

21-4-92

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
Ernakulam Bench

D.A.814/90, D.A.827/90, D.A.130/90, D.A.1146/90, D.A.1042/91,
D.A.1241/91, D.A.1402/91, D.A.280/91, D.A.283/91, D.A.285/91,
D.A.286/91, D.A.287/91, D.A.288/91, D.A.289/91, D.A.290/91,
D.A.291/91, D.A.292/91, D.A.293/91, D.A.294/91, D.A.298/91,
D.A.299/91, D.A.309/91, D.A.310/91, D.A.311/91, D.A.321/91,
D.A.322/91, D.A.323/91, D.A.324/91, D.A.325/91, D.A.386/91,
D.A.387/91, D.A.504/91, D.A.507/91, D.A.509/91, D.A.511/91,
D.A.522/91, D.A.577/91, D.A.686/91, D.A.697/91, D.A.70/92,
D.A.100/92, D.A.384/92, D.A.893/91 & D.A.255/91.

DATE OF DECISION 21.4.1992

Applicants

Shri K.N. Sivadas & 8 others - D.A.814/90
Shri Nixon John & 7 others - D.A.827/90
National Union of Postal Employees Class III, Kerala Circle & 7 others - D.A.130/90
Ms M.K. Mridula - D.A.1146/90
Shri K.X. Raju George & 4 ors - D.A.1042/91
Ms Bhagyalaxmi C.P. & 14 ors - D.A.1241/91
Ms C.S. Suma & 38 others - D.A.1402/91
Shri P.M. Rajamani - D.A.280/91
Shri Gnana Selvam V. - D.A.283/91
Ms K. Devi - D.A.285/91
Shri T. Muthaiyan - D.A.286/91
Shri Balasubramanian - D.A.287/91
Ms E. Rajeena - D.A.288/91
Shri P. Vidyadharan - D.A.289/91
Ms M.I. Marikutty - D.A.290/91
Ms R Sarasam - D.A.291/91
Ms V. Padmavathi - D.A.292/91
Shri K. Govindan Nair - D.A.293/91
Ms K.J. Lovely Kutty - D.A.294/91
Shri Babu Thomas - D.A.298/91
Shri K. Sethumadhavan - D.A.299/91
Shri P. Letchmanan & 2 ors - D.A.255/91

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Shri V. Sreerama Krishnan	- O.A.309/91
Shri K. Babu Girish	- O.A.310/91
Ms V Sathi Ratnam	- O.A.311/91
Ms T. Kamalavathy	- O.A.321/91
Shri P. Kutty Sankaran	- O.A.322/91
Shri A. Nagarajan	- O.A.323/91
Ms S Sobhana	- O.A.324/91
Shri K Babu	- O.A.325/91
Shri N.B. Ambedkar	- O.A.386/91
Ms Mariamma N Ninan	- O.A.387/91
Shri Ganesh Rao	- O.A.504/91
Shri Gopalekrishna Bhat	- O.A.507/91
Shri M. Bhavanishankar	- O.A.509/91
Shri C.H. Ishwara Naik	- O.A.511/91
Ms K Annapurna	- O.A.522/91
Ms K. Veena	- O.A.577/91
Shri B Vasudeva	- O.A. 686/91
Ms P. Santhakumari	- O.A.697/91
Shri E.K. Premanadhan	- O.A.70/92
Ms S. Ajithakumari & Ms Sheela Bai	- O.A.100/92
Ms A.K. Jayashree & 26 ors	- O.A.384/92
Ms A.T. Yesoda	- O.A.893/91

Advocate for the Applicants

Shri M.R. Rajendran Nair in O.A.814/90, O.A.827/90, O.A.1042/91,
O.A.1241/91, O.A.1402/91 O.A.384/92.
& O.A.255/91.
Shri O.V. Radhakrishnan in O.A.130/90,

Shri K. Ramakumar in the remaining O.As given above.

Versus

Respondents

Union of India (Secretary, Ministry of Communications)
& others.

Advocate for the Respondents

Shri Mathews J Nedumpara, ACGSC in O.A.814/90, O.A.286/91, O.A.287/91,
O.A.504/91, O.A.1042/91,
& O.A.255/91.

contd.

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Shri K. Prabhakaran, ACGSC in O.A.827/90 & O.A.522/91.

Shri T.P.M. Ibrahim Khan, ACGSC in O.A.1241/91.

Shri C. Kochunni Nair, ACGSC in O.A.1402/91.

Shri V.V. Sidharthan, ACGSC in O.A.130/90.

Shri N.N. Sugunapalan, SCGSC in O.A.1146/90, O.A.511/91,
O.A.577/91, O.A.697/91, O.A.893/91.

Shri George Joseph, ACGSC in O.A.285/91, O.A.507/91,
O.A.509/91 & O.A.686/91.

Shri V. Krishnakumar, ACGSC in O.A.288/91, O.A.100/92 &
O.A.384/92.

Shri K.A. Cherian, ACGSC in O.A.70/92.

Shri V. Ajithnarayanan, ACGSC in O.A.280/91, O.A.283/91,
O.A.289/91, O.A.290/91, O.A.291/91,
O.A.292/91, O.A.293/91, O.A.294/91,
O.A.298/91, O.A.299/91, O.A.309/91,
O.A.310/91, O.A.311/91, O.A.321/91,
O.A.322/91, O.A.323/91, O.A.324/91,
O.A.325/91, O.A.386/91, O.A.387/91.

CORAM:

The Hon'ble Mr S.P. Mukerji, Vice Chairman
and

The Hon'ble Mr A.V. Haridasan, Judicial Member.

JUDGEMENT

(Hon'ble Shri A.V. Haridasan, Judicial Member)

Since the relief claimed, fact, and

the question of law involved in all these cases are similar, we dispose of all the above applications jointly.

2. The applicants in these applications were recruited as Postal Assistants in the reserve pool in various postal divisions during the years 1982 and 1983. After selection, they were sent for training at PTC Mysore, Calicut etc and after completion of training they were deputed for duty as

Short Duty RTP/Postal Assistants on daily wages. They continued as RTP Short Duty Postal Assistants on daily wages without being regularly absorbed in the service for a fairly long period and they were/finally absorbed during the years 1986 to 1990 on various dates.

While they were working as RTP PAs, they were paid wages at hourly rates and were not given any weekly paid off or annual increments. On their absorption in the regular service, the applicants submitted representations requesting for fixation of pay with effect from the date of their initial engagement for disbursement of bonus for the period they had worked as RTP PAs and for counting the period of their service as RTP PAs as service in the regular cadre for the purpose of eligibility for appearing in the departmental examination, for seniority and other purposes. As there was no favourable response to these representations, some of the RTP PAs approached this Tribunal filing O.A.612/89 and O.A.171/89 claiming bonus for the period of their service as RTP PAs. These two applications

were allowed and it was ~~directed~~ declared in the final orders passed therein that the applicants therein would be entitled to the

benefit of productivity linked bonus, if like casual labourers
they had put in 240 days of service each year for 3 years or more
as on 31st March/each bonus year after their recruitment as
RTP candidates. The grievance of the applicants is that the
refusal on the part of the respondents to reckon their services
as RTP PAs for the purpose of seniority etc would cause them
undue hardship and loss. It is averred in these applications
that since the applicants have been selected in a competitive
examination held by the department for appointment in the
service of the department and ever since the completion of
their training, they have been discharging the same duties
and shouldering the same responsibilities as the Postal Assistants
regularly appointed, the refusal to reckon their service
before they were regularly absorbed in service violates the
fundamental rights of equality in the matter of employment
guaranteed under Articles 14, 16 and 23 of the Constitution of
India. The applicants have, therefore, prayed that it may
be declared that the applicants are entitled to get the benefit
of their service commencing from the date of their initial
engagement as RTP PAs for the purpose of annual increment,
bonus, length of service for the purpose of departmental
examination and for seniority and other purposes and to issue
necessary directions to give the applicants the consequential
benefits arising out of such declaration.

3. All these applications are resisted by the respondents.
The respondents have filed a reply statement in O.A.814/90
and they have filed MPs in all the remaining applications

praying that the reply statement in D.A.814/90 may be treated as applicable to the remaining applications also. The respondents have resisted the claim of the applicants on the ground that before absorption in the regular service, the applicants not being holders of any post are not entitled to seniority, increments etc and that in the judgement of the Hon'ble Supreme Court in writ petition No.1119 of 1986 the Hon'ble Supreme Court has observed that after eventual absorption of the RTPs in regular service, their claims should be regulated by the extant rules. The respondents have further contended that since according to ~~as per~~ the extant rules, service is to be reckoned from the date of regular appointment, the applicants are not entitled to any benefit of seniority, increment, bonus etc for the period during which their services were utilised only on a casual basis by paying them prorate wages calculated at hourly rate. It is further contended that as the Hon'ble Supreme Court has already decided the question as to how the period of service rendered as RTP PAs should be treated on regular absorption, the applicants are not entitled to raise the same question before this Tribunal.

4. The applicants have filed a rejoinder in which it is stated that in the judgement of the Supreme Court, there is no finding or decision that the RTPs would not be entitled to any benefit during the period of their service as RTP PAs and that their liberty to adjudicate the question after absorption has been preserved.

5. We have gone through the pleadings and documents and have also heard the learned counsel appearing for the parties.

6. The applicants in all these cases being successful in competitive examinations for recruitment as Postal Assistants under RTP were sent for training and were included in the Reserve Trained Pool. According to the method of selection to the post of Postal Assistants under Appendix 9, Rule 39 of P&T Manual Vol.IV, the vacancies in the cadre of Postal Assistants are to be filled from among those ~~recruited as~~ RTP. Till such time as those are in the RTP are absorbed in service, against vacancies, the practice is to utilise their services for clearing the arrears of work or to perform the duties of the regular Postal Assistants who are on leave. During the period when they served as short duty Postal Assistants in the RTP, the remuneration that is paid to them is on an hourly basis and not in any particular pay scale. As the period for which they would be drafted for duty may depend on the quantum of work to be done and for that reason, it cannot be said that they have any regular duty hours. They may be required to do work for 8 hours as regular Postal Assistants or it may be more or less than that depending on the availability of work. Usually, those who are recruited as RTPs would be absorbed in service without much delay. But in the case of the applicants in these cases though they were taken as RTP Postal Assistants during the years 1982-83 for various reasons, their absorption in the regular service was delayed and it was only in the year 1990 that their

absorption was completed though some of them were absorbed ~~1986~~ during 1986 to 1990.

The grievance of the applicants is that though they have been discharging ^{the} same duties as regular Postal Assistants, since their absorption in regular service was unduly delayed for no fault of theirs, they are being denied the benefit of service rendered by them during that period. Though there is no specific pleading in the application, it has come out during the course of the hearing that most of the applicants have been from the very date of their completion of training till their regular absorption, performing similar duties as the regular Postal Assistants for full 8 hours a day and even more. The applicants therefore claim that though not on regular post as the applicants had been discharging ~~the~~ similar duties as Postal Assistants, they are entitled to have their services from the date on which they were first taken as short duty Postal Assistants be regularised and that they are entitled to get increments, bonus, seniority and all other attendant benefits of service for this period.

7. The learned counsel for the respondents argued that those who are recruited as RTP Postal Assistants have only the status of candidates until they are absorbed on regular post and that till the date of their regular absorption, their services were utilised only in a casual manner paying them remuneration at hourly rate. This according to the learned counsel does not entitle the RTPs to claim retrospective regularisation from the date of their entry as RTP candidates.

The learned counsel for the applicant invited our attention to several rulings of the Supreme Court in support of the applicants claim that they are entitled to reckon their services from the date they were engaged as RTP short duty Postal Assistants. Reference was made in this context to the decision of the Hon'ble Supreme Court in Balleshwar Dass and others Etc. V. State of U.P. and others, AIR 1981 SC, 41, GP Doyal and others V. Chief Secretary, Government of U.P. and others, 1984(2) SLR, 555, Dhirendra Chamoli and another V. State of U.P., 1986(1), SCC, 637. In Balleshwar Dass V. State of U.P., the Hon'ble Supreme Court observed as follows:

"The normal rule consistent with equity is that officiating service, even before confirmation in service has relevancy to seniority if eventually no infirmities in the way of confirmation exists. We see nothing in the scheme of the Rules contrary to that principle. Therefore, the point from which service has to be counted is the commencement of the officiating service of the Assistant Engineers who might not have secured permanent appointments in the beginning and in that sense may still be temporary, but who, for all other purposes, have been regularised and are fit to be absorbed into permanent posts as and when they are vacant."

The learned counsel for the applicant submitted that the services of the applicants as RTP Postal Assistants till they were regularly absorbed in service against the post should be considered as temporary service and that on regularisation, their services have to be reckoned from the date of their officiation as RTP Postal Assistants. Seeking support from the above observation/ their Lordship, we find that the facts and circumstances of the case on hand are entirely different from those in Balleshwar Dass's case. There, during temporary service, the Assistant Engineers were working on temporary

posts. But in this case, the RTP Postal Assistants were not working against any post, whether temporary or permanent, but were only performing some duties on casual basis on receipt of hourly remuneration. So the principle in Balleshwar Dass's case does not apply to the case on hand. In GP Doval V. Chief Secretary, Govt of UP, the Hon'ble Supreme Court has observed as follows:-

"Now if there was no binding rule of seniority it is well settled that length of continuous officiation prescribes a valid principle of seniority. The question is: from what date the service is to be reckoned? It was urged that any appointment of a stop-gap nature or pending the selection by Public Service Commission cannot be taken into account for reckoning seniority. In other words, it was urged that to be in the cadre and to enjoy place in the seniority list, the service rendered in a substantive capacity can alone be taken into consideration. We find it difficult to accept this bald and wide submission. Each case will depend upon its facts and circumstances. If a stop-gap appointment is made and the appointee appears before the Public Service Commission when the latter proceeds to select the candidates and is selected, we see no justification for ignoring his past service. At any rate, there is no justification for two persons selected in the same manner being differently treated....."

Relying on the above observation the learned counsel submitted that the service as RTP should as regular appointment be reckoned for the purpose of seniority and length of service. We are of the view that the principle enunciated in the above judgement could apply only if there is appointment against a post at least on adhoc basis and that as the applicants as RTPs did not officiate against any posts, they cannot claim to have rendered officiating service to be reckoned on regularisation. Much reliance was placed by the learned counsel for the applicant on the following observation of the Hon'ble Supreme Court in Dhirendra Chamoli and another V. State of UP.

"....The argument envisaged in the counter affidavit is that since there are no sanctioned posts to which regular appointments can be made, the casual employees

employed by different Nehru Yuval Kendras cannot claim to receive the same salary and perquisites as Class IV employees appointed regularly to sanctioned posts. But while raising this argument, it is conceded in the counter affidavit that "the persons engaged by the Nehru Yuval Kendras perform the same duties as is performed by Class IV employees appointed on regular basis against sanctioned posts"

Here, the services of the applicants as RTP Postal Assistants being only on an hourly basis cannot be considered as ad-hoc or officiating service as against post to be entitled for reckoning the service for the purpose of seniority and other service benefits on their subsequent regularisation. But the fact remains that for a considerably long period, the services of the applicants had been utilised. Can this long period of service be completely ignored in the case of these applicants? If the applicants had been performing the same duties as regular Postal Assistants, should they not be entitled to some benefits for this service? This aspect of the case requires some consideration. In fact before all the RTP candidates were absorbed in regular service, the cause of the RTP candidates were taken up before the Supreme Court in Writ Petition No.1623/86, All India Postal Employees Union, V Class-III, Bombay V. Mahanagar Telephone Nigam Ltd. Bombay(1990(1) SLR, 839). In this case the Hon'ble Supreme Court has observed as follows:

"The two remaining writ petitions relate to the Department of Posts. Though an assurance had been held out by the learned Additional Solicitor General that a separate scheme for the postal employees would be prepared and placed before the Court within a time frame, that has not been done. At the hearing, a note containing tentative proposals and a statement as to what has been done by way of improving the conditions

have, however, been placed before the Court. The statement relating to improvements brought about indicates that after April, 1986, about seven thousand RTPs have been absorbed. Since the RTP category is no more expanding, only about 2,900 of them remain to be absorbed. We have been told by learned counsel for the Department that equal number of justified and supernumerary posts are being created and the Ministry's proposal is in the hands of the Ministry of Finance for approval and is expected to be finalised soon. This has to be done within a time frame and we direct the posts of both the categories to be created by the end of January, 1990, and the process of absorption to be completed by 31.3.1990. With such absorption made, the RTPs will become regular employees. All their claims would, thereafter, be regulated on the basis of entitlement in accordance with extant rules."

It appears that in pursuance to the above direction entire RTPs have now been regularised in service. According to the judgement of the Hon'ble Supreme Court, a copy of which is at Annexure-R1, on regularisation the claims of the RTPs are to be regulated under the extant rules. No rule or instruction for reckoning the service rendered as RTP Postal Assistants as service on regularisation has been brought to our notice. So as per the extant rules, there is nothing which enables the RTP Postal Assistants to claim that the service rendered by them as RTPs should be reckoned for the purpose of seniority. But as per the scheme for grant on temporary status and regularisation in the case of casual labourers of the Department of Telecommunication, temporary status would be conferred on all casual labourers currently employed and who have rendered a continuous service of at least one year and thereafter such casual labourers would be designated as temporary mazdoors, and they are entitled to count 50% of the service rendered under temporary status for the purpose of retirement benefits after their regularisation and they are also entitled to productivity

linked bonus. We have not been told whether any such scheme has been framed in the case of employees of Postal Department. While deciding the case of RTP Postal Assistants claiming bonus in DA-612/89 and DA-171/89, this Tribunal has declared that the RTP candidates would be entitled to the benefit of productivity linked bonus, if like casual labourers they had put in 240 days of service each year for 3 years or more as on 31st March of each bonus year after their recruitment as RTP candidates. It was held that RTP PAs who had been selected in a competitive examination should not be considered inferior to the casual labourers. We are of the view that in the matter of conferring temporary status reckoning of 50% of service rendered after attainment of temporary status and the benefit of productivity linked bonus available to the casual labourers should be extended to the RTPs also provided as casual labourers, the applicants had been discharging 8 hours duty a day continuously. If a scheme for regularisation of casual labourers in Postal Department is framed, we are of the view that the benefit of the scheme should be extended to the RTP candidates like the applicants, if they satisfy the above said condition.

B. In the conspectus of facts and circumstances, we dispose of these applications with the following directions:

a) those applicants in these cases who have been rendering service for 8 hours a day continuously, on completion of one year of such service, xxxx should be deemed

to have attained temporary status and half the period of eight hours a day service after attaining temporary status should be reckoned for the purpose of qualifying service for pension,

- b) All other benefits if any available to the casual mazdoors after attaining temporary status and subsequent regularisation under the scheme should also be extended to the applicants if they satisfy the above conditions; and
- c) The applicants should be paid productivity linked bonus if like casual labourers they had put in 240 days of service each year for 3 years or more as on 31st March of each bonus year after their recruitment as RTP candidates, i.e. the benefit of the judgement in O.A. 612/89 and O.A. 171/89 should be extended to the applicants in all these cases.

9. There is no order as to costs.

(A. V. HARIDASAN)
JUDICIAL MEMBER

(S.P. MUKERJI)
VICE CHAIRMAN

21.4.1992