

CENTRAL ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH,
CIRCUIT BENCH SITTING AT AURANGABAD
DIARY No.1681

ORIGINAL APPLICATION No.212/844/2019

Dated this Thursday, the 12th day of December, 2019

CORAM: R.VIJAYKUMAR, MEMBER (ADMINISTRATIVE)
RAVINDER KAUR, MEMBER (JUDICIAL)

Gangadhar S/o Gahenaji Sonawane, Age 70 years,
Occ: Retired, R/o Opposite Premlata Kirana Store,
Bhoi Wada, Mill Corner, Aurangabad,
District Aurangabad 431 001.

(By Advocate Shri S.S.Kulkarni)

... Applicant

VERSUS

1. Union of India, Through its Secretary,
Department of Post, Dak Bhavan, New Delhi 110 001.
2. The Chief Post Master General, Maharashtra Circle,
Mumbai 400 001.
3. The Senior Superintendent of Post Offices,
Aurangabad Division, Aurangabad 431 001. ... Respondents

ORAL ORDER

Per : R.VIJAYKUMAR, MEMBER (A)

Heard Shri S.S.Kulkarni, learned counsel
for the applicant.

2. This application has been filed on
29.11.2019 under Section 19 of the
Administrative Tribunals Act, 1985 seeking
the following reliefs:

"8.A. The Original Application may kindly be
allowed.

8.B. The respondent No.1 to 3 may kindly be
directed to consider the case of applicant in terms of
Rule 88 of the Rules 1972.

8.C. Quashed and set aside the impugned order
passed by respondent No.3 dated 01/03/2019 and
appropriate directions may kindly be issued to

appropriate directions may kindly be issued to grant/award minimum pension to the applicant.

8.D. Any other & such further orders may kindly be passed in favor of the applicant to which he is deemed fit and entitled.

8.E. Appropriate cost may kindly be awarded."

3. The application has been heard at the admission stage. The applicant had commenced service with the respondents as GDS on 05.02.1970 and then was appointed as Postman by orders of the respondents dated 23.12.1999 and thereafter, retired on 31.03.2009 after completing eight years and eleven months of service in Postal Service as Postman. He has filed representations with the respondents on 20.09.2018 and 29.03.2019 seeking pension by considering his GDS service but this has been replied by the respondents in the impugned orders dated 01.03.2019 stating that this case did not fall within the CCS (Pension) Rules, 1972 since he had not completed ten years of service. He relies on the judgment of the Hon'ble Apex Court in **Union of India and Ors. Vs. Gandiba Behera, Civil Appeal No.8497 of 2019 decided on 08.11.2019** which records the view taken by the Hon'ble Apex

Court and its direction and held as below in paragraph Nos.19, 20 and 21:

"19. Having regard to the provisions of the aforesaid Rules relating to qualifying service requirement, in our opinion the services rendered by the respondents as GDS or other ExtraDepartmental Agents cannot be factored in for computing their qualifying services in regular posts under the postal department on the question of grant of pension. But we also find many of the respondents are missing pension on account of marginal shortfall in their regular service tenure. This should deserve sympathetic consideration for grant of pension. But we cannot trace our power or jurisdiction to any legal principle which could permit us to fill up the shortfall by importing into their service tenure, the period of work they rendered as GDS or its variants. At the same time, we also find that in the case of Union of India & Ors. v. The Registrar & Anr. (supra), though the incumbent therein (being respondent no.2) had completed nine years and two months of service, the Union of India had passed orders granting him regular pension. This Court in the order passed on 24th November 2015 had protected his pension though the appeal of Union of India was allowed.

20. For the reasons we have already discussed, we are of the opinion that the judgments under appeal cannot be sustained. There is no provision under the law on the basis of which any period of the service rendered by the respondents in the capacity of GDS could be added to their regular tenure in the postal department for the purpose of fulfilling the period of qualifying service on the question of grant of pension.

21. We are also of the opinion that the authorities ought to consider their cases for exercising the power to relax the mandatory requirement of qualifying service under the 1972 Rules if they find the conditions contained in Rule 88 stand fulfilled in any of these cases. We do not accept the stand of the appellants that just because that exercise would be prolonged, recourse to Rule 88 ought not to be taken. The said Rules is not number specific, and if undue hardship is caused to a large number of employees, all of their cases ought to be considered. If in the cases of any of the respondents' pension order has already been issued, the same shall not be disturbed, as has been directed in the case of Union of India & Ors. v Registrar & Anr. (supra). We,

accordingly allow these appeals and set aside the judgments under appeal, subject to the following conditions:

(i) In the event the Central Government or the postal department has already issued any order for pension to any of the respondents, then such pension should not be disturbed. In issuing this direction, we are following the course which was directed to be adopted by this Court in the case of Union of India & Ors. v. Registrar & Anr.(supra).

(ii) In respect of the other respondents, who have not been issued any order for pension, the concerned ministry may consider as to whether the minimum qualifying service Rule can be relaxed in their cases in terms of Rule 88 of the 1972 Rules."

4. Further, the Hon'ble Apex Court has also referred to Rule 88 of the CCS (Pension) Rules, 1972 which reads as below:

"88. Power to relax.

Where any Ministry or Department of the Government is satisfied that the operation of these rules, causes undue hardship in any particular case, that Ministry or Department, as the case may be, may, by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner:

Provided that no such order shall be made except with the concurrence of the Department of Pension & Pensioner's Welfare."

5. At this stage, it is not possible for this Tribunal to take a decision on behalf of the Administrative Authority at what level of exemption of operation of rule would be

reasonable for relaxation of rules. Further, these powers solely lie with the Administrative Authority and it is expected that the respondents will take an early decision in view of the observations of the Hon'ble Apex Court. In such an event, the case of the applicant was completed eight years and eleven months of service as per his statement may also be considered appropriately in accordance with the rules and guidelines.

6. In the aforesaid terms, this OA is disposed of without expressing any view on legal pleas. No costs.

(Ravinder Kaur)
Member (Judicial)

(R. Vijaykumar)
Member (Administrative)

kmg*

JD
19/12/19

