

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.614 of 2013

.....Wednesday..... this the^{03rd} day of September 2014

C O R A M :

HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER

Vasanthakumar.A., S/o.M.Gopalan (late),
Multi Tasking Staff, Thalassery Head Post Office.
Residing at Achath House,
Palayad P.O., Thalassery – 670 661.

...Applicant

(By Advocate Mrs.R.Jagada Bai)

V e r s u s

1. Union of India represented by the Secretary,
Department of Posts, New Delhi – 110 001.
2. Chief Post Master General,
Kerala Circle, Trivandrum – 695 033.
3. The Post Master General, Northern Region,
Kerala Circle, Kozhikode – 673 011.
4. The Superintendent Post Offices,
Thalassery Division, Thalassery – 670 101.Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC)

This application having been heard on 12th August 2014 the Tribunal
on ^{03rd} September 2014 delivered the following :-

O R D E R

HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER

Applicant is aggrieved by the non-feasance of the respondents in not
admitting him to the GPF Scheme and also to the Pension Scheme under the
CCS (Pension) Rules, 1972. According to him, while he was working as
GDS Mail Carrier under the Thalassery Postal Division, he was appointed

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as Group 'D' with effect from 6.6.2008 against the vacancy earmarked for 2002. He approached this Tribunal vide O.A.No.524/2009 wherein this Tribunal declared that he is eligible for appointment as Group 'D' notionally with effect from the date of occurrence of the vacancy. Although the respondents have issued Annexure A-2 order giving effect to his appointment notionally from 1.3.2002, he was not allowed to be included in the Pension Scheme governed by CCS (Pension) Rules, 1972. He sent Annexure A-3 representation to 4th respondent. As no response was forthcoming from 4th respondent, he sent Annexure A-4 representation to 3rd respondent. Later, in response to Annexure A-4 representation, he was informed vide Annexure A-5 that he will be governed by the New Pension Scheme which came into force on 1.1.2004 and that as his date of joining service is only after 1.1.2004, the New Pension Scheme will be applicable to him. Aggrieved by this, he prays for the following reliefs :

1. Declare that the applicant be admitted to the General Provident Fund and Pension Scheme prevalent in the year 2002 within a time frame.
2. To direct the respondents to stop the recoveries towards contribution under the New Pension Scheme and refund the amount already recovered within a time frame.
3. Any such remedy deemed fit and proper as this Hon'ble Tribunal may be pleased to order.
4. Grant costs to the applicant for dragging him into an unnecessary litigation.

2. In the reply filed, respondents submit that the request of the applicant cannot be granted because while allowing O.A.No.542/2009 this Tribunal had not issued any direction that he should be governed by the old Pension

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Scheme ie. CCS (Pension) Rules, 1972. Since all Government servants who are appointed after 1.1.2004 are to be mandatorily included in the New Pension Scheme and since the applicant whose actual service commenced with effect from 6.6.2008 his case can be considered only under the New Pension Scheme.

3. A rejoinder was filed by the applicant disputing the contentions of respondents. An additional reply statement also was filed on 13.3.2014 wherein the respondents state that if the reliefs prayed for are granted, it would have all India ramifications incurring huge expenditure for the public exchequer. An additional rejoinder also was filed by the applicant to which a 3rd additional reply statement was filed by the respondents reiterating the contentions in the earlier replies and further stating that the applicant had not physically worked in the regular Group 'D' post prior to 1.1.2004.

4. Heard both sides. Smt.R.Jagada Bai, learned counsel for the applicant and Shri.Rajesh representing Shri.Sunil Jacob Jose, learned SCGSC argued the case. Learned counsel for the applicant referred to a decision of this Tribunal in O.A.No.980/2012. The short order passed by this Tribunal in O.A.No.980/2012 reads as follows :

“1. When the case was taken up for consideration today, the counsel for the parties agreed that this case is covered by an earlier order of this Tribunal dated 27th September 2012 in O.A 81/12. The following order was passed in that O.A.

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"5. In the light of the fact that the applicants have been appointed only in 2004 whereas the batch mates were given notional appointment from 2003 onwards, applicants need not be isolated for granting that benefit. Accordingly, we declare that the applicants will also be entitled to count their services from 2003 as in the case of their batch-mates so that they will also fall within the pension rules which was in force in 2003. They will also be entitled to fixation of pay. However, they will be paid their arrears and other benefits only for a period of three years prior to filing of this Original Application."

2. Counsel for the respondents submitted that same order would be extended to the present applicants as well. Accordingly, respondents are directed to afford the same benefits to the present applicants as made available to the applicants in O.A 81/12. Arrcars and other benefits are restricted to a period of three years as in other case. Accordingly, the Original Application is disposed of. No costs."

5. According to learned counsel, applicants in O.A.No.980/2012 were granted permission by the respondents vide Annexure A-7 to count their service from 20.3.2003 as in the case of their batch mates and also to treat them as falling within the Pension Rules which were in force in 2003. Learned counsel had also relied on a decision of the Hon'ble High Court of Kerala in *Senior Superintendent of Post Offices v. K.P.Krishnankutty Nair and another* in W.P.(C) No.31698/20016 (judgment dated 3.4.2007).

6. Learned counsel for the respondents submitted that the facts in O.A.No.980/2012 and the facts in this case are totally different and that in O.A.No.980/2012 the batch mates of the applicants were given appointment in 2003 itself. In the instant case, according to the learned counsel for the respondents, the actual appointment was only in 2006. Smt.R.Jagada Bai referred to yet another decision of this Tribunal in O.A.No.724/2012 (Annexure A-9). The applicants therein were declared as

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deemed to have been promoted from the date the vacancies arose and thus the notional date of promotion is only for the purpose of reckoning the qualifying service for pension under the CCS (Pension) Rules, 1972. Respondents disputed the applicability of the order in O.A.No.724/2012 in this case because in the said case Postmen were promoted as such in the examination held on 28.3.2004 for the vacancies belonging to the year 2002 whereas in the present case the applicant was selected on seniority basis amongst the GDS.

7. After hearing both sides, this Tribunal is of the view that as the applicant has been given a notional date of posting with effect from 1.3.2002, that benefit will have to be reflected in the consequential aspects of his service also. The order giving a notional date of appointment with effect from 1.3.2002 will be of no use unless the fruits of the same is available to him for other service matters like promotion, pension etc. Perhaps he may not be getting arrears of salary for the entire period dating back to 2002 on account of the apparent bar of limitation in the case of money matters and on account of the fact that he has not worked in the promoted post till the date of actual posting. But the notional posting date he has earned by virtue of Annexure A-1 cannot be disregarded for the purpose of pension because it was not on account of his fault that he was not promoted as Group 'D' till 6.6.2008. This *ratio* is discernible to have been employed in Annexure A-9 order of this Tribunal also.

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8. In the circumstance, following the *ratio* of Annexure A-6 and Annexure A-9 orders of this Tribunal, it has to be held that the applicant in the instant case is entitled to get the benefit of Annexure A-1 order for the purpose of determining his pensionary benefits also. Accordingly, it is hereby declared that the applicant is entitled to be included in the pre-2004 Pension Scheme ie. The pension scheme governed by the CCS (Pension) Rules, 1972. Ordered accordingly. There shall be no order as to costs.

(Dated this the 03rd day of September 2014)



U. SARATHCHANDRAN
JUDICIAL MEMBER

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