

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCHDated the Thursday 3rd day of January Two Thousand And NineteenPRESENT:
THE HON'BLE MR. R. RAMANUJAM, MEMBER (A)

O.A. 310/1731/2016

Mr. K. Jagannathan,
S/o. P. T. Krishnamachariyar,
No. 134/68, Chinnamaniyakar Street,
Chengalpattu- 603 001.

...Applicant

(By Advocate: M/s. R. Malaichamy)

Versus

1. Union of India Rep. by the Secretary, Ministry of Personnel, Public Grievances And Pensions, Department of Pensions and Pensioners Welfare, 3rd Floor, Lik Nayak Bhavan, Khan Market, New Delhi- 110 003;
2. The Secretary, Ministry of Communications & I.T., Department of Posts, Dak Bhavan, Sansad Marg, New Delhi- 110 011;
3. The Chief Postmaster General, Tamil Nadu Circle, Anna Salai, Chennai- 600 002;
4. The Superintendent of Post Offices, Chengalpattu Division, Chengalpattu- 603 001.

...Respondents

(By Advocate: Mr. G. Dhamodaran)

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

Heard. Applicant has filed this O.A. seeking the following relief:-

"i) to direct the Respondents 2 to 5 to treat the officiating service performed by the applicant from 2001 to 16.11.2014 or otherwise the date from the year of vacancy till he was appointed on regular basis as MTS as qualifying service or both and thereby further direct the Respondents 2 to 5 to grant pension under old scheme within the purview of CCS (Pension) rules 1972 with all retirement service benefits."

2. The case of the applicant is that he was initially appointed as ED Packer (GDS) w.e.f. 28.2.1973. He submits that as per the decision of the Hon'ble Supreme Court as well as the various benches of the Tribunal, GDS employees were deemed to be holders of Civil post, and, therefore, he is eligible for grant of pension under the CCS (Pension) Rules 1972. The applicant filed OA 1623 of 2014 along with one P. Sekar and others to treat the applicant and others as old entrants and to grant pension accordingly. The matter is allegedly still pending.

3. Further, the applicant was promoted to the cadre of Gr. D on 17.11.2004 against the vacancy of the year 2002 and retired from service on 31.12.2014. He had completed over 10 years in Group D cadre. He is entitled to his qualifying service being counted accordingly, it is urged.

4. It is submitted by the respondents that the initial appointment of the applicant in the Government service was with effect from 17.11.2004 only ie after 01.01.2004 and, therefore, the New Pension Scheme (NPS) would



be applicable to him. As for the delay in appointing the applicant who was eligible for a 2002 vacancy, it is submitted that the delay was due to reasons beyond their control.

5. Learned counsel for the applicant would argue that in similar cases where the persons concerned had been appointed against 2002 or 2003 vacancies, the Tribunal had directed the authorities to grant pension under the CCS (Pension) Rules, 1972 as it was not the applicants' fault that their appointment was delayed beyond 01.01.2004. It is further submitted that the orders of this Tribunal had been upheld by the Hon'ble Madras High Court. However, SLPs thereagainst are pending in the Hon'ble Apex Court.

6. Learned counsel for the applicant informs that the matter of eligibility of GDS to count the GDS service for the purpose of Pension under the CCS (Pension) Rules, 1972 is also pending before the Hon'ble Apex Court in SLPs no. 16767/2016 and 18460/2015. Accordingly, the applicant would be satisfied if the respondents are directed to review their decision in accordance with the law to be laid down by the Hon'ble Apex Court in the pending cases.

7. Learned counsel for the respondents would, however, submit that the applicant had been appointed into Government service after 01.01.2004 and, therefore, he would only be covered by the NPS. Attention is drawn to the order of the Hon'ble Madras High Court in W.P. No. 13500/2016 dated 17.10.2016 by which the validity of Rule 6 of the Gramin Dak Sevak (Conduct & Employment) Rules 2001 denying pension to GDS was upheld



and a distinction was made between holders of Civil Post and persons in Central Government Service. Accordingly, the applicant would have no claim under the CCS (Pension) Rules 1972, it is contended.

8. I have considered the submissions. It is not clear whether the applicant was selected against a 2002 vacancy or a post -2004 vacancy. If it is a 2002 vacancy, the ratio of the previous orders passed by this Tribunal would hold unless reversed by the Hon'ble Apex Court. In such circumstances, I am of the view that this OA could be disposed of with the following direction:-

"In the event of the Hon'ble Apex Court upholding the order of this Tribunal to the effect that persons appointed against pre-2004 vacancies should be considered eligible for pension under the CCS (Pension) Rules, 1972, the competent authority shall review their decision within a period of two months thereafter and pass fresh orders. The authority shall ascertain clearly whether the applicant was appointed against a 2002 or 2003 vacancy or a vacancy that arose after 1.1.2004. If it is the former, he shall be treated similar to persons who had been appointed against pre-2004 vacancies. Similar action shall be taken in the event of the SLPs cited supra being decided in favour of persons similarly placed as the applicant in respect of the claim to count service rendered as GDS as qualifying for pension."

8. OA is disposed of as above. No costs.