

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Applicaton No.595/2013

..Monday.... this the 27th.... day of July 2015

C O R A M :

HON'BLE Mr.JUSTICE N.K.BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE Mrs.P.GOPINATH, ADMINISTRATIVE MEMBER

1. B.Sreedhara,
S/o.late Appayya,
Working as MTS Vidyanagar, S.O Kasaragod.
Residing at Bajakudula House,
Perla, Kasaragod – 671 552.
2. A.Shankara,
S/o.late Mani,
Working as MTS Kasaragode HPO.
Residing at Bittikkal House, Thekkil P.O.,
Changala, Kasaragod – 671 541.
3. P.V.Thamban,
S/o.K.Kelu,
Working as MTS Nileswar MDG.
Residing at Pattanveetil House,
Nattakkal P.O., Kasargod – 671 533.
4. V.Balan,
S/o.late Sankunny Vaidyan,
Working as MTS Kasaragod HPO.
Residing at Pakkam, Pallikkara,
Kasaragod – 671 316.
5. Balappa Poojari,
S/o.late Arun Poojari,
Working as MTS Kumbala P.O.
Residing at Kadamagadi,
Kasaragod – 671 543.
6. M.Ashokan,
S/o.late N.Narayana,
Working as MTS Kasaragod HPO.
Residing at Shreyas House,
Maipady P.O., Kasaragod – 671 124.



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7. A.Vasantha,
D/o.Aitha,
Working as MTS Kasaragod HPO.
Residing at Pudunna House,
Muttathody P.O., Kasaragod – 673 123.

8. Bhaskara,
S/o.Krishnoji,
Working as MTS SRO Kasaragod.
Residing at Beeranthbail House,
Kasaragod – 671 121.

...Applicants

(By Advocate Mr.P.C.Sebastian)

V e r s u s

1. Union of India represented by the Secretary to Govt. of India,
Ministry of Communications, Department of Posts,
New Delhi.

2. The Chief Postmaster General,
Kerala Circle, Trivandrum – 695 033.

3. The Superintendent of Post Offices,
Kasaragod Division, Kasaragod – 671 121.

4. The Superintendent RMS CT Division,
Calicut – 673 032.

...Respondents

(By Advocate Mr.Sreenath.S.,ACGSC)

This application having been heard on 16th July 2015 this Tribunal
on 27th July 2015 delivered the following :

ORDER

HON'BLE Mrs.P.GOPINATH, ADMINISTRATIVE MEMBER


Applicants are working as Gramin Dak Sevaks (GDS) in Kasaragod
Postal Division and have 20 years of service. They are eligible to
be promoted to Group D cadre by virtue of their seniority from
2006 onwards. They were promoted in 2010 following this Tribunal's
order in O.A.No.312/2008 which directed respondents to fill up vacancies

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for the period 2002 to 2009. Applicants 1 to 8 were selected vide memo dated 17.7.2010 and posted to various offices against vacancies which occurred during the period 2006 to 2009. The applicants have been given notional appointment with effect from date of occurrence of vacancies for pensionary benefits. The applicants were also paid severance allowance @ Rs.1500/- for every completed year of service subject to a maximum of Rs.60,000/-. The third respondent has ordered recovery of Rs.3000/- to Rs.600/- being over paid severance allowance from applicants 1 to 7 on the plea that they are not entitled to the same for the period their notional promotion as MTS.

2. The applicants in their rejoinder have cited O.A.No.620/2003 wherein GDS candidates qualified for promotion as Postman in departmental exam held on 24.11.2002 for appointment against 2002 vacancies and were given actual appointment only in 2004 as a result they lost the benefit of being included in pre 2004 statutory pension scheme.

3. The respondents in their reply state that the applicants were given retrospective appointment with effect from the date of occurrence of vacancies and the notional service would count only for pension. In view of notional promotion, the service rendered as Gramin Dak Sevaks would count only up to the date of notional promotion and not up to date of actual appointment as Group D. Thus the period of notional promotion was excluded while reckoning the GDS service for payment of severance.



allowance and any excess payment made was ordered to be recovered. Contribution towards the New Pension Scheme 2004 is being recovered from the month following the month of joining as Group D/MTS. The respondents state that they do not consider it appropriate to grant dual benefits of severance allowance and counting of notional appointment for pensionary benefits.

4. We have heard the learned counsel appearing for both parties and also gone through the documents/annexures produced by the parties. The applicants have already been given the benefit of notional promotion. However, their claim for pay fixation from the date of notional appointment is against the 'no work, no pay' principle. Further, New Pension contribution recovery is made from the applicants from the month following the month of joining as MTS. No contribution recovery has been made for the period of notional appointment to date of actual appointment. Annexure A-9 order of the Tribunal states that "their pay be fixed notionally, while their actual pay would be from the date they have assumed their charges". In Annexure A-10 the Tribunal has given the applicants the benefit of counting the notional service as qualifying service for the purpose of appearing in departmental examination. Further, a reading of O.A.No.620/2003 reveals that though the exam was held on time in 2002 for vacancies of 2002, actual appointment was made in 2004. Hence the delay in giving the 2002 examinees appointment in 2004 was that of the respondents and the applicants were given the benefit of being



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included in pre-2004 pension scheme. In the present case, the respondents have given the benefit of orders of the Tribunal to applicants within reasonable time by antedating their appointment to date of occurrence of vacancy.

5. The respondents recovery of severance allowance is against the Supreme Court judgment in **State of Punjab & Others v. Rafiq Masih (White Washer)** in Civil Appeal No.11527/2014 wherein the Hon'ble Supreme Court ordered that recoveries from employees belonging to Class III and Class IV service would be impermissible in law. In this case Gramin Dak Sevaks are a category below Class III and hence this rule be made applicable to them also.

6. Hence the recovery of 'severance amount' made, be restored to applicants. The claim for payment of arrears of pay and allowances by fixing the pay notionally in the cadre of Group D at higher stage till the date they have assumed charge is not allowed as the applicants have not rendered service as Group D with effect from the date of occurrence of vacancies. The O.A is disposed of accordingly. No order as to costs.

(Dated this the 27th day of July 2015)



P.GOPINATH
ADMINISTRATIVE MEMBER



JUSTICE N.K.BALAKRISHNAN
JUDICIAL MEMBER