

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 132 of 2007

Thursday, this the 26th day of June, 2008

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

P. Sugesh,
S/o. M. Chandrasekhara Menon (late),
Mailman, SRO RMS, Palakkad : 678 002,
Residing at Haritha, Neduvakkodu Kalom,
Kinassery P.O., Palakkad : 678 701 ... Applicant.

(By Advocate Mr. M.R. Hariraj)

v e r s u s

1. Superintendent,
RMS CT Division,
Calicut : 678 002
2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
3. Union of India, represented by
The Secretary to Government,
Department of Posts, New Delhi ... Respondents.

(By Advocate Mr. Varghese P. Thomas, ACGSC)

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The short question in this case is whether the applicant who has been serving the respondents from 16-01-1985 is entitled to be treated as a regular employee from the date he was conferred with ad hoc basis on 30-04-1991 to be treated as regular only from the date he has been conferred with regularization as on 12-04-2005.

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OA

2. The Facts capsule: The applicant was posted as Extra Departmental Mailman w.e.f. 16-01-1985 under the Superintendent, RMS CT Division Calicut. In early 1991, he joined the APS on deputation and he was prior to his deputation appointed on ad hoc basis as Group D in his parent department. The applicant had given a declaration, which reads as under: -

"DECLARATION"

I, No. 8373126, Y Rank R/SEP Name SUGHESH P. EDA on my free will agree to the following conditions in connection with my temporary appointment as Group 'D' for the purpose of deputation to APS : -

1. My appointment as Group D is purely technical to enable my deputation to the APS.
2. I will be entitled for appointment as a regular Group D only when my turn comes for the same as per seniority.
3. In case I seek repatriation from the APS, if at that time my turn has not come for appointment as Group D I will be taken back in the civil only as EDA and that for this also I will be prepared to wait till the next vacancy occurs. My appointment as EDA may not also be at the same place where I was working at the time of my deputation to the APS.
4. On repatriation my pay in the civil will be fixed with reference to the pay of my immediate junior in the civil at the lower stage.
5. I will not be eligible to appear in the examination for promotion as PAs/SAs till my junior in the civil Group 'D' becomes eligible for the same.
6. My service as Group 'D' for the purpose of TBOP will count only from the date my immediate junior is appointed as Group 'D'."

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3. During his services at APS, the applicant earned increment as also pay revision w.e.f. 01-01-1996. He was repatriated back to his parent department w.e.f. 01-01-2006 and the applicant was asked to report to SRO, Palakkad RMS for further duties, vide Annexure A-1 discharge cum move order No. 12/17/2005 dated 28-12-2005. In between, according to the applicant he became entitled to be promoted as Group D in his parent cadre, on which he continued to hold lien, as his juniors were promoted. Vide Annexure A-4 order dated 13-01-2006 the applicant was selected to be appointed as MM and allotted to SRO Palakkad and appointed as temporary Mailman in the scale of pay of Rs 2550-55-2660-60-3200. It was also stated in the said order that the appointment is purely temporary basis and will be terminated at any time with or without notice and assigning any reason thereof. The applicant by Annexure A-5 representation requested the SRM, RMS CT Division Calicut to count his service rendered in APS from 30-04-1991 to 12-04-2004 for all purposes such as increment, retirement benefits etc., In response to the said representation, vide Annexure A-6 impugned order, the applicant was informed 'as per the declaration given by the official at the time of his deputation to APS, he is eligible for promotion only when his turn comes or his junior becomes eligible for promotion. In this case, Shri Sugesh was promoted when his turn came and none of his juniors had become eligible for promotion previously. Hence, Sri P. Sugesh has no right to get his service rendered in APS counted as Group D in Civil.'

4. The applicant has come against the aforesaid Annexure A-6 order and has sought the following relief(s): -



- (a) For quashing of Annexure A-6 impugned order.
- (b) For a declaration that the applicant is entitled to have his pay drawn by him in the Army Postal Service protected on appointment as Group D in the RMS;
- (c) For a direction to the respondents to pay the arrears of pay and allowances due to the applicant with 18% interest.
- (d) To declare that the applicant is entitled to count the service rendered in Army Postal Service for pension under the CCS Pension Rules and to direct the respondents to consider the service as Group D with effect from 30-04-1991 as qualifying for pension under the CCS (Pension) Rules and not to make any reduction of pension contribution from the pay of the applicant.

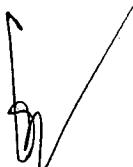
5. Respondents have contested the O.A. They have contended that the appointment of the applicant as Group D was purely on technical ground to enable his deputation to APS so as to overcome the shortage of manpower in Group D cadre in APS and under the condition that he would be entitled for appointment as a regular Group D only when his turn comes for the same as per seniority, that in case he seeks repatriation from the APS before his turn for appointment as Group D in Civil comes he will be taken back in civil only as EDMM and for that also he would be prepared to wait till next vacancy occurs and further that on repatriation his pay in the Civil would be refixed with reference to the pay of his immediate junior in the lower stage and that he would not be eligible to appear in the examination for promotion as PA/SA till his junior in the Civil Group D becomes eligible for the same and lastly his service as Group D for the purpose of TBOP will count only from the date of his immediate junior appointed as Group D. Declaration on the above lines was obtained, vide Annexure R-1 (extracted above). The respondents have admitted the fact that



the applicant was regularly appointed as Group D w.e.f. 12-04-2005 and by Annexure R-2 order his pay was fixed in the regular pay scale of Rs 2550 – 3200. The immediate senior of the applicant was regularly appointed in 2002 and immediate junior in November 2006.

6. The applicant had filed his rejoinder in which he had referred to the decision by the Apex Court in the case of Union of India vs Mathivanan (2-6) SCC L&S 1271 and Full Bench decision of the Tribunal which stipulates that when a temporary status, he will be entitled to pay protection. Other averments of the OA have all been reiterated.

7. Counsel for the applicant submitted that the applicant was appointed, albeit on ad hoc basis as Group D well before his joining the APS on deputation. His declaration is not a condition precedent to appointment in the APS, as could be seen from the very declaration, where the applicant had revealed his identity as a sepoy, which confirms that this was after his joining the APS. This declaration, if against statute, the same cannot be considered at all as no declaration against statute could have any legal validity. Again, as regards fixation of pay, the applicant's counsel submitted that the same should be in accordance with the provisions of Rule 22(1)(b)(i). Again, Rule 13 of the CCS Pension Rules would also apply to the case of the applicant. The counsel had also referred to the decision of the Apex Court in the case of Mathivanan (supra) to bring home the point that services rendered in APS would count as service for the purpose of TBOP.



8. Counsel for the respondents submitted that the applicant was sent on deputation on his volunteering for the same. At that time, he was granted ad hoc status to enable him to take over the post in APS. His case for regularization cannot take precedence over his juniors. As his immediate senior got regularization in 2002 and his junior in 2006, the applicant was given regularization in Group-D on 12-04-2005.

9. Arguments were heard and documents perused. The applicant was sent on deputation and for a limited purpose he was granted ad hoc group D appointment in his parent department. It is trite law that such an ad hoc status does not confer any vested right for regularization, especially when the ad hoc status given is not based on seniority. There were seniors to the applicants who were not conferred with any such ad hoc group D Posts. As a group D individual alone would be eligible for being sent on deputation to APS, on the application of the applicant to go on deputation to APS, in order to ensure that the applicant is not rejected, this ad hoc appointment of Group D was given. This is the admitted position.

10. Now, what is the nature of deputation. The Apex Court has in the case of ***Umapati Choudhary v. State of Bihar, (1999) 4 SCC 659***, has held as under:-

"8. Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organization (commonly referred to as the parent department or lending authority) to another department or cadre or organization



(commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not....."

11. The above features have been fulfilled by the applicant, his parent department and the borrowing department. The applicant had been earning the increments in the borrowing department. Then he was repatriated. On his repatriation, the aspects that are to be considered are (a) fixation of pay and (b) seniority in the parent department. As regards pay in the parent department on repatriation, the Apex Court has, in *R.L. Gupta v. Union of India, (1988) 2 SCC 250* held as under:-

"9. That rule referred to the right of the government servant who goes on deputation to earn increments in the pay scale applicable to the post on which he held a lien on his return to the parent department from the department to which he had been deputed. One of the questions which arose for consideration in that case also was whether the respondent who had gone on deputation was entitled to claim the promotion which he would have got in his parent department had he not been sent on deputation."

12. The Apex Court has answered to the above question by referring to an earlier decision, as under:-

10. The above decision was followed by this Court in the State of Mysore v. P. V. Nanjundiah. In that case this Court observed thus :

"So long as the service of the employee in the new department is satisfactory and he is obtaining the increments and promotions in that department, it stands to

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reason that the satisfactory service and the manner of its discharge in the post he actually fills, should be deemed to be rendered in the parent department also so as to entitle him to promotion which are open on seniority-cum-merit basis."

13. As regards seniority, the applicant retains the seniority in the parent department on his repatriation and in fact, if two individuals are posted on deputation, followed by absorption in the borrowed organization, they carry with them the very same seniority, unless otherwise is provided for in the rules, as held by the Apex Court in the case of *Attar Singh Kaushik v. Secy./Commr., Transport Deptt.*, (2008) 1 SCC 400, as under:-

"It is axiomatic that those who were senior in the parent department in the equivalent post should continue to be senior in the deputed post unless there exists a statutory rule to the contrary."

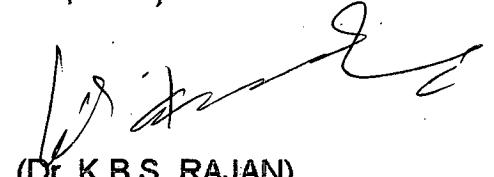
14. The above would go to show that all the benefit that the applicant could get on his volunteering for deputation is the higher pay scale and status in the borrowed organization and nothing else. As far as his position in the parent department is considered, he remains junior to his seniors at the time of going on deputation and likewise remains senior to his junior to him as at the time of his going on deputation. Of course, the pay fixation would take into account the years of service rendered in deputation, as held in the case of Nanjundiah referred to in the case of R.L. Gupta (supra). The above decision is also not in any way deviating the spirit behind the provisions of Rule 22(1)(b)(i) of the F.R.



15. In view of the above, the applicant is not entitled to the relief claimed.

Hence, the OA is dismissed. No costs.

(Dated, the 26th June, 2008)



(Dr. K B S RAJAN)
JUDICIAL MEMBER

CVR.