

**Central Administrative Tribunal
Madras Bench**

OA/310/00158/2015

Dated 17th February Two Thousand Sixteen

P R E S E N T

Hon'ble Mr.R.Ramanujam, Member(A)

1. R.Senthil Kumar
S/o A.S.Ramalingam,
Plot No.36, Sastri Nagar,
Kodungaiyur,
Chennai 600118.
2. N.Mythu Kumar
S/o J.Natarajan,
11A/14, Netaji Street,
Srinivasa Nagar,
New Perungalathur, Chennai 600063.
3. S.Venkatesan,
S/o V.Shankaran,
15, Senthil Apartments,
17, Bharathi Road II Street,
Perambur, Chennai 600011.
4. K.V.Lalitha,
W/o R.Ramakrishnan,
T-5, Shyams Soundaryam,
Jaswanth Nagar,
Mogappair West, Chennai 600037. .. Applicants

By Advocate M/s.P.Rajendran

Vs.

The Union of India, rep by the
Superintendent of Post Offices,
Chennai City North Division,
Chennai 600008. .. Respondent

By Advocate Mr.G.Krishnamurthy

ORDER
(Pronounced by Hon'ble Mr.R.Ramanujam, Member(A))

The applicants are appointees on compassionate ground on various dates. It is stated that in the year 2000-2001 some of the compassionate appointees filed OAs praying for appointment against regular posts and these were allowed by this Tribunal. The WPs 38990/2002 & batch filed against the order of the Tribunal were dismissed by the Hon'ble High Court of Madras. Subsequently CAs 7773/2009 & 7780/2009 were filed against the order in WPs and the Hon'ble Supreme Court of India directed the department to regularize the services of all the respondents who were working in the Department against short term/leave vacancies with effect from their date of appointment. However, it was directed that they were not entitled for payment of any arrears on account of such regularization but their pay and pensionary benefits would be protected. Pursuant to the said orders, the services of the compassionate appointees therein were regularised with effect from the date of their initial appointment.

2. According to the applicants, the dates of initial appointment or entry into service in respect of the respondents in the above said WPs were subsequent to the date of initial appointment of the applicants herein. Since the services of the applicants were regularized with effect from a later date and not from the date of their initial appointment, they ranked junior to the respondents in the WPs cited supra. Therefore, the applicants filed OA 854/2011 and the said OA was allowed by this Tribunal by order dated 20.3.2013, directing the respondent to regularize

the services of the applicants with effect from the date of their initial appointment, without any arrears of pay. Against the said order, the respondents filed WP 28507/2013 which was dismissed by the Division Bench of the Hon'ble High Court of Madras. Thereafter the respondents issued an order dated 14.7.2014 regularizing the services of the applicants with effect from the date of their initial appointment. It was stated that the applicants were not entitled for payment of arrears on account of such regularization but their pay and pensionary benefits would be protected. Accordingly, their pay fixation was made only from the month of July 2014.

3. The applicants contend that though they could not claim arrears of pay from a date prior to the date of the order passed in OA 854/2011 ie., 20.3.2013, they were entitled to claim the payment of arrears from the date on which the order was passed in the said OA. The applicants submitted a representation dated 6.8.2014 to the respondent requesting for payment of arrears from 20.3.2013 which was rejected by order dated 20.10.2014 stating that there was no instruction by the Court for drawal of arrears from the date of issue of orders by the Tribunal on 20.3.2013. Aggrieved by the said rejection order, the applicants have filed this OA with a prayer to quash the impugned order dated 20.10.2014 and to direct the respondent to grant the benefit of pay fixation and consequent payment of arrears to the applicants w.e.f. 20.3.2013.

4. The respondents have filed a reply contesting the relief prayed for by the applicants. The facts of the case are, however, not controverted.

5. Heard the learned counsel for the applicant and the respondent and perused the pleadings and other material produced by the rival parties.

6. The issue to be decided is whether the respondents are justified in declining the claim for arrears of pay for the applicants atleast from the date of the order by this Tribunal dated 20.3.2013.

7. It is not in dispute that the applicants are not entitled to arrears from the date of their regularization. This Tribunal in its order dated 20.3.2013 in OA 854/2011 had directed as follows:-

"10. The applicants' case is squarely covered by the above decision of the Hon'ble Supreme Court. In view of the above position, we hold that the applicants are entitled for the relief as prayed for. We direct the respondents to regularize the services of the applicants with effect from the date of their appointment i.e. 17.6.1996 in respect of the first three applicants and 01.6.1996 in respect of the 4th applicant. We further direct that the applicants were not entitled for payment of any arrears on account of such regularization but their pay and pensionary benefits are to be protected. The above exercise shall be completed within a period of three months from the date of receipt of a copy of his order. The OA is allowed to the extent indicated above. No costs."

It would be clear that the OA had been allowed and, therefore, the orders to regularize the services of the applicants with effect from the date of their appointment ought to have been issued within a period of three months from the date of receipt of a copy of the said order.

8. The respondent's contend that they had filed a WP against the said order before the Hon'ble High Court of Madras and after the dismissal of the same, the matter was referred to the Directorate as the respondent is not competent to issue orders in this regard. Order of regularization of the applicants was issued in July 2014 after following the due procedure. The respondent could not, therefore, be held to be responsible for any delay.

9. The aforesaid contention of the respondent cannot be accepted for the reason that the Tribunal had given a time limit of three months for compliance. Had the orders been issued within the time limit prescribed by the Tribunal, the applicants would have been entitled to the benefit of pay and allowances accordingly from such date. It is obvious that the time consumed by the respondent in exploring further legal remedies resulted in an avoidable loss for the applicants. The contention of the respondent that they were entitled to delay the compliance till they had exhausted their legal remedies and that when the order of the Tribunal is finally complied with thereafter, it would still have only a prospective effect is totally devoid of merits. The respondent's cannot pursue their legal remedies at the expense of the applicants.

10. In view of the above, the impugned order dated 20.10.2014 rejecting the representation of the applicants dated 06.8.2014 is quashed and set aside. The respondents are directed to work out the benefit of refixation of pay and allowances from a date which is three months from the date of receipt of the Order of this Tribunal in OA 854/2011 till the actual date of issue of the order of their

regularization and make the payment of arrears to the applicants accordingly within a period of six weeks from the date of receipt of a copy of this order.

11. The OA is allowed in the above terms. No order as to costs.