

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No. 203 of 2012**

TUESDAY, this the 20<sup>th</sup> day of August, 2013

**CORAM:**

**HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

P. Dakshayani Amma,  
W/o. Suseelan Nair,  
Group-D (Retd.), Kaloor Post Office,  
Ernakulam Division,  
Residing at Pullikkal House,  
Bhakthanandapuram P.O.,  
Puthencuriz, Ernakulam : 682 308

... Applicant.

(By Advocate Ms. Rekha Vasudevan)

v e r s u s

1. Union of India, represented by  
The Secretary to the Govt. of India,  
Ministry of Communications,  
New Delhi
2. The Assistant Director General (Pension),  
Department of Posts, Dak Bhavan,  
Sansad Marg, New Delhi : 110 001
3. The Chief Postmaster General,  
Kerala Circle, Thiruvananthapuram
4. The Sr. Superintendent of Post Offices,  
Ernakulam Postal Division, Ernakulam.

... Respondents.

(By Advocate Mr. Millu Dandapani, ACGSC)

This application having been heard on 12.08.2013, the Tribunal on  
20-08-13 delivered the following.

**ORDER**

**HON'BLE MR. K GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

The applicant was appointed as Group-D with effect from 18.10.2000.

She retired on superannuation on 31.05.2010 after rendering 09 years 07

✓

months and 14 days of qualifying service. As it fell short of the required qualifying service of 10 years, she was not granted pension. But she was granted eligible retirement gratuity. In O.A. No. 888/2010 filed by her for grant of minimum pension was disposed of directing the first respondent to consider the representation of the applicant afresh. In compliance, the impugned order dated 07.04.2011 at Annexure A-16 was issued rejecting her request for grant of minimum pension. Aggrieved, she has filed this O.A. for the following reliefs:

- (i) Quash Annexure A-16 order issued by the 2<sup>nd</sup> respondent rejecting the claim of the applicant herein for pension;
- (ii) Declare that the applicant is entitled to get her appointment as Group-D with effect from the date of occurrence of vacancy for the limited purpose of her to qualify for the minimum pension;
- (iii) Direct the respondents to grant the applicant the promotion as Group-D with effect from the date of occurrence of vacancy for the limited purpose of her to qualify for the minimum pension and to count the service from the said date of promotion for pension and to grant her the pension with effect from 31.05.2010;
- (iv) To grant such other reliefs as may be prayed for and the Court may deem fit to grant, and
- (v) Grant the cost of this Original Application.

2. The applicant mainly contended that despite there being a catena of decisions directing the respondents to grant promotion from the date of occurrence of vacancy, the respondents have chosen not to do so. The applicant relied on the judgements at Annexures A-1, A-5, A-6, A-9 to A-11, A-17 and A-18. Had the respondents filled up the vacancy in time, the applicant would have got her promotion in time and would have secured the requisite qualifying minimum service in Group-D and would have got the



minimum pension. The applicant is fully entitled to get promotion from the date of occurrence of vacancy so as to entitle her for minimum pension. In Annexure A-5 final order in O.A.No. 389/2004, this Tribunal observed that the promotion to a post should relate back to the date of occurrence of vacancy at least to enable an employee to get minimum pension. This order was upheld by the Hon'ble High Court of Kerala in the judgement in W.P.(C) No. 29430/2007 (Annexure A-6). As per the order of the Hyderabad Bench of this Tribunal dated 27.07.2007 in O.A. No. 754/2005, *N.V. Shastry vs. The Superintendent of Post Offices* (Annexure A-19), the applicant is entitled to get notional promotion from the date of occurrence of vacancy enabling her to get qualified for the minimum pension.

3. The respondents in their reply statement submitted that as per the judgement of the Hon'ble High Court in O.P. No. 25172/1998, action was taken to regularize the senior most Extra Departmental Agents (EDAs) working against vacancies in Group-D arising upto 1999. Orders promoting the EDAs as Group-D were issued by the Senior Superintendent of Post Offices, Ernakulam Division, on 16.10.2000. No delay is noticed in making Group-D appointments. The applicant is now estopped from challenging her date of appointment at this distant point of time. The relief granted by the Madras Bench of this Tribunal in O.A. No. 1264/2001 (Annexure A-9) is pertaining to the applicant in that O.A only. In the judgement dated 04.10.2007 in W.P. No. 45465/2002, the Hon'ble High Court of Chennai had made it clear that the relief ordered is confined only to the first respondent, which should not be treated as a precedent for others to follow. The service rendered as Extra Departmental Agent followed by regular appointment as



Group-D cannot be reckoned for computing qualifying service for the purpose of pension as per the decision of the Full Bench in O.A. No. 1003/2003. The representation of the applicant was duly considered by the 1<sup>st</sup> respondent and the impugned order at Annexure A-16 was issued. The judgements cited by the applicant cannot be made applicable to her in as much as there are factual differences among the applicant and the petitioners therein. In the instant case, the applicant has no case that any of her junior has been promoted with effect from a date prior to her promotion. The respondents have relied on the orders of this Tribunal in O.A. Nos. 889/2009, 145/2010 and 204/2012.

4. In the rejoinder statement filed by the applicant, it was submitted that this O.A. has been filed for a direction to grant her promotion as Group-D with effect from the date of occurrence of vacancy for the limited purpose of her qualifying for the minimum pension and not for getting her service rendered as EDA counted towards qualifying service for pension. Relying on Annexures A-21 and A-22 letters, the applicant submitted that she was accommodated against the vacancy of 1999. As per the dictum laid down by the Hon'ble High Court of Kerala in *Varghese vs. State of Kerala*, 1981 KLT 458, the promotions are to relate back to the date of occurrence of vacancy.

5. I have heard Ms. Rekha Vasudevan, learned counsel for the applicant and Mr. Millu Dandapani, learned ACGSC appearing for the respondents and perused the records.

6. The applicant has filed this O.A. for the limited purpose of getting her date of appointment as Group-D preponed to the date of occurrence of

vacancy enabling her to qualify for the minimum pension. The cause of action arose when the rejection of her request for minimum pension was issued vide order dated 07.04.2011 at Annexure A-16. Hence, I do not find any merit in the contention of the respondents that the applicant is estopped from filing this O.A or that it is time barred.

7. As per Annexure A-4 order of appointment, the applicant is listed at Sl. No. 07 which indicates as per Annexure A-22 that the applicant was accommodated against the vacancy of 1999. The applicant did not have the minimum qualifying service for pension as per rules for the reason of non-promotion of the applicant with effect from the date of arising the vacancy. Had she been given promotion in due turn at the due time, she would have acquired the qualifying service and would have been entitled to the minimum pension. The Hon'ble High court of Kerala in **Varghese vs. State of Kerala**, 1981 KLT 458, held as under:

"5. A Full Bench of this Court in the decision in James Thomas v. Chief Justice, 1977 KLT 622 has also expressed the view that the general rule is that promotions are to be decided upon with reference to time of occurrence of vacancies and not the time of making the appointments. We think there is considerable force in the view that it is the time of occurrence of vacancy that should be relevant for determining the question of promotion and not the time the order of promotion is passed. The relevant date must be definite and not depending upon the volition of the authorities as otherwise the determination would be arbitrary. If it were to be the date of promotion that is to be relevant for determining the title to such promotion the rule is capable of arbitrary exercise. Even if it is honest exercise that would be arbitrary because the fate of the service career will depend in each instance upon the time taken by the concerned authority in passing the order of promotion. On the other hand, there is definiteness in treating the date of occurrence of the vacancy as that which would determine the title of the person to be considered for promotion. The view taken by the Division Bench in Ravindranath v. Calicut University 1977 Lab IC. 1127 appeals to us to be the rational view."

(emphasis supplied)

Even if the delay in appointing the applicant as Group-D was not owing to any laches on the part of the respondents but only because of pendency of litigations and Court orders, as per the above judgement the date of occurrence of vacancy should determine the title of the person to be considered for promotion.

8. In the judgement dated 10.08.2009 in CWJC No. 3893/2009, the Hon'ble High Court of Judicature at Patna, held as under :

"In the present case, the petitioner's case for absorption / promotion to Group-D post should have been considered on or before 10<sup>th</sup> July, 1994, whereas it was actually considered much later and the promotion order dated 21.02.1995 was issued after a delay of approximately eight months from the due date. The benefit of such delay in the background of facts and and the departmental policy decisions must go to the petitioner. By grant of such benefits the petitioner would be entitled for pension which the very purpose of the policy decision that Group-D post should be given only to those who are below 50 years of age.

In view of the aforesaid facts and discussions and particularly in view of the judgements rendered by the Tribunal against the postal authorities themselves, as contained in annexures 10 and 11, the writ petition is allowed. The respondents are directed to treat the petitioner as having completed minimum qualifying service period of ten years and allow him pension on that basis as early as possible, preferably within two months from today."

(emphasis supplied)

9. In the order in O.A. No. 754/2005 dated 27.07.2007 in the case of **N.V. Shastry vs. The Superintendent of Post Offices** (Annexure A-19), the Hyderabad Bench of this Tribunal directed the respondents therein to consider the request of the applicant for treating his service in Group-D notionally from the year in which he would have been selected and appointed but for the delay in the process of selection which has occurred, purely for pension purpose.



10. In the order dated 17.12.2012 in O.A. No. 429/2012, this Tribunal held as under:

"8 In this case admittedly the applicant was appointed on 13.10.2000 against a vacancy of the year 1999. The respondents have conceded in their reply statement that during 1997 to 2000, no appointment was made in Group D cadre. It is due to the fact that the upper age of 50 years as fixed by DG (Posts) was struck down by the Tribunal in O.A No. 155/95 for appointment to Group D. It is seen from O.A No. 389/04 that more litigation followed as OAs were filed, seeking a direction to the respondents to fill up Group D posts. The issue was given a quietus, when Hon'ble High Court of Kerala permitted the respondents to issue executive order fixing the upper age. When it was done in August, 2000 by R-1, the process of appointment in Group D was initiated by R-2. That is how the applicant came to be appointed in October, 2000. Hence, there is force in the contention of the applicant that he could have been appointed against a vacancy of 1999. He was so informed in response to a RTI query vide Annexure A-3. Therefore, it should be possible for the respondents to antedate his appointment to a vacancy from 01.01.2000 or earlier.

9 In this view of the matter, the OA succeeds. I, therefore, direct the respondents to treat the applicant as notionally appointed to the post of Group-D cadre on regular basis at least from 1.1.2000 as against his actual date of appointment on 9.10.2000 and to count the aforesaid deemed period of appointment (1.1.2000 to 28.2.2010) as qualifying service for pension. It is also made clear that the aforesaid notional period of his promotion as Group-D employee shall not count for any purpose other than for qualifying service for pensionary benefits. The respondents are directed to pass appropriate orders to the aforesaid effect within a period of two months from the date of receipt of a copy of this order. No costs."

(emphasis supplied)

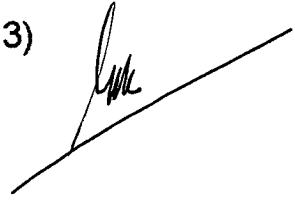
11. The instant O.A. is squarely covered by the decision of this Tribunal in O.A. No. 429/2012. The reliance of the respondents in O.A. Nos. 889/2009, 145/2010 and 204/2012 is of no assistance as they could be distinguished on the basis of the facts from this O.A. In the light light of the above, the settled law is in favour of the applicant. Hence the O.A. succeeds. As the impugned order of 07.04.2011 is issued without considering the eligibility of the applicant for



minimum pension by predating her promotion as Group-D to the date of occurrence of vacancy in 1999, it is liable to be set aside.

12. The impugned order is set aside. It is declared that the applicant is entitled to get her appointment as Group-D with reference to the date of occurrence of vacancy for the limited purpose of qualifying the applicant for minimum pension. Accordingly, the respondents are directed to grant her notional promotion as Group-D with effect from the date of occurrence of vacancy or as a matter of convenience with effect from 01.06.2000 for the purpose of qualifying her for minimum pension only and grant her pension with effect from 01.06.2010 within a period of 02 months from the date of receipt of a copy of this order. No costs.

(Dated, the 20<sup>th</sup> August, 2013)

  
(K. GEORGE JOSEPH)  
ADMINISTRATIVE MEMBER

cvr.