

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 429/2012

Dated this the 17th day of December, 2012

CORAM

HON'BLE Mrs.K.NOORJEHAN, ADMINISTRATIVE MEMBER

A.Vijayan, S/o Achuthan, Retired Group-D Official,
Ettumannur P.O, R/o Aikkaraparambil House,
Arunoottimangalam P.O, Kaduthuruthy, Kottayam..

Applicant

(By Advocate Mr. P.C.Sebastian)

Vs.

1 The Director General, Department of Posts
Dak Bhavan, New Delhi.

2 The Senior Superintendent of Post Offices, Kottayam Division,
Kottayam.

3 Union of India represented by its Secretary
to the Govt of India, Ministry of Communication,
Department of Posts, New Delhi.

Respondents

(By Advocate Mr.S Jamal, ACGSC)

The O.A having been heard on 7.12.2012, the Tribunal delivered
the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant,a retired Group-D, is aggrieved by non-grant of
pension and other benefits flowing therefrom.

2 The applicant entered service under the respondents as Extra
Departmental Branch Postmaster on 1.4.1975 at Arunoottimangalam Branch;
Post Office in Kottayam Division. He continued as such till he was promoted
as Group-D cadre on 9.10.2000. He retired from service on 28.2.2010. At

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the time of retirement, applicant had not completed the minimum qualifying service of 10 years. He was not granted pension as he has not completed 10 years qualifying service under Rule 49 of the CCS (Pension) Rules, 1972. He further submitted that promotion to Group-D is made from Extra Departmental Agents on the basis of seniority and satisfactory service. Accordingly Group-D vacancies occurring in a calendar year shall be calculated in January each year and the select list will be drawn up strictly in order of seniority and the ED Agents who are in the panel should be appointed as soon as vacancies arise during the year. He referred to Director General Posts circular dated 25.8.1993 for timely holding of DPC in a prescribed schedule for promotion of ED Agents to avoid unjustifiable and inordinate delay. It is averred by the applicant that he sought for information under the Right to Information Act, from the 2nd respondent and the applicant was informed by communication dated 1.2.2010 (Annex.A3) that he was appointed as Group-D against the vacancy of the year 1999. According to the applicant he was due for promotion as Group-D in 1999 and his promotion was delayed for no fault on his part. Had he been promoted on occurrence of vacancy he would have completed the minimum qualifying service of 10 years to earn pension. The main contention of the applicant is that though he had spent his entire life for the service of the respondents, he is deprived of pension solely for short fall of 7 months qualifying service. Therefore, he stated that he is entitled to pension under Rule 49(3) of the CCS (Pension) Rules. He cited a similar cases, OA No.389/2004 and OA 730/07 and argued that the same relief as granted in that OAs may be allowed to him.

3 The respondents filed reply statement. It is submitted that the applicant did not have the mandatory minimum service of 10 years which is required under Rule 49(1) of the CCS (Pension) Rules, 1972. Therefore he did not fulfill the eligibility condition of 10 years service. They further submitted that the applicant accepted the appointment as Group-D as early as in the year 2000 therefore challenging the said appointment at this

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distant time is barred. His actual date of appointment is 13.10.2000. It is also submitted that as per the Recruitment Rules 2002, the approval of the Screening Committee is required for filling up the vacancies of Group-D. DPC for selection of GDS to Group-D can be held only after getting approval of Screening Committee. They further averred that in Kerala Circle recruitment of Group-D was kept in abeyance during the period from 1997-2000 by an order of this Tribunal in OA 155/1995. Consequent to the litigation before this Tribunal and Hon'ble High Court all the available vacancies from the year 1997 to 1999 were filled up in Kerala Circle in the year 2000. According to the respondents the delay occurred on account of litigation before the different Courts. They further submitted that the judgment cited by the in OA 389/2004 relied upon by the applicant is not applicable in the present case as the same cannot be considered as a judgment in rem.

4 Heard the learned counsel for the parties and perused the record.

5 The sole issue that comes up for consideration in this O.A. is whether the applicant is entitled to be granted the benefit of pension under CCS (Pension) Rules, 1972.

6 The learned counsel for the applicant has brought to my notice the order dated 9.11.2006 in OA No.389/2004 and order dated 28.5.2008 in OA No.739/2007 of the coordinate Benches of this Tribunal wherein identical issues were dealt with. He argued that the applicant in the present OA is similarly situated like the applicants in the OAs supra and submitted that the applicant's case is squarely covered by the orders therefore he is also entitled for the benefit granted in that O.As.

7 I have gone through the orders of the Coordinate Benches of the Tribunal. In these cases the Applicant in the O.As (supra) are similarly placed like the present applicant. This case is squarely covered by the decision of the Division Benches.

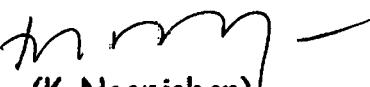
8 In this case the admittedly the applicant was appointed on

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13.10.2000 against a vacancy of the year 1999. The respondents have conceded in their reply statement that during 1997 to 2000, no appointment was made in Group D cadre. It is due to the fact that the upper age of 50 years as fixed by DG (Posts) was struck down by the Tribunal in O.A No. 155/95 for appointment to Group D. It is seen from O.A No. 389/04 that more litigation followed as OMs were filed, seeking a direction to the respondents to fill up Group D posts. The issue was given a quietus, when Hon'ble High Court of Kerala permitted the respondents to issue executive order fixing the upper age. When it was done in August, 2000 by R-1, the process of appointment in Group D was initiated by R-2. That is how the applicant came to be appointed in October, 2000. Hence, there is force in the contention of the applicant that he could have been appointed against a vacancy of 1999. He was so informed in response to a RTI query vide Annexure A-3. Therefore, it should be possible for the respondents to antedate his appointment to a vacancy from 01.01.2000 or earlier.

9 In this view of the matter, the OA succeeds. I, therefore, direct the respondents to treat the applicant as notionally appointed to the post of Group-D cadre on regular basis at least from 1.1.2000 as against his actual date of appointment on 9.10.2000 and to count the aforesaid deemed period of appointment (1.1.2000 to 28.2.2010) as qualifying service for pension. It is also made clear that the aforesaid notional period of his promotion as Group-D employee shall not count for any purpose other than for qualifying service for pensionary benefits. The respondents are directed to pass appropriate orders to the aforesaid effect within a period of two months from the date of receipt of a copy of this order. No costs.

Dated 17th December, 2012


(K. Noorjehan),
Administrative Member

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