

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**Original Application No.180/00090/2020
along with M.A.No.180/00099/2020**

Thursday, this the 10th day of September 2020

C O R A M :

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

D.Selvaraj,
Retired Group D, Amaravila,
Thiruvananthapuram South Postal Division.
Residing at Somasmrithi, Kuttithani,
Nellimood P.O., Thiruvananthapuram – 695 524. ...Applicant

(By Advocate Mr.Vishnu S Chempazhanthiyil)

v e r s u s

1. Union of India
represented by Director General & Secretary,
Department of Post, Dak Bhavan,
New Delhi – 110 116.
2. The Chief Postmaster General, Kerala Circle,
Thiruvananthapuram – 695 033.
3. The Superintendent of Post Offices,
Thiruvananthapuram South Postal Division,
Thiruvananthapuram – 695 036. ...Respondents

(By Advocate Mr.Thomas Mathew Nellimootttil, Sr.PCGC)

This application having been heard on 27th August 2020, the Tribunal on 10th September 2020 delivered the following :

O R D E R

Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER

This is the second round of litigation. The applicant had earlier approached this Tribunal by filing O.A.No.180/00953/2015. The O.A was disposed of by this Tribunal on 21.10.2016 by directing the Respondent

No.1 (Department of Post) to consider the request and dispose of the Annexure A-4 representation within two months from the date of receipt of a copy of the order. Accordingly, the Department of Post passed order dated 25.1.2017 at Annexure A-14 wherein the Department has not agreed to accept the request of the applicant to grant pension. This order at Annexure A-14 has been challenged in the present O.A. The reliefs sought in the present O.A are as follows :

1. Direct the respondents to sanction pension to the applicant, as done in the case of Shri.M.P.Ramachandran Nair, who had been appointed along with the applicant in Annexure A-1 and to extent the benefit of Annexure A-8 judgment to the applicant.
2. Call for the records leading to the issue of Annexure A-14 and set aside Annexure A-14.
3. Direct the respondents to invoke powers under Rule 88 of CCS (Pension) Rules and to make good the shortage in minimum qualifying service of the applicant in the light of the decision at Annexure A-15 of the Hon'ble High Court of Kerala.
4. Direct the respondents to grant the applicant the promotion as Group D with effect from the date of occurrence of vacancy for the limited purpose to qualify for the minimum pension and to count the service from the said date of promotion for pension and to grant him the pension.
5. Direct the respondents to extent to the applicant the benefit of judgment at Annexure A-12 and to remedy the loss of qualifying service by granting minimum pension.
6. Declare that the applicant is legally entitled to has his service rendered as Extra Departmental Agent reckoned for the purpose of determining minimum qualifying service for pension to make up the deficiency of a few days to complete 10 years in the post of Group D and is entitled to receive pension on his retirement from the cadre of Group D in the light of the decision in Annexure A-16.
7. Directing the respondents to pass appropriate orders sanctioning pension to the applicant who retired from Group D cadre, reckoning the part of his service rendered as Extra Departmental Agent to make up the deficiency of service for earning pension.
8. Directing the respondents to disburse arrears of pension which became due on retirement of the applicant from the post of Postman and continue to pay pension regularly.
9. Any other further relief or order as this Hon'ble Court may deem fit and proper to meet the ends of justice.

10. Award the cost of these proceedings.
2. Along with the O.A., the applicant has filed M.A.No.180/00099/2020 to condone the delay of 735 days in filing the O.A stating that he had retired way back in 2008 and he did not have any source of income as he was denied pensionary benefits. Thus, left with without any income, he was unable to prosecute the litigation. He has prayed that a sympathetic view may be taken by this Tribunal and delay of 735 days be condoned.
3. The respondents have filed an objection to the above request for condonation of delay and have pointed out that Section 21 of the Administrative Tribunals Act, 1985 is clear as to the period of limitation and that the applicant has failed to put forth any valid ground to justify inordinate delay. In support, they have placed reliance on the judgment of the Hon'ble Supreme Court in **JT 1998 (7) SC 21** which held that there has to be satisfactory reason for condoning the delay. They have also placed reliance on the judgment of the Hon'ble High Court of Kerala in **2014 (1) KLJ 477** which held that any suit which was filed after the period of limitation has to be dismissed irrespective of the fact whether the plea of limitation is a defence or not.
4. We have considered the above contentions with regard to delay and we feel that the applicant has not put forth a satisfactory or convincing reason for allowing condoning the excessive delay. Therefore, in the absence of a satisfactory reason, the O.A has to be dismissed on the ground

of inordinate delay, without going into the merits of the case. However, since the applicant is a senior citizen and has claimed that he has no other source of income due to denial of pensionary benefits, we have given learned counsel for the applicant an opportunity for presenting the matter.

5. The facts are as follows - The applicant started service as an Extra Departmental Agent and later got appointed as a Group D on 17.10.2000. He retired from service on 29.2.2008. He did not get any pensionary benefits as he did not have the required 10 years of qualifying service. However, the contention of the applicant is that he is entitled for grant of pension on the grounds that a similarly situated person appointed along with him on 17.10.2000 was sanctioned pension on the basis of a direction of this Tribunal in O.A.No.674/2012 (Annexure A-8). The applicant has also claimed the benefit of the judgment dated 23.10.2019 of the Hon'ble High Court of Kerala in O.P.(CAT) No.1889/2013 to make good the shortage of minimum qualifying service (Annexure A-15). He has also claimed that he could have been considered in the vacancies which arose during 1997 to 1999 even though he had got appointment only with effect from 17.10.2000. He has requested reckoning the part of his service rendered as Extra Departmental Agent to make up deficiency of service for earning pension.

6. We find that these issues were addressed in the Annexure A-14 order passed by the Department. The applicant was appointed against a vacancy of 1999 on 13.10.2000 in his turn after his seniors were appointed against earlier vacancies. It has also been brought out that the applicant has put in

less than 8 years of qualifying service as against the applicant in O.A.No.674/2012, who retired from service only on 30.6.2010 after rendering 9 years 8 months and 15 days of service. Thus the shortfall in qualifying service in his case is quite substantial. While a marginal shortfall in service can be overlooked on occasion by invoking the power to relax the Rules provided under Rule 88 of Central Civil Services (Pension) Rules, 1972 in cases of undue hardship, learned counsel for the respondents through their reply statement has brought to our notice a recent judgment of the Hon'ble Supreme Court of India in **Union of India & Ors. v. Gandiba Behera** dated 8.11.2019 in Civil Appeal No.8497/2019 arising out of SLP (C) No.13042/2014. The relevant portion of the judgment at paragraphs 19 to 21 reads as follows :

19. *Having regard to the provisions of the aforesaid Rules relating to qualifying service requirement, in our opinion the services rendered by the respondents as GDS or other Extra Departmental Agents cannot be factored in for computing their qualifying services in regular posts under the postal department on the question of grant of pension. But we also find many of the respondents are missing pension on account of marginal shortfall in their regular service tenure. This should deserve sympathetic consideration for grant of pension. But we cannot trace our power or jurisdiction to any legal principle which could permit us to fill up the shortfall by importing into their service tenure, the period of work they rendered as GDS or its variants. At the same time, we also find that in the case of [Union of India & Ors. v. The Registrar & Anr.](#) (supra), though the incumbent therein (being respondent no.2) had completed nine years and two months of service, the Union of India had passed orders granting him regular pension. This Court in the order passed on 24th November 2015 had protected his pension though the appeal of Union of India was allowed.*

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.*

21. *We are also of the opinion that the authorities ought to consider their cases for exercising the power to relax the mandatory requirement of qualifying service under the 1972 Rules if they find the conditions contained in Rule 88 stand fulfilled in any of these cases. We do not accept the stand of the appellants that just because that exercise would be prolonged, recourse to Rule 88 ought not to be taken. The said Rules is not number specific, and if undue hardship is caused to a large number of employees, all of their cases ought to be considered. If in the cases of any of the respondents' pension order has already been issued, the same shall not be disturbed, as has been directed in the case of Union of India & Ors. v Registrar & Anr. (supra). We, accordingly allow these appeals and set aside the judgments under appeal, subject to the following conditions :-*

(i) *In the event the Central Government or the postal department has already issued any order for pension to any of the respondents, then such pension should not be disturbed. In issuing this direction, we are following the course which was directed to be adopted by this Court in the case of [Union of India & Ors. v. Registrar & Anr.](#)(supra).*

(ii) *In respect of the other respondents, who have not been issued any order for pension, the concerned ministry may consider as to whether the minimum qualifying service Rule can be relaxed in their cases in terms of Rule 88 of the 1972 Rules.*

22. *Interim orders passed in these appeals, if any, shall stand dissolved. All connected applications shall stand disposed of.*

23. *There shall be no order as to costs.*

(emphasis added)

7. From the above judgment it is clear that the period of service rendered by the applicant in the capacity of Extra Departmental Agent cannot be added to their regular tenure in the Postal Department under any provision of law for the purpose of fulfilling the period of qualifying service. As regards invoking the provisions of Rule 88, the competent authority (the Department of Post) had earlier considered the representation filed by the applicant and had found that this case was not a case of exceptional kind or of rare occurrence which justify relaxation of rules as a special case to invoke Rule 88. The Rule allows only the Ministry or Department of the Government to be satisfied before invoking the power to relax.

8. Hence, owing to the above reasons, we do not find that the Original Application can be allowed due to limitation as well as on merit. Accordingly, the Original Application and M.A.No.180/00099/2020 are dismissed on the grounds of limitation and merits. There shall be no order as to costs.

(Dated this the 10th day of September 2020)

K.V.EAPEN
ADMINISTRATIVE MEMBER

P.MADHAVAN
JUDICIAL MEMBER

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List of Annexures in O.A.No.180/00090/2020

1. **Annexure A-1** – A copy of the appointment order No.G/16/TV(E) dated 17.10.2000 issued by the ASP, Trivandrum East Sub Division.
2. **Annexure A-2** – A copy of the Memo No.BIE/MISC dated 15/19.2.2008 issued by the 3rd respondent.
3. **Annexure A-3** – A copy of the representation dated 15.7.2015 to the 2nd respondent.
4. **Annexure A-4** – A copy of the representation dated 15.7.2015 to the 1st respondent.
5. **Annexure A-5** – A copy of the letter No.RTI/TV(S)/60/2015 dated 7.4.2015 issued by the 3rd respondent.
6. **Annexure A-6** – A copy of the letter No.RTI/TV(S)/40/2015 dated 13.3.2015 issued by the 3rd respondent.
7. **Annexure A-7** – A copy of the letter No.RTI/TVMS/164/2014 dated 9.1.2015 issued by the 3rd respondent.
8. **Annexure A-8** – A copy of the order dated 12.4.2013 in O.A.No.674/2012 of this Hon'ble Tribunal.
9. **Annexure A-9** – A copy of the order dated 18.4.2002 in O.A.No.1264 of 2001 of the Hon'ble Central Administrative Tribunal, Madras Bench.
10. **Annexure A-10** – A copy of the order dated 17.10.2008 in SLP CC No.13829 of 2008 of the Hon'ble Supreme Court.
11. **Annexure A-11** – A copy of the ordere No.99-3/08-Pen dated 9.10.2009 issued by the 1st respondent.
12. **Annexure A-12** – A copy of the order in O.A.No.389/2004 of this Hon'ble Tribunal.
13. **Annexure A-13** – A copy of the order dated 21.10.2016 in O.A.No.180/00953/2015 of the Hon'ble Tribunal.
14. **Annexure A-14** – A copy of the order No.99-79/2016-Pen dated 25.1.2017 issued by the 1st respondent.
15. **Annexure A-15** – A copy of the judgment dated 23.10.2019 in O.P.(CAT) No.1889/2013 of the Hon'ble High Court of Kerala.
16. **Annexure A-16** – A 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 Tribunal.

17. Annexure A-1 – A copy of the appointment order No.G/16/TV9E dated 17.10.2000 issued by ASP, Trivandrum East Sub Division.

18. Annexure A-2 – A copy of the Memo No.BIE/MISC dated 15/19.2.2008 issued by the 3rd respondent.

19. Annexure R-1 – A copy of the judgment dated 4.10.2007 in Writ Petition No.45465/2002 of the Hon'ble High Court of Madras.

20. Annexure R-2 – A copy of the judgment dated 24.11.2015 in Special Leave Petition (Civil) Nos.17035-17036 of 2013 (Civil Appeal Nos.13675-13676 of 2015).

21. Annexure R-3 – A copy of the order dated 18.3.2014 in O.A.No.1191/2012 of Hon'ble Tribunal.

22. Annexure R-4 – A copy of the order dated 5.8.2014 in O.ANo.151/2013.
