

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
O.A. NO.560/2012.

Dated this the 21st February, 2013

C O R A M

HON'BLE Mrs. K.NOORJEHAN, ADMINISTRATIVE MEMBER

V.M.Joseph S/o late V.C.Mathai, Postman Nilambur P.O,
Manjeri Postal Division, Malappuram - 679329
residing at Vaniyapurackel, Kappil P.O, Vandoor, Malappuram.

..Applicant

By Advocate Mr.V.Sajith Kumar

Vs

- 1 Union of India represented by the Secretary to the
Govt, Deptt of Post, Ministry of Communications
Govt of India, New Delhi - 110001.
- 2 The Chief Postmaster General, Kerala Circle, Trivandrum.
- 3 The Superintendent of Post Office, Manjeri Postal Division
Malappuram District 676121.
- 4 The Superintendent of Post Office, Ernakulam Postal Division
Ernakulam District - 682024.

...Respondents

By Advocate Mr. Sunil Jacob Jose, SCGSC

The Application having been heard on 21.2.2013 the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant who is working as Postman under Manjeri Postal Division, is aggrieved by the inaction of the respondents to place him under the old pension scheme and the benefits flowing therefrom.

- 2 Brief facts of the case as stated by the applicant are that he entered the service of the respondent as GDS in the year 1983 under the Ernakulam Postal

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Division. He was considered for promotion as Group-D against vacancy of the year 2001-2002 and ultimately appointed as Group-D on 8.1.2004 by Annx.A1. It is the case of the applicant that his appointment as Group-D was unnecessarily delayed for want of clearance from the Circle Office. According to him the Regional PMG had cleared his selection as Group-D in the first week of Decembr 2003, therefore there was no justification to delay the convening the DPC for recommending/appointment in a Group-D post which led delay in issuing Annx.A1 order and resulted in adverse consequences to him. It is submitted by the applicant that a new Pension Scheme was introduced for those appointed on or after 1.1.2004. On account of the delay in issuing his appointment order, he was brought under the new Pension Scheme and recoveries are being made from his salary towards the new contributory pension Scheme. He avers that the old pension Scheme is more advantageous than the new pension scheme and the delay in promoting him as Group-D brought him under the new Pension Scheme. Therefore he prays for a direction to the respondents to place him in Grade-D cadre notionally w.e.f the date of occurrence of the vacancy, stop recoveries towards contribution under the new pension scheme and refund the amount so recovered from his salary with interest.

3 The respondents contested the OA by filing their reply. It is submitted that the Screening Committee approval for filling up the post of a Group-D vacancy pertaining to the year 2002 was received on 8.12.2003. As per rules, first preference should be given to non-test category Group-D officials. Since the lone non-test Group-D official did not fulfill the eligibility criteria, the said vacancy was offered to the GDS in the Division. A Departmental Promotion Committee was convened on 30.12.2003 and the applicant was appointed as Group-D on 8.1.2004. It is further submitted that w.e.f 1.1.2004, the Govt has introduced the New Pension Scheme and the said scheme is applicable in respect of all the employees who joined the service on or after 1.1.2004. Therefore, the applicant who commenced his service in Group-D cadre after 1.1.2004 was included in the New Pension Scheme and he accepted the same without any challenge whatsoever. The applicant was transferred to Manjeri Postal Division as per his request w.e.f 2.11.2005.

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Thereafter he participated in the examination for promotion to the cadre of Postmen and was selected as Postman w.e.f 13.7.2006 under departmental quota. It is submitted that the vacancy against which the applicant was selected pertained to the year 2002. They clarified that the delay occurred as the matter was referred to the Postal Directorate seeking approval for transferring the unfilled departmental quota vacancies to the GDS merit quota. According to the respondents the prayers of the applicant are devoid of any merit.

4 The applicant filed rejoinder to the reply reiterating the facts as stated in the O.A. He alleged that the administrative delay had resulted in denial of his statutory pension available under the old pension scheme. He referred to a decision of this Tribunal in O.A 620/2003 whereby this Tribunal antedated the date of appointment of the applicants therein by its order dated 7.7.2006. It is further stated that the vacancies of year 2002 have to be filled in the year itself or atleast by 2003. Many postal Divisions in Kerala completed the selection process prior to 1.1.2004.

5 Heard the learned counsel for the parties and perused the record.

6 The learned counsel for the applicant argued that it is a case in which the applicant became eligible and entitled to be appointed in Group-D post in the year 2002 against an available vacancy whereas he was appointed only on 8.1.2004. The claim of the applicant is that he must be deemed to have been appointed from the date of availability of vacancy in 2002 or at least in 2003.

7 The learned counsel for the respondents on the other hand argued that the Screening Committee approval for filling up the post of a Group-D vacancy pertaining to the year 2002 was received on 8.12.2003 and the DPC was convened on 30.12.2003. Therefore it cannot be said that there was a willful delay in regard to his selection.

8 I have given anxious consideration to the rival contentions of the parties. It is true that a new Pension Scheme was introduced for those employees who are appointed on or after 1.1.2004 and the applicant was brought under the new pension scheme and recoveries are being made from his salary towards contribution of the

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employee. Admittedly, the Group-D vacancy arose in 2002 and the Screening Committee approval for filling up the post was received on 8.12.2003. The Departmental Promotion Committee was convened on 30.12.2003. (Since no eligible non-test Group-D official was available for promotion the applicant was considered and appointed as Group-D on 8.1.2004). The case of the applicant is that he became eligible and entitled to be appointed to the available Group-D vacant post in the year 2002, whereas he was appointed only on 8.1.2004 because of the administrative delay on the part of the respondents. Had it been filled on time he would have been appointed in the year 2003 itself and would be a beneficiary of the old pension scheme. According to him the old pension scheme is more advantageous than the new pension scheme. Therefore the delay in appointing him as Group-D on a date anterior to 1.1.2004 has snatched away his rightful claim to be a member of the old scheme.

9 It is seen from the record that a Group-D post vacancy occurred in the year 2002 and the respondents took more than one year to get the administrative sanction/screening committee clearance, the same was received only on 8.12.2003. Accordingly the DPC could be convened only on 30.12.2003 and the applicant was appointed on 8.1.2004. Under such circumstances the appointment of the applicant was delayed which resulted in denial of the benefit of the old pension scheme for no fault of his. In order to render justice all that could be done is to deem the applicant as having been appointed from 30.12.2003 i.e the date when DPC met and found him fit for promotion and to restrict the benefit only to notional appointment and notional fixation of pay & allowances. Since the date of his appointment would be advanced to 30.12.2003, the old pension scheme would be applicable to him. In view of the above, the respondents are legally obliged to extend the benefit of the order of this Tribunal in OA No.620/2003 to the applicant. I find that this O.A is fully covered by the decision of this Tribunal in O.A No.620/2003 which was allowed on 7.7.2006. The relevant portion is extracted below:

"In the end the O.A succeeds. It is declared that the applicants 2 to 6 are deemed to have been appointed as Postman w.e.f 30.1.2003 and their pay be fixed notionally in the scale of Rs.3050-4590 while actual pay would be from the date they have assumed their charges. Their seniority shall also be accordingly fixed (of course, junior to those already appointed against the merit quota). The




consequential relief viz. fixation of pay at higher stage on the date they have assumed the charges, payment of arrears of pay and allowances arising there from and annual increments, entitlement to pension as per the rules prevalent as on 30.1.2003 would all accrue. Respondents shall accordingly pass suitable orders for fixation of pay and allowances and make available the arrears of pay and allowances to the applicants 2 to 6 within a period of four months from the date of communication of this order."

10 The respondents have implemented the aforesaid order vide letter dated 11.1.2008 subject to the outcome of the Writ Petition before the Hon'ble High Court of Kerala. The applicant in the present O.A is similarly placed as the applicants in O.A No.620/2003. Hence, the direction of this Tribunal in the said order equally applies to the applicant in this O.A also. Therefore, the respondents are directed to extend the benefit of the order of this Tribunal in O.A No.620/2003 to the present applicant within a period of 3 months from the date of receipt of a copy of this order. They are further directed to stop forthwith the recoveries towards contribution of the applicants under the new pension scheme and refund the amount already recovered within 3 months from the date of the order.

11 The O.A is allowed as above. No costs.

Dated 21st February, 2013


(K.NOORJEHAN)
ADMINISTRATIVE MEMBER

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