CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : BILASPUR

Original Application No.203/00869/2018

Bilaspur, this Thursday, the 21st day of November, 2019

HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER
HON'BLE MR. B V SUDHAKAR, ADMINISTRATIVE MEMBER

Bhim Rao Ingle, S/o Late Sukhdev Ingle, aged about 61 years, Retired Mail Overseer (Group-D), Raipur Sub-Division Office, R/o : Veer Bhadra Nagar, Near Budha Talab, Raipur 492001 (Chhattisgarh) **-Applicant**

(By Advocate – Shri B.P. Rao)

V e r s u s

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi – 110001.

2. The Sr. Superintendent of Post Offices, Raipur Division, Raipur – 492009 (CG) **-Respondents**

(By Advocate – Shri Vivek Verma)

O R D E R (O R A L)

By Ramesh Singh Thakur, JM.

The applicant is aggrieved by communication dated 21.08.2018 (Annexure A-7), whereby his claim for grant of Old Pension Scheme has been rejected.

2. The applicant has sought for the following reliefs:

> "8.1 That, the Hon'ble Tribunal be pleased to pass an Order, and set aside the Official Letter dated 21.8.2018 (A-7) in the interest of justice.

8.2 That, the Hon'ble Tribunal be pleased to pass an Order, directing the Respondents to consider atleast Minimum Pension to the Applicant under Old Pension Scheme i.e., under CCS (Pension) Rules, 1972, from the date of retirement on the basis of his 27 years 6 months service rendered in GDS and 9 years 7 months and 25 days service in Group-D in the Postal Department, in the interest of justice.

8.3 That, the Hon'ble Tribunal be pleased further to direct the Respondents to refund/repay the recovered amount to the Applicant from GPS at the time of his retirement with 10% Interest. "

3. The case of the applicant is that he was appointed as ED Branch Post Master on 18.04.1980 and worked as such till 05.11.2007. Thereafter, he was promoted as Postman (Group-D) on 06.11.2007 and after rendering about 9 years, 7 months and 25 days of service as Group-D, the applicant superannuated on 30.06.2017. The case of the applicant is that he was paid only DCRG and Service Gratuity and was advised to receive pension as per New Pension Scheme. The applicant submitted his representation on 01.09.2017 (Annexure A-4) for payment of pension on the basis of service rendered by him as GDS. Since no response was received from the respondents, the applicant filed Original Application No.203/629/2018 before this Tribunal, which was disposed of on 10.07.2018 with a direction to the competent authority of the respondents to consider and

decide applicant's representation. The respondents, vide Annexure A-7 dated 21.08.2018, have rejected the same stating therein that applicant is only entitled for pension under New Pension Scheme and not under Old Pension Scheme. The applicant submits that he is entitled for pension under the Old Pension Scheme as he has rendered more than 26 years of service as GDS. However, the respondents have only taken account the services rendered by the applicant as Postman (Group-D) from 06.11.2007 to 30.06.2017 and, therefore, the applicant is being paid pension under the New Pension Scheme.

4. The respondents have filed their reply. It has been submitted by the respondents that the applicant was engaged as Gramin Dak Sevak in the year 1980. Thereafter he was promoted to Postman (Group – D) on 06.11.2007. The appointment of GDS as Group D is treated as direct recruitment and not as a promotion because promotion exists only from like cadres and GDS being outside the Government service, cannot form a feeder cadre as far as Postman and other cadres are concerned. Further, the Department of Postman and Mail Guard Recruitment Rules clarify that Gramin Dak Sewaks are holders of civil, but they are outside the regular civil service due to

which their appointment will be by direct recruitment even when selection is on basis of selection-cum-seniority. It has also been submitted by the respondents that applicant was appointed as Postman (Group D) after 01.01.2004 and, therefore, he is entitled for pension under the New Pension Scheme.

5. Learned counsel for the applicant has relied upon the orders passed by the Principle Bench of this Tribunal in Original Application No.749/2015 & other connected OAs decided on 17.11.2016. The relevant para 20 of the order reads as under:

> *"20. To summarise, we dispose of the O.As. with the following directions to the respondents:*
>
> *(a) For all Gramin Dak Sevaks, who have been absorbed as regular Group 'D' staff, the period spent as Gramin Dak Sevak will be counted in toto for the purpose of pensionary benefits.*
>
> *(b) Pension will be granted under the provisions of CCS (Pension) Rules, 1972 to all Gramin Dak Sevaks, who retire as Gramin Dak Sevak without absorption as regular Group 'D' staff, but the period to be counted for the purpse of pension will be 5/8th of the period spent as Gramin Dak Sevak. Rule 6 will accordingly be amended.*
>
> *(c) The Gramin Dak Sevaks (Conduct and Engagement) Rules, 2011 are held to be valid except Rule 6, as stated above.*
>
> *(d) The claim of Gramin Dak Sevaks for parity with regular employees regarding pay and allowances and other benefits available to regular employees, stands rejected."*

5.1 Learned counsel for the applicant further submitted that the said order of the Principal Bench has also been taken into consideration by the Madras Bench of this Tribunal, while passing the order in Original Application No.1676/2014 on 13.01.2017. The relevant Para 37, relied upon by him, is extracted below:

> *"**37**. In the conspectus of the above facts and circumstances of the case and in the light of our discussion herein above, since the Principle Bench has already passed an order on similar claims, we feel it appropriate to grant liberty to the applicants to submit a representation to the respondents in the light of the order of the CAT, Principle Bench in OA 749/2015, etc dated 17.11.2016 cited supra within a period of one month from the date of receipt of a copy of this order, which the respondents shall dispose of by a reasoned and speaking order, keeping in view the directions contained in the said order and any further measures taken by them in pursuance thereof within a period of 3 months thereafter. The OA's are disposed of accordingly."*

6. On the other hand, learned counsel for the respondents has relied upon the recent judgment passed by the Hon'ble Supreme Court in the case of **Union of India & ors**. vs. **Gandiba Behera** in Civil Appeal No.8497/2019, decided on 08.11.2019. In Para 20 of the judgment, the Hon'ble Apex Court has held as under:

> *"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 departmental for the purpose of fulfilling the period of qualifying service on the question of grant of pension."

7. From the above, it is clear that law has been settled by the Hon'ble Apex Court on the issue whether services rendered by the GDS can be counted for the purposes of grant of pension. The same has been replied in negative. Hence, the applicant seeking similar relief, is not entitled for grant of pension in view of the law laid down in the case of **Gandiba Behera** (supra).

8. Accordingly, the O.A is dismissed being devoid of merit. No order as to costs.

(B V Sudhakar)
Administrative Member

(Ramesh Singh Thakur)
Judicial Member

am/-