

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.546/2012

Tuesday, this the 09th day of December 2014

C O R A M :

HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER

K.Raveendran,
Group D, Mail Motor Service,
Fort, Thiruvananthapuram – 695 023.
Residing at Kappil Panyil Veedu,
Rajiv Gandhi Nagar, RNRA – 107,
Medical College P.O., Thiruvananthapuram – 695 011. ...Applicant

(By Advocate Mr.Vishnu S Chempazhanthiyil)

V e r s u s

1. The Senior Superintendent of Post Offices,
Thiruvananthapuram North Division,
Thiruvananthapuram – 695 001.
2. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram – 695 033.
3. Union of India
represented by its Secretary & Director General,
Department of Posts, Dak Bhavan,
New Delhi – 110 001. ...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 5th November 2014 the Tribunal on 09th December 2014 delivered the following :-

ORDER


HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER

Applicant is a pensioner retired on 30.9.2008 on attaining superannuation at the age of 60 years as a Group D official under the respondent No.1. He was taken into Group D as per Annexure A-2 order

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dated 17.10.2000. Annexure A-2 indicates that applicant while working as an ED Agent(for short, EDA) was selected for appointment against the Group D vacancies which arose in 1998 in Thiruvananthapuram North Division and in Postal Stores Depot, Thiruvananthapuram. Applicant states that when he retired on 30.9.2008 he fell short of one year and nine months for the purpose of reckoning the ten years' qualifying service required for minimum pension. He sent Annexure A-3 representation to respondent No.2 requesting for grant of minimum pension. As there was no response, he sent Annexure A-4 representation to respondent No.3. According to him, if he had continued in the GDS post, he could retire after attaining the age of 65 years. But on taking up the Group D post in the Postal Department, he had to retire at the age of 60 years. He points out that full time/part time casual labourers are entitled to work beyond the age of 60 years and as per the Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993 with effect from 1.9.1993 50% of the service rendered by casual labourers under the temporary status would be counted for the purpose of retirement benefits after their regularisation to Group D. Applicant states that respondents ought to have adopted a similar practice in Postal Department also to reckon the service rendered by ED Agents (now GDS) appointed as regular Group D for reckoning their qualifying service for pension. In support of his claim applicant points out a decision dated 18.4.2002 of the co-ordinate Bench of this Tribunal at Madras in O.A.No.1264/2001, marked as Annexure A-5. Applicant states that the order therein was upheld by the Madras High Court and thereafter



the S.L.P filed against the judgment of the Madras High Court in that case was dismissed by the Apex Court. Applicant seeks parity with the benefits granted vide Annexure A-5 order. He prays for the following reliefs :

1. Declare that the applicant is legally entitled to have his service rendered as Extra Departmental Agent reckoned for the purpose of determining minimum qualifying service for pension to make up the deficiency of a few days to complete 10 years in the post of Group D and is entitled to receive pension on his retirement from the cadre of Group D.
2. Direct the respondents to take into account the service rendered by the applicant as a Group D on adhoc/extra cost basis for the purpose of qualifying years of service for pension.
3. Direct the respondents to consider treating the applicant as notionally appointed in the vacancy of the year 1998 so as to enable the applicant to get minimum qualifying years of service for pension.
4. Directing the respondents to pass appropriate orders sanctioning pension to the applicant who retired from Group D cadre, reckoning the part of his service rendered as extra Departmental Agent to make up the deficiency of service for earning pension.
5. Directing the respondents to disburse arrears of pension which became due on retirement of the applicant from the post of Postman and continue to pay pension regularly.
6. Any other further relief or order as this Hon'ble Court may deem fit and proper to meet the ends of justice.
7. Award the cost of these proceedings.


2. Respondents in their reply contend that while accepting the Group D post on 17.10.2000, applicant had accepted the conditions of appointment and is now estopped from challenging his date of appointment at this distant point of time. According to the respondents, an employee does not have any indefeasible right to promotion and that right is only for consideration for promotion. In support of this contention respondents relied on Annexure R-1 to R-3 orders of this Bench. According to respondents, service of applicant as EDA cannot be reckoned since the nature of engagement as GDS differs from that of the permanent posting as Group D in the Postal



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Department, in view of the nature of posting of EDAs as noted by the Apex Court in *Union of India & others v. Kameshwar Prasad* 1988 SCC (L&S) 447. It was pointed out by the respondents that Annexure A-5 order of the Madras Bench of this Tribunal, though upheld by the Madras High Court, Annexure R-4 judgment of the Madras High Court in that case had specifically put a rider that the judgment is not to be treated as precedent in other cases. Respondents further state that the Apex Court's order, copy of which is produced as Annexure A-6, has specifically pointed out that the question of law is left open to be decided by the appropriate Court in appropriate case. Therefore, respondents contend that Annexure A-5 order cannot be relied on in this case.

3. It is also contended by the respondents that in view of the clear position in CCS (Pension) Rules, 1972, the applicant has no legal right to claim the reliefs sought. The relevant provisions in the CCS (Pension) Rules have not been set aside or quashed by any judicial fora. Respondents state that a Full Bench of this Tribunal in O.A.No.1033/2013 (Chandigarh Bench) had held that the services rendered as Extra Departmental Branch Postmaster, even if followed by appointment as Group D, is not to be reckoned as qualifying service for the purpose of pension. According to respondents, the request of applicant to revise the date of appointment as Group D with effect from the date of arising of the vacancy cannot be accepted. Here the applicant has no case that any of his juniors have been promoted with effect from the date prior to his promotion. Respondents



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contend that there is a shortfall of two years and 17 days for the applicant to be considered for minimum pension.

4. A rejoinder was filed by the applicant reiterating his contentions in the O.A. Applicant has subsequently produced Annexure A-11 to Annexure A-14- which are copies of some of the decisions of this Bench as well as some of the judgments of the High Court of Kerala on the topic.

5. Heard Shri.Vishnu S Chempazhanthiyil, learned counsel for the applicant and Shri.Varghese representing Shri.Thomas Mathew Nellimoottil, learned senior panel counsel for respondents. The important issue to be considered in this O.A is whether the deficit period of the applicant's qualifying service for the purpose of availing of minimum pension can be made good by reckoning his service as an EDA (now known as GDS).

6. It is admitted by respondents that applicant commenced his service as Extra Departmental Mail Packer with effect from 27.1.1981. It is also the admitted case that he was selected to the post of Group D in the Postal Department as per Annexure A-2 as a selection made from the ED Agents against the vacancies arose in 1998. Applicant contends that Annexure A-2 order dated 17.10.2000 happened to be delayed on account of the laches of the respondents' department and that had he been appointed in 1998 itself, ie., when the Group D vacancy arose, he would have been qualified for



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minimum pension under the CCS (Pension) Rules, 1972. This contention is, however, refuted by the respondents stating that the applicant cannot take such a plea because while accepting the Annexure A-2 appointment he had foregone the service as ED Agent and it cannot be agitated at a distant point of time in 2012. However, it has to be noted that applicant is not claiming any seniority or arrears of salary by making a prayer in this O.A for reckoning his date of appointment from the date of arising of the vacancy and that he is seeking such notional dating back of his appointment merely for the purpose of availing of pensionary benefits.

7. This Tribunal takes note that even while working as ED Agent the applicant was working under the Postal Department, though the nature of work of ED Agent (now GDS) is, in theory, considered to be a leisure time engagement for people who are otherwise reasonably affluent and are assisting the Department by way of a gainful vocation and social service in catering to the postal needs of the rural communities. However, in reality, one can judicially take notice that though initially the work of EDAs and GDSs have been honorary in nature, the gratuitous concept has gradually withered and it became engulfed by the employment needs of teeming millions who throng at the doors of Government institutions for securing public employment that ensures security of tenure and other service benefits sans pensionary benefits. Respondents point out that engagement as EDA/GDS does not carry any pensionary benefits but only severance benefits. By adopting a dual mode of employment of persons for



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discharging the functions of Postal Department, the Government may be aiming at economy. But, as observed earlier, in the modern context the honorary nature of EDA/GDS has undergone a sea change. Faced with acute unemployment, a large number of educated youth are eagerly waiting for being enrolled as GDS which carry less service benefits than their counterparts in the regular posts of the Postal department. May be the continuance of such a dual system of employment is within the province of the policy decisions of the Government. Yet the Tribunal and Courts cannot shut their eyes to the disparity and injustice meted out to the EDAs/GDS in the matter of pension and security of tenure.

8. Applicant has relied on Annexure A-5 decision of the Co-ordinate Bench of this Tribunal at Madras which had made some strong observations regarding the need for reckoning the service of Group D employees, who are promoted from the post of EDAs. Though the superior Courts have not interfered with that decision, it was destined to remain as a judicial verdict in respect of the parties *inter se*, not being capable of percolating down to similarly situated employees.

9. Applicant has also referred to the situation of the casual employees in the Postal Department who has attained temporary status being able to reckon 50% of their service as temporary status casual worker as qualifying service for the purpose of pension. One may be at a loss to find reason why a similar policy is not adopted by the Postal Department in the case of



EDA/GDS. It may be argued that EDA/GDS are paid only the time related emoluments depending on the time they spent on duty. Nevertheless, the continued and unbroken service extracted of them for long years has to be treated on par with the regular employees of the department because in the present day context, no EDA/GDS will be doing "honorary" work as envisaged in the early days of EDA. Denial of equal treatment of such persons with the casual employees who have been given temporary status appears to be tainted with double standards and violative of the equality principles enshrined in Articles 14 and 16 of the Constitution of India. Though this is within the sphere of the policy decisions of the executive, decision makers are Constitutionally bound to make just and equitable decisions, as envisaged in Article 38 of the Constitution of India. It reads :

"38. State to secure a social order for the promotion of welfare of the people – The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations."

10. The Constitutional aspirations of bringing in a social order in which justice – social, economic and political – is expected of by all instrumentalities and institutions of the national life. Postal Department is not an exception to this Constitutional provision. The Postal department cannot turn a Nelson's eye to the expectations of the Constitution envisaged in Article 38 of the Constitution of India. Therefore, though not taking Annexure A-5 order as a precedent, this Tribunal, through the windows of

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Article 38 of the Constitution of India, is able to perceive the crass injustice meted out in this case. The discerning eyes in the department can see that the tools of justice are readily available in Article 38 to put to use and to bring in a better social order for its employees who are differentiated by artificial stratification viz. Departmental and GDS.

11. In view of the rider put in by the Madras High Court in Annexure R-4 judgment and in the light of the caveat contained in the Annexure A-6 order of the Apex Court, this Tribunal is not relying on Annexure A-5 decision of the Co-ordinate Bench at Madras.

12. It is contended by the applicant that even while he was working as EDA he was given *ad hoc* postings as Group D and hence he prays for treating such periods as qualifying service for pension. However, respondents contend that the periods during which he has worked as *ad hoc* Group D were intermittent and not continuous. Therefore, according to the respondents, applicant cannot qualify himself for the benefits of first proviso to Rule 13 of the CCS (Pension) Rules, 1972 which requires that the officiating or temporary service put in by a Government servant has to be followed by a substantive appointment without **interruption**. Applicant has not produced any record to show that his service put in as *ad hoc* Group D employee immediately prior to Annexure A-2 appointment was without any interruption.

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13. Applicant relied on a good number of orders of this Tribunal wherein the past service as GDS and the delay occurred in selection and appointment was taken into consideration for the purpose of being treated as qualifying service for pension. Respondents also produced some decisions which disentitle the GDS employees for claiming their previous service when they were appointed as GDS. Annexure R-1, Annexure R-2 and Annexure R-3 are such decisions in which the applicants therein are claiming antedating their date of appointment. However, the intention of the applicant in his request for notional antedating of his date of appointment is simply for the purpose of getting pensionary benefits. Normally, in other circumstances, such claims of antedating will have serious repercussion on the persons who had already been promoted, upsetting their seniority. In this case no such claims have been made by the applicant. He is not even claiming any other financial benefits like arrears of salary in the event of his notional antedating of appointment.

14. Applicant alleges that although the vacancy for Annexure A-2 appointment in his case arose in 1998, it was on account of the latches on the part of the respondents, his appointment became delayed till 17.10.2000. Obviously Annexure A-2 is a selection made from amongst the ED Agents. In such cases, it can be argued that chances of promotions are only the aspirations of the employees, not a right vested in them. However, in view of the bleak prospects of a GDS for being posted as Group D, it is the dream of every EDA/GDS to get a selection at the earliest in order to

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mitigate his bleak prospects of promotion and the deplorably low financial benefits as EDA/GDS. In the circumstance, this Tribunal is inclined to accept the contention of the applicant that had he been promoted in 1998, he would have been qualified for minimum pension as per the provisions of CCS (Pension) Rules, 1972. In the circumstance, the following order is passed :

Respondents shall consider Annexure A-3 and Annexure A-4 representations of the applicant in the light of the observations made in this order for treating the date of arising of the vacancy in 1998 as the notional date of appointment of the applicant and to grant him the pensionary benefits as per the provisions of CCS (Pension) Rules, 1972. Respondents shall pass a considered order in this regard within two months from the date of receipt of a copy of this order and communicate to the applicant.

15. The O.A is disposed of as above. No order as to costs.

(Dated this the 09th day of December 2014)


U.SARATHCHANDRAN
JUDICIAL MEMBER