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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No. 260/00140/2016
Cuttack, this the 17th day of March, 2016

CORAM:
The Hon'ble Mr.A.K.Patnaik, Judicial Member

Janaranjan Mandal, aged about 61 years, Son of Late Kangali Charan Mandal of Vill. /Po.- Matiali, P.S.-Rajberhampur, Dist.-Balasore.

..... Applicant
By legal practitioner: M/s. S. Barik, D.K. Mohanty, P.C. Behera

-Versus-

Union of India represented through

1. Secretary-cum-Director General of Posts, Department of Posts, Dak-Bhawan, Sansad Marg, New Delhi-110001.
2. Secretary, Department of Pension & Pension Welfare, Government of India, New Delhi-110001.
3. The Chief Postmaster General, Orissa Circle, At- CPMG Square, PO-Bhubaneswar GPO, Dist -Khurda, Pin-751001.
4. The Superintendent of Post Offices, Balasore Division, At/Po/Dist-Balasore, PIN-756001.
5. The Asst. Superintendent of Post Offices, Balasore Sub-Division, At/Po/Dist- Balasore, PIN-756001.
6. The Post Master, Balasore Head Post Office, At/Po/Dist- Balasore, PIN-756001.
7. The Inspector of Posts, Raj Nilagiri Sub-Division, At/Po- Raj Nilagiri, Dist- Balasore.

..... Respondents
Advocate(s).....Mr. M.R. Mohanty

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O R D E R (ORAL)

A.K.PATNAIK, MEMBER (JUDL.):

Heard Mr.S. Barik, Learned counsel appearing for the applicant and Mr. M.R. Mohanty, the learned Additional CGSC appearing for the Respondent- Department and perused the pleadings and materials placed in support thereof by the respective parties.

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2. This OA has been filed by the Applicant, Shri Janaranjan Mandal, a retired Group D employee of the postal department, under Section 19 of the Administrative Tribunals Act, 1985 seeking direction of this Tribunal for getting minimum pension as because the present applicant has served the postal department for more than 08 years and 10 months as Group-D employee and more than 27 years as EDDA-cum-MC. Therefore, Mr. Barik, Learned counsel for the applicant prayed for granting minimum pension by taking into consideration the shortfall period of service of EDDA/GDSDA for reckoning the ten years of qualifying service.

3. The factual matrix of the case is that the applicant had worked as EDDA, Matiali Branch Post Office in account with Sajanagarh Sub-Division of Balasore Division from 02.01.1979 to 17.05.2006. Thereafter, he was promoted to Gr. D cadre (Dept. Employee) and joined as Gr. D employee. Thereafter, he was promoted to Post Man on 27.04.2010. Thereafter the applicant assumed the charge of Mail Overseer in the Office of Mail Assistant, Superintendent of Post Offices, Balasore Division, Balasore. On 12.03.2015 the applicant received memo of retirement that he has to retire on 31.03.2015. Before that he had filed a representation on 18.11.2006 claiming to accept him as Group-D staff from 2002 by giving him notional promotion and consider him to get minimum pension. Thereafter, he made several representation in this regard and lastly, on 16.09.2015 the applicant made representation before Respondent No.1 to consider his case to grant him to minimum pension with copies to Respondent Nos.2, 3 & 4 and a reminder on 17.02.2016 to Respondent No.3 which are pending consideration.



4. The learned counsel for the applicant placing reliance on the averments made in the pleadings and materials placed in support thereof, submitted that the Applicant is entitled to the minimum pension by bringing the short fall period of service from the service rendered 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 Union of India and others**) and upheld by the Hon'ble High Court, Chennai in WP No.45465 of 2007 as well as by the Hon'ble Apex Court on 17.10.2008. In this connection, he has also placed reliance on the decision of this Tribunal in OA No. 310 of 2010 disposed of on 21.03.2011 filed by Shri Gouranga Ch Sahoo which was upheld by the Hon'ble High Court of Orissa in WP (C) No. 11665 of 2011 dated 06.12.2011 and the Hon'ble Apex Court in Special Leave to Appeal (Civil) No./2012 (CC 14722/2012) dated 03.09.2012.

5. Admittedly, ten years qualifying service is a mandatory requirement for granting or getting the minimum pension and pensionary benefits after retirement and as against this, the applicant has only 08 years, and 10 months as a Group D employee of the Department. Due to short fall of the qualifying period of ten years a Group D employee pension was denied to a retired employee, namely Shri M.R.Palaniswamy, who challenged the said decision before the CAT, Madras Bench in OA No. 1264 of 2001 in which the Madras Bench of the Tribunal directed to grant the applicant therein minimum pension by taking the shortfall service into consideration from the ED service of the Applicant. The said decision was challenged by the postal departmental before the Hon'ble High Court of

Madras in WP No.45465 of 2007 but the same was dismissed. Thereafter, the Postal Department carried the matter to the Hon'ble Apex Court which was also dismissed on 17.10.2008. The Postal Department asked for necessary order from the DoP&T and as per the order of the No. 99-3/08-Pen dated 09-10-2009 the applicant therein was granted the minimum pension which was counted by bringing the shortfall service from the ED employment of the applicant. Similar matter came up before this Tribunal in OA No. 310 of 2010 filed by another similarly situated employee Shri Gouranga Ch Sahoo. This Tribunal based on the decision of the Madras Bench of the Tribunal (supra), allowed the OA No. 310/2010 on 21.03.2011. The Postal Department challenged the said order before the Hon'ble High Court of Orissa in WP (C) No. 11665 of 2011 which was dismissed vide order dated 06.12.2011 and subsequently the SLP (Civil) No./2012 (CC 14722/2012) filed by the Postal Department was also dismissed on 03.09.2012. Again a similar matter came up for consideration before this Tribunal in OA no. 756 of 2012 filed by one such similarly situated employee namely Shri Narasingh Sahoo which was allowed on 29th January, 2013. The postal department carried the matter to the Hon'ble High Court of Orissa in WP © No. 7993 of 2013 but the same was dismissed vide order dated 27.6.2013 and Special Leave to Appeal (Civil)/2014 (CC No. 5478/2014) filed by the postal department against the aforesaid order before the Hon'ble Apex Court, was also dismissed on 15.4.2014. We are reminded with a legal maxim *Lex prospicit, non respicit* (The law looks forward, not backward). It is trite law that as a benevolent employer, the authority cannot create a situation compelling each and every similarly

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situated employees have to approach the Court for the same relief as has been granted to others in same subject. Once a judgment 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). The above being the position of the fact and law, we find sufficient force on the stand taken by the applicant. It has further been submitted that till date no response has been received by the applicant on his representation. Hence, the applicant has filed this O.A. with the prayer as aforesaid.

6. Since the representation submitted by the applicant is stated to be pending, I do not feel proper keep the matter pending at this instant stage, accordingly, without entering into the merit of this case, I dispose of this O.A at the stage of admission by directing Respondent No.3 to consider the representation dated 16.09.2015 followed by a reminder on 17.02.2016 to Respondent No.3, if the same are still pending, as per the extant Rule and communicate the result thereof to the applicant by way of a reasoned/speaking order within a period of two months from the date of receipt of copy of this order. If, after such consideration it is found that the applicant is entitled to the relief claimed by him then the same may be extended to him within a further period of 03 (three) months from such consideration. Though we have not expressed any opinion on the merit of the matter, we make it clear that all the points raised in the representations will be kept open for the Respondents to consider the same as per rules, regulations and law in force. However, it is made clear that if in the

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meantime the said representation has already been disposed of then the result of the same be communicated to the applicant within a period of two weeks from the date of receipt of copy of this order.

7. With the aforesaid observation and direction, the O.A. is disposed of at the stage of admission itself. No costs.

8. On the prayer made by Mr. S. Barik, Ld. Counsel appearing for the applicant, copy of this order, along with paper book, be sent to Respondent No.3 by Speed Post for which Mr. Barik undertakes to file the postal requisites by 21.03.2016.


(A.K. Patnaik)
Judicial Member

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