above delivery of post and by this method it is next to impossible to perform the duties. No employee can be given bicycle beat which requires to travel 34 kms. per day over and above the delivery work of posts. That impugned decision to pay less salary to applicant than payable to unskilled labourer of the respondents is discriminatory and violative and against the rules.

3. Respondents have filed their written statement on 6/08/15 stating that applicant was appointed as GDS/MD Zamar B.O. (A/c. With Lakhtar SO) w.e.f. 17.5.1984 vide Memo dated 15.6.1988 and certain duties were assigned to him. His engagement was purely temporary and on ad hoc basis for uninterrupted postal services. Applicant vide application dated 20.5.2013 applied for increase in remuneration/salary which, after careful consideration, replied on 22.5.2013 (Annex.A1) clarifying that he is not performing duties of GDS/BPM as well as of GDS/MD-MC and hence his request was rejected as per norms. Respondents while replying his representation dated 27.5.2013 for demanding salary for 8 hours mentioned that there is no additional justification found in work / duty and salary is

being drawn as per work-load. It is contended that applicant was informed vide letter dated 3.10.2013 that his present pay and allowances are adequate looking to workload of duty assigned to him. Since his appointment he was working as GDS MD/MC Zamar BO up to 14.4.2013 and w.e.f. 15.4.2013 he was posted as GDS MD/MC Lakhtar –Dhanki Line vide SDI(P) North Sub Division, Surendranagar letter dated 13.4.2013. Applicant had to perform duty only from 3.00 to 3.45 hours for which pay and allowances in pay scale of Rs. 2870-50-4370 as per departmental norms for the cadre of applicant was paid. Respondents' further clarified that due to his temporary charge in duty, no pay and allowance was reduced or drawn less compared to earlier months. He is being paid justified pay and allowance for his engagement and his duties does not exceed beyond 3 hours 45 minutes and department is paying him accordingly, therefore, decision of respondents dated 27.5.2013 and 3.9.2013 were just and fair and applicant is misleading this Tribunal on different counts

3.1 That applicant's contention that he has to perform duty from 9.30 to 11.30 and 14.30 to 15.30 hours as per prescribed duty is not acceptable as there is split duty and being performed in two spells which consisting 3 hours as 'idle hrs. and cannot be treated as duty

hours and applicant's plea is totally wrong stating wrong duty timings. Apart from that while he has been providing Railway Passes there is no reason to give him cycle allowance. The respondents also have pleaded that they have inquired into the matter and applicant in no way is entitled to be compared with Group D status or salary as there is no such provision. It is mentioned that applicant is not performing the dual duty of BPM as well as MD.MC and the work assigned to him is completely on ad hoc basis thus, he is not entitled to any combined duty allowance. The action of the respondents was just and proper and no relief is warranted, hence, having baseless application, respondents prayed to dismiss the same.

3.2 After amendment of OA additional affidavit of reply of amended paras was filed by the respondent on 1.8.2017 wherein it is pleaded that revised pay scale order has issued due to proposed revised duty of five hours and this revision is as per departmental GDS Rules. That the applicant was appointed as GDS and hence the question of him treating him full time employee would not arise. That applicant's duty is revised by cycle beat as per his earlier demand and his pay scale has been revised and he has been allowed cycle allowance as well.

4. Have heard Sh. P.H. Pathak Advocate, who appeared for applicant and learned counsel Ms. R.R.Patel, who appeared for respondents. Sh. P.H. Pathak Advocate has argued that cycle beat schedule chart showing 5 hrs. duty by the applicant, Annexure A/3/5, is also faulty. Distance of up & down from Dhanki to Lakhtar, as per respondents also is 34 kilometres and such a long cycle beat has not been given to any other employee and that no employee can be given bicycle beat which requires to travel 34 kms. per day over and above the delivery work of posts. That working hours has only been shown as 5 hrs whereas Cycle journey alone from Lakhtar to Dhanki takes at least three hours and in addition there to time needs for taking & sorting the mail and in affecting the delivery. That earlier a full time class IV employee was posted at Dhanki and on his transfer, same work was assigned to him. That applicant on receipt of duty list represented on 18.9.2015 but same has also not been decided. He concluded contending that decision to pay less salary less than payable to unskilled labourer of the respondents is discriminatory and violative and against the rules.

5. Learned counsel for respondents rebutting the contentions submits that applicant was appointed as GDS, no justification was

found for 8 hours duty salary looking to workload of duty assigned to the applicant and as the applicant was appointed as GDS hence question of treating him as full time employee would not arise. That applicant's contention that he has to perform duty for 8 hrs. is not acceptable as there is split duty and being performed in two spells which comprising three hours as 'idle' hrs. which cannot be counted as duty hours. That revised pay scale order has been issued having found proposed revised duty of five hours and this revision of pay scale is as per departmental GDS Rules. That applicant's duty is revised by cycle beat as per his earlier demand and his pay scale has been revised and he has been allowed cycle allowance as well. That the action of the respondents is just and proper and no relief is warranted.

6. Considered the submissions made at Bar and perused the record minutely.

7. This O.A. has been preferred, assailing legality of the impugned order at Annexure-A whereby claim of the applicant for combined duty allowance has been rejected by the respondents as well. Without going into the further details of the matter, suffice is to say that during pendency of O.A. respondents has passed another order dated

04.09.2015, Annexure A/3/4, whereby sanction to revise and reaffix the scale of TRCA has been accorded and scale of applicant was revised from Rs. 2870-50-4370 to 3635-65-5685 w.e.f. 04.09.2015. That applicant's duty has been revised by cycle beat and he has been allowed cycle allowance as well. In view of changed circumstance order at Annexure-A has lost its sanctity and therefore, it shall be a futility to enter into the issue whether this order as is at Annexure-A is legally sustainable or not.

8. It has also been urged by Sh. P.H. Pathak, Advocate that earlier a full time class IV employee was posted at Dhanki and on his transfer, same work was assigned to the applicant, applicant is performing the duties of Group D, of unskilled nature being GDSMC and therefore instead of hourly basis applicant, pursuant to DOPT order, Annexure A/3/3 should get equivalent amount of pay of Class -IV employee of the department. He requested to direct the respondents to pay the applicant all consequential benefits payable to a regular Group D employee along with interest. We have examined the case from this angle and have look of Annexure A/3/3. Interestingly A/3/3 {Office Memorandum No.15022/4/90-Estt, (Allowances) Government of India Ministry of Personnel, Public Grievances and Pension, Department of

Personnel and Training dated 9/6/1994} relates only to over time allowances of Casual employees and having no bearing, even remotely with the relief claimed by applicant under this Office Memorandum. As the applicant was appointed as GDS hence the question of him treating him full time employee could be considered under GDS Rule only and learned counsel neither could point out any provision in the rules where-under relief, as claimed can be granted in facts and circumstances of the case, nor he has challenged the veracity of said Rules.

9. Respondents has passed order dated 4.9.2015 whereby sanction to revise and reaffix the scale of applicant has been revised from Rs. 2870-50-4370 to 3635-65-5585 w.e.f. 4.9.2015 but we could not find any logic much less plausible and convincing why it has been made effective 4.9.2015 only. Indisputably it is vide order dated 13.4.2013 (Annexure-A/2) of SDO North Sub Division Surendernagar applicant was deputed to work of EDDA & EDC, was issued Railway pass and since then, to discharge duty applicant had to go from Lakhtar to Dhanki to carry postal bags for Dhanki and to deliver mail there. Annexure A/3/4, whereby sanction to revise and reaffix the scale of TRCA has been accorded and scale of applicant was revised from Rs.

2870-50-4370 to 3635-65-5585, logically thus should be effective from the date when applicant did start his duty to go from Lakhtar to Dhanki to carry postal bags for Dhanki and to deliver mail there, however, cycle allowance of the period during which applicant has availed Railway pass facility may be curtailed. Respondent thus are directed to pass appropriate order revising pay scale of applicant from the date when he did start his duty to go from Lakhtar to Dhanki in discharge of duty to carry postal bags for Dhanki and to deliver mail therein and, if deemed fit & proper, cycle allowance of the period, during which applicant has availed Railway pass facility, may be curtailed.

10. Rout map Dhanki to Laskar and assigning cycle beat schedule chart of 5 hrs duty being done by the applicant. Rout list shown aggregate distance of up & down from Dhanki to Lakhtar as of 34 Kms. Such a long cycle beat, as contended by the applicant has not been given to any other employee, it is also contended that it is not possible to travel such long distance every day and particularly taking note of situation of road and two rivers on en-route. Applicant explaining his grievances has represented vide representation Annexures- A/3/6 and no decision yet on said representation formally has been taken by competent authority. It is hoped that competent authority would

consider/ reconsider the same and taking note of ground reality would pass rational order thereon.

11. Entire exercise relating to above observations and directions shall be completed by the respondents within two months of receipt of copy of this order. To the extent of observations and directions made ibid, the O.A is allowed and stand disposed of. No order as to cost. M.A., if any, is pending also stand disposed of.

(M.C.Verma)
Member (J)

(Archana Nigam)
Member (A)

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