

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.293 of 2008
Cuttack, this the 19th day of January, 2010

Babaji Bandhu Jena Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


(C.R.MOHAPATRA)
MEMBER (ADMN.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.293 of 2008
Cuttack, this the 14th day of January, 2010

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Sri Babaji Bandhu Jena, aged about 61 years, son of Late Banamali Jena, Vill/Po.Bhainchua, Via-Balakati, Dist. Khurda-752 100.

.....Applicant

Legal practitioner :M/s.P.K.Padhi, J. Mishra, Counsel.

- Versus -

1. Union of India represented through its Secretary cum DG Posts, Ministry of Communication & I.T. Dak Bhawan, New Delhi 110 001.
2. Secretary, Pension & Pensioner's Grievances, New Delhi-110 001.
3. Senior Superintendent of Post Offices, Bhubaneswar Division, At/Po.Bhubanewar, Dist. Khurda 751 009.
4. Assistant Superintendent of Post Offices I/C, At/Po.Bhubaneswar, Dist. Khurda-751 001.

.....Respondents

Legal Practitioner :Mr. U.B.Mohapatra, SSC

O R D E R

MR. C.R.MOHAPATRA, MEMBER (A):-

Applicant was a regular GDSBPM of Bhainchua Branch post office w.e.f. 13.11.1969. He was approved for promotion to the cadre of Postman under 25% seniority quota for the vacancies of the year 1996 and 1997 and then appointed as Postman purely on temporary and ad-hoc basis after completion of the prescribed training vide Memo dated 26.10.1998 and joined as Postman w.e.f. 31.10.1998 in the Mancheswar Railway Colony Sub Post Office, Bhubaneswar. On attaining the age of superannuation, i.e. 60 years, he retired from service w.e.f. 31.10.2000. From the counter filed by the Respondents it is seen that after the retirement of the applicant he was paid service gratuity but not the pension as the applicant did not fulfill the conditions stipulated in Rule 49 (1) of CCS [Pension] Rules, 1972 in which it was provided that an employee completing less than ten years of qualifying

service as on the date of superannuating retirement is not at all entitled for the superannuating pension and the applicant has only rendered eight years eight months and 16 days qualifying service as on the date of superannuating retirement which is less than ten years qualifying service as required under the aforesaid Rules. Further stand of the Respondents is that Rule 30 of CCS (Pension) Rules, 1972 has got nothing to do in regard to the GDS employees; especially in absence of any express provision in the Recruitment Rules of the GDS employees that the service or post is one which carries the benefit of Rule 30 *ibid* as a precondition of attracting the provisions of the aforesaid Rules. It is the contention of the Applicant that delay in holding the DPC made him to face sufferings through out his life due to non-payment of pension and pensionary benefits which has direct nexus with the provisions enshrined under Article 21 of the Constitution of India. Applicant was selected against the 25% vacancy of the year 1996-97 only in the year 1998. The delay being not attributable to the applicant, the applicant is entitled to count the period of service starting from the vacancy until retirement. His contention is that leaving aside this, even by implication and application of the provision of Rule 30 *ibid*, the applicant is entitled to pension by taking into consideration one fourth of the length of his service as GDS BPM. Learned Counsel appearing for the Respondents vehemently opposed this.

2. Having considered the submissions put-forward with reference to the record and rules by Learned Counsel for both sides, perused the materials placed on record including the Recruitment rules of the GDS employees as also various provisions of the CCS [Pension] Rules and the related instruction of the Government of India. We are not at all impressed by the ground taken by the applicant that delay in holding DPC entitles the applicant to count his qualifying service from the date the vacancy arose and not from the date he

was actually promoted in view of the judicial pronouncements of the Hon'ble Apex Court that no employee has any vested right to claim appointment or promotion merely because vacancy was there and he was eligible to hold the post. It is purely the prerogative of the authority or of the Government to decide. This apart, no explanation has been offered as to why the Applicant became indolent and tardy in the matter in case the Government did not hold the DPC at the right time. What he was doing all these years. Hence this plea of the Applicant cut no ice. Coming to the next contention regarding applicability of the provision of Rule 30 *ibid*, we may state that it is well settled principles of law that the Court cannot read anything into the statutory provision, which is plain and unambiguous. The Court has to find out legislative intent only from the language employed in the statutes. Surmises and conjectures cannot be resorted to for interpretation of statutes. Rule 30 *ibid* clearly provides that "the concession shall be admissible only if the recruitment rules in respect of the said service or post contain a specific provision that the service or post is one which carries the benefit of this rule". This is not the position in so far as the Applicant is concerned who as a GDS employee was not holding pensionable service. Hence, the applicant is not entitled to the claim the benefit available under Rule 30 *ibid*. As stated above, admittedly the applicant is not having the qualifying service of ten years so as to be entitled to get pension under the CCS [Pension] Rules, 1972.

3. For the discussions made above, we find absolutely no merit in this OA. Hence this OA stands dismissed by leaving the parties to bear their own costs.


 (JUSTICE K. THANKAPPAN)
 MEMBER (JUDICIAL)


 (C.R. MOHAPATRA)
 MEMBER (ADMN.)