

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 448/01

Wednesday this the 20th day of February, 2002.

CORAM

HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

V.P.Krishnan
S/o Veluthakunju
Retired Group-D
Changanasserry Head Post Office
Residing at Krishna Mandiram
Veliyamadu P.O. Changanasserry
Alappuzha.

Applicant.

[By advocate Mr.M.R.Rajendran Nair]

Versus

1. Union of India represented by the
Secretary to Government
Ministry of Communications
Department of Posts
New Delhi.
2. The Director General of Posts
New Delhi.
3. The Chief Postmaster General
Kerala Circle
Trivandrum.

Respondents.

[By advocate Mr. K.Shri Hari Rao, ACGSC]

The application having been heard on 20th February, 2002, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant aggrieved by Rule 4 of the ED Agents (Conduct & Service Rules) by which his ED service is made non pensionable has filed this Original Application seeking the following reliefs:

- i. To quash Rule 4 of ED Agents Conduct and Service Rules.
- ii. Quash Annexure A1 to the extent it denies pension to the applicant and direct the respondents to pay full pension to the applicant reckoning his ED service as qualifying.
- iii. Grant such other reliefs as may be prayed for and the Court may deem fit to grant, and
- iv. Grant the cost of this Original Application.



2. Applicant commenced service as EDMC, Kidangara with effect from 30.12.1963. He was appointed as Group-D on 31.12.1992 (Learned counsel for the applicant submitted that 31.12.82 shown in the OA was a typographical error). He retired from service on 30.11.2000 on attaining the age of 60 years. His Group D service came to 8 years, 7 months and 16 days. As he did not have 10 years of qualifying service, he was not granted any pension. According to the applicant, had he continued as an ED Agent, he could have continued till the age of 65 years. Now he had to retire at the age of 60 years and that too without any pension. He claimed that if his ED service was also reckoned as qualifying service, he would have been granted full pension. Applicant made A-2 representation dated 30.11.2000 to the second respondent. Apprehending that A-2 representation would not be considered by the respondents because of Rule 4 of the EDA Rules, he filed this OA seeking the above reliefs. He submitted that ED agent was a holder of civil post and Rule 4 of ED Agents (Conduct & Service) Rules which stipulated that such employees would not be entitled to any pension was only an administrative direction. According to him, to the extent the said direction ran counter to the provisions in CCS (Pension) Rules, was ultra vires the statutory rules and hence unsustainable. He also relied on Rule 88 of (CCS (Pension) Rules and submitted that the Ministry was competent to relax the rigours of the rules if any particular rule in CCS (Pension) Rules caused hardship in any particular case. In this case, such a dispensation was highly warranted. He also submitted that Rule 4 of EDA Rules was discriminatory and ultra vires the Constitution of India.

A handwritten signature in black ink, appearing to be in cursive script, is placed here.

3. Respondents filed reply statement resisting the claim of the applicant. In the absence of any rule or provision to count the Extra Departmental service for pension, the applicant's EDA service was not counted as qualifying service for granting pension and as per the existing provisions ED Agents were not entitled for service pension. Relying on the judgement of the Hon'ble High Court of Kerala in OP No.28629/2000 dated 12.10.2000, it was submitted that Rule 4 was not ultra vires of the constitutional provision. It was also submitted that the applicant could not draw a similarity with a casual labour and an ED Agent for pension.

4. When the OA came up for consideration on date, both counsel submitted that this OA is squarely covered by the judgement of the Hon'ble High Court of Kerala in OP No.28629/2000 dated 12.10.2000 in which OP also a declaration was sought that Rule 4 of the Posts and Telegraph Extra Departmental Agents (Conduct and Service) Rules, 1964 was unconstitutional. Hon'ble High Court of Kerala in its judgement dated 12.10.2000 in O.P.No.28629/2000 filed against the order of this Tribunal in OA No.815/2000 held as follows:

"We notice as per Rule 4 of the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 would show that it is in the form of administrative instructions to suit the requirement of the particular service. We may notice that the ED Agents system is outside the regular cadre of service in the Postal Department and rules in the form of administrative instructions were issued regulating the method of recruitment and conditions of service. The claim of the petitioner for a direction to the respondents to give her pension, taking into account her 23 years of service as ED Branch Post Master was not based on any rule or regulation. Facts reveal that she had only 9 years and three months service as postman in terms of the Central Civil Service (Pension) Rules. Consequently, petitioner is not entitled to get any pension. There is no dispute with regard to the provision of law, which is applicable to the



petitioner. Petitioner now challenges the validity of Rule 4 of the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964. Question is whether pension should be given to these ED Agents, which is a matter for the rule-making authority to decide. As things stand today, since petitioner had only 9 years and three months service, as per the Central Civil Service (Pension) Rules, she is not eligible to get pension. This court cannot direct granting of pension in deviation of the said rule."

In the said circumstances, we do not find any infirmity in the order of the Tribunal to be interfered with by this Court. Writ Petition therefore lacks merits and the same is dismissed."

5. In OA 815/2000, this Tribunal held as follows:

"The applicant who ceased to be an ED Agent more than 9 years back cannot now be permitted to challenge the vires of Rule 4 of the Posts & Telegraphs Extra Departmental Agents (Conduct & Service) Rules, 1964. Further, the said rule in the form of administrative instructions was issued to suit the requirement of the particular service. The Extra Departmental Agents system is outside the regular cadre of service in the postal department and the rules in the form of administrative instructions were issued regulating the method of recruitment and conditions of service. This system has stood the test of time and even *prima facie* there is no reason to hold that it is inequitable or ultra-vires. Therefore, the prayer for the declaration does not merit further deliberation. The claim of the application for a direction to the respondents to give her pension taking into account her 23 years service as ED Agent is also not supported by any rule or instruction. As the applicant has only 9 years and 3 months of service as postman in terms of the CCS (Pension) Rules, the applicant is not entitled to any pension. There is no challenge to any provisions of the CCS (Pension) Rules in the application

In the light if what is stated above the application is rejected under section 19 (3) of the Administrative Act, 1985."

6. Following the above judgement of the Hon'ble High Court of Kerala upholding the order of this Tribunal in OA No.815/2000, this OA is only to be dismissed.

A handwritten signature in black ink, appearing to be in cursive script, is positioned at the bottom of the page. The signature is somewhat stylized and includes a small 'J' or 'S' at the end.

7. Accordingly this Original Application is dismissed with no order as to costs.

Dated 20th February, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

aa.

APPENDIX

Applicant's Annexures:

1. **A-1:** True copy of the pension calculation sheet dated 11.10.2000 of the applicant.
2. **A-2:** True copy of the representation dated 30.11.2000 submitted by the applicant to the 2nd respondent.

Respondents' Annexures:

1. **R-1(a):** True copy of the judgment dated 12.10.2000 in OP No. 28629/2000 of the Hon'ble High Court of Kerala.

npp
25-2-2002