

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.310 of 2010

Cuttack, this the 21<sup>st</sup> day of March, 2011

Gouranga Ch. Sahoo .... Applicant

-v-

Union of India & Others .... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *Yes*
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not? *Yes*

*[Signature]*  
(A.K.PATNAIK)  
Member(Judl)

*[Signature]*  
(C. R. MOHAPATRA)  
Member (Admn.)

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THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

A N D

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

Shri Gouranga Ch. Sahoo, Aged about 62 years, S/o.Late Krushna Ch. Sahoo, At/Po/Ps.Bhandaripokhari, Dist. Bhadrak.

.....Applicant

By legal practitioner : M/s.S.K.Ojha, S.K.Nayak,Counsel

-Versus-

1. Union of India represented through the Director General (Posts), Dak Bhawan, Sansad Marg, New Delhi-110 001.
2. The Chief Postmaster General, Orissa Circle, Bhubaneswar-751 001.
3. Superintendent of Post Offices, Bhadrak Division, Bhadrak, At/Po/Dist. Bhadrak-756 100.
4. Accounts Officer (Pension), Office of the D&A (Post), At/Po/Dist. Cuttack.

....Respondents

By legal practitioner: Mr.S.Mishra, ASC

O R D E R

**MR. C.R.MOHAPATRA, MEMBER (ADMN.):**

The Applicant has approached this Tribunal to quash Annexure-A/12, order dated 19.5.2010 and to direct the Respondents to treat the strike period as well as training period and service rendered as Ex-Departmental employee as qualifying duty and grant pension and pensionary benefits to the Applicant. According to him, on 06-08-1974, he joined the post of ED Packer and was provisionally promoted on 06-10-

1998 to the post of Postman/Village Postman and sent for in-service training for 10 days w.e.f. 12-10-1998 & completed the in-service training successfully on 21-10-1998. After successful completion of the training, applicant joined in the promotional post w.e.f. 22.10.1998. On reaching the age of superannuation he retired from 31.07.2008. Incidentally we may record that from 05-12-2000 to 18.12.2000; applicant participated in the postal strike. After his retirement, the applicant was not paid his pension and pensionary dues on the ground that the applicant has only 9 years, 8 months and 26 days of qualifying service as against the requirement of ten years qualifying service for grant of pension. His stand is that thought he is entitled to get the benefit of strike period from 05-12-2000 to 18.12.2000 as well as training period and the in-service training period from 12-10-1998 to 21-10-1998 towards qualifying service, the said periods have illegally been excluded by the Respondents while counting the qualifying period of service for grant of grant the pension and pensionary dues to the applicant, after his retirement. Next contention of the Applicant is that he is entitled to pension by bringing the short fall period of service from the service rendered by the Applicant as GDS in terms of the DOP&T

instruction dated 99-3/08-Pen dated 09-10-2009 which was issued in compliance of the order of the CAT, Madras Bench of the Tribunal in OA No.1264 of 2001 (M.R.Palaniswamy v Unoni of India and others) upheld by the Hon'ble High Court, Chennai in WP No.45465 of 2007 and by the Hon'ble Apex Court on 17.10.2008.

Since he was not paid his pension and pensionary dues, he has earlier approached this Tribunal in OA No. 79 of 2009 seeking direction to the Respondents to take into consideration the above periods towards calculating his qualifying period of service for sanction of pension and pensionary benefits. This Tribunal disposed of the said OA with direction that the applicant should make a representation to the Respondent No.2 and the Respondent No.2 was directed to examine and pass a reasoned order on the grievance of the applicant. Through representation applicant requested for counting his total period of service for counting the qualifying period of service, the said representation of the applicant was considered and rejected by the Respondent No.2. The applicant again challenged the said order of rejection in OA No. 162 of 2010. As the order of rejection was bereft of any reason, this Tribunal, vide order dated

6.4.2010 disposed of the OA no. 162 of 2010 directing the Respondent No.2 to pass a reasoned order. Pursuant to the order of this Tribunal dated 06.04.2010, Respondent No.2 vide letter under Annexure-A/12 dated 19-05-2010, communicated the reason as to why he is not entitled to pension and pensionary benefits and as to why the training period as also strike period could not be taken into consideration towards qualifying service. Relevant portion of the order of rejection under Annexure-12 dated 19.5.2010 reads as under:

“Regularization of the strike period from 05.12.2000 to 18.12.2000 in your case was not considered in view of the later instruction issued by the Circle Office vide letter No. ST/8-8/2001 dated 03.07.2009.

There is no provision under C.C.S. Pension Rules for counting period of training followed by immediate appointment towards qualifying service for the purpose of pension. You have also not submitted the copy of any such rule as proof in support of your contentions.

As seen from the copy of DOP issued under letter No.99-3/08Pen dated 09-10-2009 published in Bharatiya Post submitted as Annexure-A/10 to OA No. 162/2010 by you, the said order is specifically for an individual Shri M.R.Palaniswamy- applicant of OA No. 1264/2001 and not in general for all. Your case cannot be considered in the absence of any general order/Rule.”


Hence by filing this Original Application he prayed for the aforesaid relief.



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2. It will suffice to state that by reiterating the reason of rejection, quoted above, Respondents stoutly opposed the stand taken by the applicant in support of the relief claimed in this OA.

3. No rejoinder has been filed by the Applicant either admitting or rebutting the stand taken by the Respondents in their counter.

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, 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

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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

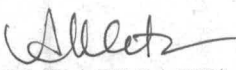
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and accordingly sanction and pay the pension and pensionary benefits to the Applicant from the date of his retirement forthwith preferably within a period of 60(sixty) days from the date of receipt copy of this order; failing which, the Applicant shall 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.

Liberty is granted to the Applicant to serve copy of this order on the Respondents through Registry but in that event he has to bear the expenses required for the above purposes.

  
(A.K. PATNAIK)  
Member(Judl.)

  
(C. R. MOHAPATRA)  
Member (Admn.)