

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.189/11

Tuesday, this the 28th day of June 2011

C O R A M :

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

N.Chandran Asari,
Group D (Retired), Kowdiar,
Department of Posts.
Residing at Ram Nivas,
Eliparakonam, Kulappada P.O.,
Aryanad – 695 542.

...Applicant

(By Advocate Mr.Vishnu S Chempazhanthiyil)

V e r s u s

1. The Superintendent of Post Offices,
Thiruvananthapuram South Division,
Thiruvananthapuram – 695 001.
2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram – 695 001.
3. Union of India represented by its Secretary
and Director General, Department of Posts,
Ministry of Communications, New Delhi – 110 001. ...Respondents

(By Advocate Mrs.Deepthi Mary Varghese,ACGSC)

This application having been heard on 3.6.2011 the Tribunal on
~~28.06.2011~~ delivered the following :-

ORDER

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

The applicant after rendering 19 years of service as ED Agent entered into the service as Group 'D' and superannuated on 31.3.2003 after rendering 9 years 9 months and 20 days of service as Group 'D'. He fell short of 2 months and 10 days to complete 10 years of service. If this deficient period is added to 32 days of service treated as non qualifying

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service, the service rendered by the applicant works out to 9 years 8 months and 18 days of service. Since this period is less than the minimum requirement of 10 years completed service, he has not been paid any pension.

2. The applicant has approached this Tribunal for a direction to the respondents to consider his case for payment of pension, if need be by invoking the provisions of Rule 88 of the CCS (Pension) Rules 1972.

3. An identical issue was dealt with by this Tribunal in respect of one Mr.M.P.Ramachandran Nair in O.A.35/11. This case was decided on 30.5.2011 after referring to a decision by the Bangalore Bench in O.A.245/10. The order in O.A.35/11 inter-alia reads as under :-

"6. Arguments were heard and documents perused. It is true that the High Court of Madras in Writ petition No.45465/2002 while upholding the decision of the order in O.A No.1264/01, confined the relief only to the applicant therein. In fact, when the matter was taken up in the Apex Court, the Apex Court also while dismissing the petition filed by the respondents herein held that the question of law is left open to be decided by the appropriate court. Thus the decision of Madras Bench can not be taken as final. However, the Bangalore Bench of the Tribunal in a recent case vide order dated 23.03.2011 in O.A 245 of 2010 has held as under :-

"6. The Madras Bench of the Tribunal in its decision in O.A No. 1264/2001 dated 18.04.2002 dealt with a case which is also exactly similar to the facts on hand. The Madras Bench considered the schemes formulated by the Department of P & T and Railways and after observing that even employees who had been dismissed or removed from service are eligible to get 'compassionate allowance' not exceeding 1/3rd of pension as per Rule 41(1) of the CCS (Pension) Rules, which is subject to the order of the competent authority, to overcome similar situations in order to help the persons who rendered long service in the department and to enable them to get the minimum pension, allowed the said O.A., directing the 1st Respondent therein to consider the case of the applicant in a proper perspective and formulate a Scheme as has been formulated by the DOPT in the scheme issued in the Office Memorandum dated 12.04.1991 as also in the Railways by giving weight-age for certain percentage of service rendered as ED Agent



for reckoning the same as qualifying service for purposes of pension in respect of persons who get absorbed or promoted against regular Group-D posts in the department which would enable such employees to get the minimum pension and further directed to complete the said exercise within 4 months from the date of receipt of the said order. The 1st Respondent in the said O.A is also the 1st Respondent in this O.A. The applicant therein and the applicant herein are similarly situated who originally worked in GDS cadre and later promoted to Group-D cadre and governed by CCS (Pension) Rules, 1972 only. After the Hon'ble Supreme Court dismissed the SLP filed against the decision of the Madras Bench of the Tribunal, the respondents have sanctioned the minimum pension to the applicant therein by making up the short fall in service to the extent of the short fall by taking into account the ED period of employment. However, even from the reply filed by the respondents in this O.A. during August, 2010, it is not forthcoming whether the respondents have formulated any scheme or not in pursuance of the decision of the Madras Bench of the Tribunal so far.


7. For the foregoing reasons, the O.A is allowed. Annexure A-13 is quashed and the respondents are directed to consider the case of the applicant by sanctioning the minimum pension by making up the short fall in service to the extent of shortfall by taking into account the ED period of employment of the applicant, within 90 days from the date of receipt of this order. "

7. The decision by the Bangalore Bench is respectfully endorsed. Here is a case where the applicant having put in as many as 23 years of service as GDS followed by nearly a decade as a government servant, is not in a position to enjoy the minimum pension of his regular service as a Government employee, on the ground that he has fallen short of minimum qualifying service by a few days. The provisions of rule 88 read as under:-

"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 Department, as the case may be, may, by order for 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. "

8. The above has to be considered with a liberal interpretation and in that case, the case of the applicant would also fall within the spirit of the provisions of Rule 88. As judicious decision by the Director General, Posts is warranted in this case and as the



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representation of the applicant is still pending, interest of justice would be met, if the O.A is disposed of with a direction to the Director General Posts to consider the case of the applicant as has been done in the case of the applicant in 1264/01 (Vide Annexure A-5 read with Annexure A-7) and decision communicated to the applicant within a period of 3 months from the date of receipt of this order.

9 Needless to mention that if the Director General decides to waive the shortage of period of service and allows the pension to the applicant, the same shall be effected w.e.f the date such a decision is taken and not from retrospective effect as the right to draw the pension by the applicant cannot arise prior to use of discretion by the Director General. No Costs."

4. As the instant case is also analogous to the case in O.A.35/11, the above decision of this Tribunal can be pressed into service in this case as well.

5. Accordingly, this O.A is disposed of with a direction to the Director General Posts to consider the case of the applicant as has been done in the case of the applicant in O.A.1264/01 and the decision communicated to the applicant within a period of three months from the date of receipt of a copy of this order.

6. Needless to mention that if the Director General Posts decides to waive the shortage of period of service and allows the pension to the applicant, the same shall be effected with effect from the date such a decision is taken and not from retrospective effect as the right to draw the pension by the applicant cannot arise prior to use of discretion by the Director General. No costs.

(Dated this the 28th day of June 2011)



Dr.K.B.S.RAJAN
JUDICIAL MEMBER