

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

OA 350/1420/2017

Date of Order: 20-08-2019

Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Miss Namrata Mahato
Daughter of Sri Girindra Nath Mahato,
aged about 24 years, working as GDSBPM
of Hiliaftair Branch Office in a/c with
Hili Sub-office under Balurghat Sub-Office,
Balurghat-733101;
residing at Mahato Boarding,
Village-North Chakbhawani (Angsh),
P.O. Balurghar, Dist- Dakshin Dinajpur,
Pin-733101.

..... Applicant

-Versus-

1. Union of India, service through the Secretary, Ministry of Communications, Govt. of India, Department of Posts, Dak Bhawan, New Delhi – 110001.
2. The Chief Post Master General, West Bengal Circle, Yogayog Bhawan, C.R.Avenue, Kolkata – 700012.
3. The Superintendent of Post Offices, Dinajpur Division, Balurghat, Pin- 733101.
4. The Post Master, Balurghat H.P.O., Pin- 733101, West Bengal.

..... Respondents

For the Applicant(s) : Mr. K.Sarkar, Counsel

For the Respondent(s) : Mr. B.P.Manna, Counsel

ORDER

Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached the Tribunal praying for the following relief:

"i) to issue direction upon the respondents to cancel, quash, set aside the recovery order dated 08.08.2017 in respect of the applicant who is at Sl. No. 52 forthwith;
ii) to issue the further direction upon the respondents to return the recovered amount if any, from the TRCA of the applicant forthwith;
iii) and to pass any other order or orders as the Hon'ble Tribunal deem fit and proper."

2. Heard both Ld. Counsel, examined pleadings and documents on record along with citation referred to by the Ld. Counsel in support of their respective contentions.

3. The matter, in brief, is that on 29.06.2015, the applicant was engaged as a Gramin Dak Sevak Branch Post Master (GDS. BPM, in short) of Hiliaftair Branch Office, Hili Sub-Office under Balurghat Head Office and that, the applicant was continuing in the slab of Time Related Continuity Allowance (TRCA) of Rs. 4115-75-6365/- till 24.05.2016. On 24.05.2016, a revision order on TRCA was announced by the concerned Respondent authority and, accordingly, Postmaster Balurghat, H.P.O., being the DDO, disbursed the arrears on TRCA and the applicant also received arrears of Rs. 8178/- w.e.f.

29.06.2014.

That, consequent to a complaint that the TRCA had been enhanced irregularly, a memo was issued on 14.07.2017 to recover the arrear amount and to refix the TRCA, as per the rate as notified in the engagement notification. The applicant has approached the Tribunal challenging the said refixation of TRCA and the recovery consequent thereof.

According to the applicant,

(a) The recovery order is arbitrary, malafide and bad in the eye of law, as such recovery order was issued without ascribing any reasons thereto.

(b) The applicant has also alleged that the Respondent authorities have violated DoPT's O.M dated 02-03-2016 consequent to the Hon'ble Apex Court's decision in the **State of Punjab and others Vs. Rafiq Masih, Whitewasher, etc. in CA No. 11527 of 2014 (Arising out of SLP(C) No. 11684/2012)**, which mandates situations wherein recovery is impermissible.

(c) The applicant further argues that since she had never prayed for revision of TRCA and as the Respondent No.3 had enhanced it on his own motion, the applicant cannot be made liable for excess payment and, therefore, the proposed recovery violates the fundamental rights of the applicant.

The Respondents have opposed the applicant's claims by arguing

(a) that, the applicant's engagement as GDS BPM was purely temporary in nature and that Gramin Dak Sevaks do not enjoy the status of

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Central Government employee, but are contractual employees for a maximum of 5 hours of work per day. Thus, their service is governed under GDS(Conduct and Engagement) Rules, 2011.

(b) that, the applicant was engaged after acceptance of terms and conditions of the contractual service including TRCA in the scale of Rs. 4115-75-6365 as notified for the post.

(c) that, there is a provision for revision of TRCA every three years based on triennial review of workload and the parameters fixed by DG Posts vide letter dated 15.12.2009.

4. To adjudicate on the applicant's claims, at the outset, we would refer to the terms and conditions of the contractual appointment of the applicant, which is annexed at Annexure-A/1 to the O.A. and, as extracted, reads as under, with supplied emphasis:

"xxx xxx xxx xxx

Pending verification of character and antecedents through appropriate authorities, Namrata Mahato, D/o Girindra nath Mahato of Vill-North Chakbhawani + P.O- Balurghat, Dist-Dakshin Dinajpur, whose date of birth is 18.01.1993 (18th day of January, one thousand nine hundred and ninety three) and belong to UR category is hereby provisionally engaged as Gramin Dak Sevak Branch Postmaster (GDSBPM) of Hiliaftair B.O in account with Hili S.O. under Balurghat HO.

Namrata Mahato should clearly understand that his/her engagement as GDS Branch Postmaster Hiliaftair B.O shall be in nature of contract liable to be terminated at any time by him/her or by the undersigned by notifying the order in writing without assigning any reason and that his/her conduct and service will also be governed by the Gramin Dak Sevak (Conduct & Engagement) Rules

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2011 as amended from time to time and all other rules and orders applicable to G.D.S.

Namrata Mahato has submitted character certificates from two different Gazetted Officers before joining and he/she is given understand that he/she shall be discharged forthwith if the result of verification of her character and antecedence are found unsatisfactory subsequently.

Namrata Mahto shall be paid Time Related Continuity Allowance in the scale of Rs 4115-75-6365 as notified for the post subject to revision from time to time.

If these conditions are acceptable to him/her, he/she should communicate his/her acceptance in the enclosed proforma.

xxx xxx xxx xxx"

It is clear from the above that the applicant was to be paid TRCA in the scale of Rs. 4115-75-6365/- as notified for the post subject to revision from time to time and the applicant was bound by the terms and conditions of her engagement.

The directions of the DG Posts dated 06.01.2012 (Page 24 of Memo submitted by Respondents in compliance to directions dated 27.10.2017) states that the vacant posts are to be filled up on the basis of triennial review and that the slab of notified TRCA would depend on the workload.

The Respondent authorities, vide their clarification dated 04.01.2010, stated, that GDS who were recruited after 01.01.2006, would have their TRCA fixed on the minimum of the new slab depending upon the workload on the date of their engagement as GDS. Such instructions were once again reiterated on 16.07.2012 and, hence, allowances of GDS BPMs engaged after

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01.01.2006 would be fixed at the minimum of TRCA slab Rs. 4115-75-6365/- notified in the engagement notice for the post of GDS BPM accepted by the applicant. As the TRCA is based on workload, there is no logic in granting TRCA on arrear basis as the scope of retrospective workload prior to engagement does not arise and hence, the scope of revision of TRCS with retrospective effect is a nullity.

5. The order of the then Superintendent of Post Offices, Dinajpur Division, Balurghat, dated 24.05.2016 to revise the TRCA *suo moto* without going through the workload/result of the triennial review or upon observing the restriction of the review cannot be held to be authorized as per departmental instructions. Not only did the Superintendent of Post Offices of Dinajpur Division violate the departmental instructions but he also acted against the interest of the potential candidates, who would have refrained from applying for the post upon perusal of the unrevised TRCA so notified.

6. We are of the considered view that the applicant was bound by the TRCA as laid down in her engagement letter. Had a revision been contemplated in the notification for filling up the post of GDS at Hili Sub-Office under Balurghat Head Office, other candidates might have applied being attracted by the higher TRCA. Hence, granting a higher TRCA and arrears thereon, to an already engaged appointee, is contrary to the directions. Accordingly, we hold that the Respondents had not committed any error in issuing the order dated 08.08.2017 for recovery of arrears of TRCA granted unauthorizedly to 54 incumbents. The highest amount to be so

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recovered is listed as Rs. 1,79,120/- On the other hand, an amount of Rs. 8178/- has been declared to be recovered from the applicant. The applicant had undertaken to abide by the TRCA notified in her engagement letter. In this context, Respondents have referred to Civil Appeal No. 3500/2006 in the matter of High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh. The Hon'ble High Court had held that "*In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.*"

7. The applicant has relied on Rafiq Masih (supra) in support of her claim but she does not fall in the categories specified in the orders of Rafiq Masih. Further, when there has been no change in the TRCA as allowed to her vide her engagement letter, she can hardly take a plea of hardship and violation of her rights at this stage.

8. In B.J.Akkara Vs. Govt. of India [(2006) 11 SCC 709], in Para 28 it was observed as follows:-

"28.....But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery."

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Accordingly, we hold that the O.A. is without any merit and the interim orders stands vacated. Respondents are at liberty to recover the excess amount from the applicant as per rules.

9. The O.A. stands dismissed. There shall be no order as to costs.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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