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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A No. 626 of 2010

Cuttack, this the 25th day of April, 2012

Shri Surendra Kumar Samal

.....Applicant

-Versus-

Union of India & Ors.

....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? ☒
2. Whether it be referred to CAT, PB, New Delhi or not ? ☒


(A.K.PATNAIK)
Member(Judl)

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THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

Shri Surendra Kumar Samal, aged about 66 years, Son of Late Kulamani Samal, resident of Village Mahespur, Post-Khalarda, Via-Gopalpur, District-Cuttack-753011.

.....Applicant

By legal practitioner: M/s.P.K.Padhi, M.P.J.Ray,
Mrs.J.Mishra, Counsel

-Versus-

1. Union of India represented through its Secretary cum Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. Secretary, Department of Pension & Pension, Welfare, Government of India, New Delhi-110 001.
3. Chief Post Master General, Orissa Circle, At / Post-Bhubaneswar Dist. Khurda-751 001.
4. Senior Superintendent of Post Offices, Cuttack City Division, At-P.K.Parija Marg, Post. Cuttack, GPO, Dist. Cuttack-753 001.
5. Senior Post Master, Cuttack General Post Office, At/Post. Cuttack, GPO, Dist. Cuttack-753 001.
6. Assistant Superintendent of Post Offices I/C, Cuttack East Sub Division, At/Post-Cuttack GPO, Dist. Cuttack, Orissa-753 001.
7. Sub Divisional Inspector (Postal), Cuttack West Sub Division, At/Post. Chandinichowk, District-Cuttack, Orissa-753 002.

.....Respondents

By legal practitioner: Mr.S.Barik, ASC

O R D E R

A.K.PATNAIK, MEMBER (J):

It is not in dispute that as a GDS employee the applicant, on being selected joined as a Gr. D employee of the Postal department on 03.12.1994 & while working as such, on attaining the age of superannuated, he retired from service w.e.f. 31.3.2004.

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Since he was not sanctioned the pension, after his retirement, he has approached this Tribunal in the instant OA seeking direction for payment of pension etc with effect from 31.3.2004.

Respondents filed their counter in which it has been stated that as per the Rules, a Government servant has to render minimum 10 years of qualifying service to be eligible for pension. But in the instant case the qualifying service rendered by the Applicant is only 09 years 03 months & 14 days. Since the applicant has rendered less than 10 years of qualifying service, as per the provisions of CCS (Pension) Rules, 1972 he is not entitled to pension. However, the other retirement benefits like DCRG, Service Gratuity, CGEGIS and GPF etc of the applicant was sanctioned and paid soon after his retirement. On the above said grounds, it has been stated by the Respondents that this OA is liable to be dismissed being devoid of any merit. After filing rejoinder by the applicant, the Respondents have also filed additional counter more or less reiterating the stand taken in the counter.

Learned Counsel appearing for both sides have^d reiterated the stand taken in their respective pleadings and having heard them at length, I have perused the materials placed on record. It is the contention of Mr. Padhi, Learned Counsel for the Applicant that recently similar case came up for adjudication where the similarly situated employee who had not completed ten years of service and falling short by 8 months and 1 day and the Madras Bench of the Tribunal after hearing both sides directed to take into consideration the short fall in qualifying service for grant of minimum pension from GDS period and in the present case the

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applicant has completed 9 years 4 months of service in Gr.D and more than 31 years 9 months as ED/GDS service from 25.2.1963 to 31.3.2004 as total service period i.e. from 25.2.63 to 2.12.94 as ED/GDS and from 3.12.94 to 31.3.04 as Gr.D. So the principle decided in the case of M.R.Pilani by the Madras Bench of the Tribunal and upheld by the Hon'ble High Court of Madras and Hon'ble Apex Court is squarely applicable. It has further been contended that again similar question came up for consideration before this Tribunal in OA No. 310 of 2010 and this Tribunal disposed of the matter in the light of the order passed by the Madras Bench of the Tribunal.

The issue in this OA as to whether the short fall of service can be brought from the service rendered by the applicant as GDS Agent so as to make the applicant eligible pension after his retirement. For this purpose, I do not see any justification to delve into the matter in great details as I find that similar issue came up for consideration before the Division Bench of this Tribunal in OA No. 310 of 2010 filed by **Shri Gouranga Ch. Sahoo -Vrs- Union of India and others**. The Division Bench of this Tribunal in its order dated 21st March, 2011 taking into consideration the various pronouncements on the subject held as under:

"4. Heard Learned Counsel for both sides and perused the materials placed on record. Admitted fact of the matter is that ten years qualifying service is a mandatory requirement for granting pension and pensionary benefits after retirement and if it is held that the applicant is not entitled to count the strike period and the training period towards qualifying service, the applicant is short of qualifying service to get pension and pensionary benefits. No record has been produced by the Applicant that the strike period has been regularized by the Respondents nor has he produced any Rule or Government of India instruction or law in support of his stand that the training

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period ought to have been taken into consideration for the purpose of counting the qualifying service of an employee although conscience says that when the applicant was sent for in-service training the training period ought not to have been excluded for counting towards qualifying service. Be that as it may, without going into the above controversy of the matter, as it appears from Annexure-A/10, the Madras Bench of the Tribunal held/directed the Respondents/Postal Department to consider a scheme by giving weightage for certain percentage of service rendered as an ED Agent for reckoning the same as a qualifying service for the purposes of pension in respect of persons who get absorbed or promoted against regular Group D posts in the Department which would enable such employees to get the minimum Pension. The Department challenged the said order of the Madras Bench of the Tribunal before the Hon'ble High Court, Chennai in WP No.45465 of 2007/WPMP No.66391 of 2007. The Hon'ble High Court of Madras while upholding the order of the Madras Bench of the Tribunal directed sanctioning at least the minimum pension by bringing the shortfall of service from ED employment. Being aggrieved by the said order, the Respondent- Department of Posts filed appeal before the Hon'ble Apex Court and the Hon'ble Apex Court in order dated 17.10.2008 dismissed the appeal preferred against the aforesaid order. In compliance of the aforesaid order, the DOP&T issued instruction dated 99-3/08-Pen dated 09-10-2009 in the light of the decision, as aforesaid. This position has not been disputed by the Respondents in their letter of rejection or even counter but have stated that since that case relating to Mr.M.R.Palaniswamy applicant therein, the benefit of the said decision or order cannot be extended to the Applicant. This logic of the Respondent-Department cannot stand in the eyes of law because it is trite law that as a benevolent employer, the authority cannot create a situation compelling each and every employee to approach the Court for the same relief as has been granted to another employee on the same subject. Once a judgment had attained finality, it could not be termed as wrong, and its benefit ought to have been extended to other similarly situated persons (Ref: **Maharaj Krishan Bhatt and Another Vs State of Jammu and Kashmir and others** (2008) 2 SCC (L&S) 783). In view of the law propounded above, the applicant is entitled to the benefit as has been extended to Mr.Palaniswamy (surpa). Hence, Respondents are hereby directed to bring such of the shortfall period of service from the ED employment of the Applicant to count for the purpose of minimum period of ten years qualifying service of the Applicant and accordingly sanction and pay the pension and pensionary benefits to the Applicant from the date of his retirement forthwith preferably within a period of 60(sixty) days from the date of receipt


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copy of this order; failing which, the Applicant shall be entitled to 6% interest on the arrear pension and pensionary dues from the date of his retirement till actual payment is made and the Respondents are free to recover the interest amount from the officer who would be found responsible for causing delay in payment.

5. In the result, for the reasons recorded above, this OA stands allowed to the extent stated above by leaving the parties to bear their own costs."

In view of the above, the Respondents are hereby directed to bring such of the shortfall period of service from the ED employment of the Applicant to count for the purpose of minimum period of ten years qualifying service of the Applicant and accordingly sanction and pay the pension and pensionary benefits to the Applicant from the date of his retirement forthwith preferably within a period of 90(ninty) days from the date of receipt copy of this order; failing which, the Applicant shall be entitled to 6% interest on the arrear pension and pensionary dues from the date of his retirement till actual payment is made and the Respondents are free to recover the interest amount from the officer who would be found responsible for causing delay in payment.

With the aforesaid observation and direction this OA stands allowed. There shall be no costs.


(A.K.PATNAIK)
Member(Judl)