

CENTRAL ADMINISTRATIVE TRIBUNAL**CHENNAI BENCH****OA/310/01070/2016****Dated the 30th day of December, Two Thousand Twenty****CORAM : HON'BLE MR. T. JACOB, Member (A)**

S. Gururajan, S/o. Sama Rao,
A/10, Type I, Postal Staff Quarters,
Kutchery Road,
Mylapore, Chennai - 4.

....Applicant

By Advocate M/s. S. Ramaswamyrajarajan

Vs

Union of India, rep by,

1.The Chief Postmaster General,
Tamil Nadu Circle, Chennai 600002.

2.Superintendent of Railway Mail Service,
Chennai Sorting Division,
Chennai 600008.

3.The Head Record Officer,
Chennai Sorting Division,
Chennai 600008.

....Respondents

By Advocate Mr. S. Padmanabhan

ORDER

(Pronounced by Hon'ble Mr. T. Jacob, Member(A))

The applicant has filed this OA under Sec.19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

"To quash the impugned order bearing Memo No. STA/29-OA 1472/2012, dated 29.04.2015 passed by the first respondent, to direct the respondents to count the applicant's service taking into account the continuous officiating period rendered in Group 'D' cadre with effect from 05.09.2000 to 24.05.2003 and give him the seniority in Group 'D' cadre and all consequential benefits thereon..."

2. The brief facts of the case as stated by the applicant are as follows:

The applicant while working as Extra Departmental Mailman from 1984 was promoted as Group 'D' under seniority quota on officiating capacity by a valid Departmental Promotion Committee in the year 2000. He was holding the post continuously and was given regular appointment in the said cadre. However, his request for continuity of service and seniority etc with effect from 2000 i.e including the service rendered in officiating capacity was rejected by the respondents. Aggrieved on that, he filed OA No.1472 of 2012 wherein this Tribunal by order dated 26.11.2013 directed the respondents to re-examine the case of the applicant along with the similarly placed persons in the light of the Hon'ble Supreme Court judgment. When the said order was not complied with,

the applicant filed Contempt Petition No.32 of 2015 before this Hon'ble Tribunal and during the pendency of the said Contempt Petition, the 1st respondent passed the impugned order rejecting the claim of the applicant. Challenging the above impugned order the applicant has filed this OA seeking the aforesaid reliefs on the following grounds:-

i. Based on the seniority in the Extra Departmental Mailman cadre, the applicant was selected as approved candidate for promotion to the cadre of Group 'D' and was ordered to officiate in Group 'D' cadre in a regular vacancy with effect from 05.09.2000 continuously without break,.

ii. When the respondents 2 & 3 had promoted the applicant as Group 'D' with effect from 24.05.2003, they ought to have issued regular appointment to him on completion of one year of officiating period as per the Govt of India, MHA OM No. dated 26.12.1968 read with Department of Personnel OM dated 25.09.1972. He was given regular appointment with effect from 24.05.2003 subsequently without counting his service rendered in Group 'D' cadre on officiating capacity ie without taking into account the length of service in a regular vacancy with effect from 05.09.2000 to 24.05.2003 for seniority and other consequential benefits.

iii. The 1st respondent had passed the Impugned order without proper application of mind towards the order dated 11.09.2014 given by this Tribunal In OA No.104 of 2013, because in the said order the respondents were directed to re-examine the case as a general issue taking note of the law laid down by the Hon'ble Supreme Court in regard to counting the period of continuous officiation for the purpose of seniority in Group 'D' post.

iv. There is delay and latches on the side of the respondents.

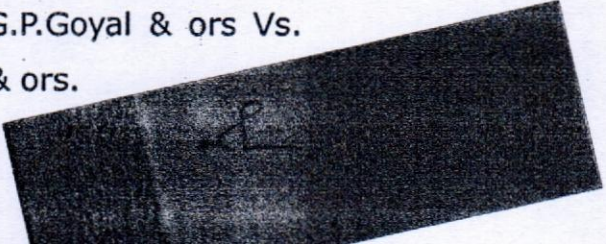
3. The applicant has relied on the following Judgements in support of his submission :-

i. Judgment of CAT-Principal Bench in OA 1204/1987 dt. 20.11.1987 in the case of S.K.Nayyar and others Vs. Union of India & ors.

ii. Judgment of CAT-Jodhpur Bench in OA 137/2011 dt. 04.07.2016 in the case of Rajeev Pathak Vs. Union of India & ors.

iii. Judgment of CAT-Bombay Bench in OA TA No. 234/1986 dt. 19.06.1987 in the case of Shri. Ramakrishnan M. Vs. Union of India & ors.

iv. Judgment of Hon'ble Supreme Court of India dt. 18.07.1984 in the case of G.P.Goyal & ors Vs. The Chief Secretary, Govt of UP & ors.



v. Judgment of Hon'ble Supreme Court of India in CA No. 5664 of 1999 & batch dt. 01.10.1999 in the case of L.Chandrakishore Singh & ors Vs. State of Manipur & ors.

vi. Judgment of Hon'ble Supreme Court of India dt. 22.08.2000 in WP (C) No. 490 of 1987 & batch in the case of Rudra Kumar Sain and others Vs. Union of India and others.

4. The respondents have filed a detailed reply statement stating that the applicant was appointed as Extra Departmental Mail-man in the year 1984 and as Group 'D' w.e.f 26.05.2003. The applicant seeks counting of his service rendered on arrangement of duty from 05.09.2000 to 25.05.2003 prior to his regular appointment with all consequential benefits. As per the Recruitment Rules for recruitment of Group 'D' cadre, in the Department of Posts, earlier there were two categories in Group 'D' cadre - Test Category and Non-Test Category. For the selection of NTC to TC there would be a literacy Test. The NTC Group 'D' will be filled only from the senior most Extra Departmental DMM (now GDS Gramin Dak Sevaks). The vacancies that arose then and there were filled by convening Departmental Promotion Committee and the eligible candidates were given appointment in Group 'D' cadre. Accordingly, DPC was held on 22.03.2000 for selection of 6 assessed vacancies

(UR-3, OBC-2, SC-1) in Group 'D' cadre and the following candidates were selected:-

UR	OBC	SC
N.Ganesan	L.Govindasamy	S.Marimuthu
G.Selvakumar	E.Gnanasekar	
S.Gururajan/2		

2 UR and 1 SC candidates were given regular appointment and 1 UR and 2 OBC candidates were waiting for appointment against assessed vacancies. In the meantime, the Government imposed a ban on recruitment schemes by the Directorate letter no 45-6/200-SPB II (Part) dated 07.04.2000 which was communicated by the Circle Office vide letter no REP/6-500/2000 dated 05.05.2000. When the ban on recruitment was subsequently lifted, there were clear instructions from the Directorate which was communicated by the Circle Office vide letter No.Rep/202/2000/DR dated 27.12.2000 that only 25% of less than a year old vacancies in operational posts only falling in Direct Recruitment quota can be filled up. As per the instructions of Department of Personnel & Training, Screening Committee was formed and only 1/3rd of the vacancies were approved for filling up the post and the remaining 2/3rd were abolished vide letter no 2/8/2001-PIC dated 11.05.2001. As per Directorate letter No.45-6/2000-SPB II (Part) dated 07.04.2000 which was communicated by the Circle Office letter No.REP/6-

500/2000 dated 05.05.2000 officiating arrangements cannot be treated as filling of any post". As immediate appointment could not be given, the selected candidates including the applicant were detailed to work on officiating capacity purely on temporary basis vide HRO (3rd respondent) Memo No.HRO/SB/Oftg dated 05.09.2000. Consequent to the approval of the Postal Directorate, New Delhi for filling up of vacant posts of Mail-man cadre in RMS divisions for the vacancies of less than one year old and for which recruitment action was not finalised, it has been directed to fill the vacant posts allotted to RMS divisions as per the instructions contained in DOP&T OM No.-8/2001-PIC dated 16.05.2001 which was communicated by Circle Office letter no REP/2/2/2000/Dlg dated 11.07.2001. Shri. S. Gururajan was appointed as Grade-D on regular basis w.e.f. 26.05.2003 vide HRO Memo No. HRO/SG/Appt dt. 24.05.2003. Aggrieved on this, the applicant filed OA 1472 of 2012 before the Hon'ble CAT-Madras Bench. In pursuance of the direction of the Tribunal, the first respondent disposed the representation of the applicant rejecting the claim of the applicant. Further the Contempt Petition filed by the applicant was dismissed by the Division Bench on 02.09.2015 and the CA was closed. Aggrieved on this, the applicant filed this OA before the Hon'ble CAT. Hence the respondents pray for

dismissal of the OA.

5. The respondents also relied on the following citations in support of their submissions :


i. Judgment of Hon'ble Madras High Court dt. 14.07.2015 in WP Nos. 6474 and 9071 of 2015 in the case of S. Babu & ors Vs. Union of India & anr.

ii. Judgment of Hon'ble Supreme Court of India dt. 10.04.2006 in the case of Appeal (Civil) Nos. 3595-3612 of 1999 in the case of Secretary, State of Karnataka & ors Vs. Umadevi & ors.

6. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

7. Admittedly this is the second round of litigation before this Tribunal. The applicant had earlier filed OA 1472/2012 before this Tribunal seeking the above reliefs wherein this Tribunal by order dated 26.11.2013 disposed of the OA as under:-

"11. In the facts and circumstances of the case and legal position set out above, the Respondents are directed to reexamine the case as a general issue taking note of the law laid down by the Hon'ble Supreme Court in regard to counting the




period of continuous officiation for the purpose of seniority in Group 'D' post of all those similarly placed as the applicant and take a decision in all the cases including that of the applicant where due to ban their regular appointment got delayed but nevertheless they were put in officiating charge of Group 'D' post in which they continued uninterruptedly till their regular appointment. This exercise should be completed within a period of 4 months from the date of receipt/communication of a copy of this order".

In pursuance thereof, the respondents have re-examined his case, but however, rejected the claim by order dated 29.04.2015.

8. Undisputedly the applicant being the senior most EDMM was appointed as Group 'D' on regular basis w.e.f 26.05.2003 vide HRO Memo No.HRO/SG/Appt dated 24.05.2003. His representation dated 22.05.2006 to the 2nd respondent to re-fix his date of commencement of continuous service as 05.09.2000 instead of 26.05.2003 was rejected by the 3rd respondent vide letter dated 29.06.2006 due to ban on filling up of vacancies and he was kept under waiting list. He was regularly appointed after being cleared by the Screening Committee of Postal Directorate w.e.f 26.05.2003. His subsequent representation

dated 05.03.2007 to the 2nd respondent for counting of past services rendered in Grade 'D' in officiating capacity was also rejected and the same was informed to him vide letter dated 22.03.2007. His appeal dated January, 2010 to the 1st respondent also stood rejected by order dated 18.08.2010. According to the applicant the rejection of the claim is illegal, arbitrary and unsustainable in law."

9. I have considered the matter. As per rules then in vogue, Group 'D' appointments were made from among the senior EDMM depending upon the number of vacancies available. 12 vacancies were assessed for the year 2000 for Group 'D' (Test Category & Non Test Category) with a break up of UR-6, and OBC-6 and all the vacancies were approved by the DPC and appointment orders were issued. Subsequently, DPC was held on 22.03.2000 for selection of 6 approved vacancies with a break up of UR-3, OBC-2 and SC-1 out of which UR-2 and SC-01 were given regular appointments and the remaining candidates including the applicant were kept in the panel. However, before issue of appointment orders to the officials in the select panel, the Government imposed a ban on recruitment and hence appointment could not be given to the applicant immediately. When the ban on recruitment had been lifted,



there was an instruction from the Screening Committee that only 25% of less than a year old vacancies in operational posts falling in direct recruitment quota can be filled up. Initially, the applicant was selected by the DPC against UR quota and posting could not be made due to ban on recruitment. The applicant was engaged as Group 'D' vide order dated 05.09.2000 and after selection for the vacancy year 2001, was regularised in the said post vide order dated 24.05.2003 and after completing the probationary period of two years was confirmed vide order dated 25.08.2005.

10. As per Directorate letter No. 45-6/2000-SPB II (Part) dated 07.04.2000 which was communicated by the Circle Office vide letter no. REP/6-500/2000 dated 05.05.2000 wherein it was clearly mentioned that "officiating arrangements cannot be treated as filling of any post." Hence, the contention of the applicant that mere long years of working in a post continuously purely on temporary basis will not make him eligible for regularization.

11. Further, the respondents have forwarded the Directorate's letter dated 05-09-2014 along with Hon'ble CAT orders in OA No. 1472/2020 filed by the applicant, Shri S. Gururajan to all

Regions/C.O Units and requested to check and report as to whether such similar cases are available and, if so, furnish the details. The report received from Regions/Units revealed that the pay and allowances were drawn in supplementary bill for substitute arrangement and not in pay bill as the GDS officials were only engaged as substitute in Postman/Group D vacancies. SRM, Chennai Sorting Division has also intimated that the officiating pay and allowances of all the said GDS officials was not drawn along with regular MTS officials.

12. The Hon'ble Supreme Court in CA.No.3595-3612/1999 in the case Secretary, State of Karnataka and others Vs Umadevi and others dated 10.04.2006 held that :

"One aspect arises. Obviously, the State is also controlled by economic considerations and financial implications of any public employment. The viability of the department or the instrumentality or of the project is also of equal concern for the State. The State works out the scheme taking into consideration the financial implications and the economic aspects. Can the court impose on the State a financial burden of this nature by insisting on regularization or permanence in employment, when those employed temporarily are not needed permanently or regularly? As an example, we can envisage a direction to give permanent employment

to all those who are being temporarily or casually employed in a public sector undertaking. The burden may become so heavy by such a direction that the undertaking itself may collapse under its own weight. It is not as if this had not happened. So, the court ought not to impose a financial burden on the State by such directions, as such directions may turn counter productive."

13. The Hon'ble Supreme Court in CA.No.80-123/96 in the case of Union of India vs. Shri K.N. Sivadas and others dated 01.08.1997 held that "any service which was rendered prior to regular appointment in the cadre cannot count for the purpose of these rules because it cannot be considered as service in any eligible cadre".

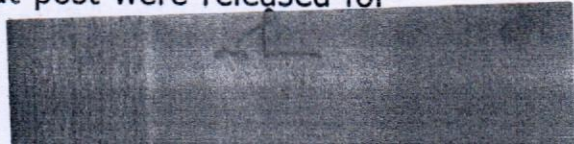
14. In the case of Madhyamik Shiksha Parishad, UP Vs Anil Kumar Misha & others SCC (L&S) 628 in which it was held that employees engaged on adhoc/temporary basis cannot be granted regularisation.

15. In the case of CA No.4996/06 filed by Indian Drugs and Pharmaceuticals Limited Vs Workmen Indian Drugs & Pharmaceuticals Ltd., the Hon'ble Supreme Court observed that if the Court or Tribunal directs the daily rated or adhoc or casual

employee should be continued in service till date of superannuation it is implidly regularizing such and employee which cannot be done and that regularization can only be done in accordance with the rules and not dehors the rules. It was also observed by the Hon'ble Supreme Court that the rules of recruitment cannot be relaxed.

16. The Hon'ble Supreme Court in CA.No.1606/2020 & batch in the case Vinod Giri Goswami & others Vs State of Uttarakhand and others dated 14.02.2020 held that the promotees are not entitled to count their ad hoc service for the purpose of computing their seniority.

17. The question of seniority in a post would arise only when a regular post is available to accord seniority in that post. Mere inclusion of one's name in the select list drawn by a DPC would not give any right to issues of seniority until the concerned individual is formally appointed against a sanctioned regular post. The Government issued instructions on ban on recruitment much before the turn of the applicant could have come in the normal course for regular appointment to the post as per the DPC recommendations. He was later given regular appointment when the vacancies in that post were released for



filling up.

18. As such, the claim of the applicant for counting his past service rendered in Group 'D' on officiating capacity is not sustainable in law. The applicant cited the Hon'ble CAT judgment dated 11.09.2014 in OA 104/2013 which is a similar case as that of the applicant which was disposed of by rejecting the case by a speaking order dt. 08.05.2015 by the 1st respondent. Similar disposal was given by the 1st respondent by a speaking order dt. 29.04.2015 in the OA filed by the applicant.

19. In the conspectus of the above facts and circumstances of the case, the Judgements of the Hon'ble Supreme court and the discussions here in above, I see no grounds to interfere with the impugned order of rejection of the claim of the applicant.

20. In the circumstances, the OA is liable to be dismissed and is accordingly dismissed. No costs.
