

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 158 of 2013

TUESDAY, this the 09th day of December, 2014

CORAM:

Hon'ble Mr. U. Sarathchandran, Judicial Member
Hon'ble Mr. P.K. Pradhan, Administrative Member

M.P. Dinesh, aged 50,
 S/o. M.P. Kunhiraman, Mail Guard,
 SRO Kannur, Railway Mail Service
 'CT' Division, Kannur, Residing at
 'Swapnasree', Near Maichankunnu Road,
 Valapatanam PO, Kannur – 670 010. **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. The Chief Postmaster General,
 Kerala Circle, Thiruvananthapuram – 695 033.
3. The Post Master General,
 Northern Region, Kerala Circle,
 Kozhikode – 673 011.
4. The Superintendent Railway Mail Service,
 CT Division, Kozhikode – 673 032. **Respondents**

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

This application having been heard on 10.11.2014, the Tribunal on

09.12.2014 delivered the following:

OR D E R

By Hon'ble Mr. U. Sarathchandran, Judicial Member-

Applicant was an Extra Departmental Mail Man (EDMM) in the Sub Record Office, Kannur Railway Mail Service. He was promoted to the cadre



of Group-D on temporary basis with effect from 28.2.1991 and was deputed to Army Postal Service (in short APS). He was on deputation to APS up to 31.12.2006 and was discharged to take civil employment as Mail Guard in Railway Mail Service "CT" Division as per Annexure A1 discharge-cum-move order dated 28.12.2006 issued by the Commandant, APS. While the applicant was on deputation in APS he appeared for the examination held on 24.5.2005 for promotion to the cadre of Mail Guard against the vacancies earmarked for Railway Mail Service "CT" Division and came out successful. Annexure A2 is the appointment as Mail Guard, Railway Mail Service, CT Division with effect from 1.12.2005. On 9.1.2007 he was deputed for training vide Annexure A3. Thereafter he joined duty as Mail Guard with effect from 13.1.2007 forenoon. He applied for payment of severance allowance. But his claim was rejected by respondent No. 4 vide Annexure A4. He was inducted in the new pension scheme which came into effect from 1.1.2004 instead of CCS (Pension) Rules, 1972. His claim for inclusion in the pension scheme under CCS (Pension) Rules, 1972 taking into consideration of his services in the APS was rejected vide Annexure A5. He submitted Annexure A6 representation and two other representations to respondent No. 3 and also to respondent No. 2. Applicant states that as per Annexure A7 communication from the Director of Postal Services, the service rendered by the Deputationist in APS as Group-D will be counted for all purpose as a regular service except for claiming seniority. Therefore, he prays for the following reliefs:-

- "(1) Call for the records relating to the case.
- (2) Declare that the Group D service rendered by the Applicant in the Army Postal Service should count towards his pensionable service.

(3) Declare that the Applicant be admitted to the General Provident Fund and in the pension scheme under CCS (Pension) Rules, 1972 reckoning his Group D service rendered by him in Army Postal Service.

(4) To direct the respondents to stop the recoveries towards contribution under the new pension scheme and refund the amount already recovered.

(5) Any such remedy deemed fit and proper as this Hon'ble Tribunal may be pleased to order."

2. Respondents resisted the OA by stating that his deputation to APS as Group-D was purely on temporary basis and was for the purpose of providing manpower to the APS units. His technical appointment was subject to the condition that in the event of repatriation to civil before his due turn of promotion in civil he is liable to be appointed as GDS only. His date of entry in the Department was rightly taken as 1.12.2005, even though he continued in the APS till 31.12.2006. Since he joined service in the civil as Mail Guard after the introduction of the new pension scheme he is not eligible to be appointed under the CCS (Pension) Rules, 1972. As per Annexure A7 the service of 847 GDS who were on deputation to APS as Group-D were regularized in order to enable them to get benefits such as pension, TBOP, etc. As on the date of Annexure A7 order i.e. 13.6.2007 the applicant was not serving in APS and therefore, the same is not applicable to him. He was not appointed as a Group-D before his appointment in APS. In the circumstances the respondents pray for rejecting the claim of the applicant.

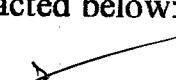
3. A rejoinder was filed by the applicant refuting the contentions made by the respondents and relying on the decision of the Apex Court in *Union of India v. M. Mathivanan* [decided on 9.6.2006 in Appeal (Civil) No. 5739 of 2005] wherein the Apex Court took into account the service rendered by the

applicant therein for the time bound one promotion, treating the same service as pensionable service.

4. An additional reply statement was filed by respondents stating that **Mathivanan**'s case has to be distinguished from the facts of the present case because **Mathivanan** was initially recruited from the open market as Postal Assistant in civil and he volunteered to work in APS. Respondents reiterated their contentions already made in the reply statement.

5. Heard both sides. Mrs. R. Jagada Bai, learned counsel for the applicant and Ms. Chandini, learned proxy counsel representing Mr. Varghese P. Thomas, learned ACGSC for respondents appeared before us.

6. At the outset of her arguments Smt. Jagada Bai, learned counsel for the applicant, submitted that the facts, circumstances and documents relied on by the applicant are squarely covered by those in OA No. 1067 of 2012 of this Bench in which an order was passed by this Tribunal holding that the applicants therein are entitled to be treated as on regular service from the time they got themselves enrolled in the services of APS and that the same would be tagged to the regular service for the Postman cadre in which they joined after discharge from APS. It was also held in that case that since the regular service of the applicants in APS commenced prior to 1.1.2004 it was declared that the applicants are governed by CCS (Pension) Rules, 1972. The relevant portion of the said order is extracted below:-



“9. The core issue in this case is whether the service put in by the applicants in the Army Postal Service from 15.10.1997 and 5.4.1999 to 1.6.2005 and 6.2.2005 respectively can be counted for considering them for inclusion under the CCS (Pension) Rules, 1972 ?

10. In order to substantiate their contention that their service rendered in Army Postal Service will be counted as regular service in the civil side, applicants rely on Annexure A11- a copy of the letter No. 47-1/2003-SPB-I, dated 13.6.2007 with an endorsement dated 13.10.2008 by the Superintendent of Post Offices, Kannur Division. Annexure A11, issued by the Director, Postal Department, reads:

“Sub: Service and pensionary benefits to GDSs on deputation to APS as Group 'D'.

Sir,

I am directed to refer to your letter No. 90413/APS 1C/R-341(b)(Pt) dtd 09.05.2007 on the subject mentioned above and to state that it has been decided by the Department that the 847 GDSs, presently, on deputation to APS may be regularized from the date of entry in APS/from the date the GDSs have been conferred technical promotion as Group 'D'.

2. In addition, these 847 GDSs, who have been deputed to APS may be offered an option to return to civil side and accept GDS posts. Those who are prepared to revert should be reverted immediately.

3. GDS officials who are now proposed to be regularized as group 'D' from the date of their entry in APS/technical promotion given earlier will not be reverted to civil till they are discharged from APS on the date of retirement as applicable in APS. However, AP Dte. will make efforts to retain officials in APS itself till the civil date of superannuation. In case of reversion from APS to Civil side after attaining the retirement age in APS or thereafter, these officials will be deployed to the extent Group 'D' vacancies are available in Civil. In case there are no Civil Group 'D' posts available to accommodate these personnel, then there will be no option but to proceed on retirement direct from APS. An undertaking to this effect should be obtained.

4. In case the GDSs who are now proposed to be regularized as Group 'D' are reverted to Civil from some reason or other, such personnel will rank junior most in seniority in Civil Gradation list. The date of assumption of charge in a Civil post will be deemed to be the date of entry in the grade in the Civil gradation list for the purpose of seniority. However, the service rendered in APS as Group 'D' will for all purpose be counted as a regular service except in claiming seniority in the civil side. An undertaking to this effect should be obtained.

5. All the consequential benefits including TBOP/BCR will accrue since the date of regularization of these personnel in APS. Statutory deductions such as GPF etc., will have to be made in accordance with the rules on the subject.

Sd/-
(V.C. Kajla)
Director (SPN)
(emphasis supplied)



11. Respondents contend that applicants can be treated only as GDS prior to their being deputed to Army Postal Service and they can be treated as having regular service only if they had continued in that service till their retirement. According to respondents applicants voluntarily got discharged from Army Postal Service and hence cannot be treated as having completed the regular service in Army Postal Service. According to learned counsel for the respondents on their discharge from Army Postal Service they can be treated only as having come back to their old position i.e. GDS which is not a civil post and hence their service in the GDS cannot be counted as a regular post. We are unable to accept this submission of the learned counsel for the respondents in view of the categoric finding of the Hon'ble Apex Court in *P.K. Rajamma's* case (*supra*) wherein it was held that EDAs are holders of civil post under the Government. Reference made by learned counsel for the respondents to *Girish Jayantilal Vaghela's* case does not appear to be pertinent to this case because in that case the process of recruitment in accordance with relevant service rules was not followed and the other incidents of service also were absent.

12. A perusal of Annexures A5 & A6 discharge-cum-movement order issued by the Army Postal Service to the applicants shows that on joining the Army Postal Service applicants were treated as regular Sepoys with definite Army numbers. Nothing is discernible from Annexures A5 & A6 that their service has not been regular in the Army Postal Service as contended by respondents. Annexures A5 & A6 documents *prima facie* give an impression that the applicants had been treated as regular Sepoys of Army Postal Service and that they have been issued discharge for the reason "unwilling to undergo PRC course". It is further seen from Annexures A5 & A6 that the discharge order directs the applicants to report to the SPM, Edat SO in the case of applicant No. 1 and to the Depot Coy APS Centre for discharge in the case of Applicant No. 2.

13. In the light of the above records and the manner in which the applicants were posted in the Army Postal service it is clear that their service in the Army Postal Service was a regular service and that they were discharged on account of their unwillingness to appear in the PRC course. Their discharge certificates do not show any element of punitive or stigmatic nature and hence there is nothing to presume that their services in the Army Postal Service was not regular. Therefore, it is difficult to accept the argument of learned counsel for the respondents that unless the applicants continued in the Army Postal Service till their age of superannuation they could not be treated as on regular service.

14. The next contention of the learned counsel for the respondents was about the delay occurred in filing this OA. MA No. 1159 of 2012 for condonation of delay was already allowed. While doing so this Tribunal took note of Hon'ble Apex Court's decision in *Tarsem Singh* (*supra*) wherein the Apex Court held that:

"5.
if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties."

15. Having found above that the service of the applicants in the Army Postal Service was regular service, this Tribunal holds that in the light of the order quoted portion of Annexure A11 communication issued by the

S

Postal Directorate the service rendered by applicants in Army Postal Service has to be counted as regular service for all purposes except for claiming seniority in the civil side.

16. In *Dwijen Chandra Sarkar v. Union of India*, [1999 (2) SCC 119] the Apex Court held:

"The words "except seniority" in the transfer order mean that such a benefit of a higher grade given to the transferees will in no way affect the seniority of employees in the P&T Department when the turn of the P&T employees comes up for promotion to a higher category or post. The said words "except seniority" are intended to see that the said persons who have come from another Department on transfer do not upset the seniority in the transferee Department. Granting them higher grade under the Scheme for Time-bound Promotion does not, therefore, offend the condition imposed in the transfer order."

In that case the Apex Court held that the appellants will be entitled to the higher grade from the date they completed 16 years of service and computing the same by taking into account their past service in Rehabilitation Department also along with their service in the P&T Department. An identical situation is perceivable in Annexure A11 communication also which confers a right to the applicants to reckon their service rendered in the Army Postal Service to be tagged with the service in the Civil Postal Department to be counted as a regular service rendered by them except for claiming seniority. This view was upheld in *M. Mathivanan's case (supra)* also.

17. In the light of the above discussion, applicants are entitled to be treated as on regular service from the time they got themselves entered into the service of Army Postal Service and the same would be tagged to a regular service in the Postman cadre in which they joined after discharge from Army Postal Service. Since their regular service in the Army Postal Service commenced prior to 1.1.2004 it is declared that the applicants are governed by the CCS (Pension) Rules, 1972. Therefore, we direct the respondents to stop recovery of contributions to the new Pension Scheme which has commenced from 1.1.2004 and to refund the amounts so far collected from the applicants with interest at 6% from the date of recovery each month till the date of refund."

7. We are satisfied that the facts and circumstances in the case on hand are identical to those in the case wherein the afore-quoted order was passed by this Tribunal and hence we hold that the decision in that case is squarely applicable to the applicant herein also.

8. Accordingly, the OA is allowed, directing the respondents to treat the applicant as on regular service from the time he entered into the service of

✓

APS and the same would be tagged to regular service in the Group-D in which he joined after discharge from APS.

9. Therefore, it is hereby declared that since the regular service in the APS commenced prior to 1.1.2004, applicant is governed by CCS (Pension) Rules, 1972. Respondents are directed to stop recovery of contributions to the new pension scheme and to refund the amount so far collected from the applicant with interest at 6% from the date of recovery in each month till the date of refund. Ordered accordingly. No order as to costs.


(P.K. PRADHAN)
ADMINISTRATIVE MEMBER


(U. SARATHCHANDRAN)
JUDICIAL MEMBER

“SA”