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CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00886/2015

Friday, this the 9th day of August, 2019

CORAM:

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

M. Gopinathan, aged 45 yeears, S/o. Late Ramadas,
GDS Mail Packer, Pazhanji Sub Office, Thrissur Postal Division.
Residing at Moolayil House, Akkikkavu,
Kunnamkulam PO, Pin – 680 503. **Applicant**

(By Advocate : Mr. Shafik M.A.)

v e r s u s

1. Union of India, represented by its Secretary,
Department of Posts, Ministry of Communication and
Information Technology, Dak Bhavan, New Delhi-110 116.
2. The Chief Postmaster General, Kerala Circle,
Thiruvananthapuram – 695 033.
3. The Senior Superintendent of Post Offices,
Thrissur Division, Thrissur – 680 001. **Respondents**

(By Advocate : Mr. C.P. Ravikumar, ACGSC)

This application having been heard on 26th July 2019 the Tribunal on 9th August 2019 delivered the following:

O R D E R

Hon'ble Mr. Ashish Kalia, Judicial Member –

The applicant is aggrieved by Memo dated 26.12.2014 issued by the 3rd respondent in pursuance to order of this Tribunal dated 15.9.2014 in O.A.No.1163/2012, reducing his Time Related Continuity Allowance (TRCA) from Rs.4220/- to Rs.3765/- based on the audit objection without issuing a notice to him. The reliefs claimed by the applicant are as under :

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“(i) To call for the records relating to Annexure A-1 to A-10 and to quash A-1 being illegal, arbitrary and against the directions of A-9 order;

(ii) To issue appropriate direction or order directing the 1st respondent to restore the TRCA of the applicant which he was drawing up to the month of June, 2010 and to continue to pay the TRCA with annual increments admissible and to refund the TRCA unlawfully recovered from the pay of the applicant;

(iii) To issue appropriate direction or order directing the respondents to pay the applicant the arrears of TRCA and allowances becoming payable on restoration of the TRCA with annual increments for the period from the month of June, 2010 in the revised TRCA of Rs. 3,635-65-5,585 till the date of restoration of the TRCA with interest;

(iv) To issue appropriate direction or order directing the respondents to pay the applicant the 2nd installment of 60% arrears as provided in paragraph 11 of Annexure A-3 with interest immediately, at any rate, within a time frame that may be fixed by this Hon'ble Tribunal;

(v) To issue appropriate direction or order directing the respondents to fix the TRCA of the applicant in the revised TRCA of Rs. 3,635-65-5,585 and to fix his pay at the stage of Rs. 4,350/- as on 1.1.2006 with consequential benefits provided in Annexure A-3 with annual increments admissible and to grant arrears of TRCA and allowances becoming payable on re-fixation of TRCA in the revised TRCA of Rs. 3,635-65-5,585/- with interest from the date of entitlement till the date of actual payment;

(vi) To pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

And

(vii) To award costs of this proceedings.”

2. The brief facts of the case are that the applicant was initially appointed as Extra Departmental Mail Packer, Pazhanji (subsequently redesignated as GDS Mail Packer) and was placed in the TRCA of Rs.1545-25-2020/- with effect from 1.2.1990. According to the recommendations of Sri.R.S.Nataraja Murti Committee on revision of wage structure of GDS, GDS Mail Packer in the existing TRCA of Rs.1545-25-2020/- are entitled for the revised TRCA of Rs.3635-65-5585/- with 40% fitment benefit of Rs.808. Therefore the basic pay of the applicant which reached at the stage of Rs.1920/- is entitled to corresponding fixation in the revised TRCA of Rs.3635-65-5585/- at Rs.4350/- as on 1.1.2006. However, his pay was fixed at Rs.4155/- corresponding to the pre-revised stage as on 1.9.2009

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which was subsequently reduced to Rs.3765/- and was further reduced to Rs.3556/- below the minimum of the TRCA of Rs.3635-65-5585/- without any notice or without affording him an opportunity of being heard. The representation dated 28.7.2010 against the said reduction did not evoke any response and the respondents continued to pay the lower TRCA. In the meanwhile, the applicant was served with a communication dated 5.10.2010 of the 3rd respondent stating that the reduction/recovery of over paid TRCA has been made based on the observations of the audit party from DA(P), Trivandrum after reviewing the fixation of the applicant's TRCA during their visit to Kunnamkulam HO while carrying out cent percent verification of fixation of TRCA on implementation of revision of wage structure to GDS officials according to the Sri.Nataraja Murty Committee recommendations. Further paragraph 11 of Annexure A-3 provides for fixation of TRCA with effect from 1.1.2006 to 30.9.2009 which shall be paid in case in two installments of 40% and 60% spread over the financial year 2009-10 and 2010-11. The applicant submits that he was given the 1st installment of 40% as provided in Annexure A-2. However, the respondents adjusted the 2nd 60% arrears towards alleged excess payment. Aggrieved the applicant approached this Tribunal by filing O.A.No.1163/2012 which was disposed of vide Annexure A-9 order dated 15.9.2014. The order reads as under :

24. After considering the rival contentions, we are of the view that the argument put forth by the applicant has got merit. If his workload justified the retention of the TRCA, then there is no reason for arbitrarily re-fixing his pay without giving him an opportunity to explain his position. Simply because the audit have made some observations and suggested review, the respondents, without examining the matter further ought not to have gone ahead with the revision of pay. Therefore, the action on the part of the respondents appears to be unreasonable. As such, we are of the view that it would be appropriate if the applicant is allowed to submit a detailed representation to the respondents justifying the grounds on which the Time Related Continuity Allowances allowed

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to him earlier should be retained and after such a representation is submitted, the respondents shall consider the same and pass a detailed speaking order thereon. If it is held that the applicant is entitled for retention of the TRCA originally sanctioned in his favour, they should provide all consequential benefits including the grant of arrears.

25. Therefore, after due consideration of the facts and circumstances of the case, we permit the applicant to submit a detailed representation as outlined above within a period of one month to the respondents who shall consider the same and pass a detailed reasoned order thereupon within two months next.

3. In purported compliance of Annexure A-9, the respondents have now issued Annexure A-1 impugned order by which the applicant's request for the TRCA of Rs.1545-25-2020/- with effect from 1.9.2008 and in the TRCA of Rs.3635-65-5585/- at the rate of Rs.4350/- as on 1.1.2006 was rejected again without reckoning any of the facts narrated by him in the representation.

4. As grounds the applicant has relied on the decision of the Hon'ble Apex Court in **Bagwan Shukla vs. Union of India reported in AIR 1994 SC 2480** which emphatically held that the reduction of pay cannot be made without following the basic principles of natural justice and the order of reduction of pay effected without notice and without affording an opportunity of being heard is liable to be set aside.

5. The respondents have rendered appearance and filed their reply statement wherein they have reiterated their contentions which they have raised during the earlier round of litigations ie., in O.A.No.1163/2012. Further they have submitted that pursuant to the order of this Tribunal in the aforesaid O.A the respondents have considered the representation of the applicant along with the results of the triennial establishment review and they justified the reduction of pay.

6. The applicant has filed rejoinder reiterating the contentions raised in the O.A and submitted that the normal working hours of the applicant is 9am to 2pm and in addition to that he had to carry the mails to and from Porkulam and Mangatt Post Offices. The TRCA of Mail Packer having duty of 3 hours and 45 minutes up to 5 hours is Rs.3635-65-5585/- as per Annexure A-3 and the respondents cannot fix the same below the minimum of the TRCA of Rs.3635/- which he has been drawing, by force of Annexure R-1 protection order.

7. The respondents have also filed their additional reply statement again reiterating the contentions in the reply statement.

8. Heard learned counsel for the parties at length and perused the records on offer. This Tribunal has considered this issue in great detail when the applicant has approached this Tribunal by filing O.A.No.1163/2012. For the sake convenience we are extracting the relevant portions of the aforesaid order as below :

21. We have carefully considered the facts of the case and also the submissions made by either side. The issue mainly relates to revision in the TRCA based on the observation made by the audit. In this context, the two circulars issued by the respondent authorities are quite relevant. The first one relates to the order issued by the Senior Superintendent of Post Offices, Thrissur Division, on 18.04.2000. This is a detailed order in respect of revision of allowances in which for each office, the present allowance and justified allowances with effect from 01.01.1998 was mentioned. In the said order under Kunnamkulam Head Office, for Pazhanji, for the post of ED Packer, the present allowance was shown as Rs.1545-25-2020/- and justified allowance with effect from 01.01.1998 was also same, i.e., Rs.1545-25-2020/-. For the ED Messengers, the present allowances and justified allowances shown is Rs.1220-20-1600/-. Thereafter, there was a column specifying the cases where allowance is protected even though the justified allowance is less than the existing allowance specifying that the protected allowance is applicable to the present incumbents only. Under that category, 7 offices have been mentioned and in case of Pazhanji office, the post of EDP-II, the present allowance was mentioned as Rs.1545-25-2020/-, the revised allowances with effect from 01.01.1998 as Rs.1220-20-1600/- and the protected

allowance to the present incumbents only with effect from 01.01.1998 as Rs.1545-25-2020/- . It seems that in many offices, the work load came down requiring revision of TRCA. The respondent authorities then issued a circular on 11.10.2004 (Annexure-R/6) relating to fixation of time Related Continuity allowance of GDS on reduction of workload. They have stated that clarification continued to be sought for by many circles as to how the TRCA of GDS should be fixed whenever a change takes place warranting revision in the Time Related Continuity allowance. The said circular contained detailed instructions in order to adopt uniform policy in these matters and it stated as follows:

"(i) In case of drop in the workload of GDS BPM as a result of Triennial Establishment Review, possibility of entrusting additional work by way of combination of duties of mail delivery and mail conveyance may be examined for justifying retention of the higher TRCA. If GDS happens to be in the lower TRCA and there is further drop in the workload, then the recombination of duties of mail delivery/mail conveyance with the work of GDS BPM/GDS SPM would be unavoidable and the only choice available. However, while ordering such an arrangement, care should be taken that the total workload of the post does not exceed 5 hours and while combining the duties of GDS Delivery Agent/Mail Carrier with the GDSBPM for protection of allowance, no separate combined duty allowance will be payable to the GDSBPM.

(ii) If the combination of duties is not possible, then the GDS may be brought from the second TRCA to the first TRCA by protecting the stage of the 1st TRCA. If the specific stage is not available in the lower TRCA, then he may be placed in the lower stage. Difference will be protected as personal allowance to be absorbed against future entitlement, provided that the 1st TRCA and Personal allowance do not exceed maximum of 1st TRCA. If on subsequent review, the workload of the post increases, then the higher stage of TRCA be restored from a prospective dated which would be determined with respect to the date of completion of Triennial Review."

It may also be noted that if the respondents felt that the order of 2000 issued by the Senior Superintendent of Post Offices, Thrissur Division in any manner contravenes the subsequent order of 2004, then, normally revised order should have been issued. But no such revised order was issued in respect of the order of 2000 which clearly provides guidance for fixation of justified allowance in all the offices under the Division.

22. It seems that during checks, the audit party observed the following eight persons including the applicant (page 73 to be typed)

"It is seen that on the basis of Thrissur SSP No.H/TRCA/Dig dated 26.08.03, some of the GDS were granted higher TRCA based on foot beat formula. It is reliably learnt that validity of this protection was expired somewhere in 2004. But, revision was made on the basis of higher TRCA which is maximum of lower TRCA i.e., Rs.1600/- in r/o those who were in 1220-20-1600 or Rs.2125 in r/o those who was in 1375-25-2125 scale. As a test case, drawal made to Sri K.K. Krishnankutty was examined and appropriate over payment of Rs.12462/- was noticed. All such cases may be reviewed and recalculated under intimation to DAP office. A list of GDS to whom protection was granted is furnished hereunder :

K.S. Krishnankutty
ET Jose
KC Johnson
P Bhanumathi
NA Vasu
K K Manian
K K Preman
M Gopinathan"

23. Simply based on the audit report, the respondent authorities went ahead and refused the fixation. In fact, they should have examined whether their earlier fixation order was correct, since the audit had observed for reviewing the cases mentioning that they have reliably learnt that the validity of protection has expired on 07.08.2004. It would also have been appropriate if they had given an opportunity to the applicant to give representation against the audit observations. The applicant has contended that in addition to his normal workload as GDS Mail Packer which was 5 hours, the applicant was entrusted with the additional work of Mail Carrier and the applicant had to carry the mail to and from Porkulam and Mandatt Post Offices therefore, he is entitled for retention of higher TRCA. The order of 11.10.2004 also suggest possibility of entrusting additional work by way of combination of duties of Mail delivery and mail conveyance to justify the retention of higher TRCA.

24. After considering the rival contentions, we are of the view that the argument put forth by the applicant has got merit. If his workload justified the retention of the TRCA, then there is no reason for arbitrarily re-fixing his pay without giving him an opportunity to explain his position. Simply because the audit have made some observations and suggested review, the respondents, without examining the matter further ought not to have gone ahead with the revision of pay. Therefore, the action on the part of the respondents appears to be unreasonable. As such, we are of the view that it would be appropriate if the applicant is allowed to submit a detailed representation to the respondents justifying the grounds on which the Time Related Continuity Allowances allowed to him earlier should be retained and after such a representation is submitted, the respondents shall consider the same and pass a detailed speaking order thereon. If it is held that the applicant is entitled for retention of the TRCA originally sanctioned in his favour, they should provide all consequential benefits including the grant of arrears.

25. Therefore, after due consideration of the facts and circumstances of the case, we permit the applicant to submit a detailed representation as outlined above within a period of one month to the respondents who shall consider the same and pass a detailed reasoned order thereupon within two months next.

9. We are in complete agreement with the above findings of this Tribunal. However, the respondents without application of mind again followed the same ground for rejecting the request of the applicant. Hence we have no hesitation to direct the respondents to restore the pay at Rs.4350/- in the TRCA of Rs.3635-65-5585/- with effect from 1.1.2006

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with consequential benefits provided in Annexure A-3 with annual increments admissible and to refund the TRCA recovered from the pay of the applicant. Arrears arising therefrom as also the 2nd installment of 60% arrears as provided in paragraph 11 of the OM dated 9.10.2009 shall also be disbursed. The aforesaid exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

10. The O.A is accordingly allowed. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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APPLICANTS' ANNEXURES

Annexure A1 - True copy of the memo No. A/253 dated 26.12.2014 issued by the 3rd respondent.

Annexure A2 - True copy of the pay slip of the applicant for the month of June, 2009.

Annexure A3 - True copy of the DG Posts OM No. 6-1/2009-PE.II dated 9.10.2009.

Annexure A4 - True copy of the pay slip of the applicant for the month of November, 2009.

Annexure A5 - True copy of the pay slip of the applicant for the month of March, 2010.

Annexure A6 - True copy of the representation dated 28.7.2010 of the applicant with translation.

Annexure A7 - True copy of the memo No. A/GDSCOMMN/09/Regn dated 5.10.2010 issued by the 3rd respondent.

Annexure A8 - True copy of the pay slip of the applicant for the month of February, 2011.

Annexure A9 - True copy of the order dated 15.9.2014 of this Hon'ble Tribunal in OA No. 1163/2012.

Annexure A10 - True copy of the representation dated 20.10.2014 submitted by the applicant.

RESPONDENTS' ANNEXURES

Annexure R1 - True copy of the memo No. A/EDA/Revn/Gnl/1998 dated 18.4.2000.

Annexure R2 - True copy of letter No. A/GDS Commn/09 dated 15.10.2009.

Annexure R3 - True copy of memo No. A/GDS/Commn/09 dated 22.6.2010.

Annexure R4 - True copy of the revised TRCA slab applicable with effect from 1.1.2006 communicated vide Directorate letter No. 6-1/2009-P.E II.

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Annexure R5 - True copy of the undertaking dated 20.10.2009 furnished by the applicant.

Annexure R6 - True copy of Directorate letter No. DOP No. 14-16/2001/PAP(Pt) dated 11.10.2004.

Annexure R7 - True copy of RM No. 3/SIP/GDS/REV/KKM dated 12.1.2010 issued by Internal Audit Inspection party.

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