

**Central Administrative Tribunal
Ernakulam Bench**

O.A No.180/00311/2019

Friday, this the 5th day of March, 2021

CORAM:

Hon'ble Mr. P.Madhavan, Judicial Member
Hon'ble Mr.K.V.Eapen, Administrative Member

G.Prasannakumar
Retired Leave Reserve Postal Assistant
Attingal Post Office
Thiruvananthapuram – 695 301
Residing at Sreehari, Chilambil
Sasthavattom P.O
Perumkuzhi, Thiruvananthapuram – 695 305 - Applicant

(By Advocate: Mr.Vishnu S Chempazhanthiyil)

Versus

1. Union of India, represented by the Director General & Secretary
Department of Posts, Dak Bhavan
New Delhi – 110 001
2. The Chief Postmaster General
Kerala Circle, Thiruvananthapuram – 695 033
3. The Senior Superintendent of Posts
Thiruvananthapuram North Division
Thiruvananthapuram – 695 001 - Respondents

(By Advocate: Mr.K.N.Radhakrishnan, ACGSC)

The application having been heard on 1st March, 2021, this Tribunal delivered the following order on 5.3.2021.

ORDER

P.Madhavan, Judicial Member

This is an Original Application filed seeking the following reliefs:

- “1. Declare that the applicant is entitled to be governed by the Pension Scheme in force prior to 1.1.2004 and count applicant's service rendered as a Gramin Dak Sevak along with his service as Group D, in terms of the order rendered by the Principal Bench of the Hon'ble Central Administrative Tribunal in its order dated 17.11.2016 in O.A No.749/2015.*
- 2. Direct the respondents to bring the applicant under the pension scheme in force prior to 1.1.2004, in view of the judgment as at Annexure A1 as per which half of applicant's GDS service prior to 1.1.2004, he is entitled to be governed under the pension scheme in force prior to 1.1.2004.*
- 3. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.*
- 4. Award the cost of these proceedings.”*

2. The applicant in this case was working as GDSMD, Sasthavattom under the 3rd respondent from 2.7.1981 onwards. Thereafter, he was appointed as Postman at Thiruvananthapuram Chala Post Office in the year 2005. According to him, he was posted in the vacancy which arose in the year 2003. Even though, he had worked as GDSMD from 2.7.1981, the respondents did not extend the benefits under the old pension scheme available for Group D staff. According to the applicant, the Central Administrative Tribunal, Principal Bench in O.A 749/2015 (***Shri.Vinod Kumar Saxena and others v. Union of India and others***) had directed that for all Gramin Dak Sevaks who have been absorbed as regular Group D staff, the period spent as GDS will be counted in toto for the purpose of pensionary benefits. So according to the applicant, he is also entitled to get the benefit of judgment in O.A 749/2015.

3. Respondents have entered their appearance through their counsel Adv.Mr.K.N.Radhakrishnan,ACGSC and filed a detailed reply statement denying the averments made in the Original Application. According to them, the applicant was selected and appointed as Postman as per order dated 17.6.2005. After completion of the training for 10 days, he was posted as Temporary Postman, Trivandrum Chalai Post Office as per order dated 30.6.2005. So according to the respondents, the applicant had joined the Department only on 30.6.2005. Since the applicant in this case had joined the Department as Postman only after 01.01.2004 , the applicant will be eligible only for the New Restructured Defined Contributory Pension System which came into force with effect from 1.1.2004. According to them, as per the law settled in *Y.Najithamol & Others v. Soumya S.D and Others*, the Hon'ble Supreme Court has held that the selection of Extra Departmental Agents or Gramin Dak Sevaks to the post of Postman is by way of Direct Recruitment and not by way of promotion. The counsel for the respondents also invited our attention to the latest Hon'ble Supreme Court's decision in *Union of India v. Gandiba Behera* (Civil Appeal No.8497 of 2019), wherein the Hon'ble Supreme Court has laid down that the service rendered in the post of GDS or ED Agents cannot be considered for computing qualifying service in regular post under the Postal Department on the question of granting pension. The post of GDS is not a regular post and appointment of the applicant to the post of Postman is not by way of promotion. Hence the service rendered by the applicant as GDS cannot be taken into account for counting pension.

4. We have heard the counsels appearing on both sides and have gone through the various pleadings and Annexures produced and the latest decision of the Hon'ble Supreme Court in *Union of India v. Gandiba Behera* (Civil Appeal

No.8497 of 2019) case.

5. In *Union of India v. Gandiba Behera* (Civil Appeal No.8497 of 2019), the Hon'ble Supreme Court has clearly laid down that the service rendered as GDS cannot be added to the service of Postman and the service rendered as GDS cannot be considered for the purpose of counting pension. In this case, the applicant had entered in service only on 30.06.2005. So he cannot be considered in the old pension scheme. The authorities in this case can exercise discretion and permit relaxation and it is for the respondents to do the same. There is no merit in the case filed by the applicant in the matter. The applicant had given representation seeking relaxation of the rules for granting old pension scheme. Hence we direct the respondents to consider Annexures A-4 dated 31.12.2019 and A-6 representation dated 11.5.2020 filed by the applicant for relaxation of the above in the light of relevant rules and regulations and pass a speaking order on it after considering various aspects of the case. This shall be done within a period of one month from the date of receipt of a copy of this order.

6. The Original Application is disposed of as above. No costs.

(K.V.Eapen)
Administrative Member

(P.Madhavan)
Judicial Member

List of Annexures

- Annexure A1 - True copy of the relevant portion of the judgment dated 17.11.2016 in O.A No.749/2015 and connected cases of the Hon'ble Central Administrative Tribunal, Principal Bench
- Annexure A2 - True copy of representation dated 10.7.2017 to the 2nd respondent
- Annexure A3 - True copy of order No.B2/Staff dated 30.6.2005 issued by the Assistant Superintendent of Post Offices, Thiruvananthapuram North Sub Division
- Annexure R-1 True copy of the judgement dated 8.3.2019 in W.P No.5305 of 2018
- Annexure R-2 True copy of the order of the Hon'ble Tribunal in OA No.151/2013 dated 5.8.2014
- Annexure R-3 True copy of the order of the Hon'ble Tribunal in OA No.151/2013 dated 5.8.2014
- Annexure R-4 True copy of the common order dated 28.2.2019 in OA 29/2017 and similar cases
- Annexure R-5 True copy of the order dated 28.1.2019 in OA 179/2016
- Annexure R-6 True copy of the judgment dated 15.3.2019 in CA 3150/2019
- Annexure R-7 True copy of the MHA notification No.SRO 609 dated 28.2.1957
- Annexure R-8 The copy of the common order dated 8.8.2019 in OA 35/2018 and similar cases
- Annexure A4 - True copy of the representation dated 31.12.2019 to the first respondent
- Annexure A5 - True copy of the OM No.57/04/2019-P&PW(B) dated 17.2.2020 issued by the Government of India, Department of Pension and PW
- Annexure A6 - True copy of the representation dated 11.5.2020 to the 2nd respondent.

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