

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 187 of 2013

Tuesday, this the 24th day of September, 2013

CORAM:

Hon'ble Dr. K.B.S. Rajan, Judicial Member

M. Jamal Muhammed,
Aged 60 years, S/o. Meenan,
Retired Postman, Anchal P.O.,
Residing at J.B. Manzil,
Barathipuram P.O., Eroor,
Pathanamthitta-691 312.

Applicant

(By Advocate – Mr. P.C. Sebastian)

V e r s u s

1. The 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 Sr. Supdt. of Post Offices,
Pathanamthitta Division – 689 645.

Respondents

(By Advocate – Mr. A.D. Raveendraprasad, ACGSC)

This application having been heard on 24.09.2013, the Tribunal on the same day delivered the following:

OR D E R

The case of the applicant is as under:-

- a) The applicant was serving as GDS under the respondents since 1981.

[Signature]

b) When vacancies for the year 2002 for the post of Postman arose, the examination was scheduled initially on 29.9.2002 but postponed to 24.11.2002.

c) The applicant came victorious in the examination and was imparted training from 3.3.2003 and he actually joined the post of Postman on 14.3.2003.

d) He has superannuated on 30.6.2012.

e) Under the extant rules the minimum qualifying service for earning pension is 10 years which in the case of the applicant is not fulfilled.

Excluding the training period the applicant has completed only 9 years, 3 months and 16 days. If the training period (which is said to have not been included in general) is also reckoned then also the applicant would have only completed only 9 years, 3 months and 27 days.

f) According to the applicant, if the applicant is given notional service from the date of occurrence of vacancy against which he was appointed, he would be fulfilling 10 years service.

g) Since the respondents have not sanctioned any pension, the applicant moved an application vide Annexure A8 dated 10.11.2012 addressed to the Secretary, Ministry of Communications, Department of Posts. As there has been no response, this OA has been filed seeking the following reliefs:-

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"i) To declare that applicant was entitled to notional service as postman with effect from the actual date of occurrence of vacancy against which he has been promoted as postman, for the purpose of pensionary benefits.

ii) To direct the respondents to grant minimum pension to the applicant giving him notional promotion as postman from the date of occurrence of the vacancy against which he has been promoted with consequential monitory benefits.

iii) In the alternative direct the 1st respondent to consider applicant's case for relaxation as per Annexure A-8 under the relaxation clause of the CCS (Pension) rules, 1972, sympathetically.

iv) To grant such other relief as deemed fit and proper to this Hon'ble Tribunal to grant in the facts and circumstances of the case.

v) To award costs for this proceedings in favour of the applicant."

2. Respondents have contested the OA. They have raised the preliminary issue of limitation and to substantiate their contentions they rely upon two orders of this Tribunal vide Annexures R1 and R2.

3. Counsel for the applicant submits that though ten years qualifying service is required, even the period of 9 years and 9 months could be rounded to ten years and as such in his case the deficiency in the qualifying service is less than six months. The vacancies of 2002 ought to have occurred much prior to the initial date of the examination i.e. 29.9.2002 and as such if the period is reckoned from the date of occurrence of vacancy, he fulfilled the minimum 9 years and 9 months period. As the delay is attributable to the respondents, he should not be stopped to the huge recurring loss of pension for all time to come.

4. Counsel for the respondents on the other hand submits that the cause

of action having arisen as early as in 2003, the application is barred by limitation. He has also submitted that the Tribunal may not have any power to relax minimum qualifying service which is vested with the Secretary, Department of Posts (in consultation with UPSC) vide Rule 88 of the CCS (Pension) Rules.

5. Arguments were heard and documents perused.

6. It is not exactly known as to when vacancy arose in 2002. The examination is scheduled in September, 2002 and all the vacancies of 2002 arose prior to initial date of examination, perhaps there could be a possibility of the applicant becoming eligible with notional service for pension. In any event at this distance of time it may not be possible to work out the same. Earlier, vide order dated 10th August, 2012 almost an identical case was considered by the Tribunal in OA No. 26 of 2011 and following order was passed:-

“8. Arguments were heard and documents perused. For filling up of the vacancies in Group D posts the essential requirements are (a) availability of posts and (b) availability of eligible candidates for appointment. In the instant case the eligibility of the applicant to be appointed as Group D has not been refuted by the Department. The availability of vacancies has also not been rebutted by the Department. Only the constraint due to which the vacancies of 1999 could not be filled up has been explained by the respondents. Had there been no vacancies at all and thus there could not have been the possibility of the applicant's being appointed earlier than his actual date of appointment, the applicant would have no case at all. Instead, if there could have been a possibility of the applicant's appointment as Group D earlier than his actual date of appointment and if the applicant could not be blamed for his not being appointed as such, the case deserves consideration for relaxation under the provisions of Rule 88 of the CCS (Pension) Rules, 1972, more so when the deficiency to make the minimum qualifying period is marginal.

9. Provision, as extracted below does exist for such relaxation in

consultation with the Department of Personnel, vide Rule 88 of the CCS (Pension) Rules.

"88. Power to relax:

Where any Ministry or Department of the Government is satisfied that the operation of any of these rules, causes undue hardship in any particular case, the Ministry or Departments, as the case may be, may, by order for the reasons to be recorded in writing dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner.

Provided that no such order shall be made except with the concurrence of the Department of Personnel and Administrative Reforms."

10. Thus, if at all there could be a possibility for the applicant to earn pension, the same cannot but be with the invoking of the above provisions, for which it is the Government which is the authority. The Tribunal of its own, cannot relax the provisions of the Rules by any judicial order even where full justification exists.

11. In view of the above, this OA is disposed of with a direction to the first respondent to prepare a statement of case, in the light of the discussions as above, and refer the matter to the Department of Personnel for their concurrence and act on the basis of their advice. As this is a case of the senior citizen, priority shall be accorded to the case by the respondents and the DOPT, which is not a party before this Tribunal in this case, shall be impressed upon by the respondents as to the need to accord priority to this case. The decision of the Ministry may be communicated to the applicant preferably within a period of five months from the date of communication of this order. Under the above circumstances, there shall be no order as to costs."

7. As this case is identical to the above case it is appropriate that the identical order is passed in this case as well. Accordingly, this OA is disposed of with direction to the 2nd respondent to prepare a statement of case and refer the matter to the 1st respondent who would refer the matter to the Department of Personnel for their concurrence and act on the basis of their advice. As this is a case of senior citizen, priority shall be accorded to

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the case by the respondents and the DOP&T, which is not a party before this Tribunal in this case shall be impressed upon by the respondents as to the need to accord priority to this case. The decision of the Ministry may be communicated to the applicant preferably within a period of five months.

No order as to costs.



(DR. K.B.S. RAJAN)
JUDICIAL MEMBER

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