

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO.609/2009.

Dated this the 13th Day of April, 2010

C O R A M

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

C.R. Minilal S/o A. Rajappan, GDSMC/MD,
Elampazhanoor BO
Chadayamangalam, Kottarakara
residing at Chkaruvila Veedu, Edakkarikkakom,
Madathara, Kollam District.

..Applicants

By Advocate Mr. Shafik M. Abdulkhadir

Vs

1 Union of India represented by the
Chief Postmaster General
Kerala Circle, Trivandrum

2 The Superintendent of Post Offices
Kollam Division, Kollam.

..Respondents

By Advocate Mr. Subash Syriac, ACGSC

The Application having been heard on 8.4.2010 the Tribunal
delivered the following:

O R D E R

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant who is working as GDS MD/MC, Elampazhanoor
Branch Office, is aggrieved by the rejection of his application for
recruitment to the cadre of Postman on the ground that he had not

21

completed 5 years of regular service and denial of bonus and increments.

2 According to the applicant, he joined the service of the Department as GDSMC/MD on a provisional basis through a properly conducted selection process against the put off vacancy of the regular incumbent (A-2). Though the regular incumbent was removed from service w.e.f. 3.2.2003, applicant's service was not regularised despite several representations. However, his service was regularised w.e.f. 14.3.2008 (A-3). He again submitted representation for regularisation from the date of removal of the regular incumbent. In fact, the issue of regularisation of service and grant of increments and productivity linked bonus has been considered by this Tribunal/High Court in a number of proceedings as early as in the year 2000 and it has been found that there is no reason to deny the increments and ex-gratia bonus for the provisionally selected officials. (A-6 and A-7). Hence he has filed this Application to quash A-1, for a declaration that he is entitled to be regularised in service w.e.f the initial entry, increments of Pay/TRCA w.e.f. 9.8.2001 onwards, to direct respondents to grant him annual increments. The main grounds urged by him in support of his case are that (i) having been appointed w.e.f. 10.8.2001, he has more than 5 years of service as on 1.1.2007, (ii) the denial of regularisation of his service against a vacancy caused by put off and subsequent removal of the regular incumbent w.e.f. 3.2.2003 is highly illegal and arbitrary, (iii) refusal to grant increments of Pay/TRCA from 2002 onwards is illegal in spite of catena of judgments, the matter has already been considered by this Tribunal as well as High Court of Kerala in a number of proceedings as early as in 2000, in O.A. 1197/2000, OA 424/2003 and O.A. 787/2006 etc., (iv) denial of increment and bonus to him is illegal,

TM

arbitrary and malafide exercise of power.,

3 The respondents filed reply statement opposing the Application. They submitted that the OA is barred by limitation as he was given regularisation w.e.f. 14.3.2008 whereas this O.A is filed only on 30.10.09. They admitted that the minimum eligibility condition prescribed under the 1994 amended rules was 5 years of satisfactory service according to which the applicant was eligible to appear in the said Postman Examination, but the respondents failed to incorporate the amendment in the notification due to an inadvertent omission. As regards regularisation, it is stated that as per the extant rules a provisional employee is eligible for regularisation only from the period when the disciplinary case against the incumbent is finally disposed of and all channels of departmental and judicial appeals and petitions exhausted. The regular incumbent filed O.A. 582/200 before this Tribunal and it was dismissed only on 13.3.2008, as such the applicant was regularised from the next day onwards. Regarding payment of productivity linked bonus and increments, they submitted that they are admissible to only regular GDS and not to those who are appointed on provisional basis. They produced the orders of the Tribunal in O.A. 698/2007 in support of their contention. They stated that the judgment of the High Court of Kerala in WP(C) No. 17727/2005 relied on by the applicant, was stayed by the Apex Court in Special Leave to Appeal (Civil) No. 26052/2005.

4 We have heard learned counsel appearing on both sides.

5 The learned counsel for the applicant in short argued that the regular incumbent having been dismissed from service w.e.f. 3.2.2003, the applicant was working as GDSMC/MD, Elaampazhanoor BO ;w.e.f. 9.8.2001 on provisional basis, he is entitled to be regularised w.e.f that

TM

date and in that case he is entitled to increment and bonus from. The date of regularisation. The counsel relied on the order of this Tribunal in O.A. 576/2007, WP(C)No. 17727 of 2004 in support of his argument.

6 The learned counsel for the respondents on the other hand argued that the removal of the regular incumbent was finally decided with the dismissal of O.A. 582/2006 by the Tribunal on 13.3.2008, therefore, the service of the applicant could be regularised w.e.f. 14.3.2008 only and that provisional GDSs are not entitled to increments and bonus. The counsel relied on the judgment of the Apex Court in Sreenivasa Reddi & Others Vs. Govt. Of A.P. and Others (GT 1994 (6461), Union of India & Others Vs. K.G. Balakrishna Panicker & Others (AIR 1998 SC 2073), State of M.P and another Vs. V. Dharam Dir(1998) 6 CC 165) and State of Orissa and another Vs. Dr. Piali Mohan Mishra (AIR 1995 SC 1974) in support of his argument.

7 The applicant has raised three issues in the O.A (i) eligibility of the applicant to appear in the Postman Examination held on 13.9.2009 (ii) regularisation w.e.f the date of initial appointment (iii) grant of increments and bonus. Let us examine each point.

8 The first issue relates to the eligibility of the applicant to appear in the Postman Examination held on 13.9.2009, the respondents have admitted that in view of the amended Recruitment Rules 1994, the applicant was eligible to appear in the examination and due to an inadvertent omission they failed to incorporate this amendment in the notification and consequently, the applicant was denied the opportunity. The second issue relates to regularisation of the applicant w.e.f the initial appointment on provisional basis. It is admitted that the applicant was appointed to the post of GDSMD/II-cum-Mail Carrier, Elampuzhnoor PO on 10.8.2001 on provisional basis, till the disciplinary

71

proceedings against the regular incumbent are finally over and he has exhausted all channels of departmental and judicial appeals and petition etc. and in case it is finally decided not to take the regular incumbent back into service or till regular appointment is made. Therefore, it is ample clear that the appointment of the applicant was purely on provisional basis. The case of the regular incumbent has ended with the order of this Tribunal in O.A. 576/2007. Therefore, we do not find any fault with the action of the respondents. As regards the third prayer for grant of increments, the respondents have produced Annexure R-4 Joint Programme of Action by the Postal Employees in Kerala Circle, reference from Secretary General, Bhartiya Postal Employees Union, the comments on item NO. 12 is extracted below:

"As regards demand for grant of Bonus and increments (called future annual entitlements) in TRCA to provisional GDS appointees, it is clarified that provisional appointment is resorted to when a GDS (a) retires (b) is put off duty or (c) when deputed to APS. Instructions already exist to curb the practice of making provisional appointments and to reduce the period of provisional appointments to the bare minimum. These need to be monitored and enforced more effectively. As far as provisional appointment against persons deputed to APS, the issue of allowing regular appointment against such posts to curb provisional appointment will be explored. It may also be mentioned that the issue of whether bonus should be paid to the provisional appointees, has been examined even earlier in consultation with Internal Finance and rejected. Hence the question of giving in to this demand does not arise. The bonus is however, being given to GDS who are working against departmental post and who provide substitute in their place. Thus the provisional appointees are not entitled to bonus.

In the case of increment to the provisional appointee the position is the same as in the case of bonus since the effort

11

should be to curb the practice of provisional appointments rather than provide them with increments that will further their continuance."

9 The question of grant of increments and payment of bonus has come up before this Tribunal in O.A. 698/2007 which was dismissed by the Tribunal by its order dated 20.10.2008. The Tribunal held as follows:

"....The services on; provisional basis and regular basis are entirely on different footings. The respondents have a clear policy regarding payment of Productivity Linked Bonus and increments in TRCA to the Gramin Dak Sevaks. According to the said policy Productivity Linked Bonus and increments in TRCA are admissible to only regular Gramin Dak Sevaks and not to those who are serving on provisional basis. It is on the basis of the aforesaid policy that the respondents have rejected the applicant's representation for grant of Productivity Linked Bonus and increments for the period of his provisional service commencing from 12.9.1999 i.e impugned Annexure A-5 letter dated 15.6.2007. They have paid him both the Productivity Linked Bonus and the;increments in TRCA after 19.5.2005, i.e the date from which he has been regularly appointed. We do not find the aforesaid action of the respondents arbitrary unjust and and illegal as alleged by the applicant. This OA is therefore devoid of any merits and the same is dismissed accordingly."

10 In another case in O.A. 576/2007 the applicant therein approached the Tribunal for annual increments in TRCA and ex gratia payment of bonus, the Tribunal in its order dated 3.7.2008 held as follows:

"7. In the above facts and circumstances of the case and in the light of the aforesaid judgment, we hold that the applicant herein is also entitled to the annual increments as well



as Productivity Linked Bonus. We therefore direct the respondents to grant the annual increments of TRCA to the applicant w.e.f. 1.10.2002 onwards in the scale of Rs. 1740-30-2640 upto 2006. The respondents also shall pay him the ex-gratia payment of Productivity Linked bonus from the accounting year 2001-2002 onwards till 2005-06 at the rate applicable in terms of the Annexure A-6, Annexure A-7, Annexure A-8, Annexure A-9 and Annexure A-10 of letters of the Government of India Department of Posts. The arrears arising out of the aforesaid directions shall be paid to the applicant within a period of two months from the date of receipt of a copy of this order. In case the respondents fail to pay the arrears within the aforesaid stipulated period, they will be liable to pay the interest of 9% from the date of this order till the payments are made. With the aforesaid direction the O.A is allowed."

11 Yet in another similar case in O.A. 146/2002, filed before the Tribunal the applicant therein sought regularisation of his service which was disallowed by the Tribunal upon which the applicant moved the High Court of Kerala through WP(C)No. 17727/2004. The High Court held as follows:

"17 In the said circumstances we direct that expeditious steps are to be taken so as to see that the benefit of the regularisation is granted to the petitioner, without delay. This regularisation should be deemed as to have become operative from 25.12.2000. It may not be possible for the petitioner however to claim seniority, as rights of others are involved. Therefore, for the purpose of seniority, date relevant will be the date of order of the regularisation and such proceedings are to be issued within two months from today.

18 As regards the claim for bonus sufficient materials have not been placed before this Court. Because of the direction for regularising him as above made, the petitioner will have the right to entitlements as might be admissible. It

dy

will be appropriate that such claims are dealt with expeditiously. The order of the Tribunal therefore will stand set aside. A Writ Petition is disposed of on the above terms."

It is brought to our notice that the Department has challenged the judgment of the High Court before the Apex Court through SLP (Civil) No. 26052/2005 and the direction regarding regularisation of the respondent stayed until further orders.

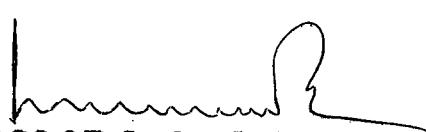
12 What emerges from the above judgments is that a provisional GDS is entitled to regularisation with effect from the date of his appointment on provisional basis, subject to the outcome of the SLP supra.

13 In this view of the matter, we allow the O.A, quash Annexure A-1, declare that the applicant is entitled to be regularised in service with effect from the date of removal of the regular incumbent i.e. w.e.f 3.2.2003, when the vacancy became clear with all consequential benefits such as annual increments and productivity linked bonus subject to the outcome of the SLP supra. Action on the above lines shall be completed and arrears paid to him within three months from the date of receipt of a copy of this order.

Dated 13th April, 2010


K. NOORJEHAN
ADMINISTRATIVE MEMBER

kmn


GEORGE PARACKEN
JUDICIAL MEMBER