

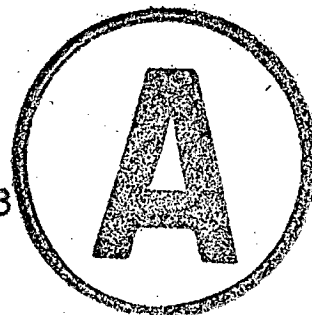
**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.105 of 2013

with

Original Application No.112 of 2013

Tuesday, this the 17th day of December, 2013



CORAM:

HON'BLE Mr. JUSTICE A.K. BASHEER, JUDICIAL MEMBER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. O.A. No.105 of 2013

1. N.R. Vijayakumar,
S/o. Ramakrishnan Nair,
Working as Postman, Kalaketty - 686 508.
Residing at Kizhakkal House, Vanchimala P.O.,
Kalakatty - 686 508.

2. Mohanlal A.G.,
S/o. Govindan Assari,
Retired Postman, Kanjirappally P.O.
Residing at Sreevilasam, Thampalakad P.O.,
Ponkunnam - 686 506.

...Applicants

(By Advocate Mr. P.C. Sebastian)

Versus

1. Union of India represented by Secretary to Govt. of India,
Ministry of Communications, Department of Posts,
New Delhi - 110 011.
2. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram - 695 033.
3. The Supdt. of Post Offices,
Changanassery Division,
Changanassery - 686 101.

...Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

2. O.A. No.112 of 2013

1. Abi P.S.,
S/o. Sukumaran,
Working as Postman, Kaloor P.O.
Residing at Perumanath House,
Thiruvaniyoor, Puthencruz - 682 308.



- 2
2. Chidambaran Nair,
S/o.Chandran,
Working as Postman, Ambalamedu P.O.
Residing at Renjith Nivas,
Pazhamthottam P.O.-683 565.
 3. K.Purushothamman,
S/o.Narayana Pillai,
Working as Postman, Maradu P.O.
Residing at Kattassery House,
Maradu P.O. - 682 304.
 4. K.C.Majid,
S/o.Chekkutty,
Working as Postman, Vyttila P.O.
Residing at Kottilamcheril House,
Panangad P.O. - 682 506.
 5. K.Rajendran,
S/o.Karunakaran,
Working as Postman, Thrikkakara P.O.
Residing at Ponnakkudath House,
Vadacode, Thrikkakara - 682 021.
 6. K.K.Sreedharan,
S/o.Kunjukunju,
Working as Postman,
Shanmughom Road P.O.
Residing at Kizhakkakara House,
Paingarappally, Mulanthuruthy - 682 314.
 7. E.D.Chandra Bose,
S/o.Damodara,
Working as Postman, Mattancherry.
Residing at Edakkatt House, Puthuvypin,
Ochanthuruth - 682 508.
 8. T.M.Varughese,
S/o.Kurian Mathai,
Working as Postman,
Speed Post Centre, Ernakulam.
Residing at Thekkeponnayil House,
Puthencruz - 682 308.
 9. M.S.Sindhu,
W/o.P.K.Sreekumar,
Working as Postman, Kochi H.O.
Residing at H.No.14/308, Odampallipuram,
Chullickal, Thoppumpady P.O. - 682 005.



10. M.K.Ponnappan,
S/o.Kumaran,
Working as Postman, Kadavanthara,
Residing at Mallappallil House, Panangad - 682 506.
11. V.A.Rajan,
S/o.Nannu Appu,
Working as Postal Assistant, Vyttila,
Residing at Vellappattil House,
Vadayampady, Puthencruz - 682 308.
12. A.R.Rajesh,
S/o.Raveendran,
Working as Postman, Kumbalangi,
Residing at Appathusseril House,
Andikkadavu, Kannamali.

Applicants

(By Advocate Mr. P.C. Sebastian)

Versus

1. Union of India represented by Secretary to Govt. of India,
Ministry of Communications, Department of Posts,
New Delhi - 110 001.
2. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram - 695 033.
3. The Senior Supdt. of Post Offices,
Ernakulam Division, Kochi - 682 011.

Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

These applications having been heard on 17th December, 2013, the Tribunal on the same day delivered the following:

ORDER**HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Having common facts and issues, these O.As were heard together and are disposed of by this common order.

The applicants while working as Gramin Dak Sevaks were declared as qualified for promotion against the unfilled vacancies in the departmental



examination quota held on 24.11.2012. While persons qualified in the merit quota and seniority quota were given appointment in the year 2003 itself and thereby came under the statutory pension scheme, i.e., CCS (Pension) Rules, 1972, the applicants were given appointment in January, 2004 only with the result that they came under the new Contributory Pension Scheme. Aggrieved, they have filed this O.A for the following reliefs

- (i) To declare that the applicants are entitled to be extended the benefit of Annexure A-4 order of this Tribunal and to direct the respondents to do so within a time frame as deemed fit and proper to this Hon'ble Tribunal;
- (ii) To direct the respondents to stop further recoveries from the applicant towards contribution under the new pension scheme and refund the amount already recovered in this regard;
- (iii) To grant such other relief which may be prayed for and which this Hon'ble Tribunal may deem fit and proper to grant in the facts and circumstances of the case.

2. The applicants contended that the action on the part of the third respondent in not granting their claim for getting the benefits as given to similarly placed persons as per Annexure A-4 order dated 07.07.2006 in O.A. No. 620/2003 is highly unjust and arbitrary. There is no question of prior approval of any higher authority for transferring the unfilled vacancies in the departmental quota to the merit quota of the Gramin Dak Sevak. The delay in the announcement of the result of the applicants is unjust and illegal. The promotion due to the applicants has been unjustly delayed with consequential loss and injury without any fault on their part. The applicants are similarly placed as the applicants in Annexure A-4 order of this Tribunal which has been followed in a number of cases and upheld by Hon'ble High Court of Kerala. When a citizen aggrieved by the action of the Government has



approached the Court and obtained a declaration of law in his favour, others situated in the same circumstances should be able to rely on the sense of responsibility of the Department concerned and to expect that they will be given the benefit of the said declaration without the need to take their grievances to the Court, as already held in *Amritlal vs. Collector of Central Excise, Revenue Department*, AIR SC 638. Further, in *Inder Pal Yadav vs. Union of India*, 1984 (2) SLR 248, the Hon'ble Supreme Court held that those who did not come to the Court need to be in a comparative disadvantageous position and that if they are otherwise similarly situated, they are entitled to similar treatment.

3. The respondents in their reply statement in O.A. No. 105/2013 submitted that the order of this Tribunal in O.A. No. 620/2003 has been implemented. The first applicant in O.A. No. 105/2013 has already been brought under the old pension scheme on the basis of his request before the second respondent vide order dated 04.05.2007 at Annexure R-1. The recovery of contribution towards the new pension scheme from him has been stopped. Appropriate order would be issued for refund of the amount recovered towards contribution to the new pension scheme as soon as the procedure for the same is completed. It was further submitted by the respondents that as regards the second applicant in O.A. No. 105/2013, his date of appointment can be revised to 21.03.2003 bringing him under the old pension scheme and the amount recovered under new pension scheme can be refunded to him. The direction given in O.A. No. 620/2003 cannot be taken literally so as to mean that they should be given appointment from the same date as given to the applicants in O.A. No. 620/2003 as the date of



appointment as Postman may not be identical in all the Postal Divisions across the Circle. The ratio decidendi in the said order of this Tribunal is that the applicants should be given appointment from the date from which the candidate under GDS merit quota joined the post. 21.12.2003. They are covered under the old pension scheme.

4. We have heard Mr. P.C. Sebastian, learned counsel for the applicants and Mr. Sunil Jacob Jose, learned SCGSC for the respondents and perused the records.

5. The respondents have shown their willingness to antedate the appointment of the applicants in such a way that they are covered under the old pension scheme i.e. CCS (Pension) Rules, 1972. They submitted that they should be given appointment from the date from which the candidate under GDS merit quota joins the post in the postal divisions of the applicants. This is in accordance with the ratio decidendi in the order pronounced by this Tribunal in O.A. No. 620/2003. The said O.A. was allowed as under :

"15. In the end, the O.A. Succeeds. It is declared that the applicants 2 to 6 are deemed to have been appointed as Postman w.e.f. 30.01.2003 and their pay be fixed notionally in the scale of Rs. 3050-4500 while actual pay would be from the date they have assumed their charges. Their seniority shall also be accordingly fixed (of course, junior to those already appointed against the merit quota). The consequential relief viz., fixation of pay at higher stage on the date they have assumed the charges, payment of arrears of pay and allowances arising therefrom and annual increments, entitlement to pension as per the rules prevalent as on 30.01.2003 would all accrue. Respondents shall accordingly pass suitable orders for fixation of pay and allowances and make available the arrears of pay and allowances to the applicants 2 to 6 within a period of four months from the date of communication of this order."



6. The respondents are directed to grant the same reliefs as above to the applicants in both the O.As. However, their appointment will be from the date from which the candidate under GDS merit quota joined the post in their divisions on the basis of the examination held on 24.11.2002. They will be covered under the old pension scheme and the GPF. The amounts already collected under the new pension scheme from the applicants should be refunded to them as early as possible. Their pay will be fixed notionally from the date of appointment as per this order while their actual pay will be from the date they assumed their charges. They will be entitled to fixation of pay at higher stage on the date they assumed their charges and all other consequential benefits. However, the payment of arrears of pay and allowances will be limited to three years prior to filing of the O.As by the applicants. Appropriate order in this regard should be issued within a period of three months from the date of receipt of a copy of this order.

7. The O.As are allowed in the above terms. No order as to costs.

(Dated, the 17th day of December, 2013)

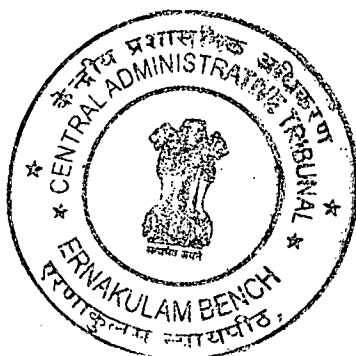
sd/-

K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER

sd/-

JUSTICE A.K. BASHEER
JUDICIAL MEMBER

CVT.



CERTIFIED TRUE COPY

Date 6/1/14

Section Officer (Judl)