

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.26/11

...Friday... this the 10th day of August 2012

C O R A M :

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

M.M.Chacko,
S/o.Mathai,
Retired Postman, Kottayam.
Residing at Mylavelil House,
Villoonni P.O., Kottayam – 8.

...Applicant

(By Advocate Mr.P.C.Sebastian)

V e r s u s

1. The Director General,
Department of Posts, Dak Bhavan, New Delhi.
2. The Senior Superintendent of Post Offices,
Kottayam Division, Kottayam.
3. Union of India
represented by Secretary of Government of India,
Ministry of Communications, Department of Posts,
New Delhi.

...Respondents

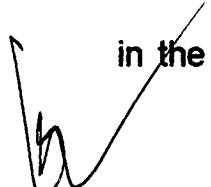
(By Advocate Mr.Millu Dandapani,ACGSC)

This application having been heard on 7th August 2012 this Tribunal on 10th August 2012 delivered the following :-

O R D E R

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

The admitted facts in this case, required for adjudication of the claim of the applicant are that the applicant was initially engaged as Extra Departmental Agent and he served in that capacity for nearly 25 years and thereafter, against the vacancy of Group D post, on the basis of seniority, in the respective quota, he was appointed as a Group D employee on a



.2.

regular basis w.e.f. 13th of October 2000. He continued in the said post till his superannuation on 31st of May 2010. The period of qualifying service for the purpose of grant of pension in his case fell short by about five months for full ten years (and one month and 12 days for 9 years and nine months) consequent to which, the applicant became disentitled to the grant of pension. It is the case of the applicant that had the Department acted timely in filling up the vacancy of Group D posts immediately on its arising, the applicant would have been appointed as a Group D employee in 1999 itself in which event he would have fulfilled the requisite qualifying service of 10 years to enable him to draw pension during his entire life. Provision exists for relaxation of this condition and the applicant accordingly requested the authorities to exercise the power to relax but since his request for relaxation of the aforesaid condition of 10 years of qualifying service, under the provisions of rule 88 of the CCS(Pension) Rules, 1972 has not been acceded to, the applicant has moved this Tribunal through this OA, seeking the following reliefs :-

1. *To declare that applicant is entitled to get minimum pension counting his adhoc service as Group D to the extent of the short fall in his qualifying service for pension as required under the provisions of CCS (Pension) Rules, 1972, as done in the case of respondent in Annexure A-6 judgment.*

2. *To issue appropriate order/direction to the respondents to issue necessary orders granting pension to the applicant counting his adhoc service in Group D post to the extent of the short fall in qualifying service required for grant of minimum pension under the CCS (Pension) Rules, 1972, in exercise of the relaxation clause of said rules, within a time limit as deemed proper to this Hon'ble Tribunal.*

3. *To grant such other relief which may be prayed for and which this Hon'ble Tribunal may deem fit and proper to grant in the facts and circumstances of the case.*

4. *To award costs to the applicant.*



.3.

2. In support of his above claim, the applicant has quoted a number of decisions of this Bench of the Tribunal as also that of Madras.

3. Respondents have contested the OA. The fact that there was no appointment of GDS as Group D employee during 1997-1999 has been admitted by the respondents stating that the same was due to the fact that there were a number of litigations relating to the age limit for appointment of such GDS to Group D posts. The fact that in a few cases the Tribunal has given relief has also not been denied by the respondents but, at the same time, the respondents have stated that in so far as the decision of the Madras Bench is concerned, the High Court in its judgment had clearly mentioned that the said judgment would not form precedent and further that the Apex Court had in the case said that the question of law has been left open.

4. The applicant in his rejoinder has referred to a few more judgments of this Tribunal to hammer home his point that the delay on the part of the respondents should not be permitted to recoil against the applicant.

5. Counsel for the applicant has submitted that this is a hard case. The shortage of just less than two months in qualifying service disentitled the applicant from claiming pension for all times to come. Though the stipulation is 10 years of qualifying service, even nine years and nine months of regular service would suffice as the last three months would be construed as six months by applying the rounding off principle. In the instant case, the applicant joined as Group D on regular basis on

.4.

13-10-2000 and superannuated on 31-05-2010. The period of regular service rendered works out to 9 years, 7 months and 18 days. The shortage is thus a month and 12 days only. This marginal shortage occasioned not on account of any delay on the part of the applicant but the entire delay in his appointment has to be attributed to the respondents only. The counsel submitted that had the respondents taken action to fill up the vacancies on time, this kind of a situation would not have arisen. The counsel submitted that as a matter of fact the respondents themselves have emphasized the need of filling up the vacancies as and when they arise vide their circular No.47-11/93-SPB-I dated 25-08-1993. This circular inter alia reads as under :-

" It has been reported to the Directorate that in a number of circles the Departmental Promotion Committee for E.D. Agents to Group D is not being held in time. As the maximum age prescribed for promotion of ED agents to Group D is 50 years, some of the E.D. Agents lost their chance of getting promoted as Group D. It is, therefore, requested that DPCs for promotion of E.D. Agents to Group D should be filled as per the prescribed schedule, particularly keeping in view those cases where some of the ED agents due for promotion or nearing the age of 50 years as prescribed in the Recruitment Rules."

6. The counsel further submitted that in spite of the above stipulation, the vacancies in the cadre of Group D in Kerala circle for the year 1997 onwards, were kept unfilled on the plea that amendment to the Recruitment Rules fixing upper age limit was awaited in view of the judgment of this Tribunal in O.A. No. 155/95 which quashed the upper age limit of 50 years for General candidates and 55 for SC/ST candidates fixed by the Director General of Posts by an executive order dated 28-08-1990. The counsel further relied upon the decision of the Tribunal in OA No. 389 of 2004 and W.P. (C) No.29430 of 2007 in support of his case.

.5.

7. Counsel for the respondents referred to Rule 49(1) of the CCS (Pension) Rules, 1972 which provides for the minimum qualifying service for entitlement to pension. As regards the contention that the DPC should be held in the month of January every year to consider filling up of the vacancies during that year, it has been argued that the DPC for selection of GDS to Group D needs to be held only after getting approval of the Screening Committee. Referring to OA No. 389 of 2004 and W.P. (C) No.29430 of 2007, relied upon by the counsel for the applicant, the counsel submitted that Group D vacancies in Kerala Circle for the period from 1997 to 2000 were not filled up as the whole retirement process got entangled in litigation, since the upper age limit of ED agents for recruitment to Group D which was rated at 50 years was quashed by the Tribunal in OA No. 239 of 1998 and 449 of 1998 filed by the All India Extra Departmental Employees Union Kerala Circle.

8. Arguments were heard and documents perused. For filling up of the vacancies in Group D posts the essential requirements are (a) availability of posts and (b) availability of eligible candidates for appointment. In the instant case the eligibility of the applicant to be appointed as Group D has not been refuted by the Department. The availability of vacancies has also not been rebutted by the Department. Only the constraint due to which the vacancies of 1999 could not be filled up has been explained by the respondents. Had there been no vacancies at all and thus there could not have been the possibility of the applicant's being appointed earlier than his actual date of appointment, the applicant would have no case at all. Instead, if there could have been a possibility of the applicant's

.6.

appointment as Group D earlier than his actual date of appointment and if the applicant could not be blamed for his not being appointed as such, the case deserves consideration for relaxation under the provisions of Rule 88 of the CCS (Pension) Rules, 1972, more so when the deficiency to make the minimum qualifying period is marginal.

9. Provision, as extracted below does exist for such relaxation in consultation with the Department of Personnel, vide Rule 88 of the CCS (Pension) Rules.


"88. Power to relax:

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

10. Thus, if at all there could be a possibility for the applicant to earn pension, the same cannot but be with the invoking of the above provisions, for which it is the Government which is the authority. The Tribunal of its own, cannot relax the provisions of the Rules by any judicial order even where full justification exists.

11. In view of the above, this OA is disposed of with a direction to the first respondent to prepare a statement of case, in the light of the discussions as above, and refer the matter to the Department of Personnel



.7.

for their concurrence and act on the basis of their advice. As this is a case of the senior citizen, priority shall be accorded to the case by the respondents and the DOPT, which is not a party before this Tribunal in this case, shall be impressed upon by the respondents as to the need to accord priority to this case. The decision of the Ministry may be communicated to the applicant preferably within a period of five months from the date of communication of this order. Under the above circumstances, there shall be no order as to costs.

(Dated this the 10th day of August 2012)


Dr.K.B.S.RAJAN
JUDICIAL MEMBER

asp