
(2012) 01 KL CK 0003

In the High Court Of Kerala

Case No : Writ Petition (C) No. 6772 of 2010

Union of India and Another

APPELLANT

Vs

M. Soudabi

RESPONDENT

Date of Decision : 12-01-2012

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14
Constitution of India, 1950 — Article 226, 227

Citation : (2012) 3 KLJ 52

Hon'ble Judges : Thottathil B. Radhakrishnan, J; C.T. Ravikumar, J

Bench : Division Bench

Advocate : Thomas Kachiramattam, CGC, for the Appellant; M.A. Shafik, for the Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.—These writ petitions are filed by the Union of India challenging different orders issued by the Central Administrative Tribunal, Ernakulam Bench. W.P. (C). Nos. 13112/09, 14453/09, 16308/09 & 16376/09 arise from a common order passed by a Full Bench of the Tribunal. The other writ petitions are filed challenging orders passed thereafter by the Tribunal relying on the aforesaid Full Bench decision. On consent of parties, these matters are heard collectively since the question arising for decision in all the matters are the same.

2. The respondents are Gramin Dak Sevaks, for short, GDS. The question arising for decision is the entitlement of protection to Time Related Continuity Allowance (TRCA). Two issues were referred to the Full Bench of the Tribunal for consideration. They are (i) When a Gramin Dak Sevak drawing pay in a higher TRCA is transferred from one Post Office to another within the same recruiting unit or outside the recruitment unit with or without his request to a post with lower TRCA, whether he is entitled to protection of last pay drawn by him in the higher TRCA or not? and (ii) When a Gramin Dak Sevak is working against a post with higher TRCA is transferred on his request or otherwise to a post carrying

lower TRCA within the same recruitment unit or outside, is entitled to fixation of his TRCA in terms of FR 22(1)(a)(i) or FR 22(1)(a)(ii) or not.

3. The Full Bench, by order dated 14.11.2008, answered that reference by holding in paragraph 49 of that order as follows:

49. Now, the entire situation would be summarised and reference duly answered as under:-

(a) As per the rules themselves, in so far as transfer within recruitment unit and in the same post with identical TRCA, there shall be no depletion in the quantum of TRCA drawn by the transferred individual.

(b) In so far as transfer from one post to the same post with different TRCA and within the same Recruitment Unit, administrative instructions provide for protection of the same vide order dated 11th October, 2004, subject only to the maximum of the TRCA in the transferred unit (i.e. maximum in the lower TRCA).

(c) In so far as transfer from one post to a different post but with same TRCA and within the same Recruitment Unit, as in the case of (a) above, protection of TRCA is admissible.

(d) In respect of transfer from one post to another within the same recruitment unit but with different TRCA (i.e. from higher to lower), pay protection on the same lines as in respect of (b) above would be available.

(e) In so far as transfer from a post carrying lower TRCA to the same category or another category, but carrying higher TRCA, the very transfer itself is not permissible as held by the High Court in the case of Senior Superintendent of Post Offices Vs. Raji Mol, . Such induction should be as a fresh recruitment. For, in so far as appointment to the post of GDS is concerned, the practice is that it is a sort of local recruitment with certain conditions of being in a position to arrange for some accommodation to run the office and with certain income from other sources and if an individual from one recruitment unit to another is shifted his move would result in a vacancy in his parent Recruitment Unit and the beneficiary of that vacancy would be only a local person of that area and not anyone who is in the other recruitment unit. Thus, when one individual seeks transfer from one post to another (in the same category or other category) from one Recruitment Unit to another, he has to compete with others who apply for the same and in case of selection, he shall have to be treated as a fresh hand and the price he pays for the same would be to lose protection of his TRCA.

4. As a consequence, the Full Bench of the Tribunal rejected the prayer of the applicants for a declaration that they are entitled to have pay fixed as per FR 22(1)(a)(i) or (ii). However, it was declared that TRCA drawn shall be protected and the same fixed in the TRCA applicable to the transferred post and if there is no such stage, the TRCA shall be fixed at the stage below the TRCA drawn, the balance being treated as personal allowance, to be adjusted in future annual increase.

5. Different learned Central Government counsel appearing in the matters argued that the reference having been answered by repelling the plea of the applicants that they are entitled to have pay fixed in terms of FR 22(1)(a)(i) or (ii), the Tribunal acted illegally in holding that the last pay drawn in the higher TRCA has to be protected even when a GDS is transferred to lower TRCA. It was also pointed out that the transfers were availed on personal request and on condition that a GDS, on transfer, would go to the lower TRCA in the office to which that person is transferred. Reference was made to the decision of this Court in *Senior Superintendent of Post Offices Vs. Raji Mol*, , referred to by the Full Bench of the Tribunal in the impugned order.

6. Per contra, respective counsel appearing for the applicants in the different cases argued that "protection of pay" or "pay protection" is a well established principle of service law and it will only be fair and proper that it is protected in such cases of persons working as GDS. It was further argued that a senior cannot be pushed to a situation where the pay drawn would be lesser than that of his or her junior. In support of this propositions, *Surendra Singh Gaur Vs. State of M.P. and Others*, and *Dr. S.M. Ilyas and Others Vs. Indian Council of Agricultural Research and Others*, were relied on. It was also argued that if at all undertakings have been obtained from the GDSs, such undertakings have to be treated as illegal in view of the law laid in *Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma and Others*, .

7. The crux of the issue dealt with by the Full Bench of the Tribunal can be resolved with reference to a clarification issued by the Postal Department as D.G. Posts No. 19-51796-ED & Trg., dated 11.2.1997, which is among the exhibits that were placed before the Tribunal and before this Court as Annexure A7. It is appropriate to quote that material. It reads as follows:

Clarifications regarding Recruiting Unit transfer of ED officials:--

Attention is invited to Letter No. 43-27/85-Pen. ED & Trg., dated 12-09-1988, No. 19-21/94-ED & Trg., dated 11-08-1994 and No. 17-60/95-Ed & Trg., dated 28-08-1996 wherein certain points have been clarified regarding transfer of Ed officials.

2. In the context of the provisions contained in this office letters under reference, a reference has been received from the Postmaster General, Kochi Region, on the subject in OAs referred to above. The matter has been examined and following point wise position is clarified below:-

i. Definition of the term "Recruiting Unit" in respect of different categories of Ed Agents;

ii. Whether the placement of an ED Agent in one Post Office to another be treated as "transfer" or as on "appointment"?

3. The points raised have been examined. In so far as (1) above is concerned, kind attention is invited to this office Letter No. 17-60/95-Ed & Trg., dated

28-08-1996 wherein it has already been inter alia, clarified that the recruiting unit for the posts of ED BPM and ED SPM is the Division and that for the other categories of ED Agents, the same is the Sub-Division.

4. In so far as (ii) above is concerned, it is clarified that if the placement of an ED Agent is from one Post Office to another within the same recruiting unit, the same will be treated as transfer and the ED Agents concerned will not forfeit his past service for any purpose including seniority. However, if the placement is from one Post Office to another outside his own recruiting unit, in such an event, the placement will be treated as fresh appointment and the ED Agent concerned will forfeit his past service for seniority and will rank junior most to all the regularly appointed ED Agents of that unit.

5. It is, however, reiterated that this type of transfer requests should be discouraged at all costs.

As can be seen from paragraph 2(ii), one of the questions that was clarified was as to whether the placement of an ED Agent from a Post Office to another is to be treated as "transfer" or as an "appointment". The answer to that is provided in paragraph 4 of the clarification. It says that if the placement of an ED Agent is from one Post Office to another within the same recruiting unit, the same will be treated as transfer and the ED Agents concerned will not forfeit his past service for any purpose including seniority, (emphasis supplied for continuity). For the purpose of these cases, we are not concerned with any placement to an office outside the recruiting unit. However, it needs to be noted that if the appointment is to an office outside the recruiting unit, the placement will be treated as fresh appointment and the ED Agent concerned will forfeit his past service for seniority and would rank junior most to all regularly appointed ED Agents of that unit. We read this only to appreciate the contrasting situation that is applicable in cases where the transfer is not outside the recruiting unit. In such transfers as in the case of GDSs in all these cases, placement shall be treated as "transfer" and the GDS concerned will not forfeit his past service for any purpose including seniority. The phrase "any purpose" in that clarification, if possible of two constructions, has necessarily to be interpreted in favour of the employee and not the establishment. The purpose was to grant protection against forfeiture of past service for any purpose, including seniority.

8. Remember, the employees involved in this litigation do not belong to the higher echelons in the establishment. The brunt that they take has also to be considered, when we deal with this matter under Articles 226 and 227 of the Constitution.

9. Now, as noted in the impugned judgment of the Full Bench of the Tribunal, the following is the schedule of TRCA as admissible to various posts:

10. The only benefit given in the impugned judgment of the Full Bench of the Tribunal is that when a GDS enjoying a higher TRCA moves to a different office where the applicable TRCA would be of a lower level, the pay is protected. It is

not the pay scale that is protected. The manner in which the Full Bench has moulded the relief is only to ensure that GDSs who, at that time, were drawing TRCA at the range noted in the immediately preceding paragraph are not deprived of the benefit in terms of the pay that they were drawing in a particular TRCA while they are transferred to other offices in the same recruiting unit.

11. Of course, the Department would contend that each transfer was made at the request of the GDS concerned. We see materials in some of the writ petitions which may indicate that this is not a uniform situation. We also saw a case where the GDS was transferred to two offices, essentially, on administrative reasons. Similarly, there is controversy between the establishment and the applicants (GDSs) as to whether all of them had given consent in writing to forfeit any claim. Equally, we have also noted earlier in terms of the precedent cited that a lawful entitlement cannot be deprived by the establishment getting an undertaking, unless of course it is a case where an option is sought to be exercised.

12. Not only that, we do not think it lawful or necessary on the totality of the facts and circumstances, to rest the issue in hand on any principle of estoppel or of any concession made by any particular GDS, adverse to his/her interest from being transferred. We say this because while a GDS would have been entitled to seek a transfer from one office to another in terms of the clarification noted in paragraph 8 above, it was essentially within the volition of the establishment to grant or refuse the request for transfer, because, transfer is not a right of an employee and what would govern ultimately is the interest of the institution or the establishments, concerned. Once an establishment exercises its authority, considers a request for a transfer and grants it, it is not open to that establishment to further make out a case against the employee, on the premise that the transfer was on request, unless of course, the rule enabling the transfer cripples off any of the entitlements of the employee being transferred. It is in this context that we relied on the clarifications issued by the Department, which are essentially binding on them. Those clarifications noted in paragraph 8 above, as interpreted in paragraph 9, essentially favours the decision taken by the Full Bench.

13. In this view of the matter, we, not sitting in appeal, but only considering an application under Article 226/227 of the Constitution, are not persuaded to interfere with the impugned decision of the Full Bench of the Tribunal. It cannot be faulted on any fundamental principle of law. The impugned order is in consonance with one of the interpretations available on a plain reading of the clarification issued by the Department on 11.2.1997, which we have quoted in paragraph 8 above.

14. In terms of the provisions of the Administrative Tribunals Act, 1985, the Central Administrative Tribunal is vested with authority to decide or disputes and complaints with respect to all matters which fall within the purview of the Act for adjudication or trial. Section 14 of the Act confers exclusive authority on that

Tribunal, save as otherwise expressly provided for by the Act. Having regard to the quality of that jurisdiction and in the light of the law laid by the Apex Court in L. Chandra Kumar Vs. Union of India and others, , this Court would not sit to review the impugned decision, as if we would in a statutory appeal.

15. The Full Bench of the Tribunal was called upon to decide the issue in hand because there were conflicting views by two Benches of co-equal jurisdiction. The Department does not have a case that the Full Bench had omitted to consider any relevant aspect which goes to the root of the matter or has any jurisdictional impact on the decision making process.

16. Also having considered the financial impact that may arise while giving effect to the judgment of the Full Bench of the Tribunal, we see that what has been ordered is only protection of pay and balancing the remainder, in terms of the last paragraph of the impugned order. We see that there is no situation of injustice warranting exercise of authority under Article 226 or 227 of the Constitution, even in that regard in favour of the establishment.

17. For the aforesaid reasons, W.P. (C). Nos. 13112/09, 14453/09, 16308/09 & 16376/09 are bound to fail. The orders impugned in W.P. (C). Nos. 6772/10, 7182/10, 15338/10, 16337/10, 16365/10 & 19088/10 are decided by the Tribunal following the decision of the Full Bench, which is not interfered with by us, for reasons stated above. Therefore, these writ petitions have also to fail.

In the result, the captioned writ petitions are dismissed. No costs.