

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 35 of 2011

Monday, this the 30th day of May, 2011

CORAM:

Hon'ble Dr.K.B.S Rajan, Judicial Member

1. Mr.P Ramachandran Nair
Group D (Retired), Karamana P.O
Residing at Hari Sree
Karamoodu, Kallayam P.O
Pin – 695 043 **Applicant**

(By Advocate – Mr.Vishnu S Chempazhanthiyil)

V e r s u s

1. Superintendent of Post Offices
Thiruvananthapuram South Division
Thiruvananthapuram – 695 001

2. Chief Postmaster General
Kerala Circle, Thiruvananthapuram

3. Union of India, represented by its Secretary
Ministry of Communications, New Delhi **Respondents**

(By Advocate –Mr.S Jamal, ACGSC)

This application having been heard on 30.05.2011, the Tribunal
on the same day delivered the following:

O R D E R

By Hon'ble Dr.K.B.S Rajan, Judicial Member -

1. The applicant who has rendered 23 years of service as Extra
Departmental Agent, followed by regular service, as Group D
employee is aggrieved by the rejection of his claim for pension under
the CCS(Pension) Rules 1972 on the ground that he has not

completed 10 full years of service which is the minimum qualifying service for pension. According to the applicant, he falls short of the requisite period of qualifying service by a few days only which could be waived under the discretionary power available with the Director General, Department of Posts, New Delhi. The applicant relies upon a decision by the Madras Bench of Central Administrative Tribunal in O.A 1264/2001 (Annexure A-5). The applicant prays for the following relief:-

1. Declare that the applicant is legally entitled to has his service rendered as Extra Departmental Agent reckoned for the purpose of determining minimum qualifying service for pension to make up the deficiency of a few days to complete 10 years in the post of Group D and is entitled to receive pension on his retirement from the cadre of Group D;
2. Directing the respondents to frame a Pension Scheme enabling the Extra Departmental Agents to receive pension on their retirement from Group D, reckoning their service rendered as Extra-Departmental Agents for calculating the qualifying service for pension;
3. Directing the respondents to pass appropriate orders sanctioning pension to the applicant who retired from Group D cadre, reckoning the part of his service rendered as Extra Departmental Agent to make up the deficiency of service for earning pension;
4. Directing the respondents to disburse arrears of pension which became due on retirement of the applicant from the post of Postman and continue to pay pension regularly. “

2. The respondents have contested the Original Application. According to them, the applicant has qualifying service of 9 years 7 months and 22 days of service after deducting the non-qualifying period of 23 days. As such, the respondents cannot fill up the gap and give him pension counting his GDS service. They have relied upon a decision by the Chandigarh Bench of this Tribunal in Original Application No.1033/03. As regards the decision relied upon by the applicant, vide order in O.A No.1264/2001, the respondents have

contended that the said order has been confined only to the case of the applicant therein with a stipulation that the same should not be treated as a precedent for others to follow vide judgment dated 04.10.2007 in writ petition No.45465 of 2002 (Annexure R-1). The respondents have also relied upon an order dated 19.07.2010 in O.A 643/2008 of Hyderabad Bench wherein, in an identical issue, the Tribunal has deliberated at length and concluded that the applicant therein was not entitled to the pension for shortage of requisite period of service.

3 The applicant has filed his rejoinder contending that as he is having the qualifying service of 10 years short only by 7 days, his case could certainly come within the meaning undue hardship provided for in Rule 88 of the CCS(Pension) Rules 1972 and, therefore, requested for consideration by relaxation of the provisions of the Pension Rules.

4 When the case was called for final hearing, the counsel for the applicant could not be present and counsel for the respondent after advertizing to the pleadings (especially the counter) fairly submitted that the applicant's representation is pending.

5 It was afterwards that the counsel for the applicant also appeared in the chamber and submitted that the pension scheme being a welfare legislation liberal interpretation may be made to the provisions and the respondents may be directed to dispose of the representation.

6 Arguments were heard and documents perused. It is true that the High Court of Madras in Writ petition No.45465/2002 while upholding the decision of the order in O.A No.1264/01, confined the relief only to the applicant therein. In fact, when the matter was taken up in the Apex Court, the Apex Court also while dismissing the

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petition filed by the respondents herein held that the question of law is left open to be decided by the appropriate court. Thus the decision of Madras Bench can not be taken as final. However, the Bangalore Bench of the Tribunal in a recent case vide order dated 23.03.2011 in O.A 245 of 2010 has held as under:-

“ 6. The Madras Bench of the Tribunal in its decision in O.A No. 1264/2001 dated 18.04.2002 dealt with a case which is also exactly similar to the facts on hand. The Madras Bench considered the schemes formulated by the Department of P & T and Railways and after observing that even employees who had been dismissed or removed from service are eligible to get 'compassionate allowance' not exceeding 1/3rd of pension as per Rule 41(1) of the CCS (Pension) Rules, which is subject to the order of the competent authority, to overcome similar situations in order to help the persons who rendered long service in the department and to enable them to get the minimum pension, allowed the said O.A., directing the 1st Respondent therein to consider the case of the applicant in a proper perspective and formulate a Scheme as has been formulated by the DOPT in the scheme issued in the Office Memorandum dated 12.04.1991 as also in the Railways by giving weightage for certain percentage of service rendered as ED Agent for reckoning the same as qualifying service for purposes of pension in respect of persons who get absorbed or promoted against regular Group-D posts in the department which would enable such employees to get the minimum pension and further directed to complete the said exercise within 4 months from the date of receipt of the said order. The 1st Respondent in the said O.A is also the 1st Respondent in this O.A. The applicant therein and the applicant herein are similarly situated who originally worked in GDS cadre and later promoted to Group-D cadre and governed by CCS (Pension) Rules, 1972 only. After the Hon'ble Supreme Court dismissed the SLP filed against the decision of the Madras Bench of the Tribunal, the respondents have sanctioned the minimum pension to the applicant therein by making up the short fall in service to the extent of the short fall by taking into account the ED period of employment. However, even from the reply filed by the respondents in this O.A. during August, 2010, it is not forthcoming whether the respondents have formulated any scheme or not in pursuance of the decision of the Madras Bench of the Tribunal so far.

7. For the foregoing reasons, the O.A is allowed.

Annexure A-13 is quashed and the respondents are directed to consider the case of the applicant by sanctioning the minimum pension by making up the short fall in service to the extent of shortfall by taking into account the ED period of employment of the applicant, within 90 days from the date of receipt of this order. "

7 The decision by the Bangalore Bench is respectfully endorsed. Here is a case where the applicant having put in as many as 23 years of service as GDS followed by nearly a decade as a government servant, is not in a position to enjoy the minimum pension of his regular service as a Government employee, on the ground that he has fallen short of minimum qualifying service by a few days. The provisions of rule 88 read as under:-

" 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 Department, as the case may be, may, by order for 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 :

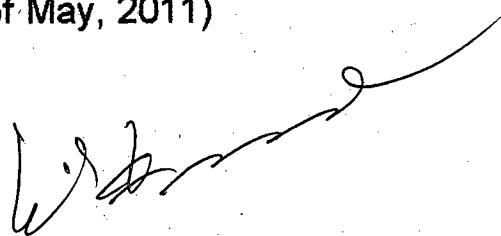
Provided that no such order shall be made except with the concurrence of the Department of Personnel and Administrative Reforms. "

8 The above has to be considered with a liberal interpretation and in that case, the case of the applicant would also fall within the spirit of the provisions of Rule 88. As judicious decision by the Director General, Posts is warranted in this case and as the representation of the applicant is still pending, interest of justice would be met, if the O.A is disposed of with a direction to the Director General Posts to consider the case of the applicant as has been done in the case of the applicant in 1264/01 (Vide Annexure A-5 read with Annexure A-7) and a decision communicated to the applicant within a period of 3 months from the date of receipt of this order.

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9 Needless to mention that if the Director General decides to waive the shortage of period of service and allows the pension to the applicant, the same shall be effected w.e.f the date of such a decision is taken and not from retrospective effect as the right to draw the pension by the applicant cannot arise prior to use of discretion by the Director General. No Costs.

(Dated this the 30th day of May, 2011)



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

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