

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No.199/2012

Monday....., this the 18th day of March, 2013.

CORAM

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

P.K.Mohanam, age 62
Group-D, Panamaram (Retired)
Residing at 'Mohanam'
Peruvaka, Aratupara PO
Mananthavady-670 645.

Applicant

[By advocate: Ms.R.Jagada Bai]

Versus

1. Union of India represented by the Secretary to Department of Posts
New Delhi-110001.
2. The Director General (Posts)
Dak Bhavan
New Delhi-110001.
3. The Chief Post Master General
Kerala Circle,
Thiruvananthapuram-695033
4. Postmaster General, Kerala Circle
Northern Region, Kozhikode-673 011.
5. Superintendent of Post Offices
Thalassery Division
Thalassery-670 102.

Respondents

[By advocate: Mr.Pradeep Krishna]

This Original Application having been heard on 12th March, 2013,
this Tribunal on 18th day delivered the following:

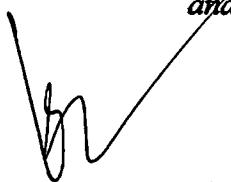
ORDERHON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant earlier approached this Tribunal through OA No.889 of 2010, wherein the following order was passed:-

"4. As per Rules, the applicant is falling short of the requisite period of service by about an year. He is not eligible for minimum pension as he has not completed 10 years of service in Group-D. He joined duty as Group 'D' on 19.10.2000 He was promoted against vacancies of 1999. He retired on 31.10.2009. If his pensionable service is counted from 1999 or a part of his E.D. Service as per the order of C.A.T., Madras Bench, is reckoned as pensionable service, he could be eligible to get minimum pension. Whether the relief can be given to the applicant by sanctioning at least the minimum pension by making up the shortfall in service from the EDA period of employment is to be decided by the executive. The Apex Court dismissed the S.L.P. filed by the respondents in the cited case on 17.10.2008 leaving the question of law, left open to be decided by appropriate Court in appropriate case. Legally the applicant is not entitled for minimum pension, but the Department of Posts can consider his case sympathetically to grant minimum pension by relaxing the requirement under Rule 88 of CCS (Pension) Rules, 1972. Filing of this O.A. shall not stand in the way of the Department in considering his case for minimum pension under the aforesaid Rule as and when the applicant makes a representation for the same."

2. In pursuance of the aforesaid order, the applicant has moved an application vide Annexure A-11 to the Director General (Posts) requesting for minimum pension stating that had the applicant been given the appointment in 1999 itself, he would have fulfilled the minimum 10 years service. This was, however, rejected by the respondents vide Annexure A-12. The applicant has challenged the aforesaid A-12 order on various grounds and sought for the following reliefs:-

- i) Call for the records of vacancy position of Group-D in Thalassery Postal Division for the period from 1996 to 1999.
- ii) Quash Annexure A-12.
- iii) Order the respondents to grant notional promotion to the applicant to the cadre of Group-D with effect from 01.01.1997 or from the date of next available vacancy falling due during the period 1996-1999 and count the said period as pensionable service rendered by him.



- iv) *Any such remedy deemed fit and proper as this Hon'ble Tribunal may order.*
- v) *Grant costs to the applicant.*

3. The respondents have contested the OA. They have stated that as early as in 1995, when the applicant was offered the post of Group-D, he had refused to accept the same. Though the vacancy against which he was later on appointed pertains to 1999, he had actually joined it only on 19.10.2000. After deducting the dies-non period during his regular service, the total qualifying period comes to only 9 years. Relaxation of the provisions of Rule 88 of the Pension Rules has to be done in accordance with the said provisions.

4. The applicant had filed rejoinder and additional rejoinder. In the additional rejoinder, he had annexed a copy of the order dated 21st Sept. 2011 in OA No.849/10 wherein it was declared that notional service from the date of occurrence of vacancies can be permitted in such cases.

5. The respondents have filed additional reply and second additional reply.

6. Counsel for the applicant submitted that the requirement under the Pension Rules is that as a regular employee, 10 years service is essential. In so far as the applicant is concerned, he has 9 years and 30 days and if the dies-non period is discounted, it comes to 9 years plus a few days. The vacancy relates to 01.02.1999 against which the applicant was offered the Group-D post some time in October 2000. There is no delay on the part of the applicant in taking up the appointment. In a number of decisions rendered by this Tribunal, as upheld by the High Court, a lenient view is taken in reckoning the notional service from the date of availability of vacancies, in case the same is required for completion of 10 years of qualifying service. The order at Annexure A-13 (OA 393/09) decided on 05.04.2010, as followed by judgment dated 21.09.2011 in OA 849/10 & connected cases, would confirm the above position. The case of the applicant also squarely falls within the above said category. As such, the applicant is entitled to count the qualifying service from the date of occurrence of vacancy (01.02.1999) till the date of his retirement.

7. Counsel for the respondents submitted that when the applicant had declined the post earlier, he had forfeited his right to get the benefit of notional services on the basis of other cases. In other cases, there is no such declining as in the case of the applicant.

8. Arguments were heard and documents perused.

9. There are three methods by which the requirement of 10 years service can be fulfilled. One of them is counting of previous service notionally from the date of occurrence of vacancy; (b) taking a part of GDS service to offset the deficiency in completion of 10 years and (c) by relaxation of the rules at the appropriate level.

10. As regards (b) above, the Madras High Court's decision which provided for counting of GDS service was taken up before the Apex Court, which has left the law open. As regards (c) above, i.e. relaxation of Rule 88 of the Pension Rules, there has been a refusal to accede to the request of the applicant under Rule 88 of the CCS Pension Rules. What is, therefore, left is to ascertain whether the applicant's services could be considered from the date of occurrence of vacancies.

11. In so far as the relaxation of rules is concerned, the applicant has exhausted the opportunity. DG (Posts) has declined the request to relax the rules. However, in the representation the applicant has stated that his qualifying service should take into account the period from 1st Feb 1999 when the vacancy arose against which the applicant was appointed. The rules relating to pension are beneficial legislation and while interpreting the said rules, a liberal interpretation is normally expected [See Allahabad Bank Vs. Allahabad Bank Retired Employees Association (2010) 2 SCC 44]. In the instant case, unfortunately, the DG (Posts) has rejected the request of the applicant to waive the requirement of completion of 10 years of service. GDS service cannot be mixed with regular Group-D service and as such, that avenue is also not available. What is left is to ascertain whether the claim of the applicant to reckon his services from the date of occurrence of vacancies is permitted. If we

keep in mind the fact that the applicant had earlier rejected the offer in 1995, perhaps the applicant may not be justified in claiming notional service. However, if it is taken into account that there is plausible explanation to decline the earlier offer and that w.e.f. 1999, if he is covered, he would get his minimum qualifying service, which will earn him pension, his case deserves consideration.

12. The Tribunal has been taking a consistent stand in so far as counting of service from the date of occurrence of vacancies against which an individual is employed. The decision cited by the applicant in OA No.849/10 is one of the latest orders on the subject and that the reason in allowing the OA is contained in para 13 onwards, which reads as under:-

"13. As per the Recruitment Rules for promotion of Lower Grade Officials (LGOs) to the cadre of Postal Assistant/Sorting Assistant, all departmental LGOs below the grade of PAs/SAs who are permanent and who have rendered no less than three years of regular service in the lower grade as on the date of notification are eligible to appear for the examination. The applicants are falling short of the required 3 years of regular service by a few days to more than 1 or 2 years. Had the examinations for the post of Postman were held in time, they would have got the required number of years of regular service. The unintentional delay in conducting the examinations due to various administrative reasons cannot be attributed to the applicants. It is admitted by the respondents that there was delay in holding the examinations for promotion to the post of Postmen. The applicants are the unintended victims of the delay on the part of the department. In 1991 Supp (2) SCC 363, the Hon'ble S.C held that "the mistake or delay on the part of the department, therefore, should not be permitted to recoil on the appellants."

14. The delay on the part of the Department of Posts has resulted in the loss of eligible service for the applicants and denial of permission to appear for the examination for promotion. In the factual situation of the cases before us, the denial of permission to appear for the examinations, though technically correct, is unjust and unfair. The Apex Court in State of Maharashtra Vs. Jagannath Adiyut Karanadiker reported in 1989 SCC (L&S) 417 held that "it would be unjust, unreasonable and arbitrary to penalise a person for the default of the Government to hold the examination every year." In AIR 1977 SC 1868, the Hon'ble Supreme Court held as under :-

6. The appellant has a future and hopefully looks forward for promotion. It is, in our view, right and reasonable that for purposes of promotion, seniority will be reckoned from 20th December, 1967 but for qualifying period, if there is such a condition for promotion, his notional service from 1st January, 1959 will be considered. Of course, we need hardly say that this order will not affect adversely

the seniority of those who have been appointed as traffic inspectors prior to 20th December, 1967. In the situation arising in the case, the respondent will pay the costs of the appellant in this Court. The appeal is allowed on the above lines.

(emphasis supplied)

15. Following the ratio of the above decisions of the Hon'ble Supreme Court the applicants in the present cases can be given the benefit of notional service from the date of occurrence of vacancies for the purpose of qualifying period for writing the examination for promotion.

16. The contention of the respondents that even if notional service is granted to the applicants, it would not amount to the regular service stipulated in the Recruitment Rules is wrong. What is prescribed is regular service, not actual service. As per settled law notional service is to be treated as regular service for counting qualifying period.

17. We do not find any illegality as far as fixing the cut off date for counting qualifying period, one month before the date of the examination. The grievance of the applicants in O.A.849/10 will be redressed, when they are granted notional service from the date of occurrence of the vacancies against which they are appointed.

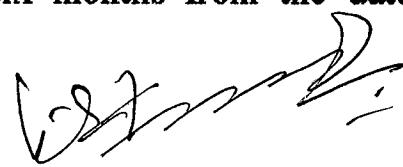
18. In the light of the above, we declare that the applicants in the instant O.As are entitled to be granted the benefit of notional service from the date of occurrence of vacancies against which they are posted as Postmen for the purpose of counting qualifying period for appearing for the examination for promotion as P.A/S.A held on 10.10.2010. The respondents are directed to publish the result of the examination in respect of the applicants and to promote those who have cleared the examination, as P.A/S.A as per rules, within a period of 60 days from the date of receipt of a copy of this order.

19. The O.As are allowed to the above extent. No order as to costs."

13. Keeping in view the aforesaid decision and earlier decisions, when the case is analyzed, it would throw light that though vacancy arose in February 1999, it took a lot of time for the Department to post the applicant as Group-D in October 2000. Following the precedent, if the notional service is added to the qualifying service of the applicant, he becomes eligible to draw his pension. Consistency is a virtue, as held by the Apex Court in State of Karnataka Vs. Umadevi (2006) 4 SCC 1. It would, therefore, be appropriate to allow this OA, directing the respondents to treat the services of the applicant from 01.02.1999 onwards instead of October 2000. Accordingly it is ordered.

~~OA is allowed with the above observations. The respondents are directed to~~

work out the qualifying service of the applicant from 01.02.1999 onwards and if he fulfills the condition for minimum pension, action be taken to accomplish the same. Time calendered for the same is six months from the date of communication of this order. No costs.



Dr K.B.S.RAJAN
Judicial Member

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