

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.20/992/2017

Date of Order: 29.10.2019

Between:

Smt. Somala Krishnamma, W/o. Venkata Ramana,
Age 45 years, GDSBPM, Yalleyapalem BO,
A/w. North Rajupalem SO – 524 366.

... Applicant

And

1. The Union of India, Rep. by the Secretary,
Ministry of Communication & IT,
Department of Posts – India,
Dak Bhavan, Sansad Marg,
New Delhi – 110 001.
2. The Chief Postmaster General,
A.P. Circle,
Vijayawada – 520 013.
3. The Superintendent of Post Offices,
Nellore Division, Nellore – 524 001.
4. The Postmaster,
Nellore Head Post Office,
Nellore – 524001.

... Respondents

Counsel for the Applicant ... Mr.M. Venkanna

Counsel for the Respondents ... Mrs. Megha Rani Agarwal

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER

{As per B.V. Sudhakar, Member (Admn.)}

2. The OA is filed challenging the orders of reduction of TRCA and the recovery of Rs.1,46,013/- towards excess payment of TRCA.

3. Brief facts of the case are that the applicant working as GDS BPM in the respondents organisation was transferred from Gundalammappalem Branch Post Office to Yellayapalem Branch Post Office in March 2014. On joining the new post, applicant has to accept TRCA as per the assessment of the associated workload in accordance with letter dated 22.7.2010 of the respondents. This being so, respondents reduced the pay of the applicant from Rs.4710 in the TRCA of Rs.3660-70-5760 to Rs.2895 in the lower TRCA of Rs.2745-50-4245 and ordered recovery of Rs.1,46,013/- consequent to the reduction of the pay. Recovery commenced from May 2017 @ Rs.2000 per month. Applicant has represented that her work load was more as per statistics collected by the Sub. Divisional Inspector and that she has to be placed in the higher TRCA of Rs.4575-7125. Different Committees were formed over the years to assess the work load and fix the TRCA on a Tri-annual basis. When the wages of similarly situated employees were reduced, they approached the Tribunal in OA 1474 & 1525/2012 wherein respondents were directed to follow instructions contained in letter dated 15.10.2012 of the respondents, which provided for protection of the pay of the applicant for one year and thereafter, a special review has to be conducted to reduce the TRCA. Respondents, without conducting the review and issuing a notice, have unilaterally reduced the pay of the applicant and ordered recovery of the alleged excess payment. Hence, the OA.

4. The contentions of the applicant are that no notice was issued while reducing the pay thereby violating the Principles of Natural Justice.

Reduction of the pay is against the instructions on the subject. The Circle Postal Accounts has carried out cent percent verification of TRCA in respect of the Branch Postmasters in the division and found them to be correct. There was no audit observation to recover the alleged excess without conducting the review of workload. Orders in OA 1474 & 1525/2012 are in favour of the applicant. Respondents have increased the TRCA of the applicant in 2015 based on increased work load due to introduction of new schemes.

5. Respondents confirm that once a Grameen Dak Sewak (GDS) is transferred to a new post, TRCA is fixed after assessing the work load in the new post as per the Postal Directorate letter dated 17.7.2006. Further as per letter dated 22.7.2010 issued by the respondents, there shall not be any protection of the TRCA of Rs.4500 drawn by the applicant in the old post after joining the new post. TRCA will be fixed in the new post at the minimum of the TRCA slab of the transferred post depending on the work load of the said post. Transfer is approved only if the GDS gives an undertaking to accept the fixation of TRCA at the minimum in the new post. Applicant was therefore transferred on 13.3.2014 to Yellayapalem BO on accepting the condition stipulated above. Applicant joined the new post on 1.4.2014 and her TRCA was fixed as Rs.2745, the minimum of the TRCA applicable to the new post. However, by mistake respondents have drawn the pay as per the old TRCA slab of Rs.3660-5670 for the period 1.4.2014 to 31.4.2017 in which the applicant was placed in the old post. In similar cases, recovery was effected from some other GDS employees of the respondents organisation. Further, no notice

is required to be issued as the applicant herself has consented for the minimum pay of the TRCA in the new post. Respondents letter dated 15.10.2012 is applicable to GDS whose work load has been reduced due to triennial review and not for those who joined new posts on transfer. Consequently, for reasons stated supra, even in regard to the applicant an amount of Rs.1,46,013/- was ordered to be recovered in instalments of Rs.2000/month from the salary payable since May 2017 onwards. Audit has verified the TRCA related to Gundalammalem BO and found it to be correct but not in respect of Yellayapalem BO. The TRCA of the applicant was not raised in 2015 as claimed. However, with the filing of the instant OA, recovery has been stopped as per interim order of this Tribunal dated 14.11.2017. Respondents submitted the judgments of the Hon'ble Supreme Court in support of their contentions.

6. Heard both the counsel and perused the pleadings on record.
7. I) The grievance of the applicant is that her pay has been reduced from Rs.4710 to Rs.2895 on joining the new post at Yellayapalem Branch Office (BO). Respondents state that the statistics of the Yellayapalem BO were taken before the applicant joined the BO and assessed the work load to be 47.99 points and not after she joined the new post. However, inadvertently respondents have drawn the pay as per the old TRCA slab of Rs.3660-5670 for the period 1.4.2014 to 31.4.2017, in which the applicant was placed in the old post, resulting in excess payment of Rs.1,46,013/-, which was ordered for recovery on 18.5.2017, as was done in the case of similarly placed employees. Nevertheless, when the applicant submitted statistics they were verified and found to be

inflated by splitting Recurring Deposit received from single depositor into multiple accounts. However, at the Sub Post Office which is the controlling accounting unit of the BO, the multiple accounts were merged into a single account. Hence, the workload could not be assessed based on incorrect statistics submitted by the applicant. Triennial review of the TRCA was due in 2015 and based on latest statistics submitted as per norms in 2016, it was found that the work load was justified to place the applicant in the TRCA slab of Rs.2745-4245. Thus, the decision of the respondents to reduce the pay of the applicant to Rs.2895 in the TRCA of Rs.2745-4245 as per the lesser work load at Yellayapalem BO, is in accordance with applicable norms.

II) Nevertheless before reducing the pay, respondents as per law have to issue a notice to recover the excess paid amount, so that the applicant has an opportunity to explain her side of the issue. Not doing so is a clear infringement of the Principles of Natural Justice. Further, when an order with adverse civil consequences is issued it must pass the test of reasonableness as observed by the Hon'ble Supreme Court in ***Vice Chancellor, Banaras Hindu University Vs. Shrikant, 2006 (11) SCC 42.*** In this case, the Hon'ble Apex court observed that

“An order issued by a statutory authority inviting civil or evil consequences on the citizen of India, must pass the test of reasonableness.”

By not giving the applicant due notice, the decision of the respondents to recover the said amount has not passed the test of

reasonableness as required by the observation of Hon'ble Supreme Court observation cited supra.

III) In fact, it was the mistake of the respondents in fixing a wrong pay and disbursing the pay and allowances. Respondents are attempting to palm off their mistake to that of the applicant which is not permitted as per the legal principle laid down by the Hon'ble Supreme Court as under:

- (i) The Apex Court in *Union of India vs. Sadhana Khanna*, C.A. No. 8208/01 held that the mistake of the department cannot be recoiled on employees.
- (ii) In yet case of *M.V. Thimmaiah vs. UPSC*, C.A. No. 5883-5991 of 2007 decided on 13.12.2007, it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer.
- (iii) It has been held in the case of *Nirmal Chandra Bhattacharjee v. Union of India*, 1991 Supp (2) SCC 363 wherein the Apex Court has held "The mistake or delay on the part of the department should not be permitted to recoil on the appellants."

Hence, for the mistake of the respondents penalising the applicant by ordering recovery of Rs.1,46,013/- is not fair as per the above observation of the Apex Court.

IV) Further, a similar issue fell for consideration of the Hon'ble Ernakulam Bench of this Tribunal in OA 404/2009, wherein it was observed as under:

18. Taking into account the judgment of the Apex Court and the Full Bench of this Tribunal, it is amply clear that a GDS, on transfer from one post to another within the same recruitment unit shall have protection of his emoluments drawn as TRCA prior to transfer, in the new place of posting. This has, however, one exception. If the maximum of the TRCA in the new place of posting happens to be less than the allowance drawn by the GDS prior to his transfer, then the individual would be entitled to only the maximum of the TRCA applicable to that place. In the above cases, save in OA 384/09, there was only one transfer and all of them are such that the incumbents were drawing higher rate of TRCA in the previous place of posting and lower rate at the present place of posting. In all such cases, the applicants are entitled to the allowances drawn at the time of transfer from the old duty station, which may be restricted to the maximum in the TRCA in the new place of posting."

Applicant was drawing a pay of Rs.4500, as indicated by the respondents, before her transfer to the new post. Hence as per the judgment cited, applicant's pay has to be restricted to the maximum of the eligible TRCA of Rs.2745-4245 in the new post. Albeit, applicant was drawing a pay of Rs.4500 in the old post it has to be restricted to the maximum of the TRCA i.e. Rs.4245 and not at the minimum of the pay scale of the TRCA of Rs.2745 in the new post. The judgment of the Hon'ble Ernakulam Bench of this Tribunal is binding as per Hon'ble Supreme Court directions in ***S.I. Rooplal And Anr vs Lt. Governor Through Chief Secretary, Delhi, in Appeal (Civil)No.5363-64 of 1997.***

V) Lastly, the judgments cited by the respondents are not relevant in view of the aforesaid facts and analysis made thereof.

VI) Therefore, in view of the aforementioned circumstances and the observations of the Hon'ble Supreme Court and Hon'ble High Court cited supra, the impugned order dated 18.5.2017 is quashed so far as it pertains to the applicant. Consequently, respondents are directed as under:

- i) To fix TRCA of the applicant in the new TRCA of Rs.2745-50-4245 at Rs.4245 and regulate her pay accordingly with periodical increments from the date of joining the new post.
- ii) After fixing pay as at (i) above, respondents to adjust any excess pay and allowances paid to the applicant in accordance with rules and as per procedure prescribed under law.
- iii) Time allowed to implement the order is 3 months from the date of receipt of this order.
- iv) With the above directions the OA is allowed, with no order as to costs.
- v) Applicant has also filed MA 548 of 2019 in OA 992 of 2017 to quash the OM dated 22.7.2010 containing a policy decision. The MA is disallowed since the Single Member Bench is not competent to deal with such issues.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 29th day of October, 2019

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