

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 698 of 2012

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

1. Rabindranath Sahoo, 63 years, S/o Late Hadibandhu Sahoo, Vill/PO-Panchirida, Via- Sarankul, Dist- Nayagarh, Odisha-752080, now working as GDSMD Panchirada BO.
2. Ramesh Chandra panda, aged 52 years, GDSMD/MC At/Po- Rangani Patna BO, Via- Odagaon, Dist-Nayagarh, Odisha-752081.
3. Suresh Chandra Rout, 35 years, GDSMD, At/po-Nandighoor BO, Via-Odagaon, Nayagarh-752081.
4. Bhagaban Mohapatra, 63 years, S/o Late Sadasiv Mohapatra, GDSMD/MC At/PO-Gambharidihi BO, Via-Mandhatapur, Dist- Nayagarh-752035.
5. Santosh Kumar Sahoom, 31 years, S/o Muralidhar Sahoo, GDSMD, At/PO-Padmabati BO, Via-Bhapur, Nayagarh-752063.
6. Siba Sankar Mohapatra, 48 years, S/o Sri Jambeswar Mohapatra, working as GDSMD Kajalapalli BO, At/PO- Kahalapalli, Via- Sarankul, Nayagarh-752080.
7. Sanatan Mohapatra, 58 years, S/o Brundaban Mohapatra GDSMD/MC, At/Po-Sakeri, Via-Odagaon, Dist-Nayagarh, Odisha-752081.
8. Prakash Chandra Mishra, 37 years, S/o Late Gangadhar Mishra, GDSMD/MC, At/PO-Bihagaon BO, Via-Madhyakhanda, Dist. – Nayagarh-752093.
9. Biranchi Narayan Mishra, 42 years, S/o Ainthra Mishra, GDSMD, AT/PO-Takara BO, Via-Daspalla, Dist-Nayagarh, Odisha-752084.
10. Gopal Sethi, 44 years, S/o Banchha Sethi, GDSMD/MC, AT/PO-Bauncha Gadia, Via-Sarankul, Dist-Nayagarh-752080.
11. Krushna Chandra Nayak, 50 years, S/o Madhusudan Nayak, GDSMD, At/PO- Bhaliadihi, Via- Godipada, Dist- Nayagarh, Odisha-752092.
12. Batakrishna Sahoo, 52 years, S./o Late Ladu Sahoo, GDSMD, AT/PO-Korapitha, Via-Odagaon, Dist-Nayagarh – 752081.
13. Jayadhar Sahoo, 62 years, S/o Late Budhi Sahoo, GDSMD now I/C BPM, At/PO-Binayakpur BO, Via-Sarankul, Dist- Nayagarh-752080.
14. Padma Charan Jena, 51 years, S/o Late Panu Charan Jena, GDSMD/MC, At/PO-Sikharpur, Via-Sarankul, Dist- Nayagaryh-752080.
15. Gola Mohapatra, 60 years, S/o Antar Mohapatra, GDSMD/MC, At/PO-Hariharpur, Via-Sarankul, Dist-Nayagarh-752080.
16. Damodar Pradhan, 44 years, S/o Debaswan Pradhan, GDSMD, At/PO-Badaisihinga, Via-Daspalla, Dist-Nayagarh, Odisha-752084.
17. Prasanna Kumar Tripathy, 50 years, S./o Laxman Tripathy, GDSMD, At/PO-Jamusahi, Via-Daspalla, Dist-Nayagarh, Odisha-752084.
18. Manjubala Das, aged 45 years, W/o late Hasihar Das, GDSMC, At/PO-Baliadihi, Via-Godipada, Nayagarh-752079.

.....Applicant

VERSUS

1. Union of India represented through its Secretary cum Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110116.
2. Chief Post Master General, Odisha Circle, At/PO-Bhubaneswar, Dist. – Khurda-751001.
3. Sr. Superintendent of Post Offices, Puri Division, At/PO/Dist-Puri-752001.

.....Respondents.

For the applicant : Mr.D.P.Dhalsamant, counsel

For the respondents: Mr.B.Swain, counsel

Heard & reserved on : 17.7.2019 Order on : 31.7.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

In this OA there are 18 number of applicants for which MA 847/2012 was filed for joint prosecution which was allowed by this Tribunal dated 19.9.2012.

2. The applicants being aggrieved by the decision of the respondents to recover the excess amount towards salary paid to them on account of wrong fixation of pay have prayed for the following reliefs in this OA :

"In view of the facts stated above, it is humbly prayed that Hon'ble Tribunal may kindly be pleased to direct the respondents not to make any recovery and refund the amount already recovered with 18% interest and protect the TRCA of applicants and impose exemplary cost & compensation.

And any other order(s) as the Hon'ble Tribunal deems just and proper in the interest of justice.

And for this act of kindness, the petitioner a in duty bound shall remain ever pray."

3. The applicants are working as GDSMD/MC as well as in-charge GDSBPM in various Post Offices under Puri Postal Division. They are aggrieved since the respondents started recovery of Rs.1000/- from the Time Related Continuity Allowance (in short TRCA) payable to the applicant from June, 2012 without passing any order or issue of show cause notice to give an opportunity of hearing to the applicants. It is stated that the applicants enquired from the authorities about the recovery but no reply was given to them, for which they have filed this OA on the ground that the decision of the respondents for

recovery is bad in law and that their TRCA was correctly fixed. It is stated that the applicants have not misrepresented to the authorities or have any role for fixing TRCA payable to them.

4. The respondents have filed a counter stating that TRCA payable to the GDS has been revised w.e.f. 1.1.2006. The decision of the Government was communicated vide Directorate's letter dated 9.10.2009 (Annexure P/1). In the said letter it was instructed to fix the TRCA of the GDS with reference to the existing work load and the TRCA drawn prior to 1.1.2006. It was also stipulated that 100% verification of fixation of TRCA would be carried out by the Circle Postal Accounts Office and that since the number of GDS in Puri Division was high and there was delay in receipt of work load statistics of GDS posts from different offices/officials, the TRCA was fixed at the corresponding stage w.e.f. 1.1.2006 in the respective TRCA slab as per the order dated 9.10.2009 (Annexure P/1) without considering the work load. It was further stated in the counter that subsequently the work load statistics of GDS was obtained and sent to the Directorate of Accounts (Postal), Cuttack for verification of fixation of TRCA. Directorate of Accounts (Postal) Cuttack after verifying the work load statistics issued instruction for recovery of excess paid amount from the GDSs to whom excess payment was made in view of less work load. Accordingly excess payments made to the GDSs were recovered from the TRCA of the concerned GDS from the allowance of June 2012 by Postmaster, Nayagarh HO. The letter dated 8.11.2011 of the Directorate of Accounts is enclosed at Annexure P/3. The applicants made representation for not to make any recovery and vide order dated 19.9.2012 this Tribunal directed that no recovery from the TRCA will be made without affording opportunity to them. As stated in counter, no recovery has been made from the TRCA of the applicants from October, 2012. It is further averred in the counter that as per the Directorate's letter dated 9.10.2009 undertakings were obtained from all GDS of this Division including the applicants in the present OA, to the effect that "any excessive payment that may be found to have been made as a result of incorrect fixation of TRCA or any excess payment detected in the light of

discrepancies noticed subsequently will be refunded to the Government either by adjustment against future payments or otherwise". It is stated that the TRCA of the applicants have been reviewed correctly as per the norms prescribed by the department which was verified by the Postal Accounts Office.

5. This OA was dismissed in default vide order dated 20.3.2018. Thereafter the MA 214/2019 was filed for restoration of the OA along with MA 215/2019 for condonation of delay, which were considered by the Tribunal and vide order dated 19.3.2019 the MAs were allowed and the OA was restored.

6. Learned counsel for the applicant was heard. He also submitted copy of the statement of fixation of TRCA of the GDS i.e. the applicants along with the copy of the order dated 6.12.2016 of this Tribunal passed in OA 559/2015. Learned counsel for the respondents was also heard. He filed a written note of argument enclosing copy of the order dated 3.4.2018 passed in OA 764/2015.

7. Learned counsel for the applicant submitted that the applicants were getting prior to 1.1.2006 TRCA of Rs.1740-2640/- which was revised to TRCA scale of Rs.4220-6470/- vide Directorate's letter dated 9.10.2009. But at the time of fixing the scale although the applicants were getting pre-revised Rs.1740-2640/-, the fixation was done on the basis of pre-revised lower TRCA scale of Rs.1375-2530/-. Although initially the applicants were allowed the revised scale of Rs.4220-6420/-, but subsequently it was reduced to 3330-5130/- on the ground that the work load has been reduced w.e.f. 1.1.2006. It was also submitted by learned counsel for the applicants that in no other Division in Orissa Circle reduction in revised TRCA has been affected. It was also submitted that the applicants had received the pre-revised TRCA in the scale of 1740-2640/- from 1.1.2006 to 9.10.2009 and the modified TRCA fixed at the lower scale, their effective TRCA has been reduced for the period 1.1.2006 to 9.10.2009 without any information or passing of any formal order.

8. Learned counsel for the respondents reiterated the grounds taken in the counter and submitted that as per stipulations in the Directorate's letter at Annexure P/1, the work load of GDS had to be reviewed and the TRCA had to be revised. A written note of arguments has also been filed by the respondents'

counsel along with a copy of the order dated 3.4.2018 passed by this Tribunal in OA No. 764/2015

9. The order dated 9.10.2009 of the Directorate (Annexure P/1 to the counter) which was relied upon by the respondents, has stated as under :

"2. The respective Authorities shall fix the time related continuity allowance of all the Gramin Dak Sevaks working under their jurisdiction with reference to their existing work load. Basic TRCA drawn as on 1.1.2006 and send the names of Gramin Dak Sevaks with a statement of fixation of time related continuity allowance as on 1.1.2006 as per given formula and also intimate the annual increases up to the date of issue of orders to the Drawal and Disbursing Officers for working out the arrears. Obtaining undertakings of proforma given in Annexure VII from GDS is a pre-requisite for payment of first instalment of arrears. The undertakings obtained from the Gramin Dak Sevaks should be kept in a separate Guard file in the Divisional Office which should be preserved permanently.

6. The Circle Postal Accounts Office shall carry out cent percent verification of fixation of TRCA consequent on revision by 31.3.2010. Discrepancy if any got settled on the spot. Excess Arrears due to wrong fixation shall be listed and reported to Regional Director of Postal "Services/Postmaster General/Chief Postmaster General concerned."

There was stipulation in above letter to the effect that the Circle Postal Accounts Office will conduct verification of fixation of TRCA consequent on revision by 31.3.2010 and one of the criteria for fixing of the TRCA was specified to be the existing work load.

10. The contention of the applicant in the OA in para 4.1 that no show cause notice was issued and no opportunity was given, there is no specific averment of the respondents contradicting the contentions in the para 4.1 of the OA, in their counter. Respondents have not also issued any order for recovery, if passed by the competent authority and communicated to the applicants. Only the letter dated 8.11.2011 of Sr. Accounts Officer addressed to SSPO Puri (respondent No.3) has been enclosed with the counter. Based on the letter dated 8.11.2011 only and without passing any specific order for recovery, the respondent No.3 started recovery from the applicant and such action was clearly against the principles of natural justice.

11. Learned counsel for the respondents cited the order dated 3.4.2018 of this Tribunal. From perusal of the order dated 3.4.2018 of this Tribunal it is clear that the CPMG has passed the order and in the said order there was an

order of the authority for recovery along with the reasons for such recovery on the ground that the work load was reduced retrospectively w.e.f. 1.1.2006. The issue of violation of principles of natural justice was not raised or considered in the said order dated 3.4.2018 passed in OA 764/2015. Hence, the present OA is factually different from the cited OA, since there is violation of principles of natural justice in the present OA since the respondents have not passed any order before starting deductions for the TRCA of the applicants.

12. The applicant's counsel has cited the order dated 6.12.2016 passed in OA No. 559/2015. In this case the excess payment towards TRCA was recovered by the authority after assessment of the work load of the concerned GDSs. As the order dated 6.12.2016 has noted, in that case, no notice was served on the applicants before recovery was made and it was alleged by the applicants that the over payment was calculated based on some "bogus work load statement" behind the back of the applicant. In this case, the subsequent "work load statement" was assessed and it was clarified by the respondents that reduction of TRCA was done by mistake. Following observations are made in order dated 6.12.2016 of this Tribunal :

"8. It is further admitted by respondent No.4 that in the case of the applicant, the TRCA slab was inadvertently fixed in the first slab Rs.33360-60-5130 for workload up to 3 hours 45 minutes instead of the slab of Rs.4220-75-6470 for workload of more than 3 hours 45 minutes.

9. With the assistance of respondent No.4, therefore, it has been clarified to the Tribunal that applicant is entitled to TRCA of Rs.4220-75-6470 as per his workload. The earlier stand of the respondents is admitted as an inadvertent error. There is no further dispute about the issue. The applicant in the OA had also submitted that he is a low paid employee, and according to the judgment of the Hon'ble Apex Court in the case of State of Punjab and Ors. -vs- Rafiq Masih etc., recovery is impermissible from employees belonging to Class III and Class IV. The respondents in the counter, have also admitted this position and indicated that in the light of the decision of Hon'ble Apex Court, action has been taken to stop recovery of excess paid TRCA of the Gramin Dak Sevaks with immediate effect pending formal approval of competent authority."

From above, it is clear that the decision in the cited OA No. 559/2015 will not apply to the present case, which is factually distinguishable.

13. In view of the above discussions, the matter is remitted back to the respondent No.2 for consideration of the case of the applicants on the basis of the work load and if there is reduction of the work load which will affect the TRCA payable to the applicant, then the same needs to be communicated to

the concerned applicant in a show cause notice along with the details of excess payment if made to him and if recovery of the excess payment is proposed from the applicants. After receiving the reply/representation of the applicant, the respondent No.2 will take appropriate decision in the matter taking into account the applicability of the reduced work load, if any, retrospectively w.e.f. 1.1.2006 in accordance with the provisions of law. Further, if it is decided by the respondent No.2 that the applicants are not liable to refund any amount, then the amount already received from the applicants is to be refunded to the applicants within one month from the date of such decision.

14. The OA is accordingly disposed of. There will be no order as to costs.

(SWARUP KUMAR MISHRA)

(GOKUL CHANDRA PATI)

MEMBER (J)

MEMBER (A)

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