

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00061/2018**

Reserved on : 17.01.2020
Pronounced on: 29.01.2020

C O R A M
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER



Anil Kumar Safi, S/o Late Phusi Safi, Village- Ram Khetari, P.O.- Sant Nagar, P.S.- Bhairav Asthan, District- Madhubani- 847404.

.... Applicant.

By Advocate: - Mr. J.K. Karn

-Versus-

1. The Union of India through the Secretary Cum D.G., Department of Posts, New Delhi-110001.
2. The Chief Postmaster General, Bihar Circle, Patna- 800001.
3. The Director of Accounts (Postal), GPO Campus, Patna- 800001.
4. The Post Master General, Northern Region, Muzaffarpur- 842002.
5. The Director of Postal Services, O/o the Post Master General, Northern region, Muzaffarpur- 842002.
6. The Superintendent of Post Offices, Darbhanga Division, Darbhanga- 846005.

.... Respondents.

By Advocate: - Mr. H.P. Singh, Sr. SC

O R D E R

Dinesh Sharma, A.M:- In the instant OA, the applicant has prayed for declaring the action of the applicant in placing the applicant in new pension scheme as bad in law and to direct the respondent authorities to allow the applicant pension scheme applicable to the Government employees before 01.01.2004 with all consequential benefits. The applicant has also requested for allowing notional seniority of applicant

in Postman cadre w.e.f. 2002 with all consequential benefits including that of benefits of two increments. The applicant has claimed that he is an employee of Department of Posts who started his career in the year 1989 from GDS cadre in Madhubani Postal Division. He was promoted to Group D cadre in the year 1998 and was sent to Army Postal Service. While continuing in Army Postal Service in deputation he appeared in Postman Examination against the vacancy of the year 2002 and was declared qualified. In October, 2006 the applicant came back from Army Postal Service and was permitted to join as Postman in Darbhanga Division. The applicant has been erroneously kept in the new pension scheme though he has made several representations before the competent authorities. His several representations were considered favourably by the office of Postmaster General and sent to the Supdt. Of Post Offices, Darbhanga Division for settling the claim of the applicant to keep him under the old pension scheme. However, the erroneous decision is not being corrected despite the matter has been taken up, on his behalf, by the Employees' Union in March, 2017. However, since in spite of various representations made by him, the latest being on 30.12.2017, the applicant is still being kept under the new pension scheme. The applicant was allowed his Group D in the year 1998 and thereafter he has been promoted in the year 2004 to Postman against the vacancy of the year 2002 and hence he should be given notional seniority from 2002 and the benefit of the old pension scheme.



2. The respondents have denied the claim of the applicant. They have stated that the applicant was technically promoted in Group D cadre for APS by Memo dated 14.12.1998 (Annexure R/1) with condition that his promotion to Group D cadre, for a day, was on a purely ad-hoc and temporary basis and it did not bestow upon him any claim of regular promotion and ad-hoc service rendered by him shall not be counted for the purpose of seniority. The respondents have admitted that the applicant passed Postman examination on 08.12.2004 against the vacancies of 2002. However, they have stated that since the applicant joined as Postman after 01.01.2004 he is not entitled to old pension scheme. The applicant has been allotted PRAN number for new pension scheme after his promotion in 2004 in Postman Cadre. Since he is under NPS scheme he is not eligible for the old pension scheme. It is also stated that the OA is barred by period of limitation under Section 21 of the AT Act.

3. A rejoinder has been filed by the applicant in which he has reiterated his earlier claim. The applicant also stated that an identical case has been decided by this Tribunal on 28.03.2018 in OA/050/00253/2017 (Annexure A/8) where an employee exactly similarly placed has been granted the benefit of new pension scheme. He has also stated that his case is within the period of limitation since he has been representing against putting him in the new pension scheme and thus was busy exhausting departmental remedy.



4. Heard the arguments of learned counsels of both the parties. The case of the applicant is that by virtue of his joining the Army Postal Service after getting technically promoted to Group D cadre w.e.f. 14.12.1998, he should be considered in regular service. Even if that was not to be accepted the fact of his promotion on the basis of a test against a vacancy of 2002, should leave no doubt about his being in regular service before the cut-off date of 01.01.2004 when the new pension scheme came into existence. It was also argued by the applicant that he is still not retired and therefore his claim for pension under the old pension scheme cannot be considered as time barred. Besides these arguments, the learned counsel for the applicant also cited the decision of this Tribunal, annexed as A/8 to his rejoinder, where, under exactly similarly circumstances, this Tribunal has found a person eligible for benefits under old pension scheme. The learned counsel for the respondents, on the other hand, argued that the technical promotion given at the time of relieving a person to join the Army Postal Service clearly mentions that this promotion is only for a day and it is only a technical requirement to enable a person to join the Army Postal Service and does not confer any right for being treated as a regular postal employee from that date (Annexure R/1).

5. After hearing the parties and going through the pleadings, I find that the decision of this Tribunal quoted above is almost exactly on the same facts. In that case also the person was sent to APS in the year



1989 and was selected for appointment to the cadre of Postman against the vacancy for the year 2002 by an order dated 11.11.2004. This Tribunal have very clearly found that such case will be covered by the old pension scheme and it would not be proper to deny a person like him the benefit of the old pensions scheme. Following this Tribunal's earlier decision, I have no option but to grant the same relief as was granted in the earlier case to the applicant in this case also. The respondents are, therefore, directed to treat the applicant under the old pension scheme and provide him with all the benefits that are associated with that scheme as are applicable to Government employees who joined Government service before 01.01.2004. Since the technical promotion in APS cadre clearly mentioned that his seniority in the Postal service shall not be counted for the purpose of fixation of seniority in the Civil Wing, no orders are being passed with respect to the claim of the applicant regarding grant of notional seniority since this will depend on how other similarly situated persons have been treated in matter of seniority. The OA is disposed of accordingly. No order as to costs.

[Dinesh Sharma]
Administrative Member

Srk.

