CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.Nos.649/11, 248/12 & 455/12

Thursday, this the 23rd day of May, 2013

C O R A M :

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

O.A.No.649/11
Sreekumar S,
S/o.G.Sreedharan Nair,
Residing at Sreepadmam, Eravoor,
Aryanad P.O., Thiruvananthapuram – 695 542. ...Applicant

(By Advocate Mr.M.R.Hariraj)

Versus

1. Union of India represented by the Secretary,
Department of Posts, Ministry of Communications,
New Delhi.

2. Chief Post Master General,
Kerala Circle, Thiruvananthapuram – 695 033.

3. Superintendent of Posts,
Thiruvananthapuram South Division,
Thiruvananthapuram – 695 036. ...Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC)

O.A.No.248/12
B.Babukuttan Nair,
S/o.Bhaskara Pillai,
Multi Skilled Employee,
Nedumangad, Thiruvananthapuram – 695 541.
Residing at Parayankavu Thadatharikathu Veedu,
Irinchayam P.O., Nedumangad,
Thiruvananthapuram – 695 541. ...Applicant

(By Advocate Mr.Vishnu S Chempazhanthiyil)

Versus

1. Union of India represented by the Secretary,
Department of Posts, Ministry of Communications,
New Delhi.

2. The Chief Post Master General,
Kerala Circle, Thiruvananthapuram – 695 033.

3. The Superintendent of Posts,
Thiruvananthapuram South Division,
Thiruvananthapuram – 695 036. ...Respondents

(By Advocate Ms.Deepthy Mary Varghese,ACGSC)

O.A.No.455/12

M.S.Radhamony,
Multi Tasking Employee (Group D),
Department of Posts, Thycaud,
Thiruvananthapuram – 695 014.
Residing at Nrithyathi, Vilappilsala P.O.,
Thiruvananthapuram – 695 073. ...Applicant

(By Advocate Mr.Vishnu S Chempazhanthiyil)

Versus

1. Union of India represented by the Secretary,
Department of Posts, Ministry of Communications,
New Delhi.

2. The Chief Post Master General,
Kerala Circle, Thiruvananthapuram – 695 033.

3. The Superintendent of Posts,
Thiruvananthapuram South Division,
Thiruvananthapuram – 695 036. ...Respondents

(By Advocate Mr.Varghese P Thomas,ACGSC)

These applications having been heard on 21.5.2013, this Tribunal on 23rd May, 2013 delivered the following :-

O R D E R

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
OA 649/11, 248/12, 455/12

As all the OAs have identical legal issues to be resolved, this common order is being passed. For reference purpose, OA No.649/11 has been taken as the pilot case.

2. Briefly, the facts of the cases are that all the applicants in the three OAs were earlier functioning as GDS in various offices of the respondents. By a series of litigations, wherein claims were made for filling up of Group-D posts lying vacant for the past many years, the Tribunal as well as the Hon'ble High Court of Kerala had held that the posts of Group-D to be filled up from GDS would not be subjected to screening of vacancies under the optimization scheme and directions were given for filling up of all such posts. In so far as

the applicants in these OAs are concerned, they have no doubt been appointed by the respondents against Group-D vacancies but in all these cases, according to the applicants, such appointments were made from a date reckoned much later than the vacancies of the previous years, against which they should have been appointed. This postponement of their appointment, according to the applicants, had resulted in losing of pay and also have pushed the applicants to the new pension scheme whereas they were entitled to pension and terminal benefits under the old pension scheme. In so far as the applicant in OA No.649/11 is concerned, whereas he has been appointed as Group-D against 2006 vacancy, his claim is that as vacancy was there even in 2002, his date of appointment should be reckoned from 2002; in addition, the applicant is entitled to consequential benefits, namely, payment of pay and allowances. Thus the reliefs sought for by the applicant in OA 649/11 are as under:-

a) To quash Annexure A3 to the extend it refuses appointment to the applicant with effect from 2002;
b) To declare that the applicant is entitled to be promoted as Group-D with effect from 2002 with all consequential benefits.
c) To direct the respondents to assign the date of promotion as 2002 to the applicant and to grant him all consequential benefits including arrears of pay and allowances;
d) To direct the respondents to pay the monetary benefits flowing from the above direction with interest at 12% per annum;
e) To grant such other reliefs as may be prayed for and the court may deem fit to grant, and
f) Grant the costs of this Original Application.

3. Almost on similar lines, reliefs have been sought by the applicants in the other two OAs also, namely, direction to the respondents to consider appointment of the applicants in respect of Group-D vacancies of the year 2002-03.

4. Respondents have contested the OA. Though the fact of vacancies earlier available in 2002 was accepted by them, in the reply, they have stated as under:-

"The applicant is relying on Annexure A-6 reply given to the application submitted by the applicant under Right to Information Act 2005 seeking the number of vacancies arose in the cadre of Group "D" during 2002 and 2003 in Thiruvananthapuram South division. While the DPC was conducted, an elaborate process of verification was conducted to scrutinize and monitor all related documents and facts and cross tally the number of vacancies from the date of their occurrence, the number of vacancies approved for filling as per the optimization scheme, the actual number of persons in position and

the total sanctioned strength of the Group-D cadre in each Division. In the said process, it was seen that out of the 4 vacancies that arose in 2002, one was filled up and the remaining 3 vacancies were abolished as per Memo No.EST/1-7/2002 dated 25.02.2004 of the 2nd respondent pursuant to orders contained in letter No.25-20/2000-PE-I dated 06.01.2004 of the Director General of Posts, New Delhi. Similarly, out of the 3 vacancies that arose during 2003, 1 was filled and the remaining 2 vacancies were abolished as per Memo No.EST/1-7/2005 dated 07.04.2005 of the 2nd respondent pursuant to orders contained in letter No.25-56/2004.PE-I dated 01.02.2005 of the Director General f Posts, new Delhi."

5. in his rejoinder, the applicant in OA No.649/11 has contended that the Hon'ble High Court of Kerala has declared that there is no question of abolition of posts of Group-D which are to be filled by promotion.

6. Counsel for the applicants submitted that on the basis of seniority, all the applicants should be accommodated against vacancies of the year 2002-03. in fact, the respondents initially took into account vacancies of 2004 onwards only and in their order (A1 in OA No.649/11), it has also been clearly mentioned that appointment will be made retrospectively when the vacancy arose. It is under the RTI Act that the applicants sought for certain information that the respondents vide Annexure A-6 in the said OA had given vacancy position in 2002-03 on account of retirement etc. The counsel submitted that the applicant in OA No.649/11 stood third in order of seniority to be appointed and there were four vacancies in 2002-03. As such, his case should have been considered against 2002 vacancy. Even as per the respondents, the third vacancy occurred in the year 2005 vide Annexure A1. In that case, at least from 01.07.2005 the respondents ought to have considered the applicant for regular appointment. However, it is only from 19.01.2006 that the applicant in OA No.649/11 had been appointed on regular basis vide Annexure A-3.

7. Counsel for the applicant submitted that the respondents had erred in fixing the date of appointment as 19.01.2006 and also in not granting the pay scale from the date of regular appointment. Thus, the applicant, according to the counsel, is entitled to the following:-

a) Advance the date of regular appointment to 2002.
b) Fixation of pay scales as Group-D from the date of such regular appointment.
c) Payment of actual pay and allowances for the scale attached to Group-D post from the date of such regular appointment.
d) Interest @ 12% per annum on the amount payable to the applicant.

8. Certain decisions of Hon'ble High Court of Kerala have been cited in respect of entitlement to actual pay instead of notional pay.

9. Counsel in respect of the other two OAs adopted the same arguments advanced by the counsel for OA No.649/11. Counsel in the other two cases had submitted that the following finding rendered in CPC 95/09 and connected CPCs would go to show that the posts which were abolished should be resurrected and brought to life and GDS employees on the basis of respective seniority should be appointed.

> *"17. Now, certain basic facts in the act of the respondents should be addressed here. First, they have been harping upon the fact of a number of posts having been abolished. True, these posts would have been abolished at the material point of time. But it was at a juncture when the posts to be filled up by the GDS or Casual Labourers were treated as Direct Promotion and provision for abolition of posts is available for direct recruitment vacancies only and not for any other category of vacancy. However, the High Court itself has declared that there is no question of abolition of posts in respect of vacancies tenable by the applicants. This declaration after perusing the documents produced by the Respondents leads to a situation that the posts were not abolished. For such a declaration takes retrospective effect. For, when the Court clarifies a legal position, the same applies not only for the future but also has the retrospective effect. In this regard the decision of the Apex Court in the case of* ***Rajasthan State Transport Corporation vs Bal Mukund Bairwa*** *(2), (2009) 4 SCC 299 is relevant. In that decision, the Apex Court has observed -*
>
> > *" 52. As has been pointed by Justice Cardozo, in his famous compilation of lectures The Nature of the Judicial Process, that in the vast majority of cases, a judgment would be retrospective. It is only where the hardship is too great that retrospective operation is withheld. A declaration of law when made shall ordinarily apply to the facts of the case involved."*
>
> *18. Thus, at this juncture, there is no meaning in harping upon the same point of the post having been abolished. The said abolition even if made by a positive act, becomes non-est and in fact there must be automatic resurrection of the abolished posts. This is the legal position in so far as the availability of post is concerned. As a matter of fact at one point of time referring to certain other documents filed in a different O.A the SCGSC has given the information that the department made earnest attempt in getting the posts which were earlier abolished, revived and as many as 424 posts in various divisions pertains to Group D posts in Kerala Circle from 2002-2009 and these were brought back to existence. And on the basis of seniority all the GDS and on Division basis these posts are also being filled up.*
>
> *19. Thus respondents are not reluctant at all in fully complying with the order of this Tribunal. Now that the vacancies do exist, and eligible persons available for being accommodated, their promotion could comfortably be executed subject to other provisions of law*

relating to age as well as seniority position. These promotions would then be with retrospective effect but on notional basis so that those who are promoted would have the benefit of that many years of service for the purpose of pension. Pay could however be actual (after catering for annual increment as per the rules from the date of initial notional promotion) from the date the individuals function the promotional post.

20. It is possible that some of the GDS employees who are in their late fifties may not be prefer even promotion if they are not entitled to any pensionary benefits due to not fulfilling the requisite years of service on regular basis. They could, as GDS continue upto 65 years, while their age of superannuation would be 60 in case of their appointment in Group D post. Thus, options could be called for from such of the individuals who are to be accommodated against the vacant posts.

21. In view of the above, taking judicious note of the fact that so far no contumacious act has been committed, we are inclined to ***close*** *these Contempt Petitions, but with the firm direction that in so far as implementation of the earlier order dated 15-12-2008 which stands upheld by the High Court as early as in 2009, action should be taken to fill up all the vacancies meant for GDS and Casual labourers. The 424 posts referred to by the respondents shall all be filled up. There shall be a time bound plan in this regard and progress thereof shall be monitored by the Chief Post Master General. Adequate budgetary provisions should therefore be made to cater for the salary and other benefits to the incumbents. The entire action of consideration of the cases of applicants and similarly situated persons in Kerala Circle should be completed within a period of six months. This part of the order is passed invoking the provisions of order 24 of the CAT Procedure Rules, 1987, for proper implementation of the order of the Tribunal."*

10. Counsel for the respondents invited the attention of the Tribunal to the fact of abolition of posts in 2002-03 as contained in the counter.

11. Arguments were heard and documents perused.

12. Admittedly the entitlement of the applicant to advance the date of regularization has been affirmed by the respondents themselves. The question is the date from which such regularization takes places. Referring to Annexure A-1 dated 09.07.2010, counsel for the applicants submitted that according to the said letter "appointment will be made retrospectively with effect from the date vacancy arose:.

13. According to the counsel for the applicants, vacancies of 2002 being there, the question is whether the applicants should not be posted against such vacancies. The vacancies indicated in 2002-2003 under the RTI Act did

not specifically reflect whether such vacancies are to be filled from GDS only or otherwise. In the reply also, there has been no mention of the same. It is, therefore, presumed that the vacancies of 2002 were to be filled up from GDS on division basis. If so, the applicants become eligible for advancing their date of regularization against 2002-03 vacancies. Subject to above presumption to be true, it is declared that the applicants are entitled to be considered for regularization against the vacancies of 2002-03 on the basis of their seniority in the cadre of GDS.

14. The next question to be considered is whether the same should be notional or actual. Even the order in CPC 95/09 extracted above, all these appointments were to be made on regular basis by notional fixation of pay. In all the earlier cases, even though all consequential benefits flowing from regularization of retrospective order have been claimed, the order in OA 312/08 and connected matters did not contain direction to the respondents to consider regularization with actual payment of pay and allowances. Para 62 of the order dated 15.12.2008 reads as under :

> *"62. In view of the above, all* ***the O.As are allowed*** *in the following terms. It is declared that there is absolutely no need to seek the clearance of the Screening Committee to fill up the vacant posts in various Divisions which are to be filled up from out of G.D.S. and Casual Labourers as per the provisions of the Recruitment Rules, 2002. Respondents are directed to take suitable action in this regard, so that all the posts, majority of which appear to be already manned by the G.D.S. themselves working as 'mazdoors'/at extra cost, are duly filled. In a few cases (e.g. OA 118/2008), the claim of the applicants is that they should be considered against the vacancies which arose at that time when they were within fifty years of age. In such cases, if the applicants and similarly situated persons were within the age limit as on the date of availability of vacancies, notwithstanding the fact that they may by now be over aged, their cases should also, if otherwise found fit, be considered subject, of course, to their being sufficiently senior for absorption in Group D post. If on the basis of their seniority, their names could not be considered due to limited number of vacancies and seniors alone could considered for appointment against available vacancies, the respective individuals who could not be considered be informed accordingly. Time calendared for compliance of this order is nine months from the date of communication of this order."*

15. The order on CPC 95/09 and connected matters passed on 29.07.2011 (as extracted above in one of earlier paragraphs) states that the promotion would be with retrospective effect so that those who are promoted would have the benefit of that many years of service for the purpose of pension. The actual pay (after catering for only increments as per rules from the date of initial promotion) would be from the date the individual functioned on the promotional post.

16. Since in majority of orders the above directions have been given, the present applicants cannot be treated differently and as such, in their case as well, promotion will be on notional basis from 2002 onwards on the basis of seniority but actual pay should be from the date they held the post as Group D for the purpose of pension. Needless to mention, the date of regular appointment would be advanced to the date of availability of vacancies. O.As are thus allowed with the above directions. Respondents are directed to pass suitable orders with regard to the date of regular appointment of the applicants in all the O.As and also calculate the extent of pay and allowances due to them from the date they started holding the post of Group D taking into account the notional increments from the date of initial appointment as Group-D.

17. Time calendered for compliance of this order is only five months from the date of receipt of certified copy of this order.

(Dated this the 23rd day of May, 2013)

(K.GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

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

aa

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Contempt Petition No. 125 of 2013
in
Original Application No. 248 of 2012

Monday, this the 15th day of June, 2015

CORAM:

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member
Hon'ble Mr. R. Ramanujam, Administrative Member

B. Babukuttan Nair, aged 54 years,
S/o. Bhaskara Pillai,
Multi Skilled Employee,
Nedumangad, Thiruvananthapuram-695 541,
Residing at Parayankavu Thadatharikathu Veedu,
Irinchayam PO, Nedumangad,
Thiruvananthapuram – 695 541. ..... **Petitioner**

(By Advocate : Mr. Vishnu S. Chempazhanthiyil – Not present)

V e r s u s

1. Ms. P. Gopinath,
(Age & father's name not known to the petitioner),
The Secretary,
Department of Posts,
Ministry of Communications, New Delhi – 110 001.

2. Smt. Shanti S. Nair, (Age and father's name not known to the petitioner), The Chief Postmaster General,
Kerala Circle,
Thiruvananthapuram – 695 033.

3. Shri M.K. Karthikeyan Nair, Aged 59,
S/o. Kesavan Nair,
The Superintendent of Posts,
Thiruvananthapuram South Division,
Thiruvananthapuram – 695 036. ..... **Respondents**

[By Advocate : Mr. N. Anil Kumar, Sr. PCGC ®]

This petition having been heard on 15.06.2015, the Tribunal on the same day delivered the following:

ORDER

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member :

None for the petitioner. Mr. N. Anil Kumar, Sr. PCGC (R), learned counsel for the respondents submitted that an affidavit has been filed by the respondents enclosing the copy of the order passed in pursuance to the direction issued by this Tribunal in OA No. 248 of 2012.

2. In the light of the affidavit and the documents produced, the contempt petition is closed. Notice discharged. If any thing further has to be complied with the applicant can move this Tribunal again.

(R. RAMANUJAM)
ADMINISTRATIVE MEMBER

(N.K. BALAKRISHNAN)
JUDICIAL MEMBER

"SA"