

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No.235/2005

Thursday this the 18th day of January, 2007.

CORAM :

HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

M.S.Sindhu,
W/o Sree Kumar,
Postman,
Kochi Head Post Office,
Kochi.

: Applicant

(By Advocate Mr. TC Govindaswamy)

v.

1. Union of India represented by
Secretary to Government of India,
Ministry of Communication,
Department of Posts,
New Delhi.
2. Chief Post Master General,
Kerala Circle,
Trivandrum.
3. Senior Superintendent of Post Offices,
Ernakulam Division,
Kochi-11. : Respondents

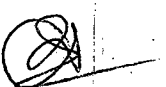
By Advocate Shri TPM Ibrahim Khan, SCGSC

The application having been heard on 22.12.2006, the Tribunal on 18.1.2007 delivered the following :

ORDER

HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant M.S.Sindhu in this O.A is aggrieved by denial of prospective pensionary benefits.



2. The applicant, presently working as Postman joined service as Gramin Dak Sevak(GDS) Stamp Vendor on 5.5.1990. According to her, her Government service commenced from that date. Matriculate GDS are entitled to be considered for promotion as Postman/Mailman against 25% departmental competitive quota. Vide A-1 circular dated 9.7.2002 an examination for promotion/recruitment to the cadre of Postman to be held on 29.9.2002 was announced. This was followed by another letter A-2 on 6.9.2002, giving details of vacancy position among various categories. The applicant participated in the examination, but was not selected. She filed O.A.No.193/2003 for a declaration of entitlement to be recruited to the cadre of Postman on the merit quota. Vide A-3 orders the respondents were directed to rework the results, adding the unfilled vacancies relatable to the departmental quota of GDS merit quota, review the selection on the basis of the performance of the candidates including the applicant and pass appropriate orders. A writ petition filed by the respondents was subsequently withdrawn. Vide A-4 document dated 25.2.2004, four candidates, with the applicant, heading the list, were declared as having passed the examination for promotion to the cadre of Postman. Thereafter, she was sent for training and appointed as Postman with effect from 11.3.2004 vide A-6 dated 10.3.2004. The said order however, reads that the R-3 was appointing the applicant, among others, as temporary Postman subject to certain conditions. On coming to know that she was being brought under the new Contribution Pension Scheme applicable to new recruits in the Government service on and from 1.1.2004, she made a representation on 19.5.2004 to the R-3. The points made therein were:

- i) She was promoted as Postman, which post she joined on 11.3.2004.
- ii) She was entitled to be governed under the Rules and Regulations existing at the time of notification (no details of notification furnished).
- iii) Her date of appointment is shown as 11.3.2004, thus bringing her under the new Contributory Provident Fund Scheme instead of CCS

(Pension) Rules 1972.

iv) Her request was to consider and bring her case within the purview of the CCS(Pension) Rules, 1972 instead of the new Contributory Provident Fund Scheme.

3. Her representation was rejected by A-8 impugned communication dated 19.7.2004, informing that she was appointed as Postman only with effect from 11.3.2004 and therefor is entitled to the benefits as per rules in force on 11.3.2004. Aggrieved by this communication she has come before the Tribunal.

4. The relief sought for is that she be covered under the CCS(Pension) Rules, 1972. The following grounds are advanced in support thereof:

i) She passed the examination held on 24.11.2002 and the declaration of results was made vide A-4 much later, on 25.2.2004, such delay causing undeserving prejudice to her.

ii) A-9 to A-12 documents would show that those, who were in Government service prior to 1.1.2004 would be governed by the CCS (Pension) Rules, 1972; since the applicant was already in Government service since 1990, she would be governed by such rules.

5. Respondents oppose the application by saying that

i) As far as GDS are concerned, their appointment to the cadre of Postman is direct recruitment and not promotion as per a Full Bench decision passed by this Tribunal .

ii) GDS service is outside the purview of the Central Government service .

iii) The applicant, having been appointed to the post of Postman from 11.3.2004, is entitled to be governed by the rules existing as on that date.

As regards pension, Rule 13 of CCS(Pension) Rules, 1972 lays down that the qualifying service of the Government servant commences from

the date he takes charge of that post to which he is appointed in a permanent capacity.

iv) The applicant was not promoted but directly recruited.

6. Heard the parties and perused the documents.

7. The first point to consider is whether the applicant was vigilant. Vide A-6 document dated 10.3.2004 she was appointed as temporary Postman. One of the conditions of such appointment vide para 2(d) of the said order is as follows:

"2. Other terms and conditions are as follows:

.....
(d) The existing system of defined pension system is not available to them. In its place, a restructured defined contribution pension system will be available to them."

8. Reference has already been made above relating to her representation vide A-7 letter dated 19.5.2004. One of the requests therein pertained to her being brought under CCS(Pension) Rules, 1972. It is significant to note that this representation was made much after the date of her appointment. Secondly, on the date of this representation, she had already assumed the charge of temporary Postman as can be seen from her designation shown in the A-7 representation. This would mean that she had taken charge in pursuance of A-6 posting orders accepting the conditions therein including the one mentioned above. There has been no challenge to the A-6 order either then or now. Under these circumstances it has to be found that she had accepted the new pension scheme along with the posting orders and the lack of challenge of A-6 document would dilute, if not nullify her present claims.

9. The next question relates to the status of the applicant prior to the date of appointment as Postman, 10.3.2004. The learned counsel for the applicant has

quoted the following three judgments a) 1998 SCC L&S 447, b) 1997 SCC L&S 374 and c) 1967 SC 884 to sustain the position that the Extra Departmental Staff are Government servants holding a civil post. In view of the declaration to the above effect, the above law set by the Hon. Supreme Court governs the field and I find she was a Government servant holding a civil post.

10. The next question raised by the applicant is that she along with others were promoted to the post of temporary Postman and it was not a case of direct recruitment. The learned counsel for the respondents brought to our notice the Full Bench decision of this Tribunal in O.A.No.807/1999 and O.A.No.1286/1997 (R-1). As per majority view, appointment of ED Agents a Postmen in 25% seniority quota is by way of direct recruitment only. In view of the above orders, I too find that the applicant was appointed and not promoted to the post of Group 'D' Postman.

11. As regards the question of the specific status of the period prior to her joining as Group'D' Postman, the learned counsel for the applicant contends that her case is sustainable based on the A-9, A-10, A-11 and A-12. In the first three documents, it is ordained that the new pension scheme would be mandatory for the new recruits to the Central Government service from 1st of January, 2004. Since she was already in Government service in terms of the decisions of the Hon. Supreme Court, she cannot be treated as such a new entrant, according to her claims. The applicant seeks support from A-12 document also which contains clarifications on the new pension scheme. The queries raised and clarifications offered under the 21st item of the said document are reproduced here below:



| | | |
|---------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| S.No.21 | Whether a Government employee who was already in service prior to 1.1.2004, if appointed in a different post under the Govt. of India will be governed by CCS(P) Rules or New Pension Scheme. | In cases where Government employees apply for posts in the same or other departments and on selection they are asked to render technical resignation the past services are counted towards pension under CCS(Pension) Rules, 1972. Since the Government servant had originally joined Government service prior to 1.1.2004, he should be covered under the CCS(Pension) Rules, 1972. |
|---------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

It is seen from the clarification, the condition precedent will be that where the Government employees apply for post in the same ^{or} other departments and on selection they are asked to render technical resignation the past services are counted towards pension under the pension rules of 1972. A-6 appointment order does not envisage any technical resignation nor has the applicant any case that she did, indeed, tender any such resignation. Prima facie therefore it appears that the documents she seems to rely upon do not come to her support. While rebutting her case, the respondents in their additional reply statement has stated the following:

"A Full Bench of this Tribunal, on a reference in O.A.No.1033/2003 before the Chandigarh Bench between Surjith Singh v. Union of India examined the above issue and held the following:

- (i) Appointment of EDAs to Group D post is not by promotion but only recruitment.
- (ii) Service rendered as ED Branch Postmaster even if followed by appointment, as Group D is not reckoned as qualifying service for the purpose of Pension. True copy of the judgment in O.A.1033/2003 is produced herewith and marked as Annexure R-2."

In fact, the applicant does not want counting of her previous service as part of the present services for pension purposes; she would be satisfied with a direction that she should be governed under the 1972 pension rules though she was appointed from 10.3.2004. This is a new dispensation not sanctified by any rule and hence is unacceptable.

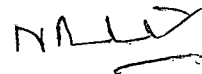


12. In sum, it is found that,

- the applicant did not challenge A-6 order which brought her under the new pension scheme,
- having accepted that, she did not challenge this order before any authority,
- her acceptance of A-6 would also mean acceptance of the conditions of new pension scheme
- in terms of the clarifications, referred to in A-12, she is not eligible to count the commencement of her service prior to 1.1.2004 as she did not tender any technical resignation
- there was no challenge to A-12 clarification,
- as per the settled law, service prior to 10.3.2004 is not countable for pension purpose and
- the new dispensation asked for is not contemplated under any valid scheme.

12. Hence, the O.A is dismissed. No costs.

Dated, the 18th January, 2007.



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER