

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 506/2011

Wednesday, this the 1st day of August, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K.NOORJEHAN, ADMINISTRATIVE MEMBER

P. Madhumohanan Nair,
S/o P Purushothaman Nair,
Mailman, Railway Mail Service,
Kollam, residing at: "Karthika"
Kokkadu.P.O., Vettikavala,
Kottarakkara,
Quilon District. PIN:691 538.

Applicant

(By Advocate Mr TC Govindaswamy)

v.

1. Union of India represented by the Secretary to Government of India, Ministry of Communications & Information Technology, Department of posts, Dak Bhavan, Sansad Marg, New Delhi-110 001.
2. The Chief Postmaster General, Kerala Circle, Thiruvananthapuram-695 033.
3. The Senior Superintendent, Department of posts, RMS TV Division, Thiruvananthapuram-695 036.
4. The Sub Record Officer, Railway Mail Service, TV Division, Kollam-691 001.

- Respondents

(By Advocate Mrs Deepthi Mary Varghese, ACGSC)

This application having been finally heard on 01.08.2012, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

The applicant, initially engaged as a casual Mazdoor in 1983, was later on appointed on provisional basis as ED Mailman w.e.f. 20-11-1992 after a due selection process, vide Annexure A-1. During the period of his provisional appointment, there were, however, some artificial breaks at regular interval. His services were regularized w.e.f. 21-11-1995 vide Annexure A-2. The applicant did make a few representations for the purpose of regularization of the artificial break, one of which is at Annexure A-3 dated 23-01-2009. It was by an order dated 30-06-2009, his request was rejected, but the applicant was not served with a copy of the same.

2. Vide Annexure A-4, the respondents have issued a seniority list in respect of Gramin Dak Sevak Mailman as on 01-07-2010 in which the name of the applicant figured in at serial No. 24 and his date of regular appointment as 21-11-1995. This seniority list was taken into account for appointment on regular basis Group D post and the applicant was so appointed w.e.f. 01-06-2008 vide order dated 13-09-2010 at Annexure A-7. This date was sought to be modified to read as 01-02-2009, for which notice was given to the applicant, vide Annexure A-8. The applicant represented vide Annexure A-9 stating that his date of appointment as provisional hand was 22-11-1992, while that of his junior Shri T. Manikandan Pillai was 01-09-1993 but the said junior's date of regular appointment as Group D is earlier than

that of the applicant. Nevertheless, by the impugned Annexure A-10 order, the respondents have rejected the case of the applicant.

3. The applicant has, therefore, come up in this OA seeking the following reliefs:-

- (i) Call for the records leading to the issue of Annexure A4 and quash the same to the extent it shows the applicant's date of entry as 21.11.95 and direct the respondents to treat the applicant's date of appointment against the post of GDS Mailman as 20.11.1992 and direct further to grant all the consequential benefits arising therefrom;
- (ii) Call for the records leading to the issue of Annexure A-10 and quash the same to the extent it relates to the applicant and direct the respondents to grant all consequential benefits as if Annexure A-10 had not been issued at all;
- (iii) Award costs of and incidental to this application.
- (iv) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.

4. Respondents have contested the OA. They have stated that the reason for advancing the date of regular appointment of Shri Manikandan Pillai was on account of a direction by the Tribunal vide Annexure R-1. As regards the claim of the applicant for advancing his seniority in GDS, the same is barred by limitation. (Reference to the decision by the Apex Court in the case of M.L. Cecil D'Souza vs Union of India (AIR 1975 SC 1269) was made in this regard.)

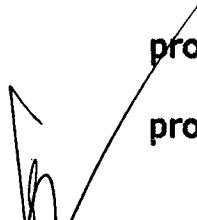
4. Applicant has filed his rejoinder, reiterating his stand as in the OA and stating that the issue of Annexure A-10 is without any

rationale.

6. Counsel for the applicant argued that the date of initial appointment of the applicant, on regular basis as Group D, was 01-06-2008 and this enabled the applicant to secure his increment from a particular date and by the impugned order, the same would be lost, which would result in loss of one increment on a recurring basis. The counsel fairly stated that he does not need any change in the seniority nor any other consequential benefits than safeguarding the date of his first increment on the basis of his initial appointment as on 01-06-2008 as regular Group D employee.

7. Counsel for the respondents submitted that because of the Tribunal's order, the date of appointment of the applicant in that OA was to be advanced, and the same has telescopic effect whereby the applicant in this case has to be adjusted against a vacancy that arose on 01-02-2009.

8. Arguments were heard and documents perused. The ratio in OA No. 733 of 2010 (filed by Manikandan) was that the break in service imposed on the applicants therein was lifted in October, 2010 and the direction was that the respondents shall complete the process of promotion of the applicants in Group D posts within a period of 3 months and each of the applicants would be deemed to have been promoted on the date his immediate junior was promoted and protecting his seniority. And, if the respondents are not able to locate



vacancies for promoting the applicants, they should revert the junior most Group D employees after following the procedure. This order was complied with, by the respondents and in that process, the date of applicant's promotion had to be pushed down. The applicant has produced Annexure A-1 which is his provisional appointment order as EDMM against a temporary vacancy created by removal of Shri J.G.Lawrence, EDMM whose appeal, review petition etc were pending disposal. His provisional appointment was a regular one, perhaps from the list of casual labour or part time contingent staff maintained by the respondents. As per DG, Post's order, such provisional appointment can be regularised from the initial date of appointment, when the vacancy becomes clear, provided the selection was done after observing the due procedure. The respondents, to be on the safe side has opted to put him a break, after a gap of 89 days, on the apprehension, that Shri J.G Lawrence may have to be reinstated on judicial order. That time there may not be a vacancy in ED to accommodate the applicant. In this case, the applicant represented for regularization from 1992, only when revision of seniority was done due to condonation of break in service of T.Manikantan Pillai and S Sajeev. Their seniority was restored. How S Sajeev whose seniority is shown at serial No.37 in Annexure A-4, with date of appointment as 9/DS on 25.06.1999 was given date of appointment as 29.9.2005 is not explained by the respondents. His date of appointment was shifted from 01.09.2009 to 26.07.2008 whereby applicant's date of appointment was changed to 01.09.2009.

changed 1995 as Gr D

9. The fact remains that the applicant was entitled for regularization of his provisional appointment as EDMM from 20.11.1992, as he continued in the vacancy of J.G.Lawrence, EDMM who was removed from service. In that case, If the applicant's date of appointment as of 01-06-2008 would not have undergone any change, non following of the above order in the case of the applicant is certainly illegal. And, the respondents are trying to take advantage of their own mistake, which is impermissible as held by the Apex Court in the following cases:-

(a) A.K. Lakshmipathy v. Rai Saheb Pannalal H. Lahoti Charitable Trust, (2010) 1 SCC 287 wherein it has been held:

"they cannot be allowed to take advantage of their own mistake and conveniently pass on the blame to the respondents."

(b) Rekha Mukherjee v. Ashis Kumar Das, (2005) 3 SCC 427 wherein it has been held -

"36. The respondents herein cannot take advantage of their own mistake."

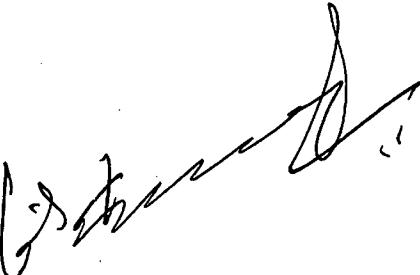
10. Nevertheless, since the applicant does not claim any other benefit save retention of the date of appointment as on 01-06-2008 intact, the same deserves to be considered. But this would pose an administrative difficulty, as there was no vacant post as on that day and the next vacancy had arisen only on 01-02-2009. To overcome this difficulty, a supernumerary post shall be created for the limited period from 01-06-2008 to 31-01-2009 so that the applicant could be

adjusted against the same. This would mean that the applicant's date of appointment would be taken as 01-06-2008 for the purpose of qualifying service, while his seniority would not be advanced.

11. The OA is disposed of accordingly by moulding the relief sought for by the applicant in the interest of justice and to render complete justice as provided for in Rule 24 of the CAT (Procedure) Rules. The respondents are directed to make suitable entries in the service books of the applicant.

12. No orders as to cost.


K.NOORJEHAN
ADMINISTRATIVE MEMBER


Dr K.B.S.RAJAN
JUDICIAL MEMBER

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