

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 634/2015

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

Rabindra Kumar Panda, aged about 30 years, S/o Late Sribanta Kumar Panda, permanent resident of Vill-Kalamatia, PO-Kaipara, PS – Ramachandrapur, Dist-Jajpur at present working as GDSMD-1 Kaipara SO under Cuttack North Division.

.....Applicant

VERSUS

1. Union of India represented through its Secretary-cum-Director General (Posts), Dak Bhawan, Sansad Marg, New Delhi-110001.
2. Chief Postmaster General, Odisha Circle, Bhubaneswar, At/PO- Bhubaneswar GPO-751001, Dist. – Khurda.
3. Superintendent of Post Offices, Cuttack North Division, 15 Cantonment road, At/PO/Dist-Cuttack GPO-753001.
4. Inspector of Posts, Dharmasala Sub Division, At/PO- Dharmasala-755005, Dist.-Jajpur.

.....Respondents.

For the applicant: Mr.T.Rath, counsel

For the respondents: Mr.A.C.Deo, counsel

Heard & reserved on : 8.8.2019

Order on : 27.8.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The OA is filed under section 19 of the Administrative Tribunals Act, 1985 with the prayer for the following reliefs:-

"(i) Direct the respondents to revise the TRCA of the applicant sanctioned for the post of GDSMD-1, Kaipara SO with effect from 28.9.2005 with subsequent revision from 1.1.2006 and pay the revised as well as arrear TRCA with immediate effect.

(ii) Pass any other order/orders as deemed fit and proper."

2. Briefly stated, the applicant claims to have been appointed as GDSMD-I Kaipara on compassionate ground on 28.9.2005 after death of his father vide order dated 24.9.2005 (Annexure-A/1) and his TRCA was fixed in the scale of Rs. 1375-2125. He is claiming the scale of Rs. 1740-2640/- which the scale his father was drawing when he was working in the same post. He submitted a letter dated 10.11.2005 (Annexure-A/2) to allow the scale of Rs. 1740-2640/-

to him. He also submitted a representation dated 5.1.2006 (Annexure-A/3) to the respondent No. 4 and another representation dated 3.10.2006 to the respondent No. 3 who called for the workload statistics for the post. Thereafter, he submitted a series of representation to the authorities, but no decision has been taken in the matter. Being aggrieved, he filed this OA.

3. In the Counter filed by the respondents, it is stated that the applicant was actually appointed as GDSMD-II, Kaipara on compassionate ground vide order dated 23.9.2005 of the respondent No. 3. He joined in the post on 28.9.2005, but the then Postmaster allowed the applicant to join against the post of GDSMD-I against which his father was working. It is further stated that the applicant was working as GDSMD against both the posts i.e. GDSMD-I and II in Kaipara from 26.7.2008 to 4.9.2009 and from 5.9.2009, he was working as GDSMD-II exclusively. It is stated that as per the circular dated 16.7.2012 (Annexure-A/10), for the newly appointed GDSs appointed after 1.1.2006, the TRCA is to be fixed at the minimum level in scale applicable for the post and since the applicant was appointed prior to 1.1.2006, this circular is not applicable to him. The respondent no. 2 after considering his representation, has disposed of the same vide order dated 15.1.2006 (Annexure-R/1), rejecting the same. Finally, it is stated in para 9 of the Counter that the respondent No. 3 will review the workload of the applicant afresh and take a fresh decision regarding revision of the TRCA.

4. In the Rejoinder, the applicant averred that since he was appointed against the post in which his father was working, i.e. GDSMD-I, Kaipara, he is entitled for the scale Rs. 1740-2640/- for TRCA and not the lower scale. It is stated that both the GDSMD-I and II were sanctioned with the TRCA scale 1740-2640/. One Mr. Judhistira Dhal, who was holding the post of GDSMD-II, was also drawing the TRCA scale Rs. 1740-2640/. Hence, the applicant will be entitled for the above TRCA scale. It is also stated the order at Annexure-R/1 is not as per the order of the Tribunal and hence, it is liable to be quashed.

5. We have heard learned counsels for both the sides, who have also filed their written notes of arguments. The applicant in his written note, took the same stand as in the OA, stating that since the respondents have admitted that he had worked in the post of GDSMD-I from his initial date of joining i.e. from 28.9.2005 till 25.7.2008 exclusively and has worked in both the posts from 26.7.2008 to 4.9.2009, he has a claim for the higher scale applicable for the post of GDSMD-I. He denied the contention of the respondents that he was appointed against the post of GDSMD-II. The written note submitted by the respondents reiterated the same stand as taken in their Counter.

6. Learned counsel for the respondents was heard and he also submitted his written notes of arguments, mainly reiterating the contentions in the Counter. It is stated in the written note that the applicant had tampered his appointment letter by changing it to GDSMD-I from GDSMD-II and has not approached the Tribunal with clean hands. It is further stated in the written note that the respondent No. 3 would review the workload for the post afresh and take a decision regarding revision of TRCA if required.

7. Having regard to the submissions as well as the pleadings of the rival parties, we take note of the contention of the respondents that the respondent No.3 will review the workload and fail to understand the reason as to why the workload could not be reviewed when the matter was pending before us in this OA and liberty was given to the respondent to address the applicant's representations in this regard vide order dated 25.9.2015. We also note that in the written note, there is a submission that the applicant had tampered his appointment order at Annexure-A/1, although it has not been explained why such a plea could not be taken in the Counter. Learned counsel for the applicant has vehemently opposed to such submission of the respondents and pointed out that the order at Annexure-A/1 had referred to the orders of the Circle Office and Divisional Office, based on which the order at Annexure-A/1 was issued by the respondent no. 4 and hence, there was no possibility for any tampering of all these orders by the applicant. Since such a contention was not there in the Counter filed by the respondents and the applicant was admittedly allowed to join against the post of GDSMD-I as stated in the Counter, we do not consider this point to be worth considering at this stage.

8. It is seen from the order dated 24.9.2005 (Annexure-A/1 to the OA), in which the applicant was allowed to join as GDS in Kaipara after his engagement on compassionate ground, it appears that the applicant was appointed as GDSMD-II Kaipara S.O. However, the undisputed fact is that the Postmaster allowed him to join as GDSMD-I instead of the post of GDSMD-II and he continued in the said post till 25.7.2008. After 25.7.2008, GDSMD-II post also fell vacant and he was kept in additional charge of the said post and he continued to work for both the posts till 4.9.2009 and on these facts, there is no dispute. The respondents have stated that the Postmaster wrongly allowed him to join against the post of GDSMD-I instead of the post of GDSMD-II against which the applicant was appointed vide the order at Annexure-A/1. As stated in the Counter, from 5.9.2009, the applicant is working as GDSMD-II Kaipara exclusively.

9. It is stated in the Counter as well as in the order at Annexure-R/1 that since the applicant joined as GDSMD on 28.9.2005 i.e. prior to 1.1.2006, he

cannot be allowed the minimum of the TRCA scale applicable for the post in which he was appointed and he was allowed the minimum scale applicable for the duty of 3 hour 45 minutes of workload. There is no circular of the DG or the rule cited in support of this contention of the respondents. If a post was carrying the TRCA scale of Rs. 1740-2640/- prior to joining of the applicant, whether it is in the post of GDSMD-I or GDSMD-II, how can he be allowed a lower scale applicable for less workload, unless part of the workload was shared by him with another person, which is not the case here. The contention in para 3 of the Rejoinder that both the posts of GDSMD-I and II at Kaipara were carrying the scale of Rs. 1740-2640/-, which has not been refuted by the respondents. Further, till 4.9.2009, the respondents have admitted in the Counter that the applicant was either working as GDSMD-I or in both the posts of GDSMD-I and GDSMD-II. Further, it is noted from the averments at para 9 of the Counter that the respondent No. 3 was to assess the workload of the applicant to see if there is any justification. It is not understood why this exercise could not be completed when the applicant represented with his grievance relating to the TRCA scale earlier and when his case was considered by the respondent no. 2 while passing the order dated 15.1.2016 (Annexure-R/1) in compliance of the order of the Tribunal.

10. In view of the discussions above, we are of the considered view that the applicant has been able to establish a strong case for his claim for the TRCA scale of Rs. 1740-2640/- which was allowed to the incumbent prior to the applicant in view of the fact that there is nothing on record to show that the workload for the post in question was reduced by the time the applicant joined the post on 28.9.2005. We do not consider the contentions of the respondents for allowing the lower TRCA scale to the applicant to be adequate to refuse the TRCA scale as prayed for by the applicant. Accordingly, the respondents are directed to allow the TRCA scale being drawn by the applicant's immediate predecessor after his joining on 28.9.2005 and allow the consequential benefits to the applicant including the arrears as per the provisions of law and disburse the same within four months from the date of receipt of a copy of this order. It is clarified that if any assessment of workload has been done as per the procedure laid down by the respondents for the post in question, then from that date, the applicant will be eligible for the TRCA scale as applicable for such assessed workload.

12. The OA is allowed as above. There will be no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath