

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.323/11

This the 13th day of February 2012

CORAM:

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mrs.K.NOORJEHAN, ADMINISTRATIVE MEMBER

Premalatha P, W/o Mr.Muraleedharan Nair,
Sub-Postmaster, Angamali South, Ernakulam Distt
R/o 'Latha Villas House' Manikyamangalam P.O, Kalady-683574.

...Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

- 1 Union of India represented by the Secretary
to the Govt of India, Mini.of ommunication
Department of Posts, Dak Bhavan, New Delhi-110001.
- 2 The Director General, Department of Posts
Govt of India, New Delhi - 110116.
- 3 Chief Post Master General,
Kerala Postal Circle, Trivandrum.
- 4 The Senior Superintendent of Post Offices,
Aluva Postal Division, Aluva, Ernakulam - 683 101.

Respondents

(By Advocate Mr. Millu Dandapani, ACGSC)

This application having been heard on 2.2.2012 this Tribunal
delivered the following:-

ORDER

HON'BLE Mrs.K.NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant has filed this OA seeking mainly for the following
relief:

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- "(i) Declare that the applicant is entitled to be deemed to have been regularly appointed with effect from 18.2.83 as a Postal Assistant the date from which the applicant was holding a regular post of the Postal Assistant, until she was finally regularised against the same post on 29.5.1980 and direct the respondents accordingly;
- (ii) Direct the respondents to grant the applicant the scales of pay attached to the post of Postal Assistant w.e.f 18.2.1983 with progression in increments year after year and to grant the consequential arrears of pay and allowances arising there from except to the extent indicated in Anxx.A6 orders of this Tribunal;
- (iii) Direct the respondents to revise the pay of the applicant in the light of the declaration and direction in paragraph 8(i) and (ii) above and direct further to grant the consequential benefits arising therefrom."

2 Brief facts of the case as stated by the applicant are that the name of the applicant finds a place in the list of Reserve Trained Pool (RTP for short) when Postal Assistant recruitment was conducted in the year 1982, for her appointment in the subsequent recruitments. She was sent for induction training and on successful completion of theoretical training she was posted for practical training at Perumbavoor Post Office for a period of 15 days from 3.2.1983. Immediately thereafter she was posted against a regular vacancy of Postal Assistant on 18.2.1983. It is averred that though she was appointed on ad hoc basis she continued as such till she was regularised as Postal Assistant on 29.5.1990. She referred to D.G Posts Anxx.A5 order dated 8.3.1983, which stipulates that if RTP candidates recruited in a particular year are awaiting absorption at the end of the year, they have to be given preference for absorption against vacancies of the succeeding year against direct recruitment quota. The contention of the applicant is that though she had worked against a regular vacancy w.e.f 18.2.83, till her regularisation on 29.5.1990, the intervening period was not treated as regular service. Aggrieved, the applicant approached the Hon'ble High Court of Kerala by way of writ petition which was transferred to the Madras Bench of the Tribunal as T.A. She was the 21st applicant in TA No.K-

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765/1987. The Tribunal finally decided the matter by Annx.A6 common order Dated 25.2.1988, directing that the petitioners are entitled to the same pay and allowances as are admissible to the regular employees for the period they have worked as Postal Assistant from the trained pool. It was also directed to pay them arrears of pay and allowances on pro rata basis and to treat them as eligible for paid holidays as admissible to the regular staff. The Tribunal further declared that they should be absorbed in a regular cadre in the order of merit in the reserve trained pool. In a similar case the Jabalpur Bench of the Tribunal in TA 82/86 held in its Annx.A7 order that failure on the part of the respondents to regularly absorb the applicant against regular vacancies under the pretext of ban on recruitment is illegal. She and others approached this Tribunal by filing OA 814/1990 on the plea that benefits of Annx.A7 orders were not extended to them and praying for the same reliefs as granted to casual labour. The order of the Tribunal was reversed by the Hon'ble Supreme Court in its decision reported in UOI Vs. KN Sivadas (AIR 1997 SC 3100). The Apex Court held RTP candidates are better placed than casual labour and they are recruited under a different Scheme altogether. Subsequently the Hon'ble Apex Court in UOI Vs. Mathivanan reported in 2006 SSC (L&S) 1271 held that identically situated persons are entitled to be granted the same pay and allowances on par with regular employees. The applicant came to know the decision in Mathivanan's case, and filed OA 1014/2010 before this Tribunal praying that the applicant be granted the benefit of time bound promotion scheme counting her service from 18.2.1983 and the OA is still pending before this Tribunal. Therefore denial of her due claim is arbitrary and discriminatory.

3 The respondents contested the OA by filing reply. It is submitted that during the RTP period she was paid wages equivalent to the minimum pay of the regular employee from 3.7.85 till regular appointment as per the orders of the Tribunal in OA 6431/85 dated 25.2.1988. The order of the

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Tribunal was over-ruled by the Apex Court by judgment dated 1.8.1987 in UOI & Anr. Vs. K.N.Sivadas & Ors and recovery of over-payment was ordered. Accordingly an amount of Rs.5492/-, the bonus paid to the applicant, was recovered. They submitted that the applicant's date of continuous service with the respondents department is from 29.5.1990 and she was given all service benefits taking into account her date of commencement of continuous service in the Department as on 29.5.90 as per the prevailing rules. It is also submitted that the RTP Scheme was in operation from 1981 to 4.3.1986 and the Scheme prescribes only eventual absorption of RTP candidates against future vacancies. The RTP candidates were recruited as stand-by. Therefore recruitment of the applicant to regular cadre with retrospective effect cannot be done. She was engaged to meet short term staff requirement and recurrent needs due to absenteeism or any other reason, besides for handling peak hour traffic. Regarding the legal submissions of the applicant, the respondents pointed out the law laid down by the Apex Court in the case of K.N.Sivadas (supra). They further submitted that the claim of the applicant based on the judgment rendered 25 years ago is highly belated and barred by limitation. For recurring and continuous cause of action they have referred to Apex Court judgment in M.R.Gupta Vs. UOI. It is averred that the matter is under the active consideration of the respondents department for grant of financial upgradation under MACP Scheme reckoning the short duty service, rendered as RTP candidates and necessary information is being sought from all Postal Circles.

4 Rejoinder has been filed by the applicant reiterating the facts as stated in the O.A

5 We have heard the learned counsel appearing on either side and considered the rival submissions.

6 It is seen from Annexure A-1, that the respondent Department decided to constitute a Standing Reserve Pool of Trained candidates, to

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meet the shortage of staff due to absenteeism and other causes which hamper the smooth flow of work in operative offices. Therefore, below the select list of candidates chosen through open recruitment, against notified vacancies, a reserve list of candidates equal in number to 50% of the number of candidates in the main list will be drawn up, for the Reserved Trained Pool. They will be imparted the training just like the candidates in the select list and they will move up to the select list, if there are any drop outs. Since the vacancies to be recruited in an year, at that point of time, in 1981 averaged around 20, it was specified that the 10 RTI candidates selected for one recruitment year will be appointed against the 20 vacancies, which will arise in the succeeding year. Till then they will be utilised as short duty staff against vacancies and will be paid hourly rates of wages. However, the scheme could not be implemented as it was conceptualised, as in many cases, the number of candidates selected for RTP far exceeded the number of vacancies notified for the particular recruitment year. As was seen from the order of CAT Jabalpur Bench, a recruitment was done only for RTP in 1983 in M.P Circle, which was totally in violation of the Anxx.A1, RTP Scheme. The situation was further aggravated by the fact that Central Government in February 1984 clamped a ban on creation of new posts and recruitment which considerably reduced the number of 50% vacancies under the DR quota. To cushion the impact of ban on promotion quota the department implemented financial upgradation known as time bound one promotion in 1983 itself. In Kerala Circle, the applicants averred that no further recruitment could take place after 1983, because a large number of RTP candidates were awaiting regular absorption. The respondent department was compelled to devise the RTP Scheme to manage the manpower shortage which arose as a result of reduction of leave reserve from 15% to 10% as part of economy measure by the Central Government and owing to the ban on engagement of EE sponsored candidates in Group C cadre even for short term vacancies. Therefore, the RTP scheme which was



considered as a panacea to meet the contingency of 30 to 40% daily absenteeism, ran out of steam. It was too late by the time the respondents reiterated the earlier instruction of restricting the recruitment of RTP candidates to 15% of the sanctioned strength of Postal Assistants in the Division. The scheme was finally scrapped in compliance with the direction from CAT Jabalpur Bench.

7 Therefore, the undisputed fact remains that the applicant, joined the Respondent Department, knowing very well that she is only put in RTP to be engaged, on an hourly wage of Rs.Two as and when vacancies arise, that her name does not figure in the select list and she is not issued with an appointment order prior to 28.05.1990. Annexure A-1 RTP Scheme clearly denotes that she is a surplus qualified candidate, with priority of absorption against vacancies for subsequent recruitment. Due to large number of waiting RTP candidates, no recruitment from open market could take place for a decade from 1983, as the supernumerary posts created to absorb them had to be set off against future vacancies. Along with denial of opportunity to many eligible unemployed youth but for the short lived RTP Scheme the applicants might not have got an opportunity to enter the respondent department at all. However, due to delay in absorption, as regular Postal Assistant, the RTP candidates, across the Country, filed a series of O.As before the respective Tribunal's from 1986 to 1996. One of the reliefs granted by this Tribunal was to direct the respondents to pay the wages equivalent to the minimum pay of the regular employees. This was complied with by the respondents. However, only after creation of 8 new posts and 15 supernumerary posts in Aluva Division the applicant could be finally appointed in 1990.

8 Regarding the issue of regularisation as Postal Assistant from the initial date of engagement as RTP, the respondents filed SLP in the orders dated 21.04.1992 of this Tribunal arising out of O.A Nos.814, 827, 130, 1146 of 1990, 1042, 1241, 1402, 280, 283, 285, 286-99, 310-11, 321-25, 386-87,

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504, 507, 509, 511, 522, 577, 686, 697 of 1991, 70, 100, 384 of 1992, 893 and 255 of 1991. These were numbered as Civil Appeals Nos.80-123 of 1996 with Nos.5268 of 1997, 126, 124-125, 127-131 of 1996, which were decided on August 1, 1997, reported in (1997) 7 SCC 30, Union of India and Anr. Vs. K.N Sivadas & Ors. The relevant portion from the judgment of the Hon'ble Supreme Court is extracted below:

"The Tribunal has erred in equating RTPs with casual labourers. The position of these two categories of employees is very different. The Tribunal has also erred in assuming that casual labourers are claiming these benefits during the period for which the RTPs are claiming these benefits. RTPs have already obtained the benefit of absorption in regular service because of the scheme applicable to them. They therefore cannot, on the one hand, avail of their own special scheme and at the same time, claim additional benefits on the basis of what has been given to the casual labourers. This is unwarranted especially as the period for which they claim these benefits is the period during which such benefits were not available to casual labourers."

9 After the Apex Court rendered its verdict on the issue of regular absorption and other service benefits of RTP candidates, a few of them again filed Writ Petition numbered as O.P 21249 of 2000(S) before the Hon'ble High Court of Kerala which, in its judgment dated 16.09.2003 held as under:-

"It is contended by the learned counsel appearing for the petitioners that the petitioners are not claiming the benefits under the Casual Labourers (Grant of Temporary Status and Regulation) Scheme. Their only contention is that the main list was exhausted soon after the training period was over and they were working continuously. Therefore, they should be given the benefits of regular employment at least from the date they started continuous employment. That fact that the petitioners were given regular appointment only in 1990 is not disputed. Therefore, based on the decision of the Apex Court in Union of India V.K.N Sivadas, AIR 1997 SC 3100 they will get the benefits of regular service only from such date of entry in the regular service and we are unable to accept the contention of the petitioners.

The Original Petition is accordingly dismissed. "



10 Now the respondents have contended that the claim have become stale since the cause of action has arisen, 28 years back and there was continuous litigation for a decade from 1986 and the matter was adjudicated at the highest level. 8 years after the contentious issue was given a quietus by the Hon'ble High Court of Kerala, the applicant has filed this O.A seeking the same relief which attracts the principles of res judicata besides Law of Limitation. Moreover, no Miscellaneous Application was filed for condonation of delay. The respondents made a strong plea to dismiss the case on the ground of delay alone. They cited the decision of the Apex Court in the case of State of Haryana versus Miss Ajay Walia (1997 Lab.IC (SC) 286) to show that the time limit for approaching Court of law cannot be extended on the plea of making repeated representations to concerned authorities. (See Administrator of UT of Daman & Diu versus R.D Valand (1995) Supp 4 SCC 593 and S.S Rathore Vs State of M.P (1989) 4 SCC 582). They also placed reliance on the judgment of the Hon'ble SC in the case of M.R Gupta vs. Union of India (1995) 5 SCC 628).

11 In the case of A.K Mitra (Dr) DG, CSIR Vs. D.Appa Rao, (1988) 9 SCC 492, the Apex Court held that where condonation of delay would lead to a result of unsettling a settled affair (such as seniority etc.). Tribunal should not condone the delay.

12 The Hon'ble Supreme Court in Civil Appeal No.7956/11 made stringent observation on delay in filing O.As. Here the applicant filed OA before the Principal Bench in 2006 when he was denied promotion in December 2003 to Senior Administrative Grade. The relevant portion is extracted below:-

" Before parting with the case, we consider it necessary to note that for quite some time, the Administrative Tribunals established under the Act have been entertaining and deciding the applications filed under Section 19 of the Act in complete disregard of the mandate of Section 21, which reads as under:

"21. Limitation.- (1) A Tribunal shall not admit an application,-
 (a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within



one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where-

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3).

In the present case, the Tribunal entertained and decided the application without even adverting to the issue of limitation."

13 In the light of the observation of the Apex Court in the case of

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supra in our considered opinion on the ground of delay alone, as contended by the respondents, the prayer of the applicant for regularisation from the date of engagement as RTP candidate is to be rejected.

14 The applicant now relies on the order of the Jabalpur Bench of the CAT in 1986 and the judgment dated 09.06.2006 in CA No.5739/2005 to press her claim. The direction contained in para 11 and 12 of Annexure A-7 order of Jabalpur Bench are as under:-

"11. Under the circumstances, to end the unreasonable and unjust classification that had been introduced as the result of dual policy of the Government as reflected in the issue of the circular (Annexure R1) and the stopping of further recruitment and absorption to the cadre of posts of Posts Assistants, as affirmed in para 8 of the Respondent's return dated 24.06.1985, we direct that:-

- a. Government shall review their policy to stop recruitment/absorption of persons against regular Postal Assistants.
- b. No persons shall be inducted from other Departments like Railway mail Service and Telecommunication Department to man posts of Postal Assistants until the petitioners are absorbed against regular posts.
- c. No fresh persons be taken and recruited against the R.T.P (Reserve Trained Pool) until the Government reviews their policy as under (a) above. The operation of the circular dated 31.10.1980 (Annexure R-1) in regard to recruitment of fresh persons to R.T.P other than petitioners is struck down in exercise of this Tribunal's writ jurisdiction.
- d. The absorption of the petitioners against regular posts will be so phased on the basis of para 2 of circular dated 30.10.1980, as if no restriction had been imposed on their regular recruitment/absorption earlier and shall be completed within a reasonable period from the date of this order, if necessary by creating supernumerary posts, and subject to screening of the unfit by a specially constituted screening committee to examine their record and performance. The Screening Committee shall also keep in view their seniority in the R.T.P.

12. As regards the question of equal pay for equal work claimed by the petitioners, we have also to keep in mind Article 39 relating to

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Directive Principles of State Policy in Part IV of the Constitution while reading Article 14 and 16 in the present case. This provision together with other provisions of the Constitution contain one main objective, namely, the building of a welfare state egalitarian, social order, as pointed out by Hon'ble Supreme Court in *Keshavananda vs State of Kerala* (1973) 4 SCC 225. If the state itself violates the directive principles and introduced inequality in the matter of equal pay for equal work it would be most unfortunate and cannot be justified. It is a peculiar attitude to take on the part of the respondents to say that they would pay only hourly wages to R.T.P employees and not the same wages as other similarly employed Postal Assistants why they are performing the same work as held by us in paras 6 and 7 of this order. It cannot be justified also in the light of the following observations of the Hon'ble Supreme Court, cited in the case of *Surendra Singh vs The Engineers in Chief P.W.D.A.T.R* 1986 SC 76.

"The argument lies ill in the mouth of Central Government, for it is all too familiar argument with the exploiting class and a welfare state committed to a socialistic pattern of society cannot be permitted to advance such an argument. It must be remembered that in this country where there is so much un-employment, the choice for the majority of people is to starve or take employment on whatever exploitative terms are offered by the employer. This fact that these employee accepted employment with full knowledge that they will be paid only daily wages and they will get the same salary and conditions of service as other Class IM employees cannot provide an escape to the Central Government to avoid the mandate of equality enshrined in Article 14 of the Constitution. This Article declares that there should be equality before law and equal protection of the law and implicit in it is the further principle that there must be equal pay for work for equal value".

In the matter of Dearness and other allowances and the need for maintaining equality between wages of casual workers and salary etc of regularly appointed Telephone operators the order of the Supreme Court dated 28.7.85 in the case of *All India Telegraph Engineering Employees Union vs Union of India and another* has also been cited by the petitioners besides some other rulings. "

15 Both the above directions have been complied with by the respondents. Soon after the order of the Jabalpur Bench of the Tribunal in

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1988, the applicant and other similarly placed RTP candidates were absorbed in 1990 in Aluva Division by creating 5 new and 15 supernumerary posts.

16 In respect of the Hon'ble SCC judgment dated 09.06.2006 in the case of GOI Vs M.Mathivanan, it is seen at Annexure A-13 that he, a volunteer RTP candidate for Army Postal Service was appointed as regular warrant officer w.e.f 30.09.1983. Hence he came to be governed by the Army rules and paid by Army authorities during his deputation to Army Postal Service. The applicant herein has no such case that she was appointed prior to 1990. However, the fact remains that certain concession in respect of financial upgradation has been extended to similarly placed RTP candidates who were deputed to Army Postal Service and were regularly appointed as Warrant Officer by the Army Authorities. In view of this fact the respondents have fairly conceded that the issue of counting the service as RTP candidate for financial upgradation under MACP on purely personal basis without any benefit of seniority is under the active consideration of the respondent.

17 No further relief regarding regularisation from initial date of engagement as RTP candidate can be given since the matter stands adjudicated at the level of Hon'ble Supreme Court and High Court.

18 In view of the foregoing the O.A is disposed of with the following direction to the respondents. The first respondent will consider the case of the applicant for financial upgradation under MACP duly taking into account, the service rendered as RTP candidate, without the benefit of seniority and will take an appropriate decision and intimate the same to the applicant within a time line of six months. There is no order as to costs.

(Dated 13th February 2012)


K.NOORJEHAN
ADMINISTRATIVE MEMBER
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JUSTICE P.R.RAMAN
JUDICIAL MEMBER