

**CENTRAL ADMINISTRATIVE TRIBUNAL,**  
**ERNAKULAM BENCH**

**Original Application No. 180/00030/2017**

**Tuesday, this the 30<sup>th</sup> day of July, 2019**

**CORAM:**

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

Kunhiraman P.K., aged 63 years, S/o./ Chundu Nair,  
Gramin Dak sEvak Branch Post Master,  
Chathangottunada Branch Post Office, Kavilampara,  
Residing at Pilakandy House, Kavilampara PO, Vadakara,  
Kozhikode District – 673 513. ....

**Applicant**

**(By Advocate : Mrs. R. Jagada Bai)**

**V e r s u s**

1. Union of India, represented by the Secretary,  
to Department of Posts, New Delhi – 110 001.
2. The Superintendent of Post Offices, Vadakara Division,  
Vadakara – 673 101.
3. Inspector Posts, Vadakara North Sub Division,  
Vadakara – 673 101.
4. The Post Master, Vadakara Head Post Office,  
673 101. ....

**Respondents**

**(By Advocate : Mr. Thomas Mathew Nellimoottil, Sr. PCGC)**

This application having been heard on 25.07.2019 the Tribunal on  
30.07.2019 delivered the following:

**ORDER**

**Hon'ble Mr. Ashish Kalia, Judicial Member –**

The relief claimed by the applicant are as under:

“(1) Call for the records.

(2) Quash Annexure A9 to the extent of its retrospective operation and direct the respondent No. 2 and No. 4 are not entitled to recover the

overpayment of TRCA retrospectively from 1.2.2014 from the allowances of the applicant.

(3) Direct the respondent No. 4 to refund the amount already recovered from the allowances of the applicant.

(4) .

(5) Any such remedy deemed fit and proper as this Hon'ble Tribunal may be pleased to order.

(6) Grant costs to the applicant.”

2. The brief facts of the case are that the applicant was appointed as Extra Departmental Delivery Agent at Kavilampara Sub Post Office at Vadakara Postal Division with effect from 1.7.1981. While working as such he was retrenched and posted as Extra Departmental Branch Post Master at Chathangottunada Branch Post office w.e.f. 13.2.1997. Consequent upon revision of Time Related Continuity Allowance (TRCA) since 1.1.2006 he was placed in TRCA scale of Rs. 3,660-70-5,760/-. He had drawn the TRCA in the same scale up to November, 2016. The applicant was due to retire w.e.f. 5.10.2018. On 31.1.2013 the 2<sup>nd</sup> respondent issued a letter informing the applicant that the periodical review of Chathangottunada Branch Post Office entitles him the TRCA in the scale of pay of Rs. 2,745-50-4,245/- instead of Rs. 3,660-70-5,760/- due to reduction in work load. Further it was also stated that his then TRCA of Rs. 3,660-70-5,760/- will be protected for a period of one year from 1.2.2013. Aggrieved by the action of the 2<sup>nd</sup> respondent the applicant preferred a representation dated 20.12.2016 praying for re-examination of his case. However, respondent No. 3 ordered recovery of an amount of Rs. 74,297/- from 1.2.2014 from the TRCA of the applicant commencing from the month of December, 2016.

The applicant submits that he is drawing monthly allowance to the tune of Rs. 12,140/- in the scale of Rs. 3,660-70-5,760/- and on reduction of the TRCA to the scale of Rs. 2,745-50-4,245/- his monthly allowance was reduced to Rs. 9,973/- reducing his pay package to the tune of Rs. 2,167/-. Besides the reduction in total emoluments an amount of Rs. 3,380/- being the 80% of the basic TRCA is being recovered from his monthly allowance due to the reduction of his TRCA with retrospective effect from 1.2.2014. Aggrieved the applicant has filed the present Original Application.

3. When the matter came up for admission on 10.1.2017, this Tribunal ordered that recovery henceforth shall remain stayed till the next hearing date. The interim order was extended from time to time.

4. Notices were issued to the parties. Shri Thomas Mathew Nellimoottil, Sr. PCGC took notice on behalf of the respondents and had filed a reply statement contending that the applicant was posted as BPM Chathangottunada with effect from 13.2.1997. He was drawing TRCA in the slab of Rs. 3,660-70-5,760/-. However, on periodical review of the Chathangottunada Branch Post Office it was noticed that from January, 2013 the applicant was entitled to TRCA of Rs. 2,745-50-4,245/- instead of the present TRCA slab of Rs. 3,660-70-5,760/-. The present TRCA of the applicant was protected for one year with effect from 1.2.2013 and with effect from 1.2.2014 the TRCA of the applicant was reduced to the slab of Rs. 2,745-50-4,245/- with basic pay of Rs. 4,275/-, which resulted in overpayment of Rs. 74,297/- from February, 2014 to November, 2016.

Accordingly, it was ordered to recover the over payment amount in 22 installments. The respondents submit that there is no unintentional mistake happened on the part of the respondents in calculating the workload of the applicant. The recovery of overpayment in the instant case is the result of the reduced workload in the post of the applicant. The respondents have relied on the judgment of the apex court in *Superintendent of Post Offices, etc. v. P.K. Rajamma etc. etc.* - 1977 AIR 1677 wherein the apex court held that GDS are a separate cadre outside the Government service. Further in a common judgment of this Tribunal in OA No. 78/2010 and connected cases filed by All India Extra Departmental Employees union challenging the direction to re-fix the pay of the applicants and to recover excess amount paid, it was ordered by this Tribunal that respondents are fully within their right to recover the excess amount paid to the applicants and applicants do not have a right to retain the excess amount paid. Respondents pray for dismissing the OA.

5. Heard Smt. R. Jagada Bai, learned counsel for the applicant and Shri Thomas Mathew Nellimootti, Sr. PCGC, learned counsel appearing for the respondents. Perused the record.

6. The short point to be considered in this matter is that whether the action of the respondents in reducing the TRCA of the applicant who was in the slab of Rs. 3,660-70-5,760/- to the slab of Rs. 2,745-50-4,245/- with basic pay of Rs. 4,275/- due to reduction in work load is justified or not and whether the recovery of overpayment of Rs. 74,297/- from February, 2014

to November, 2016 is permissible ?

7. The applicant was appointed as Extra Departmental Delivery Agent at Kavilampara Sub Post Office in Vadakara Postal Division with effect from 1.7.1981 and posted as BPM Chathangottunada with effect from 13.2.1997. He was drawing TRCA in the slab of Rs. 3,660-70,5,760/-. As per the contention of the applicant as well as respondents the applicant was due to retire on attaining the age of 65 years on 4.10.2018. This OA was filed on 10.01.2017 and it means that as on date the applicant has retired on attaining the age of 65 years w.e.f. 4.10.2018. The respondents contended that the workload of Branch Postmaster is assessed on point system based on average workload. The periodical review of Chathangottunada Branch Post Office was conducted during January, 2013 and the applicant was entitled to only TRCA of Rs. 2,745-50-4,245/- due to reduction in workload. The respondents protected the applicant's TRCA for one year with effect from 1.2.2013 till 1.2.2014 as per rules. With effect from 1.2.2014 the applicant was eligible for drawal of basic pay of Rs. 4,245/- in the scale of pay of Rs. 2,745-50-4,245/-. We find that the TRCA of the applicant was reduced due to reduction in workload. As contended by the respondents the workload of the post of the applicant was 48.09 points and hence he was eligible for TRCA of Rs. 2,745-50-4,245/- only. Therefore, we do not find any illegality in the action of the respondents in reducing the TRCA of the applicant from Rs. 3,660-70-5,760/- to Rs. 2,745-50-4,245/- with basic pay of Rs. 4,245/-. However, the action of respondents in recovering the overpayment made to the applicant w.e.f. February, 2014 to

November, 2016 to the tune of Rs. 74,297/- is not appreciated in view of the judgment of the apex court in *State of Punjab & Ors. v. Rafiq Masih (White Washer) & connected cases* - AIR 2015 SC 696 wherein the apex court had set down the law and declared recovery as impermissible from employees under certain circumstances. The Apex Court ruled :

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law :

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

In view of the apex court judgment in *Rafiq Masih's* case (supra) we find that the applicant's case falls within item No. (ii) wherein the apex court held that recovery from retired employees is impermissible. Moreover, it was duty of the respondents to conduct the periodical review of the TRCA of the applicant in time so that such a situation would not have arisen where recovery is ordered in the case of the applicant from December, 2016. We find no fault on the side of the applicant.

8. In view of the above we do not find any illegality in the action of the respondents in reducing the TRCA of the applicant from Rs. 3,660-70-5,760/- to Rs. 2,745-50-4,245/- with basic pay of Rs. 4,245/-. However, no recovery is permissible in view of the decision of the apex court in **Rafiq Masih's** case (supra). Our order dated 10.1.2017 granting stay of recovery is made absolute.

9. The Original Application is disposed of as above. No order as to costs.

**(ASHISH KALIA)**  
**JUDICIAL MEMBER**

**(E.K. BHARAT BHUSHAN)**  
**ADMINISTRATIVE MEMBER**

“SA”

**Original Application No. 180/00030/2017****APPLICANT'S ANNEXURES**

- Annexure A1** - Copy of the Inspector of Post Offices, Badagara Sub Division Memo No. DA-II-Kavilampara dated 1.7.1981 appointing the applicant as EDDA.
- Annexure A2** - Copy of the Superintendent of Post Offices, Vadakara Division (respondent No. 2) Memo No. B3/Chathangottunada dated 10.3.1997 appointing the applicant as ED BPM.
- Annexure A3** - Copy of the pay slip No. 1 in Bill No. 7 of AR No. 97 for November 2016 issued by the Post Master Vadakara Head Post Office (respondent No. 3).
- Annexure A4** - Copy of the Superintendent of Post Offices, Vadakara Division (respondent No. 2) letter under No. A2/313/2012/2013 dated 31.1.2013.
- Annexure A5** - Copy of the Superintendent of Post Offices, Vadakara Division (respondent No. 2) letter No. A2/313 dated 26.2.2014.
- Annexure A6** - Copy of the compilation of the data relating to the work load of the BPM Chatangottunada forwarded by the applicant to the respondent No. 3 on 12.3.2014.
- Annexure A7** - Copy of the Superintendent of Post Offices, Vadakara Division (respondent No. 2) letter No. A2/313 dated 15.4.2016.
- Annexure A8** - Copy of the compilation of the data relating to the work load of the BPM Chathangottunada forwarded by the applicant to the respondent No. 3 on 4.5.2016.
- Annexure A9** - Copy of the order of the Superintendent of Post Offices, Vadakara Division (respondent No. 2) Memo No. A2/313 dated 25.11.2016 reducing the TRCA of the applicant to the TRCA scale of Rs. 2745-50-4245 from Rs. 3660-70-5760



retrospectively from 1.2.2014.

- Annexure A10** - Copy of the Director General, Posts (respondent No.1) letter No. 5-1/07-WS-1, dated 15.10.2012.
- Annexure A11** - Copy of the representation dated 20.12.2016 submitted by the applicant to the respondent No. 2 praying for re-examination orders (Annexure A9) of unjustified reduction of the TRCA with retrospective effect.
- Annexure A12** - Copy of the pay slip No. 1 in Bill No. 7 of AR No. 95 for December,2016 issued by the Post Master Vadakara Head Post Office (respondent No. 3).
- Annexure A13** - Copy of the order of this Hon'ble Tribunal in OA No. 907/2010 pronounced on 9.8.2012.
- Annexure A14** - Copy of the order of the Hon'ble Supreme Court of India in Civil Appeals No. 3351-3354 of 2003 pronounced on 16.12.2008.
- Annexure A15** - Copy of the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel and Training Office Memorandum No. F. No. 18/03/2015-Estt.(Pay-I)\_ dated 2.3.2016.

**RESPONDENTS' ANNEXURES**

- Annexure R1** - True copy of calculation sheet of the workload of the applicant based on Annexure A7 statistics.

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