

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 514 of 2010

Tuesday, this the 18th day of January, 2011

CORAM:

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

K. Sankaran Nair
S/o. R. Kesava Pillai (Rtd.)
Group D Official,
Kattappana Head Post Office
Residing at Komattil House
Senapathy (P.O), Santhanpare
Pin – 685 619.

... **Applicant**

(By Advocate Shri P.C. Sebastian)

Vs.

1. Union of India, represented by
Secretary to Government of India
Ministry of Communications
Department of Posts
New Delhi.
2. The Superintendent of Post Offices
Idukki Division
Thodupuzha – 685 584
3. The Postmaster General
Central Region
Kochi – 682 018

... **Respondents**

(By Advocate Shri Pradeep Krishna, ACGSC)

This application having been heard on 11.01.2011, the Tribunal on
18-01-11 delivered the following.



ORDER**HON'BLE MR. K GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

The applicant in this O.A. entered service as Gramin Dak Sevak Mail packer (GDSMP), Santhanpura Post office on 19.11.1969. He was given officiating appointment as Group-D at Kattapana Sub Post Office with effect from 01.06.1999 considering his seniority and eligibility. He was regularly appointed as Group-D on 24.11.2000 and retired on superannuation on 31.01.2010. A minimum 10 years service is required for eligibility for superannuation pension. The applicant is having only 9 years, 2 months and 7 days of qualifying service and hence not entitled for pension. He has filed this O.A. for reckoning of his service as Group-D on daily wages from 01.06.1999 to count as qualifying service also alongwith the regular service.

2. The applicant submitted that he was eligible and entitled to be promoted as Group-D in the year 1999 itself and there were vacancies also. The request of the applicant for counting the officiating period prior to his promotion has not been acceded to by the respondents. The inaction on the part of the respondents in granting applicant's request for counting the officiating period prior to his promotion as qualifying service by preponing his date of promotional notionally, is unjust, arbitrary and prejudicial to his fundamental rights under Articles 14, 16 and 21 of the Constitution of India. He is similarly placed as Shri V.K. Divakaran, who was promoted as Group-D along with the applicant and was granted pensionary benefits counting the period of ad hoc service prior to his regular appointment as qualifying service for the purpose of pension. In



O.A. Nos. 239/1998 and 449/1998, this Tribunal had directed the respondents to take remedial steps, if any, of the E.D. Agents in Kerala Circle who had suffered any loss by lapse on the part of the respondents in filling up the vacancies. The respondents are, therefore, duty bound to remedy the loss of pension the applicant is put to suffer on account of their lapse.

3. The respondents contested the O.A. They took the stand that the applicant submitted his willingness to officiate in a departmental post; hence he was engaged to work in a Group - D post in Kattappana South Post Office with effect from 01.06.1999. He was temporarily engaged to work in the post based on the willingness submitted by him. He was engaged to carry out the duties of a Group - D and is remunerated with the minimum of the scale and such engagements are usually intended to GDS since they are already familiar with the Post Office work. As his total qualifying service fell short of 10 years, he was not eligible for pension. There is no rule in force to give promotion from a back date if DPC could not be held in time for departmental reasons. The engagement of the applicant in the vacant Group-D post at Kattappana South P.O. with effect from 01.06.1999 can be in no way considered as officiating appointment. His engagement as Group-D was not as per the Recruitment Rules and the applicant cannot claim pensionary benefits for the work done purely on temporary basis. The period spent by an employee on purely a stop gap arrangement cannot be reckoned as qualifying service with attendant benefits. The DPC for promotion to Group-D was delayed due to various cases pending before this Tribunal and the Hon'ble High Court of Kerala.

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Equating the case of the applicant with that of Divakaran's case is not correct. The decision of the Hon'ble High Court in giving the benefit of ad hoc service rendered by an employee has been overruled by Hon'ble Supreme Court in the case of **R.K. Mobina Singh vs. K.H. Themba Singh and Others**, 2008 (1) SCC (L&S) 315. In the circumstances, the O.A. is not sustainable and liable to be dismissed.

4. We have heard Mr. P.C. Sebastian, learned Counsel for the applicant and Mr. Pradeep Krishna, learned ACGSC for the respondents and perused the records.

5. The applicant has more than 40 years of service with the respondents. After 30 years of service, he was directed to join Kattappana South Post Office in the vacant Group-D post with effect from 01.06.1999 on officiating arrangement basis. He was appointed as Group-D alongwith Shri V.K. Divakaran and 7 others on the basis of the order dated 08.11.2000 at Annexure A-2. When he was made to work as Group-D on officiating arrangement in 1999, he was eligible and entitled to be appointed as Group-D as vacancies were available.

6. Shri V.K. Divakaran who was given appointment in Group-D post alongwith the applicant had claimed in O.A. No. 800/2002 that his appointment as Group-D with effect from 01.03.1999, the date from which continuously working as Group-D in Thodupuzha H.O., could be considered as regular service. The said O.A. was disposed of on 02.03.2005 as under :

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"12. In the conspectus of facts and circumstances, we set aside Annexure A-8 order and direct the respondents to grant the applicant continuity of service from 01.03.1999 and to consider him for regular appointment from that date by holding a review DPC if necessary for the purpose of pensionary benefits (alone) and pass appropriate orders within a time frame of three months from the date of receipt of a copy of this order. The O.A. is allowed. In the circumstances, no order as to costs."

The aforesaid order of this Tribunal was confirmed by Hon'ble High Court of Kerala vide its judgement dated 27.03.2008 in W.P.(C) No. 17044/2005(S).

7. This Tribunal had relied on the judgements of Apex Court in ***Direct Recruit Class II Engineering Officers' Association vs. State vs. State of Maharashtra and Others***, (1990) 2 SCC 715 and ***State of West Bengal vs. Aghore Nath Dev and others***, (1993) 3 SCC 371. The respondents have taken the stand that equating the case of the applicant with that of Divakaran's case is not correct. But it was not substantiated in what way the applicant's case is different from that of Divakaran's case. On going through "O.A. No. 800/2002", it is seen that the respondents had relaxed the age limit for absorbing Shri V.K. Divakaran in Group - D. But for this relaxation the applicant is similarly placed as Shri V.K. Divakaran in respect of reckoning service from the date of officiation on the Group-D post for the purpose of granting pensionary benefits.

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8. Hon'ble Supreme Court in ***Direct Recruit Class II Engineering Officers' Association vs. State vs. State of Maharashtra and Others***, (1990) 2 SCC 715, held as under :

“.. If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till regularisation of his service in accordance with rules, the period of officiating service will be counted...”

9. Again in ***R.K. Mobisana Singh vs. K.H. Temba Singh and Others***, (2008) 1 SCC (L&S) 315, Hon'ble Supreme Court in para 34 of the judgement, referred to its decision in ***M.K. Shanmugham vs. Union of India***, (2000) 4 SCC 476, which is extracted as under :

“.....If an ad hoc selection is followed by regular selection, then the benefit of ad hoc service is not admissible if ad hoc appointment is in violation of the rules. If the ad hoc appointment has been made as a stop gap arrangement and where there was a procedural irregularity in making appointments according to rules and that irregularity was subsequently rectified, the principle to be applied in that case was stated once again.....”

10. In the instant case, the applicant was put on duty of Group-D on officiating arrangement basis. Subsequently, he was regularised. It cannot be said that he was appointed in violation of the rules. The DPC could not meet in time for administrative reasons. That it could recommend his name subsequent to his appointment in 1999 is only a procedural irregularity which was rectified in due course of time. The stand of the respondents that the engagement of the applicant as Group-D was not as per the recruitment rules cannot be vindicated in the light of the above decisions of the Hon'ble Supreme Court.



11. The officiating arrangement of the applicant on 01.06.1999 was against existing vacancy of a Group – D post. He was eligible and qualified for a regular appointment on that date and he continued in the post uninterruptedly till regularisation of his service in accordance with the rules. In such case, the appointee is not to be blamed for the deficiency for the procedural requirements in the rules at the time of his initial appointment and the appointment not being limited to a fixed period of time is intended to be a regular appointment subject to the remaining procedural requirements of the rules being fulfilled at the earliest, as held by Hon'ble Supreme Court in **State of West Bengal vs. Aghore Nath Dev and others**, (1993) 3 SCC 371. Therefore, in our considered view, the applicant is entitled to reckon the period from 01.06.1999 to 24.11.2000 for the purpose of granting pensionary benefits.

12. The O.A. is allowed. The respondents No. 2 and 3 are directed to issue appropriate orders granting the applicant pensionary benefits counting his service from 01.06.1999 onwards as qualifying service, within a period of two months from the date of receipt of copy of this order.

13. No order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER