

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.756 of 2012
Cuttack this the 29th day of January, 2013

CORAM
HON'BLE SHRI R.C.MISRA, MEMBE(A)

Sri Narasingh Sahoo,
aged about 64 years,
Son of late Krushna Ch.Sahoo,
At/PO-Markandeswar Sahi, Puri,
PS-Basali Sahi,
Town/Dist-Puri

...Applicant

(By Advocates:M/s.S.K.Ojha
S.K.Nayak

-VERSUS-

Union of India represented through

1. Director General (Posts),
Dak Bhawan,
Sansad Marg,
New Delhi-1
2. The Chief Post Master General,
Orissa Circle,
Bhubaneswar-751 001
3. Sr.Superintendent of Post Offices,
Puri Division,
At/PO/Dist-Puri
4. Director of WAccounts (Post),
Office of the D & A (Post),
At/PO/Dist-Cuttack-4

...Respondents

(By Advocates:Mr.S.Brik, ASC)

ORDER

SHRI R.C.MISRA, MEMBER(A):

By filing this Original Application, applicant has sought for the following relief.

- i) To quash the office order issued under Memo No.C/1-283/08 (Annexure-A/4) dated 16th March, 2012.
- ii) To direct the Respondents to compute the qualifying service of 10 years taking the shortfall period from ED service
- iii) To direct the Respondents to extend the benefit of pension to the applicant immediately with all consequential benefits including arrear with interest.

iv) To pass any further order/orders as deemed fit and proper in the facts and circumstances of the case.

2. In short, the case of the applicant is that he was working as Postmaster at Puri Head Office where he retired from service on attaining the age of superannuation on 31.1.2009. According to him, he was earlier appointed as E.D.Packer on 28.2.1972 and while continuing as such, he was selected in the cadre of Postman and was posted to his promotional post on 28.12.1999. After his retirement, the concerned authorities refused pension to him on the ground that he had rendered only nine years one month and four days of qualifying service which falls short of 10 years of qualifying service required for grant of pension. The claim of the applicant is that his period of working in the E.D. service should be taken into account in order to make up the short fall for the qualifying period of 10 years for drawal of pension. Since the authorities did not grant his prayer, he had approached this Tribunal in O.A.No.601/2011 and the Tribunal disposed of the said O.A. at the stage of admission directing the applicant to approach the Respondents by making a fresh representation. The Respondents were also directed to consider the representation and pass a reasoned order taking into account the views expressed by the Tribunal in O.A.No.310/2010. In compliance with the direction of the Tribunal, the applicant submitted his representation to the concerned authority. But the Senior Superintendent of Post Offices, Puri Division, who is Respondent No.3 in this case has passed a speaking order on 16.3.2012 wherein his prayer for grant of pension has been rejected on the ground that since he had not completed 10 years of qualifying service as on 31.1.2009, he is not eligible for pension under Rule-48 of CCS(Pension Rules, 1972). Hence, this Original Application.

3. In the counter filed by the Respondents, it has been submitted that the applicant at first joined the Postal Department as E.D.Agent, which is now called 'Gramin Dak Sevak'. His services were regulated as per the Extra Departmental (Conduct and Service) Rules, now revised to Gamin Dak Sevak (Conduct & Employment) Rules, 2001. These Rules lay down that a Sevak shall not claim to be at par with a Government servant. Therefore, his regular departmental service has been confined only to nine years one month and four days. For his Extra Departmental service period he has been given severance allowance and further, he has been compensated with service gratuity and

DCRG in respect of departmental service. In the counter, it has been emphatically mentioned that since the minimum qualifying service required for entitlement to pension is 10 years and the applicant has rendered only nine years one month and four days service, he has not been granted pension. Since his other claims, as admissible, have been paid to him already, no further relief could be granted to the applicant.

4. During the hearing of this matter on 21.1.2013, it was submitted by Shri S.K.Ojha, learned counsel for the applicant that in O.A.No.310/2010 (Gouranga Ch.Sahoo vs. UOI) decided by this Tribunal on 21.3.201, relief has been granted to the applicant therein to make up the short fall in the pensionable service by taking into account the service rendered as E.D. employee. The said order of this Tribunal has been upheld by the judgments of the Hon'ble High Court of Orissa and also the Hon'ble Supreme Court. According to Shri Ojha, the facts of the present O.A. being similar to O.A.No.310/2010 (supra), the applicant herein is entitled to the same relief.

5. On being confronted, Shri S.Barik, learned A.S.C. for the Respondents mentioned that the facts of the present O.A. are not similar to the facts in O.A.No.310/2010 which has been decided by this Tribunal. In the circumstances, Shri Barik wanted some time to submit the difference between the two cases. Consequently, the matter was adjourned to 24.1.2013 for further hearing.

6. During the course of hearing on 24.1.2013, Shri Barik has, however, failed to substantiate that there is a difference between the facts as set out in O.A.No.310/2010 and the present O.A. In fact, he conceded that the facts of this case are rather the same as the facts involved in O.A.No.310/2010. While conceding that the facts of O.A.No.310/2010 are similar to the instant O.A., Shri Barik only pointed out that Rs.20,000/- have been received by the applicant towards severance allowance for the services rendered by him as E.D. Employee, which needs to be adjusted if his claim of pension is allowed.

7. I have gone through the orders of this Tribunal in O.A.No.310/2010. This O.A. had been filed by one Gouranga Ch.Sahoo, who had also joined the Postal Department as E.D.Packer and was subsequently promoted to the post of Postman. He was not granted pension on the basis of the fact that he had 9 years 8 months and 26 days of qualifying

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service as against the requirement of 10 years of qualifying service for grant of pension. His contention was that he is entitled to pension by making up the short fall period of service from the service rendered by him as GDS in terms of the DOP&T instructions dated 9.10.2009 issued in compliance of the order of C.A.T. Madras Bench in O.A.No.1264/01 (M.R.Palaniswamy vs. Union of India & Ors.) upheld by the Hon'ble High Court of Chennai in W.P.No45465/07 and by the Hon'ble Supreme Court on 17.10.2008. This Tribunal, after considering all the facts and circumstances as well as the contentions advanced by both the sides in that O.A., on the basis of detailed reasons given in that order, directed the Respondents to bring such of the short fall period of service from the ED employment of the applicant to count for the purpose of minimum period of 10 years qualifying service of the applicant and accordingly, sanction and pay the pension and pensionary benefits in favour of the applicant from the date of his retirement. The Respondents approached the Hon'ble High Court of Orissa in W.P.(C) No.11665/11 challenging the order of this Tribunal and the Hon'ble High Court vide order dated 6.12.2011 dismissed the said Writ Petition thus confirming the orders of this Tribunal. Further, the Respondents had challenged the judgment of the Hon'ble High Court in the Hon'ble Supreme Court by filing SLP which also has been dismissed on 3.9.2012.

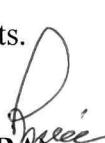
8. From the facts which have been mentioned above, it is quite evident that the applicant in this case is entitled to relief in the same line as has been granted to the applicant by the order of this Tribunal in O.A.No.310/2010, which has been upheld by the orders of the Hon'ble High Court of Orissa and Hon'ble Supreme Court.

9. From the discussion held above, I do not find any reason as ^{to} why the Respondents have not considered the prayer of the applicant in the light of the orders passed by the Tribunal although there was a specific direction from the Tribunal that the representation should be disposed of taking into account the views expressed by the Tribunal in O.A.No.310/2010. The respondents in that O.A. have taken into account the service rendered as ED Employee in order to make up the short fall for qualifying service of 10 years for the sanction of pension to the applicant. In consideration of this, it is directed

that the Respondents shall compute the qualifying service of 10 years by bringing the service which falls short from the service rendered as E.D. Employee for grant of pension and pensionary benefits to the applicant and accordingly, issue necessary orders within a period of sixty days from the date of receipt of this order.

10. So far as payment of Rs.20,000/- towards severance allowance is concerned, the same could be adjusted easily once the pensionary benefits admissible to the applicant are determined and sanctioned, which however, should be done only after giving the applicant a suitable notice in compliance with the principles of natural justice.

11. With the above observation and direction, this O.A. is allowed. No costs.


(R.C.MISRA)
MEMBER(A)

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