

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 432 of 2016

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Janaranjan Mandal, aged about 61 years, S/o Late Kangali Charan Mandal of Vill/PO-Matiali, PS – Rajberhampur, Dist.-Balasore.

.....Applicant

VERSUS

1. Union of India represented by the Secretary-cum-Director General of Posts, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi – 110001.
2. Secretary, Department of Pension & Pension Welfare, Government of India, New Delhi – 110001.
3. The Chief Post Master General, Odisha Circle, At-CPMG Square, PO-Bhubaneswar GPO, Dist.-Khurda, Pin – 751001.
4. The Superintendent of Post Offices, Balasore Division, At/PO/ Dist.-Balasore, Pin – 756001.
5. The Asst. Superintendent of Post Offices, Balasore Sub Division, At/PO/Dist-Balasore – 756001.
6. The Post Master, Balasore Head Office, At/PO/Dist.- Balasore.
7. The Inspector of Posts, Raj Nilagiri Sub Division, At/PO-Raj Nilagiri, Dist.- Balasore.

.....Respondents.

For the applicant : Mr.C.P.Sahani, counsel

For the respondents: Mr.B.Swain, counsel

Heard & reserved on : 17.1.2020 Order on :

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The present OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief :

- “(a) To quash order dated 25.5.2016 under Annexure A/15 of the Respondent no.3 being bad in law.
- (b) To direct the Respondents to grant minimum pension/superannuation pension/compassionate pension and all pensionary benefits.
- (c) And direct to pay gratuity under payments of Gratuity Act for the period of service rendered as EDDA cum MC.
- (d) And direct the Respondent to pay interest and cost.
- (e) To pass any other order/direction as deemed fit by this Hon'ble Tribunal.”

2. The applicant joined as EDDA (now designated as Gramin Dak Sevak or GDS) on 2.1.1979 and he was appointed against selection for the Group-D post against the vacancy year 2002 on 18.5.2006 (Annexure-A/3) in pursuance to the order of selection dated 9.5.2006 (Annexure A/2). He filed a representation on 18.11.2006

(Annexure-A/4) with a request to consider him as a Group-D staff w.e.f. 1.4.2002 as he has been selected against vacancy year 2002. The he was promoted as a postman vide order dated 4.5.2010 (Annexure-A/6). The applicant went on representing for antedating his date of posting against a Group-D post so that he will be eligible for minimum pension with qualifying year of service of 10 years. He retired from service on 31.3.2015 and was not allowed any pension since his qualifying year of service was less than 10 years.

3. Being aggrieved, the applicant filed the OA No. 140/2016 which was disposed of at the admission stage without expressing any opinion on merit vide order dated 17.5.2016 (Annexure-A/14) with direction to the respondents to consider and dispose of the applicant's representation dated 16.9.2015 (Annexure-A/12) as per the rules. Accordingly, the respondent no. 3 passed the order dated 25.5.2016 (Annexure-A/15) rejecting the applicant's case on the following grounds as under:-

(i) The employees joining service after 1.1.2004 are governed under New Pension Scheme (in short NPS) and hence, the applicant is not eligible for minimum pension under the CCS (Pension) Rules, 1972. Accordingly, the applicant on his joining in Group-D cadre, was enrolled under NPS and was allotted the PRAN number. The benefits under the NPS have been extended to him.

(ii) The applicant never represented against the order promoting him in Group-D cadre in 2006 and the representations stated to have been submitted by him have not been received by the authorities.

(iii) The case of Jalandhar Sahoo cited by the applicant is not applicable to him as he had joined prior to 1.1.2004 whereas Sri Sahoo had joined prior to 1.1.2004.

4. The grounds mentioned in the OA are that the applicant has served for more than 36 years of service under the respondent-department, but still he was deprived of the minimum pension. The gratuity has to be paid on total service including the service as EDDA. For inefficiency on the part of the respondents, the applicant could not complete 10 years of service.

5. Counter filed by the respondents reiterated the grounds mentioned in the impugned order dated 25.5.2016 (A/15). It is stated that as per the guidelines dated 10.10.2003 (Annexure-R/2), a government servant joining service after 1.1.2004 is governed under the NPS and he will not be covered under the CCS (Pension) Rules, 1972. It is also averred in the Counter para 24 that as per the judgment dated 24.11.2015 of Hon'ble Apex Court in Civil Appeal No. 13675-13676 of 2015 (Annexure-R/10 of the Counter), the service rendered as EDA or GDS is not be counted to make good the shortfall in minimum qualifying service for pension.

6. Rejoinder has been filed by the applicant reiterating the grounds advanced in the OA. It is stated that the NPS will be applicable for new

recruits, but the applicant should not be treated as a new recruit since he had served for more than 27 years as EDA/GDS prior to his promotion in Group-D. It is further stated that the CCS (Pension) Rules will be applicable to all government servants. The applicant has cited the order dated 29.1.2013 of this Tribunal in OA No. 756/2012 to argue that the shortfall period should be counted from the service period of EDA/GDS.

7. Heard learned counsel for the applicant and the respondents and perused the pleadings on record. The applicant has filed his written notes of argument enclosing the following judgments to buttress his case:-

- (i) Surendra Kumar Samal –vs- Union of India & Ors. - OA No. 626 of 2010 of CAT, Cuttack Bench
- (ii) Sheeba B. & Anr. –vs- Union of India & Ors. – OA No. 20 of 2015 of CAT, Ernakulum Bench
- (iii) P.Rajesh Kumar & Ors. –vs- Union of India & Ors. – OA No. 724 of 2012 of CAT, Ernakulum Bench

8. Learned counsel for the respondents has also filed his written notes of argument manly reiterating the stand taken in the Counter. It is stated that the judgments cited by the applicant are not applicable as those cases involved promotion through examination, whereas the present OA involves DPC on selection cum seniority basis.

9. The applicant's case is that the shortfall in the qualifying service for sanction of minimum pension should be made good in view of his past service as GDS and in the light of the judgments cited by him. There is no specific prayer in the OA to antedate his appointment as Group-D staff to 2002 as he was appointed against 2002 vacancy and he should not be covered under the NPS, but under the CCS (Pension) Rules, 1972. Under the rule 2 of the CCS (Pension) Rules, 1972 states as under:-

"2. Application

Save as otherwise provided in these rules, these rules shall apply to Government servants appointed on or before 31st day of December,2003 including civilian Government servants in the Defence Services appointed substantively to civil services and posts in connection with the affairs of the Union which are borne on pensionable establishments, but shall not apply to -

- (a) railway servants ;
- (b) persons in casual and daily rated employment ;
- (c) persons paid from contingencies ;
- (d) persons entitled to the benefit of a Contributory Provident Fund ;
- (e) members of the All India Services ;
- (f) persons locally recruited for service in diplomatic, consular or other Indian establishments in foreign countries ;
- (g) persons employed on contract except when the contract provides otherwise ; and
- (h) persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law for the time being in force."

Since the applicant in this case, was appointed to the cadre of Group-D after 31.12.2003, the provisions of the CCS (Pension) Rules, 1972 are not applicable

to him in view of the rule 2 above. Since the applicant did not press his claim to treat him to be 2002 appointee for the purpose of applicability of the CCS (Pension) Rules, 1972 to his case, he will be considered to have been appointed to government service after 31.12.2003.

10. Regarding the applicant's claim that his service period as EDA/GDS should be included in the qualifying service, it is seen that no rule or authority has been cited by the applicant in support of his claim. The rules applicable for the GDS clearly state that it is not a government service, not included in pensionable establishment. In paragraphs 7 and 8 of the judgment dated 24.11.2015 (Annexure-R/10) of Hon'ble Apex Court in Civil Appeal No. 13775-13676 of 2015, it is observed that GDSs are not entitled for pension but would be entitled for ex-gratia gratuity. Hence, the claim that applicant's service as GDS be considered for pension has no basis.

11. In OA No. 626/2010 (Sri Surendra Kumar Samal vs. UOI & others), the concerned employee had joined as Group-D employee on 3.12.1994, which was prior to 31.12.2003 for which the provisions of the CCS (Pension) Rules, 1972 were applicable to him, which is not the case for the present applicant to whom the CCS (Pension) Rules, 1972 are not applicable as discussed earlier.

12. In OA No. 724/2012 (P. Rajesh Kumar & others vs. UOI & others) before Ernakulam Bench of the Tribunal, the concerned employee had applied for selection to the post of Postman in response to a notification showing the vacancies of 2002 which was prior to implementation of NPS. It was observed that in similar cases, the Tribunal had accepted the prayer for notional appointment from the year of vacancy for the purpose of the CCS (Pension) Rules, 1972, which was upheld in Hon'ble High Court. Further, the benefit of notional service from the date of occurrence of vacancy was one of the reliefs sought for in OA No. 724/2012. Similarly, in OA No. 20/2015, one of the reliefs sought was for applicability of the CCS (Pension) Rules and to stop recovery under NPS. No such specific reliefs have been sought for by the applicant in this OA (No. 432/16). In fact, the present applicant has not challenged his coverage under NPS in this OA. Hence, the judgments cited by the applicant are distinguishable.

13. The applicant has also cited the order dated 29.1.2013 of this Tribunal in OA No. 756/2012 [Sri Narasingh Sahoo vs. Director General (Posts) & others] in the Rejoinder. In above OA also, the applicant had joined as ED Packer on 28.2.1972 and promoted as Postman on 28.12.1999, which was prior to 31.12.2003. Hence, the applicant in OA No. 756/2012 was covered under the

CCS (Pension) Rules, 1972 and not under the NPS, unlike the applicant in the present OA No. 432/2016.

14. In view of the facts and circumstances as discussed above, I do not find any ground to justify any interference of this Tribunal in this matter. The OA is accordingly dismissed with no order as to cost.

(GOKUL CHANDRA PATI)
MEMBER (A)

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