

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH, ERNAKULAM

ORIGINAL APPLICATION No. 48/2013

THURSDAY, this the..... 1st day of JANUARY, 2015

CORAM:

**HON'BLE Mr. U.SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE Ms. MINNIE MATHEW, ADMINISTRATIVE MEMBER**

K.P.Sasidharan, aged 60 years,
s/o the late N.Parameswara Kaimal,
Retired MTS, Aluva Head Post Office,
Residing at Kattazhath Madom, Kumbalam BO,
Panangad, Ernakulam -682506. Applicant

(By Advocate Mr.Shafik M.A.)

versus

- 1 Union of India represented by its Secretary (Posts),
Ministry of Communications & IT,
Department of Posts, Dak Bhavan,
New Delhi -110 001.
- 2 The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram -695 033.
- 3 The Senior Superintendent of Post Offices,
Aluva Division, Aluva -683 101.
- 4 The Senior Superintendent of Post Offices,
Ernakulam Division, Kochi - 682 011. Respondents

(By Advocate Mr.M.K.Aboobacker, ACGSC)

The application having been heard on 11.12.2014, the Tribunal
on 01.01.2015 delivered the following:-

ORDER

HON'BLE Ms. MINNIE MATHEW, ADMINISTRATIVE MEMBER

The applicant is aggrieved by the denial of pension in terms of CCS



(Pension) Rules, 1972 for the service rendered by him under the Respondent authorities.

2. The applicant submits that he was engaged as Mazdoor in Ernakulam Head Post Office from 1st November, 1980 under the 4th respondent and officiated as Group D from 1989 to 1991. In pursuance of this Tribunal's order in OA No. 528/1991, he was conferred temporary status from 04.03.1992. Thereafter he was treated at par with temporary Group D employees of the Department w.e.f. 05.03.1995 in terms of Memo No. PF/XPS dated 31.3.1993 issued by the Senior Postmaster, Ernakulam vide Annexure A4. It was ordered therein that the applicant be extended such benefits as admissible to Group D employees on regular basis w.e.f.05.03.1995 as enunciated in Directorate's letter N0. 66-9/91-SPB-1 dated 30.11.92. The aforesaid Directorate's letter specifically provides for treating "counting of service for the purpose of pension and terminal benefits as in the case of temporary employees appointed on regular basis for those temporary employees who are given temporary status and who complete three years of service in that status while granting them pension and retirement benefits after their regularization". The applicant therefore contends that the service of a casual labourer who has attained temporary status has to be reckoned as qualifying service for the pension and terminal benefits as in the case of temporary employees appointed on regular basis. The applicant further submits that from 04.03.1993, i.e. the date on which he was conferred temporary status, he was working as Group-D in various Post Offices in Ernakulam Division against clear



- vacancies of Group-D continuously and without any break or interruption in service. As the representation submitted by the applicant did not yield results, several OAs were filed before this Tribunal. Finally, vide common order of the Tribunal dated 15.12.2008 in OA 312 /2008 and 36 others, this Tribunal held that the mode of recruitment to Group -D from GDS/ Casual Labourers is not by way of direct recruitment and directed respondents to take suitable action for filling up all the posts. Implementing the orders of this Tribunal in OA 312/2008, the 4th respondent issued orders selecting him as Group D in Aluva Post Office on 7.12.2010. Accordingly, the applicant joined the post of Group -D on 9.12.2010.

3. It is the case of the applicant that he was permitted to retire from service on superannuation on 30.11.2012. As his pension was not sanctioned even after a month of his retirement, he submitted a detailed representation on 17.12.2012 for early sanction of pension. In response to this representation, the 3rd respondent has issued the impugned Annexure A1 order communicating that he would not be eligible for superannuation pension under the CCS (Pension) Rules, 1972 as he was appointed as regular MTS on 9.12.2010 only and the new Pension Scheme came into operation on 1.1.2004. It is the contention of the applicant that the new Pension Scheme is applicable only to those joined on or after 1.1.2004. As he had joined service before 1.1.2004 and as his qualifying service for pension commenced prior to 1.1.2004, he is entitled for getting pension and terminal benefits in accordance with the old Pension Rules in force. Further this issue has been considered

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and decided by this Tribunal in its order in OA 517/11 dated 23.8.2011 in *P.Janaki and Another Vs. Union of India and Others* wherein it was held that the old CCS (Pension) Rules, 1972 would apply in cases where the qualifying service commenced prior to 1.1.2004. The Writ Petition filed by Official respondents against this decision was also dismissed by the Hon'ble High Court of Kerala and thus this Tribunal's order has become final and binding on the respondents. In view of this, he sought a direction to the respondents to sanction and disburse to him pension and terminal benefits in terms of CCS (Pension) Rules, 1972. He has also cited the judgment of the CAT Principal Bench in OA 2332/10 in support of his case.

4. In their reply statement the respondents submit that the applicant was appointed as regular MTS only on 9.2.2010. His service prior to the regular appointment can not be reckoned for the purpose of pension under the CCS (Pension) Rules, 1972. In view of the date of his appointment in Group D cadre, he comes under new Pension Scheme and he has subscribed to the new pension scheme till his superannuation on 30.11.2012. Further the applicant is not similarly placed as the applicants in OA 517/11 and OP (CAT) 393/11. It was submitted that the applicant in OA 517/11 was not a subscriber under the new pension scheme and hence her case was decided under a law covering the facts and circumstances of that applicant. The applicant herein on the other hand is a subscriber to the new Pension Scheme and holds a CPF Number and PRAN card and cannot be equated with the applicant in OA 517/11. Thus the applicant being a subscriber to the new

Pension scheme cannot be included in the old Defined Benefit Pension Scheme.

5. The applicant has filed a rejoinder stating that the recovery of GPF subscription was started by the respondent in 1995 and continued for about 10 years upto January 2005 even after the introduction of the new Pension Scheme on 1.1.2004 as evident from the pay slip for the month of November, 2004 in Annexure A14. The recovery of GPF subscription was stopped abruptly from the month of March, 2005 onwards without notice or consent or written request of the applicant. He also enclosed a true copy of the pay slip for the month of May 2005 to show that no recovery was made either towards GPF or CPF. Thereafter at the fag end of his service, recovery of subscription on the count of CPF was made from February 2007 and continued upto his superannuation on 30.11.2012. He submits that recoveries on account of CPF from his monthly pay were made without his consent and therefore this cannot be treated as voluntary subscription of the CPF for the purpose of pensionary benefits. He reiterated that his continuous qualifying service commenced w.e.f. 05.03.1992 after conferment of temporary status followed by his appointment at par with Group-D employees w.e.f. 05.03.1995. The applicant has also pointed out that under the new pension scheme effective from 01.01.2004, no deduction should have been made towards GPF contribution as the GPF scheme is not applicable. However, in his case GPF subscriptions were continued to be recovered upto February 2005. Hence the respondents are estopped from contending that the applicant is a



subscriber of CPF by simply effecting some recovery at the fag end of his service under the CPF scheme. Further, as per Annexure A2 circular in which the scheme of Temporary status was spelt out, after 3 years of continuous service, after conferment of Temporary status, the Casual Labours would be treated at par with Temporary Group D Employees for the purpose of contribution to GPF. Accordingly GPF subscription was effected for 10 years and hence the 3rd respondent cannot take away the vested right of the applicant by simply stopping recovery of GPF subscription at the fag end of the service. The respondents have filed an additional reply statement to reiterate that applicant is eligible for only New Pension Scheme in view of his becoming MTS after 2004. They have refuted the contention that 50% of the service rendered with temporary status should be counted for granting pension under the old pension scheme. They have also submitted that there was no need to obtain any consent for recovery of CPF as it is mandatory for all entrants into government service after 1.1.2004. Moreover, there is no forcible deduction and he has submitted PRAN for recovery of CPF as a result of which CPF number was allotted.

6. We have heard learned counsel on both sides. The question that falls for consideration in this OA is whether the applicant is entitled to have his officiating service in Group D cadre prior to his appointment as regular MTS on 9.12.2010 to be counted as qualifying service for the purpose of fixation of pension and other terminal benefits as per CCS (Pension) Rules, 1972.

7. We have considered the various judgments as to what would constitute qualifying service of a Government servant. This matter has been discussed at length in the judgment of Hon'ble high Court of Kerala in OP (CAT) No. 392/11 filed by the respondents herein against the orders of this Tribunal in OA 517/11. Relevant paragraphs are extracted below:

"5. It is not in dispute that Rule 13 of CCS (Pension) Rules, 1972 stipulates, what would constitute qualifying service of a Government servant rather from what date such qualifying service could be computed. There is categorical benefit extended to employees like the applicants herein that even if they were discharging duties on a temporary capacity, if said duty is continued without any interruption by substantive appointment in the same or in another service or post, the entire service even if it is on temporary basis including being in charge on a temporary basis, it would be taken as qualifying service.

6. In that view of the matter, in the absence of new Contributory Pension Scheme, not taking away the rights which already accrued to such employees who were discharging duties on temporary status prior to 01.01.2004, we are afraid, how the petitioner / Department can still insist that the new Scheme is applicable and not the old Rules of 1972. In view of that, we are of the opinion, the benefit already accrued to the applicants under Rule 13 of CCS (Pension) Rules of 1972 cannot be taken away as the 1st applicant was discharging duties on temporary status by order dated 22.02.1996 with effect from 01.01.1995 and the 2nd applicant was given temporary status in 1999 with effect from 01.12.1998.

7. *In that view of the matter, as they were discharging their duties on temporary basis without any interruption as contemplated under Rule 13 of 1972 Pension Rules, we are of the opinion, CAT was justified in allowing the applications filed by the respondents/ applicants. We find no good ground to interfere with the order passed by the Tribunal. Accordingly, the petition is dismissed."*

8. In the instant case, admittedly, the service book of the applicant available with the 3rd respondent shows that the applicant who was initially a casual Mazdoor at Ernakulam Post Office was appointed at par with Group D employees w.e.f. 05.03.1995 on completion of 3 years of continuous service after conferment of temporary status.

9. In view of this, the date of his regular service would have to be counted w.e.f. 05.03.1995. Therefore the respondents have erred in bringing the applicant under the ambit of the new Contributory Pension scheme. The contentions of the respondents that the applicant has voluntarily subscribed to the New Pension Scheme, and that PRAN account has been opened with his consent for contributing to the CPF, have no relevance since it is the basic responsibility of the respondents, who are the employers, to apply the correct pension scheme in respect of their employees as per their legitimate entitlement. Having failed to do so, the grounds advanced by them regarding the consent of the applicant for contribution to CPF are not sustainable.

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10. In view of the settled law governing this matter, this OA is allowed. Annexure-A1 is set aside and the Respondents are directed to bring the applicant within the ambit of CCS (Pension) Rules, 1972 and draw and disburse his pension and other terminal benefits under the aforesaid Rules within a period of 3 months from the date of receipt of a copy of this order.

11. No order as to costs.

(Dated, this the 1st day of January 2015)

Minnie Mathew
(MINNIE MATHEW)
ADMINISTRATIVE MEMBER

U. Sarathchandran
(U.SARATHCHANDRAN)
JUDICIAL MEMBER

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CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Contempt Petition No. 180/00030/2015
in
Original Application No. 48 of 2013

Tuesday, this the 8th day of December, 2015

CORAM:

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member

K.P. Sasidharan, aged 62 years, S/o. Late Parameswara Kaimal,
Retired MTS, Aluva Head Post Office, residing at Kattazhath
Madom, Kumbalam, Cochin – 682 506.

Petitioner

(By Advocate : Mr. Shafik M.A.)

V e r s u s

1. Mrs. Kavery Banerjee, age : not known,
fathers name : not known to the petitioner,
Director General (Posts), Department of Posts,
Ministry of Communications, New Delhi – 110 011.

2. Mr. M.S. Ramanujam, age : not known,
fathers name : not known to the petitioner,
Chief Postmaster General, Department of Posts,
Kerala Circle, Trivandrum – 695 033.

3. Mr. K.K. Davis, age : not known,
fathers name : not known to the petitioner,
Superintendent of Post Offices, Aluva Division,
Aluva, Pin – 683 101. **Respondents**

[By Advocate : Mr. Anilkumar, Sr. PCGC (R)]

This petition having been heard on 08.12.2015, the Tribunal on the
same day delivered the following:

O R D E R

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member :

Learned counsel for the petitioner submitted that the petitioner has

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received the DCRG and arrears of pension from 2012. Hence, the Contempt Petition is closed without prejudice to any other contentions that may be available to the petitioner to be agitated later as per law. Notice discharged.


(P. GOPINATH)
ADMINISTRATIVE MEMBER


(N.K. BALAKRISHNAN)
JUDICIAL MEMBER

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