

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK**

O.A.No. 660 of 2011  
Cuttack, this the 1<sup>st</sup> day of April, 2014

**CORAM  
HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)**

.....

Pabitra Mohan Pradhan, aged about 60 years, Son of Late Jaya Pradhan, Vill. Nua Barkot, Post. Balani, Via-Barkot, Dist. Deogarh, Orissa, Pin768 110.

....Applicant

(By Advocates :Mr.P.K.Padhi)

**-VERSUS-**

**Union of India represented through –**

1. The Secretary cum Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. Chief Post Master General, Odisha Circle, At/Po. Bhubaneswar, Dist.Khurda-751 001.
4. Superintendent of Post Offices, Sambalpur Division, At/Po/Dist.Sambalpur-768 001.

....Respondents

(By Advocate : Mr.S.B.Jena)

**O R D E R**

**A.K.PATNAIK, MEMBER (J):**

Applicant's case, in nutshell, is that he joined as ED Packer in Barkot Sub Post Office on 03.03.1972. While continuing as such, on being found suitable, as per Rules he was selected and appointed to Group D post in Postal Department at Bargarh HO on

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17.04.2003 and on attaining the age of superannuation he retired from service on 30.04.2011. By submitting representation dated 22.7.2011, he has prayed for releasing minimum monthly pension and, alleging inaction thereon, filed the instant OA on 18<sup>th</sup> August, 2011 seeking direction to the Respondents to pay him the minimum monthly pension at an early date from the date of his retirement.

2. The Respondents have filed their counter in which it has been stated that in terms of the provisions made in para 5.1 of the OM No. F.No. 38/37/08-P&PW (A) dated 02.09.2008 communicated vide DG Posts New Delhi No. 4-7/2008-Pensioin dated 04.09.2008, an employee is entitled to monthly pension if he/she has completed ten years of qualifying service. As the applicant had rendered only 8 years and 14 days of qualifying service as a Group D employee in the Postal Department, he was not entitled to the minimum pension as claimed by him. As regards the decision of coordinate Benches of the Tribunal the stand of the Respondents is that Rule 49 CCS (Pension) Rules, 1972 under which the relief is sought is the relevant rule and the concomitant complementary Rule 6 of GDS (Conduct and Engagement) Rule,

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2011 as circulated vide Circular No. 21-8/2010 dated 18.04.2011 is the relevant or matching Rules. In none of the decisions nor even in the instant OA the vires of the aforesaid rules was/is under challenge and, therefore, the consequential impact of impugned decision of the CAT or the High Court judgment, perhaps amounts to dilution of the authority or the rule of law enshrined in the said Rule 49 of pension rules and concurrently rule 6 of the GDS Rules. On the aforesaid grounds, the Respondents have prayed for dismissal of this OA.

3. Heard Mr. P.K.Padhi, Learned Counsel for the Applicant and Mr. S.B.Jena, Learned Additional Standing Counsel appearing for the Respondents.

4. I do not find any justification to deal into the matter in great detail as I find that similar matter came up for consideration before the Madras Bench of the Tribunal in OA No.1264 of 2001 (M. R. Palaniswamy v Union of India and others). The Madras Bench of the Tribunal has already held/directed the Respondents/Postal Department to formulate a scheme for giving weightage for certain percentage of service rendered as an ED Agent for reckoning the same as a qualifying service for the

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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 before the Hon'ble High Court, Madras 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 for sanction of 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 vide order dated 17.10.2008 dismissed the appeal preferred against the aforesaid order. In compliance of the aforesaid order, the DOP&T has issued instruction No. 99-3/08-Pen dated 09-10-2009 in the light of the order passed by the Madras Bench of the Tribunal.

5. Further praying for shortfall of service from ED employment towards qualifying service for sanction of the minimum pension, OA No.310 of 2010 was filed before this Tribunal by another employee of the Postal Department namely Gouranga Ch. Sahoo. The said OA was disposed of on 21<sup>st</sup> March,

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2011 by the Division Bench of this Tribunal. Relevant portion of the order is quoted herein below:

“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 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, Chenai 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



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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 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.”

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6. The aforesaid order of this Tribunal was challenged by the Department of Posts before the Hon'ble High Court of Orissa in WP (C) No. 11665/2011. But the same was dismissed vide order dated 06.12.2011. Thereafter, the Department challenged the matter before the Hon'ble Supreme Court of India in CC No.14722/2012. The same was also dismissed by the Hon'ble Supreme Court on 03.09.2012.

7. In view of the position of fact and law the stand taken by the Respondents in their counter that the impugned decision of the CAT or the High Court judgment, perhaps amounts to dilution of the authority or the rule of law enshrined in the said Rule 49 of pension rules and concurrently rule 6 of the GDS Rules is misnomer. Therefore, by applying the doctrine of precedence the Respondents are hereby directed to count the minimum period of ten years of qualifying service by bringing the shortfall period of service from the ED employment 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 copy of this order; failing which, the Applicant shall be entitled to 6% interest on the arrear pension and

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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 will found responsible for the delay in such payment to the Applicant. Thus the OA is allowed to the extent stated above. There shall be no order as to costs.



(A.K. Patnaik)  
Member (Judicial)