

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION No. 607 of 2013.

THURSDAY, this the 7th day of August, 2014.

CORAM :

HON'BLE MR. B.V.RAO, JUDICIAL MEMBER

N.Chandran Asari,
Group D (Retired), Kowdiar,
residing at Ram Nivas,
Eliparakonam, Kulappada P.O.,
Aryanad - 695 542.

... Applicant

(By Advocate Mr.Vishnu S.Chempazhanthiyil)

Versus

1 The Superintendent of Post Offices,
Thiruvananthapuram South Division,
Thiruvananthapuram -695 001.

2 Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.

3 Union of India
represented by its Secretary and Director General,
Department of Posts,
Ministry of Communications,
New Delhi.

.... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

This Application having been heard on 07.08.2014, the Tribunal
on the same day delivered the following:

ORDER

HON'BLE Mr.B.V.RAO, JUDICIAL MEMBER

The applicant, aggrieved by the denial of minimum pension
and non consideration of his request for grant of minimum pension
has filed this O.A., praying for the following reliefs:

V

(i) Declare that the applicant is legally entitled to have his service rendered as Extra Departmental Agent reckoned for the purpose of determining qualifying service for pension to make up the deficiency of a few months to complete 10 years in the post of Group D and Postman and is entitled to receive pension on his retirement from the cadre of Postman;

(ii) Direct 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;


(iii) Call for the records leading to the issue of Annexure A9 and set aside Annexure A9.

(iv) Direct the respondents to disburse arrears of pension which became due on retirement of the applicant from Group D cadre and continue to pay pension regularly,

(v) Any other further relief or order as this Court may deem fit and proper to meet the ends of justice,

(v) Award the cost of these proceedings.


2 Briefly, the facts of the case are that the applicant entered in service as an Extra Departmental Agent on 1.2.1974. He was appointed in the cadre of Group D with effect from 11.06.1993. The



applicant retired on superannuation from service as Group D on 31.3.2003. At the time of retirement, the applicant had completed 9 years 9 months and 20 days of service after his appointment as Group D. For the purpose of grant of minimum pension, 10 years qualifying service is necessary. In terms of Sub Rule 3 to Rule 49 of CCS (Pension) Rules, fraction of a year equal to 3 months and above shall be treated as one half year and reckoned as qualifying service. As he completed 9 years 9 months and 20 days of service, he would have been eligible for minimum pension. However, 32 days of service was treated as non-qualifying service leaving the applicant with 9 years 8 months and 18 days service resulting in a short fall of 12 days of the required minimum qualifying period of 9 years and 9 months.

3 The applicant submitted a request dated 15.12.2005 to the 1st respondent for grant of minimum pension. In response to the same, the applicant was informed that the matter is being taken up with the Circle Office. Subsequently, since he did not hear anything from the Circle Office, the applicant moved a representation to the 2nd and 3rd respondents citing the Order of Madras Bench of the Tribunal in OA No. 1264/2001 in a similar case.


4 The applicant states that as per the GDS (Conduct and Employment) Rules, 2001, a GDS employee can continue upto the age of 65 years. However, as and when a GDS employee is appointed to Group D post he has to retire from service on attaining the age of 60 years. Therefore, there is reduction of 5 years in the retirement age of GDS on appointment as Group D whereas the Full Time / Part time Casual Labourers in the Department of Posts are entitled to work



beyond the age of 60 years and 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after their regularization to Group D. There is no such provision in the GDS (Conduct and Employment)Rules for counting the 50% of the GDS service for pensionary benefits. Therefore, the GDS who were appointed as Group D are discriminated in the matter of counting the portion of their GDS service for pensionary benefits. The applicant submits that the issue is no longer res integra in view of the decision of the Hon'ble Central Administrative Tribunal, Madras Bench in OA NO. 1264 of 2001, which ordered that

"(b) The first respondent is directed to consider the case of the applicant in a proper perspective and formulate a scheme as has been formulated by the DoPT in their scheme issued in the OM dt 12.4.1991 as also in the Railways by giving weightage for certain percentage of service rendered as an ED Agent for reckoning the same as a qualifying service for purposes of pension in respect of persons who get absorbed or promoted against regular Gr.D posts in the department which would enable such employees to get the minimum pension. This exercise shall be completed within four months of receipt of a copy of this order by the respondents".

5 The applicant states that having 9 years 8 months and 18 days service, the shortage of 12 days in Group D which is owing to the fact that the long service rendered by the applicant as Extra Departmental Agent is not taken into account and thereby denying him the minimum pension admissible for Group-D officials, is arbitrary, unreasonable and discriminatory.



6 The applicant further alleges inaction on the part of the respondents to convene DPC regularly for promotion of GDS to Group D service. Despite there being vacancies in Group D during the period 1992-1993, the same were filled up only in the year 1993. As a result, the applicant fell short of the minimum service to qualify for pension. The applicant further states that the Honourable Tribunal in OA No.239/98 and OA No.449/98 ordered the respondents to take remedial steps if any of the ED Agents had suffered any loss by lapse on the part of the respondents in filling up the vacancies. The respondents are bound by the said directions of this Honourable Tribunal and are duty bound to grant the applicant the pension reckoning his service from the date of occurrence of vacancy or compensate the applicant for the loss of adequate length of service for pension by taking his ED service in lieu of service in Group D.

7 The applicant has drawn the attention of this Tribunal to OA 674/2012 which is a case filed by a similarly situated person. The applicant in that OA was appointed on 17.10.2000 and retired on 30.6.2010 after rendering 9 years 8 months and 15 days. The Annexure -A10 judgment in OA 674/2012 states :


"9. In view of the fact that the case of the applicant is identical to that of applicant in OA 389/04, a like order would meet the ends of justice. Applicant is therefore entitled to the benefit of notional appointment from 1st Aug. 2000, which is purely for the purpose of working out the qualifying service. Accordingly, the OA is allowed to the extent that it is declared that the applicant's appointment as Group -D should be deemed with effect from 1.8.2000 and his service would be

counted from that date till the date of his superannuation on 30.6.2010. The benefit of qualifying service as calculated above shall be made available to the applicant only for the purpose of pension and terminal benefits. Respondents are directed to pass suitable orders sanctioning pension and they are also directed to pay arrears of pension from the date of his retirement as the applicant retired only on 30.6.2010 and O.A. filed within three years. This exercise shall be completed and complied in full within three months from the date of communication of this order. No costs. "

8 The Appex Court in W.P.(S) No. 5331 of 2009 in Meghan Yadav Vs. Union of India & Ors. considering the case of the petitioner who had retired after putting in 9 years 3 months and 27 days, decreed :

"9. For the reasons aforesaid, this application is allowed and the impugned order passed by the Tribunal is set aside. The respondents are directed to treat the petitioner as having completed minimum qualifying service of 10 years and allow him pension as early as possible and preferably within a period of two months from the date of receipt of a copy of this order".

9 In the reply statement, the respondents have stated that the applicant was not granted pension as he did not possess the minimum qualifying service of 10 years stipulated in Rule 49(1) of CCS Pension Rules, 1972. He had only 9 years 8 months and 18 days of service after deducting 32 days of dies-non from the total service of 9 years 9 months and 20 days. They have submitted that Government



of India Decision No.2 below Rule 14 of CCS(Pension) Rules, 1972 provides for counting of half of the service paid from contingencies with regular service provided the service paid from contingencies should have been in a job involving whole time employment. They have denied any delay in appointing the applicant as Group D.

10 After having heard the counsel for both the parties and perusing the material on record, I am of the view that denial of pension to the applicant who has put in more than 19 years of service as an Extra Departmental Agent and thereafter as a Group -D for 9 years 9 months and 18 days needs to be reconsidered favourably. Therefore the O.A. is allowed. The respondents are directed to sanction pension to the applicant treating the applicant as having completed the minimum qualifying service of 10 years from the date of his retirement and the arrears released to him within a period of three months from the date of receipt of a copy of this order. No order as to costs.

(Dated, this the 7th August, 2014).



B.V.RAO
JUDICIAL MEMBER