

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 61 of 2010

Wednesday, this the 19th day of January, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

Ponnamma Varughese, Aged 60 years,
W/o. Late Sri Sebastian, Group D,
Kattappana, H.P.O., Residing at Vettoor
House, Puthadi P.O., Vantanmedu, Idukki. **Applicant**

(By Advocate – Mr. P.C. Sebastian)

V e r s u s

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

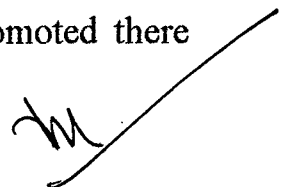
(By Advocate – Mr. A.D. Raveendra Prasad, ACGSC)

This application having been heard on 19.01.2011, the Tribunal on the same day delivered the following:

ORDER

By Hon'ble Mr. Justice P.R. Raman, Judicial Member -

The applicant entered the service of the respondents as Gramin Dak Sevak in 1971 in Idukki District. She was appointed to Group-D on ad hoc basis from 17.5.1999 and thereafter she was promoted on regular basis with effect from 13.11.2000. Further, between the date on which she was promoted on ad hoc basis and the date she was regularly promoted there



was a break in service on 3.7.2000. Subsequently, she was engaged/appointed as Group-D on officiating basis from 17.5.1999 to 4.7.2000. She was reverted as Gramin Dak Sevak with effect from 4.7.2000 and again appointed as Group-D with effect from 9.10.2000 and regularly appointed as Group-D with effect from 14.11.2000. She retired on superannuation on 30.4.2010. Further her service rendered as Group-D on regular basis with effect from 14.11.2000 when taken into account, she will have 9 years, 5 months and 17 days of service which is short of few months service for the required qualifying service of ten years for minimum pension. She has approached this court by filing this present OA in 2010 inter alia contending that i) she ought to have been appointed as Group-D on regular basis even much earlier than 14.11.2000 and ii) at any rate she is entitled to reckon the period of ad hoc employment as Group-D also for the limited purpose of calculating the required number of minimum service of ten years for pension. Subsequent to filing of the OA she amended the OA by incorporating the prayer challenging Annexure A-5 which is an order passed by the 2nd respondent rejecting her representation and holding that her appointment for the period from 17.5.1999 to 4.7.2010 cannot be treated as regular appointment for pension. While amending the OA by challenging Annexure A-5 which is dated 12.11.2011 she had filed a separate MA for condonation of delay as MA No. 567 of 2010 which by an earlier order passed by this Tribunal on 28.7.2010 had been allowed and the delay was condoned.

2. The respondents in their reply affidavit has contended that ten years



minimum service is required for eligibility for pension as per rules in force, whereas the applicant is only having qualifying service for pensionary benefits of 9 years, 5 months and 17 days which is less than 10 years. Hence, for want of minimum qualifying service she is not entitled for pension. With regard to the contention of the applicant that she is entitled to count the period from 17.5.1999 when she has worked for certain period and that the intermittent period should also be counted for the purpose of qualifying service, it is contended that ad hoc service cannot be counted for the purpose of calculating the qualifying service for pension. They also sought to support the order Annexure A-5 dated 12.11.2001 as validly passed rejecting the representation. It is also contended that there is an inordinate delay in challenging the same before this Tribunal. It is also contended that the applicant was not officiating the post but only working as a stop gap arrangement and when the applicant is engaged to work as Group-D, an extra cost bill or extra expenditure statement is prepared by the Sub Divisional Head each month noting the period the GDS worked as postman or Group-D. If the GDS continuously worked for 6 days the 7th day will also be treated as working day even if it is Sunday and if a holiday comes in between a week, that day will not be treated as working day. If the GDS has not completed six continuous day of work, the Sunday or other holidays comes within the next seven days will also not be treated as working day. Applying this principle the total days the GDS worked as Postman/Group-D is counted and the allowances are paid to her in a money receipt. Therefore, it is clear that the working of the GDS is treated as a stop-gap arrangement with no continuity.



3. We have heard the counsel for the applicant and the counsel for the respondents and perused the records and pleadings available.

4. The points that arise for consideration is as to i) whether Annexure A-5 dated 12.11.2001 passed by the Superintendent of Post Offices, Idukki Division rejecting the representation made by the applicant as early as on 2.11.2001 is valid? and ii) whether the so called officiating period said to have rendered by the applicant as Group-D prior to regular appointment on 14.11.2010 is liable to be reckoned for the purpose of qualifying service?

5. As far as Annexure A-5 is concerned, we find that the representation made by the applicant as early as on 2.11.2001 was decided on 12.11.2001. It is stated that she became a regular appointee as Group-D with effect from 14.11.2000 as per office memo dated 8.11.2000. Till then she was holding the post of ED agent while so she has also worked as Group-D for the period from 17.5.1999 to 4.7.2000 and from 9.10.2000 to 13.11.2000 on daily wage basis, in an approved capacity in preference to an outsider by making substitute arrangement in the ED post on her own responsibility. Her appointment for the period from 17.5.1999 to 4.7.2000 cannot be counted towards regular appointment and hence cannot be treated as qualifying service for pension. Undisputedly before 14.11.2000 she had some period to her service on daily wages as Group-D but even that period was not continuance to be followed by a regular appointment made on 14.11.2000. Admittedly there was a break even in official engagement as Group-D. The contention of the applicant that the service rendered by her as



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Group-D with break in service is to be taken into account for qualifying service cannot be accepted. Ad hoc appointment or ad hoc arrangement followed by a regular appointment without any break can only be counted for reckoning the qualifying service for minimum pension. On facts thus we find that it is not parallel to any other case. We have not come across a case where an ad hoc or interim appointment made as Group-D with break in service is taken into account for qualifying service and no authority has also been brought to our notice in support of that contention.

6. Even though the learned counsel for the applicant placed reliance on the coordinate bench decision of the Madras Bench of the Tribunal in OA No. 1264 of 2001 rendered on 18th April, 2002, we have perused the same and we find that all that has been directed in the said order is to direct the authorities to formulate a welfare scheme as has been formulated by the DOP&T and Railways to help many persons like applicants' therein to get the minimum pension. In paragraphs 13 it is observed that "the applicant's case deserves a sympathetic consideration in view of the fact that there is absolutely no provision in the service rules for ED staff for pension on absorption as regular Gr.D. We are constrained to observe that it is for the respondent department to take into account the overall picture and then take a sympathetic view". Thus, it can be seen that except to direct framing of a welfare scheme and expressing some sympathy on the applicant there is no legal issue decided to follow as a ratio decidendi. We do not think that the said decision in any way help the applicant to advance her arguments except to say that she also deserves to be considered sympathetically but it is well



settled principle of law that sympathy by itself alone cannot be a ground for granting any relief by a judicial process. Such consideration are vested upon the executives and not for a court to act upon. The respondents have placed reliance on the decision of another coordinate bench of the Hyderabad Bench of the Tribunal dated 19th July, 2010 in OA No. 643 of 2008 wherein reference has been made to the Madras Bench decision of the Tribunal we have referred to earlier and observed that "the order in OA 1264 of 2001 is not a judicial decision containing a principle which forms an authoritative element termed as a ratio decidendi. Neither in the Coordinate Bench, nor in the High Court, nor even in the Supreme Court, was the point of law discussed. The relief provided would be confined to the facts of that case. The order of the Coordinate Bench repeatedly talks of sympathy. Since then, the Apex Court had repeatedly held that sympathy cannot be the basis of judicial pronouncements. Judicial pronouncements have to be based on the law and the rules in accordance with the provisions of the Constitution of India". Therefore, the above view supports the view which we have taken as above. Incidentally it may be pointed out that the decision rendered by the Madras Bench, it's correctness was canvassed before the Hon'ble High Court of Madras in WP No. 45465 of 2002. Though the Hon'ble High Court of Madras dismissed the Writ Petition it was made clear that the relief granted in the said petition is confined only to the case of the 'first respondent' therein and it should not be treated as a precedence to be followed. The learned counsel for the applicant also contended that the applicant is entitled to be appointed on regular basis even prior to the dated 14.11.2008. We cannot entertain such contention after ten years and hence



we do not propose to go into the merits of the contentions so raised.

7. Thus, we find that the applicant is not entitled for any relief in the present OA. The learned counsel appearing for the respondents further submitted that the executive authority has got ample powers to relax the qualification in appropriate cases by reducing the qualifying service for granting minimum pension under the provisions of Rule 88 of CCS (Pension) Rules. But the applicant has not approached the authorities under the said provision for consideration. As we have already observed in the above paragraphs that since the applicant is seeking sympathetic consideration it is always for the authorities to consider the said contention and not for us to consider the same. Since we have disposed of the OA on the legal issues that has arisen for consideration we do not think that any of the above observation will stand in the way for the authorities in considering or exercising their power in terms of Rule 88 of CCS (Pension) Rules, as and when applied for.

8. With the above observation the OA stands dismissed and no order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

“SA”