

**Central Administrative Tribunal
Ernakulam Bench**

OA No.180/00900/2018

Thursday, this the 12th day of November, 2020

CORAM:

Hon'ble Mr. P.Madhavan, Judicial Member

Hon'ble Mr.K.V.Eapen, Administrative Member

K.M.Chandrasekharan, aged 58 years,
S/o Ramunni Kurup,
Postman, Payyoli Mukhya Dak Ghar in Vadakara.
Residing at Kallaracka Madathil House,
Peruvannamuzhi P.O.,
Vadakara - 673 528.

Applicant

(Advocate: Mr. V.Sajith Kumar)

Versus

1. Union of India, represented by
Secretary to Government
Department of Posts,
Ministry of Communications,
Government of India,
New Delhi – 110 011.
2. The Chief Postmaster General,
Kerala Circle,
Trivandrum - 695 033.
3. The The Superintendent of Post Offices,
Vadakara Division,
Vadakara - 673 101.

Respondents

(Advocate: Mr.S.Ramesh)

The OA having been heard on 4th November, 2020, this Tribunal delivered the following order on 12.11.2020:

ORDER**P.Madhavan, Judicial Member**

This is an OA filed seeking to quash Annexure A1 notice ordering termination from the post of Postman and engaging him as GDS.

2. In short, the case of the applicant is that he entered service as Gramin Dak Sevak (GDS) at Changarothy Branch Office with effect from 25.1.1980. While working as GDS, he sought for an appointment as Postman under the Seniority Quota of Vadakara Postal Division which was remaining unfilled for the years 2002 to 2008. According to the applicant, the respondents were not filling the vacancies of Group-D Postman stating that clearance from the Screening Committee is necessary for such appointment. Subsequently, the Hon'ble High Court in Writ Petition No. 34512/2009 dated 23.12.2019 (A2) had ordered that there is no need of any clearance for promotion to the post of Postman. In furtherance of the above order of the CAT and the Hon'ble High Court, the Chief Post Master General (CPMG) had issued a circular for implementing the decision of the Hon'ble High Court on 8.7.2010 (Annexure A3). When the applicant sought for appointment on the basis of the above circular in a Contempt Petition filed by him for implementing the order in his favour in OA 423 of 2008, this Tribunal had observed that the respondents can impose conditions if there is pendency of Special Leave Petition (SLP). According to the applicant, the decision in OA No.423/2008 filed by the applicant and others was confirmed by the Hon'ble High Court in WP(C) No.7188 of 2010 and the Hon'ble High Court had dismissed the appeal filed by the respondents and held that there is no need of Screening Committee's clearance for filling up the post of Group-D posts. Even though the respondents had filed a Review Petition, it was also dismissed. No SLP was filed by the respondents against the said order of the Hon'ble High Court in his case. According to the orders

of this Tribunal and the Hon'ble High Court, the respondents had issued an appointment order No.OA/423/2008 dated 3.10.2013 to the applicant as Annexure A6. The applicant joined the service as Postman and he completed the probation period. Recently after the decision of *Najithamol* case, the respondents had issued Annexure A1 notice for terminating him from the post of Postman and engaging him as GDS at the earliest. According to the applicant, a regular employee cannot be terminated without due process of law and an inquiry as contemplated under Rule 14 of CCA (CCS) Rules. The applicant has got a legal right to continue as Postman as per the judgment of the Hon'ble High Court in WP(C) No.7188/2010. The said order has become final. The orders of the respondents are unfair and illegal. So the applicant prays for the above relief.

3. The respondents entered appearance and filed a detailed statement admitting the facts stated in the OA. According to the respondents, the applicant was appointed as Postman as per the order of the Tribunal and the Hon'ble High Court and he joined service and had undergone training and was posted as Postman. The Department was of the view that even for appointment by promotion, there should be a departmental Screening Committee for approval and it was because of that the posts were lying vacant after 2008. But the Tribunal as well as the Hon'ble High Court has held that there is no need of clearance from the Screening Committee as it is only a promotion and the applicant is entitled to get appointment as Postman. The applicant, after the pronouncement of the order of the Hon'ble High Court, filed a CP(C) No.12/2010 and the Tribunal had directed the respondents to appoint the applicant as Postman subject to the outcome of the SLP (Civil) No.35223/12 (Civil Appeal No.90 of 2015) which was pending at that time before the Apex Court in *Najithamol* case. Accordingly the respondents appointed the applicant temporarily as Postman with a special condition that the appointment will be

subject to the outcome of *Y.Najithamol & Ors vs Soumya S.D.& Ors* in Civil Appeal No.90 of 2015. The Hon'ble Supreme Court considered the above question and found that “*promotion to a post can only happen when the promotional post and the post being promoted from are part of the same class of service*”. GDS is a civil post but is not part of the regular service of the Postal Department. So, the Hon'ble Supreme Court held that appointment to the post of Postman is only a direct recruitment and not a promotion. The above decision has overruled the earlier decisions of the High Court and CAT. So, according to the respondents, they have issued A1 notice to the applicant for terminating the appointment as Postman and reverting him as GDS. According to the respondents, the applicant was appointed with a specific condition that an SLP was pending and law will be finally settled only by the Supreme Court.

4. The counsel for the applicant vehemently contended that the applicant's case was allowed by this Tribunal and the respondents had challenged the same before the Hon'ble High Court by filing a Writ Petition. The said Writ Petition was dismissed and the respondents failed to succeed in it. No SLP was filed directly from the applicant's case. The decision in the case of the applicant has become final and he is entitled to continue in the post of Postman and he is also entitled to get all retirement benefits from the post of Postman.

5. We have heard both sides and perused the appointment order of the applicant and the termination memo impugned here as Annexure A1. It has come out in the pleadings that a batch of cases were filed regarding the question whether appointment to the post of Postman is a promotion or direct recruitment. When the decision of the Tribunal in applicant's case was pending for execution, the Department had filed an SLP before the Hon'ble Supreme Court as Civil Appeal No.90/2015 and it was pending before the Hon'ble Supreme Court. When the CP

was filed for execution of the order, the Tribunal permitted to record the pendency of Civil Appeal before the Hon'ble Supreme Court and the appointment order was issued.

6. On a perusal of the appointment order Annexure R2, it is seen that the appointment is purely temporary and the appointment will be subject to the SLP No.35223/2012 filed by *Najithamol and others*. The Supreme Court have categorically held that the appointment to the post of Postman can never be a promotion and the post of GDS is not a feeder category for promotion to the post of Postman. In such a condition, they can be appointed only through LDCE or open direct recruitment. Here no clearance of the Selection Committee was obtained and the respondents were compelled to appoint the applicant due to the CP(C) filed by the applicant before this Tribunal. Since the law had not become final at that stage, the respondents were compelled to add that the appointment will be subject to the outcome in *Najithamol* case. Accordingly, the applicant has accepted the appointment and undergone training and he has completed the probation period also. While so the Hon'ble Supreme Court had laid down the correct law and held that GDS is a civil post outside the postal service and it is not a feeder post to the post of Postman. So, there cannot be any promotion from the post of GDS to the post of Postman. The appointment of the applicant as Postman without any LDCE or permission of the Screening Committee is against the principle laid down by the Hon'ble Supreme Court. The appointment was subject to the outcome of *Najithamol* case and hence the decision in *Najithamol* case is squarely applicable to the applicant also. There is no merit in the arguments raised by the counsel for the applicant in this case. So, we do not find anything to interfere with the Annexure A1 notice issued by the respondents for terminating him from the post of Postman and permitting him to continue as GDS.

7. Counsel for the applicant submitted that the applicant has already retired and he is not given the retiral benefits which are due to him. It appears from the pleadings that the applicant has continued in the post of Postman on the strength of an interim order obtained from this Tribunal dated 7.11.2018 and only because of that he continued in the post of Postman and retired therefrom. So the engagement of the applicant as Postman was litigious in nature. The applicant has already retired and he is entitled to get only the retiral benefit of GDS available on that day. The respondents will grant all the retiral benefits to the applicant which are available to GDS as per rules without delay. The OA is dismissed. No order as to costs.

(K.V.Eapen)
Administrative Member

(P.Madhavan)
Judicial Member

aa.

Annexures filed by the Applicant:

- Annexure A1: True copy of the Memo No.OA 423/2008 dated 22.10.2018 issued by the 3rd respondent.
- Annexure A2: True copy of the judgment dated 23.12.2009 in Writ Petition No.34512/2009.
- Annexure A3: True copy of the circular No.Co/LC/OA/32/08 dated 8.7.2010 issued by the 2nd respondent.
- Annexure A4: True copy of the order dated 4.2.2009 in OA 423 of 2008 by the CAT.
- Annexure A5: True copy of the judgment in W.P.(C) 7188 of 2010 dated 20.10.2011.
- Annexure A6: True copy of the appointment memo No.OA/423/2008 dated 3.10.2013 issued by the 3rd respondent.
- Annexure A7: True copy of the interim order dated 12.4.2017 in OA 319 of 2017 by this Tribunal.

Annexures filed by respondents:

- Annexure R1: True copy of the Apex Court judgment in SLP 35223/12 (Civil Appeal No.90 of 2015) filed by *Y.Najithamol and others* 2016 (U) KHC 280 (SC).
- Annexure R2: True copy of the Superintendent of Post Offices Memo No.OA/423/2008 dated 3.10.2013.