

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

Original Application No.20/379/2017

Hyderabad, this the 11th day of March, 2020



Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

P. Ranadhiva Rao, S/o. late Sri P. Seetharamaiah,
Aged about 69 years, Retired Postman,
Head Post Office, Vijayawada – 520 001,
R/o. H. No. 41-2-52, Old Post Office Road,
Krishna Lanka, Vijayawada – 520 013,
Krishna District, A.P.

... Applicant

(By Advocate: Smt. Rachna Kumari)

Vs.

1. Union of India, Rep. by the Director General, Posts, Department of Posts, Dak Bhavan, New Delhi.
2. The Chief Post Master General, A.P. Circle, Hyderabad.
3. The Postmaster General, Vijayawada Region, Vijayawada.
4. The Sr. Superintendent of Post Offices, Vijayawada Division, Vijayawada – 520 001.
5. The Sr. Postmaster, Head Post Office, Vijayawada Region, Vijayawada – 520 001.

... Respondents

(By Advocate: Mr. A. Radhakrishna, Sr. PC for CG)

ORDER
{As per B.V. Sudhakar, Member (Admn.)}

2. The OA is filed for not reckoning the Grameen Dak Sewak Service rendered by the applicant in working out pension and pensionary benefits.



3. Brief facts are that the applicant joined the respondents organisation on 16.10.1971 as Grameen Dak Sewak, got promoted as Postman on 23.09.1998 against the vacancy that arose in Oct.1996 and thereafter, superannuated on 31.12.2007. On retirement, when the respondents were not entertaining applicant's request for pension for want of required service, OA 332/2008 was filed wherein it was directed to antedate the promotion of the applicant as Postman from 1998 to 30.9.1996 thereby enabling him to be eligible for pension, and on being challenged by the respondents, Hon'ble High Court of Andhra Pradesh in W.P. No.13221 of 2009 set aside the order of the Tribunal in regard to preponing the promotion but directed to consider the case of the applicant in granting relief as sought on lines similar to the one granted in OA 1264/2001 disposed by the Hon'ble Madras Bench of this Tribunal. Applicant submits that Hon'ble Principal Bench of this Tribunal dealt with a similar issue in different OAs and gave relief as sought by the applicant. Therefore, despite his case being covered and there being specific orders of the Hon'ble High Court in his favour, respondents denying the relief asked for, has led to filing of the OA.

4. The contentions of the applicant are that by proper interpretation of Rules 14, 49 (3) & 88 of CCS (Pension) Rules, 1972, he would be eligible for pension. Respondents have ignored the orders of the Hon'ble High

Court in W.P. cited, as well as the orders of the Hon'ble Principal Bench in OA Nos. 749/2015, 3540/2015, 6013/2015, which are in his favour. Besides, not granting pension is double whammy to him since, on one hand, as GDS he lost the opportunity to retire at the age of 65 years consequent to his promotion as Postman and on the other hand, in the said cadre, unfortunately, he had to retire at 60 years without pension. Even employees, who are dismissed or removed from service are granted compassionate allowance but in his case even though he has rendered 27 years of GDS service and more than 9 years of service as Postman he is denied pension. Just as for casual labourers, 50% of service rendered on being granted temporary status is reckoned for pension, the same should be extended to the applicant by enacting the role of a model employer by the respondents.

5. Respondents state that Grameen Dak Sewaks are not eligible for pension. Rules 14, 49(3), 88 of CCS (Pension) Rules do not allow relief sought. Keeping in view the fact that the applicant has not rendered 10 years minimum service to be eligible for grant of pension and also the orders of the Hon'ble High Court in WP under reference, request of the applicant was rejected. Besides, delay of 3 years in filing the OA makes it non maintainable under Administrative Tribunals Act.

6. Heard both the counsel and perused the pleadings on record.

7. I) The primary objection raised by the respondents is that the OA is barred by limitation since there was a delay of 3 years in filing the OA. This objection is overruled since pension is a continuous cause of action and the aspect of limitation does not stick to the case in question.



II) With the primary objection placed on the back burner, focussing attention on the dispute, it is revealed that the question to be answered is as to whether the services rendered in a non pensionable cadre like the GDS by the applicant, can be considered to make up for the deficit in rendering the prescribed minimum of 10 years of service, to be put up, for grant of pension in the regular cadre of Postman. The service of the applicant in the Postman cadre is a little over 9 years against 10 years required. The issue was initially decided in OA 332/2008 by the Tribunal with a direction to the respondents for antedating promotion of the applicant as Postman to 30.09.1996 from 23.09.1998 by taking the date of occurrence of vacancy into cognizance, which when challenged was set aside by the Hon'ble High Court in WP No. 13221 of 2009 as under:

"5) The respondent wanted the petitioners to count his service in the Postman, with effect from 30.09.1996, on which date the post became vacant and he was required to give his willingness. This however, cannot be accepted. An employer has always, the right and prerogative to decide as to whether a particular vacancy shall be filled or not. Howsoever qualified an individual may be or howsoever acute, the necessity to fill the vacancies may be, it cannot be said to have been filled till the appointing authority passes the specific orders in this behalf. The mere fact that on account of the delay on the part of the Petitioners to fill the vacancy, the Respondent has fallen short by few months for being granted pension is not at all a ground to advance the date of promotion of the Respondent.

6) There is another serious infirmity in the plea of the Respondent. It was only in September 1998 that he resigned to the post of EDBPM. Once he was holding that post upto that date, the

question of his being treated as Postman, earlier to the date on which he was appointed, does not arise.

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9) xxx *However, the petitioners herein shall consider the case of the respondent for extension of the relief similar to the one in the order dated 18.04.2002 passed by the Central Administrative Tribunal, Madras Bench in O.A No. 1264 of 2001. This exercise shall be complied within a period of two months from the date of this order.”*



The above order leaves no doubt that the applicant is ineligible to be promoted as Postman in 1996 since he held the post of GDS till 1998. Consequently, the service rendered by the applicant in the Postman cadre will continue to be 9 years 2 months and 25 days, as pointed out by the respondents in the reply statement at para (xiv), thereby falling short of the minimum of 10 years service to be rendered for award of pension. Applicant has harped on the application of Rule 49(3) of CCS (Pension) Rules, 1972 dealing with the amount of pension to be paid, to make up for the required period in order to become eligible for grant of pension. Relevant portion of the rule is extracted here under:

“In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half year and reckoned as qualifying service. “

Even the said Rule does not come to the rescue of the applicant since he has not put in more than 3 months service over and above 9 years to round it off as one half year. Even if done, albeit not permitted under the rule, applicant would have only 9 years 6 months service and would not clear the finishing line of minimum of 10 years of service to be eligible for grant of pension.

III) Now, turning our attention to the second limb of the Hon'ble High Court Judgment for extension of the decision of the Hon'ble Madras Bench of this Tribunal in OA No. 1264 of 2001 wherein a similar issue of considering GDS service was adjudicated and relief granted, it is to be adduced that the direction of the Tribunal to grant pension to the applicant Mr M.R. Palaniswamy in the cited OA, when challenged in Hon'ble Madras High Court in WP No 45465/2002, it was held as under:



“After going through the entire materials placed on record we are of the view that once the rule making authority has considered it appropriate to treat fraction of a year equal to three months and above as a completed one half-year while calculating the length of qualifying service, considering the total length of service put in by the first respondent, we are of the view that it is nothing serious if the first respondent’s service, which is short of just three months is treated as a qualifying twenty half-year service, so as to extend the pro-rate pensionary benefits to him, which has been correctly assessed by the Tribunal in the order dated 18.4.2002 in O.A. No.1264 of 2001 filed by the first respondent. Therefore, we see no reason to interfere with the said considered order passed by the Tribunal. Accordingly it is confirmed and the writ petition is dismissed. However it is made clear that the relief granted in this writ petition is confined only to the case of the first respondent, which should not be treated as a precedent for others to follow. Consequently, the connected MP is also closed. No costs.”

IV) The matter did not rest in peace at this level but was taken up to the Hon'ble Supreme Court in SLP (Civil) CC No 13829/2008 which was dismissed with an observation of leaving the question of law open to be decided by appropriate court in an appropriate case.

Resultantly, respondents granted minimum pension to Mr M.R.Palaniswamy on 09.10.2009. However, the question of extending the above relief to other similarly placed employees was examined by the Postal Services Board and decided against to provide such a relief by emphasizing the need to adhere to the statutory instruction of Rule 49 of CCS (Pension) Rules 1972 vide letter dated 25.10.2013 (Annexure R-1).

Respondents clarified that the order of the Hon'ble High Court of Madras was to be confined to grant relief to the respondent in the relevant W.P referred to above and not to be treated as a precedent for others to follow, in the impugned order dated 21.03.2014 (Annexure A-1). Thus, the order of the respondents was in tune with the judgment of the Hon'ble Madras High Court.



V) Nevertheless, the matter being a sensitive one with Himalayan financial implications, respondents did not give up but continuously challenged orders issued by various Judicial forums to consider GDS service for grant of pension, as pointed by the respondents in the impugned order dtd. 21.03.2014 and the same is depicted hereunder:

“A. SLP stands filed and to be finally adjudicated:

Sl. No.	Case	Circle	SLP Number
1	Surjit Singh	Punjab	8210-8211/2012
2	N.S. Ponnusamy	Tamil Nadu	17035-36 of 2013
3	Dattappa	Karnataka	2841/2012
4	Kanthalrajappa	Karnataka	12490/2012
5	G. Thulsidasan	Tamil Nadu	21598/2013

B. Taken up M/o. Law & Justice for Review Petition/ SLP:

Sl. No.	Case	Circle	SLP Number	OA/WP/SLP
1	Kashinath Raghu	Karnataka	Review Application	SLP (Civil) No. 11595/13
2	Jagannath Raghu	Karnataka	Already advised for Review Application	SLP (Civil) No. 11903/13
3	Narsingh Sahoo	Orissa	Already advised for SLP	CAT-756/2012 HC – 7993/2013
4	Rameshwar Prasad	Bihar	Already advised for SLP	WP 22481/2012
5	G. Behera	Orissa	SLP	WP 28905/2011
6	Damodar Lal Sharma	Rajasthan	SLP	WP 134/2012

Thus, with the contentious issue in question under serious challenge before the Hon'ble Apex Court in multiple cases and with the Hon'ble Madras High Court confining the relief to the respondent in the W.P cited supra, the respondents, it appears were awaiting a decision of the Hon'ble Apex Court in the matter as adduced by them in impugned order dated 21.03.2014 as under:



"1. A prohibition has been incorporated by the High Court in the case and the Hon'ble High Court, Madras had clarified that it should not be treated as a precedent for other to follow as specified in the High Court in Madras Order dt. 04.10.2007 (WP No. 45465 of 2002 and WPMP No. 66391 of 2002) as the relief granted therein was confined only to the said case of Shri M.R. Palaniswamy. The Supreme Court while dismissing the SLP, had left the question of law open to be decided by appropriate Court in appropriate case."

2. Although some cases have been implemented by the Department on the issue after exhausting all possible judicial remedies, the Department is still agitating many cases relating to different circles on this issue before Hon'ble Supreme Court through SLPs/ Review applications, in consultation with Department of Legal Affairs. A statement containing list of various pending cases on the issue, as on date, is enclosed for ready reference."

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"4. The system of engaging EDAs (now called GDS) is exclusive to the Department and the Sevaks so engaged are not required to perform duty beyond a maximum period of 5 hours in a day and thus are in part-time employment. They should mandatorily have other sources of income and their retirement age is 65 years is governed by the non-statutory rules formulated by the Govt. from time to time. The GDS employees are given ex-gratia gratuity severance allowance instead.

5. The Department further felt that the need to take a fresh policy decision in view of spurt in such types of cases. The Postal Services Board accordingly considered the issue in its meeting held on 30.09.2013. After careful consideration, the Board decided that there is no scope for allowing counting of a part of GDS service towards regular employment to enable such employees to make up for the shortfall in the minimum required service for pension. It decided that observance of statutory provisions laid down in Rule 49 of CCS (Pension) Rules, 1972 should be the rule and no deviation should be allowed in the statutory provision."

VI) The awaited decision was out, when the question of law which was left open by the Hon'ble Apex Court in the case cited supra fell for consideration in U.O.I vs Gandiba Behera on 8 November, 2019 in Civil Appeal No.8497/2019, (Arising out of SLP (C) No.13042 of 2014), resolving the legal riddle as under:



“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.”

Applying the above legal principle to the case of the applicant, the question of considering the past service of 27 years rendered by the applicant in GDS cadre cannot be reckoned to work out the minimum pension as sought by the applicant, since he did not serve for a minimum period of 10 years in the postman cadre as required under the relevant rule. With the decision of the Hon'ble Apex Court rendered in regard to the issue under dispute, the matter has attained finality and it is a binding precedent to be adhered to.

VII) Further, the banal argument that Rule 88 of CCS (Pension) Rule can be invoked to relax the minimum required residency period of 10 years in the Postman cadre for grant of pension is in the domain of policy making, which cannot be interfered with by the Tribunal. Policy matters are best left to the respondents who know better as to what is best for a public oriented organisation like India Post, as observed by the Hon'ble Apex Court in regard to policy issues in Union of India v. S. Maadasamy, (2019)

6 SCC 674 : (2019) 2 SCC (L&S) 198 : 2019 SCC OnLine SC 646 at page 683 as under:



“6.5 From the aforesaid, it appears that the UPSC gave its concurrence after having due deliberations and considering the relevant factors and only thereafter the rules came to be amended and the two posts in question came to be equated. In the case of P.U. Joshi [(2003) 2 SCC 632 : 2003 SCC (L&S)191] in paragraph 10, this Court has observed and held as under:

“10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. xxx”

VIII) Even Rule 14 of CCS (Pension) Rule on which the applicant banked to further his case does not come to his rescue since it speaks of considering the services for which payment is made from the contingency fund on rendering full time duty but not for part time duty. The very scheme of Grameen Dak Sewak has been designed on the platform of seeking work to the extent of 3 to 5 hours per day, as a part time duty, so that the rest of the day is left for him to pursue other occupations, if he so desires. This is the cardinal principle involved in the service conditions of the GDS, whose initial nomenclature was Extra Departmental Agents, as is brought out in the various provisions of EDA (Extra Departmental Agents) Conduct and Service Rules, 1964 with amendments in the following years.

Therefore, none of the rules relied on by the applicant are of any help to clinch the issue in his favour.

IX) Thus, viewed from any perspective, be it with a 360 degrees view, the OA does not hold ground to direct the relief sought, in the context of the explicit legal proposition laid down by the Hon'ble Supreme Court referred to above. Albeit, Tribunal sympathises with the applicant since he came close to the finishing line but was declared unsuccessful by a whisker. The whisker makes all the difference in life and one has to carry on with the hope that future has something better in store. Law is supreme which has to be respected, come what may, and in the instant case Law prohibits what has been asked for by the applicant.

X) Therefore, to conclude, the OA being devoid of merit, merits dismissal and hence dismissed with no order as to costs.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

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