

Central Administrative Tribunal
Madras Bench

OA/310/01977/2014

Dated 19th day of February Two Thousand Sixteen

P R E S E N T

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

S.Siriya Pushpam
Group D (Retd.),
5/134 Sankankulam & Post,
Vijayanarayanan via,
Tirunelveli District 627118. .. Applicant

By Advocate **M/s.A.Esakkiappan**

Vs.

1. The Union of India rep by its
Secretary,
Department of Posts,
Dak Bhavan, New Delhi.
2. The Principal Chief Postmaster General,
Tamilnadu Circle, Chennai 600 02.
3. The Senior Superintendent of Post Offices,
Palayamkottai, Tirunelveli Division,
Tirunelveli 627002. .. Respondents

By Advocate **Mr.V.Chandrasekaran**

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

The facts of the case as stated by the applicant are that the applicant retired from Group-D service of the respondents from Nagercoil on 31.5.2008. She was initially appointed as Extra Departmental Packer of Tirunelveli Postal Division from 27.2.1973 to 19.5.1999. Thereafter she was absorbed in a regular post of Group-D w.e.f. 19.5.1999. Thus she worked as a Group-D employee for 9 years and 12 days. The applicant submits that she had put in about 36 years of service including the service rendered for about 26 years as Extra Department Packer (ED Packer). She has not been granted pension as he has put in less than 10 years of service as a Group-D employee. A similarly placed person filed WP 29896/2013 before the Hon'ble High Court of Madras which by order dated 06.12.2013 ordered to grant pension treating the person as one who had completed 10 years of qualifying service though he had a regular service of 9 years, 3 months and 29 days only. Further, another similarly placed person one N.Makkikarjunan filed OA 1025/2010 before this Tribunal which was dismissed on 31.1.2011. The WP filed against this order was allowed by the Hon'ble High Court of Madras in WP 20926/2011. The subsequent SLP filed was dismissed by the Hon'ble Supreme Court of India by order dated 25.10.2013. Based on these orders, the applicant made a representation dated 26.5.2014 to the 2nd respondent to take into account the service rendered by her as EDDA for computing the qualifying service for

pension. As there was no reply, he filed OA 867/2014 before this Tribunal and the same was disposed of with a direction to the 2nd respondent to dispose of the representation of the applicant dated 26.5.2014 within a time schedule. However, the 2nd respondent by impugned order dated 08.9.2014 rejected the claim of the applicant stating that she had rendered only 8 years, 11 months and 25 days of qualifying service for pension, which is less than 10 years. Hence this OA seeking to quash the impugned order and to direct the respondents to count the entire services of the applicant including the service rendered by her as Group-D for pension purposes and disburse the arrears with all consequential benefits within a time frame.

2. The respondents contest the claim in terms of Rule 49 of the CCS (Pension) Rules wherein a minimum qualifying service required is 10 years whereas the applicant had only 9 years and 12 days service in Group-D cadre. There is no provision in the GDS (Conduct and Engagement) rules for counting the service rendered as GDS for pension. The post Extra Department Packer was not a sanctioned one unlike a post in Group D cadre. Rule 14(2) of the CCS (Pension) Rules specifically denies provision of pension to officials working in non-pensionable establishments. Hence the claim of the applicant is not sustainable in law, it is contended.

3. Heard the learned counsel for the applicant and the respondents and perused the pleadings and materials produced by the rival parties.

4. Learned counsel for the applicant argued on the strength of the order given

by this Tribunal and the claim subsequently allowed by the Hon'ble High Court in the OA and WP cited supra.

5. Learned counsel for the respondents, however, opposed it citing other judicial orders passed in similar matters.

6. On a careful examination of the case, it is seen that the facts are similar to OA 229/2014 which was decided by this Bench on 12.11.2015. In fact the applicant therein had rendered a service of 9 years and 3 months in the department after working as EDDA/GDS for long years as compared to 9 years and 12 days in the case of the applicant herein. The citations referred to by the applicant had been dealt with in the said order while rejecting the claim of the applicant therein for counting the service rendered as EDDA for the purpose of pension. The following observations made in the said order are relevant:-

"11. We have carefully considered the matter in the light of the relevant rule and the citations made available by the counsel for the applicant. It is clear that CCS (Pension) Rules require a minimum qualifying service of 10 years to be eligible for pension. A provision for limited relaxation is available under Rule 49(3) ibid. It is true that Rule 88 permits the competent authority to relax the rules in cases of extreme hardship. However, this is a standard relaxation clause in all such rules and this power can only be exercised by the competent authority for cogent and convincing reasons in the case of a class or category of persons who may suffer extreme hardship because of the manner of application of the rules. No directions could be issued by the Tribunal to the authorities to exercise this power in individual cases based on its own assessment of hardship.

12. It is not in dispute that the claim for pension is not supported by the relevant rules as the applicant is short of the requisite minimum qualifying service. However, the Hon'ble High Court had granted the relief of minimum pension to the applicants in the cases of Krishnamoorthy and N. Mallikarjunan cited supra. It is also seen that in the case of Mallikarjunan Vs. UOI & Anr., the Hon'ble High Court had relied on the relief granted earlier in the case of Krishnamoorthy Vs. UOI & Ors. While we would have been inclined to follow the ratio of these two cases and consider a similar relief for the applicant, we cannot be oblivious of the fact that the basis on which the relief was granted in these cases was not acceptable to the respondents who had consequently filed an SLP in the Hon'ble Apex Court in Mallikarjunan's case. The direction contained in the Hon'ble Apex Court's order in the said SLP that the dismissal of the SLP shall not be treated as precedence in any other case would indicate that the ratio is not of universal applicability and similar reliefs could not be granted to other similarly placed persons."

On the above lines a similar claim in OA 234/2014 was also dismissed by this Tribunal by Order dated 01.2.2016. I see no reason to take a different view in the instant case.

7. Counsel for the applicant would, however, refer to the Order of the Hon'ble High Court of Judicature at Madras dated 27.2.2014 in WP 5544/2014 wherein relief had been granted in part directing the petitioners therein to sanction pension to the second respondent treating him as having completed 10 years of service. However, it was a case where the respondent therein had put in a qualifying service of 9 years, 8 months and 27 days falling short of the requisite 9 years and 9 months that qualifies for limited relaxation by only three days. It had also been

submitted therein that the second respondent had participated in the All India strike from 5.12.2000 to 18.12.2000 and on 29.9.2005 the absence due to which had been treated as dies-non. Further, there is no reference therein to the order of the Hon'ble Supreme Court in Mallikarjunan's case. Thus the facts of this case could be distinguished.

8. In view of the above, the OA is devoid of merits and is dismissed. No order as to costs.