

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 914 of 2011

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Gangadhar Behera, aged about 62 years, S/o Late Brundaban Behera, Ex-Postman, Udal SO, At-Bairatpur, Via - Radho, Dist.- Mayurbhanj.

.....Applicant.

VERSUS

1. Union of India represented through the Secretary, Department of Posts, Dak Bhawan, New Delhi – 110001.
2. The Chief Post Master General, Odisha Circle, Bhubaneswar-1, Dist. – Khurda, Orissa.
3. The CPIO-cum-Superintendent of Post Offices, Mayurbhanj Division, Baripada, Dist.- Mayurbhanj, Orissa.

.....Respondents.

For the applicant : Mr.D.K.Mohanty, counsel

For the respondents: Mr.D.K.Mallick, counsel

Heard & reserved on : 20.1.2020 Order on : 11.2.2020

ORDER

Per Mr.Gokul Chandra Pati, Member (A)

The applicant by filing this OA under section 19 of the Administrative Tribunals Act, 1985 has prayed for the following reliefs :-

"The applicant therefore prays that this Hon'ble Tribunal may graciously be pleased to admit the Original application, after hearing the learned counsels for the parties may direct the respondent authorities to reckon a portion of his service as EDDA-cum-EDMC as a part of his length of services rendered to the department as postman so that it will enable the applicant to get over the short fall about 9 months and would enable him to draw pro-rata pension.

And any other order(s) as this Hon'ble Tribunal deems just and proper in the interest of justice."

2. The applicant was initially engaged as Gramin Dak Sevak (in short GDS), earlier designated as Extra Departmental Delivery Agent w.e.f. 2.6.1967. He was promoted to the post of Postman through the DPC w.e.f. 15.12.1999 (Annexure-A/2) and he retired from service on superannuation on 30.4.2009. Thus he had rendered the qualifying service of 9 years and 3 months taking the

date of his initial appointment to a pensionable establishment as Postman to be 15.12.1999. Since for sanction of minimum pension, 10 years of qualifying service is necessary, he has prayed in this OA to direct the respondents to reckon a part of his service as GDS to make up 9 months shortfall in the qualifying service taking into consideration his long 42 years of service in the Department as GDS and Postman. The applicant has submitted a representation dated 26.10.2010 (Annexure-A/6) to that effect.

3. Counter filed by the respondents on 27.11.2019 after restoration of the OA as per the order dated 21.2.2019 of Hon'ble High Court. In the Counter, the respondents have referred to the judgment dated 8.11.2019 (Annexure-R/4 of the Counter) in the case of Union of India and others vs. Gandiba Behera (Civil Appeal No. 8497/2019) in which similar claim has been examined and it was held as under:-

“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 Extra Departmental 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. The 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. Heard learned counsel for the applicant as well as the respondents. Both the learned counsels submitted that the judgment dated 8.11.2019 of Hon'ble Apex Court will squarely cover the present case of the applicant.
5. In the circumstances, the OA is disposed of with the direction to the respondents to consider the applicant's case in terms of the paragraph 21(ii) of the judgment dated 8.11.2019 of Hon'ble Apex Court (Annexure-R/4 of the Counter) in the case of Gandiba Behera (supra) and the decision taken in this matter, be informed to the applicant.
6. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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