

**Central Administrative Tribunal, Lucknow Bench, Lucknow**

**Original Application No. 125/2011**

This the 24<sup>th</sup> day of October, 2013

**Hon'ble Sri Navneet Kumar, Member (J)**

Kripal Singh Yadav aged about 61 years son of late Sri Duarika Prasad resident of village Janakpur, P.O. Rampur Grant (Gola Gokaran Nath) District- Kheri retired Group 'D' (Runner Kheri, Tikunia Mail Line).

Applicant

By Advocate: Sri R.S. Gupta

Versus

1. Union of India through the Secretary, Department of Posts, New Delhi.
2. Superintendent of Post Offices, Kheri
3. Sub Divisional Inspector, Pallia, District- Kheri.

Respondents

By Advocate: Sri S.K. Singh

(Reserved on 4.10.2013)

**ORDER**

**BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)**

The present Original Application is preferred by the applicant u/s 19 of the AT Act, with the following reliefs:-

- i) That this Hon'ble Tribunal may kindly be pleased to quash the order dated 28.1.2011 as contained in Annexure No. A-1 and direct the opposite parties to sanction minimum pension to the applicant by recouping the short fall of departmental service from employment in EDA/GDS service of 28 years.
- ii) Any other relief deemed just and proper in the circumstances of the case with cost of O.A. in favour of the applicant.

2. The brief facts of the case are that the applicant was initially appointed as EDMP, Rampur Grant Post Office and was subsequently promoted to Group 'D' cadre as Runner and finally the applicant was superannuated on 31.8.2009. When the applicant was not given any retiral benefits, he submitted representation and when the same was not decided, he preferred O.A. No.412/2010 and while deciding the said O.A., the Tribunal directed the respondents to decide the representation of the applicant by passing a detailed and



well reasoned order and decision taken be communicated to the applicant. He submitted a detailed representation in pursuance of the said order and finally the respondents passed an order on 28.1.2011 and rejected the claim of the applicant and pointed out that as per the service record, the qualifying service of the applicant is 9 years 8 months and 19 days and as per pension rules, there should be 10 years qualifying service or more for admissibility of pension. Since the qualifying service is less than 10 years, as such he is not entitled for pension. Feeling aggrieved by the said order, the applicant preferred the present O.A.

3. The learned counsel appearing on behalf of the respondents filed their reply and through reply, it was pointed out by the respondents that the applicant joined service as EDMP Rampur Grant, Kheri on 25.1.1971 and was approved in Group 'D' cadre by SPOs Kheri on 12.11.1999. He was allotted Pallia Sub Division and appointed on the post of Group 'D' runner Kheri and assumed charge there on 29.11.99. Subsequently, on attaining the age of superannuation, applicant retired from service on 31.8.2009 from the post of Group 'D' Runner and during his service period, he took part in a strike from 6.12.2000 to 17.12.2000 and also remained unauthorized absent on 8.8.2000 as such the said periods have been treated as non-qualifying service. Accordingly, the total qualifying service of the applicant was counted as 9 years 8 months and 19 days, and as per the pension rules, there should be 10 years qualifying service or more for admissibility of pension.

4. Apart from this, learned counsel for respondents also pointed out that as per the direction of the Tribunal, the representation of the applicant was considered sympathetically and found that there is no such provision under which condition of minimum qualifying service can be relaxed or strike period can be converted into leave due and admissible by the SPOs Kheri, hence the representation of the applicant was rejected and detailed order was passed.



5. Learned counsel for the respondents have also filed Supplementary Counter Reply and mostly the averments made in the Counter reply are reiterated and no new facts was brought on record.

6. Learned counsel for applicant has filed Rejoinder Reply and through Rejoinder reply, mostly the averments made in the O.A. are reiterated. In reply to para 17 of the Counter Reply, the learned counsel for applicant has given his reply in para 11 of the R.A. and failed to indicate any ground or rules which may provide for relaxation in qualifying service or strike period can be condoned or controverted into leave due and admissible by any authority.

7. Heard the learned counsel for the parties and perused the records.

8. Admittedly, the applicant joined in EDA cadre as EDMP and was promoted to Group 'D' cadre (Runner) and subsequently superannuated in 2009. The perusal of record also shows that the applicant joined in EDA cadre in 1971 and superannuated in 2009. Since, the applicant was promoted in Group 'D' cadre only on 27.11.99 and superannuated on 31.8.2009 as such his qualifying service is counted as 9 years 8 months and 19 days excluding the period of strike from 6.12.2000 to 17.12.2000 and he was also remained unauthorizedly absent on 8.8.2000. Apart from this, it is also pointed out by the respondents in the rejection order that though the applicant joined as EDMP Rampur Grant on 24.1.1971 and worked on the post till 26.11.99 for over 28 years continuously and subsequently was promoted to the cadre of Group 'D' w.e.f. 27.11.99 and he retired on 31.8.2009 after completing more than 10 years and 04 days service. But due to his involvement/ participation in the strike, his qualifying service was counted only 9 years 8 months and 19 days. Apart from this, as per the Director General, Department of Posts O.M. dated 9.10.2009 which provides for, the judgment dated 4.10.2007 of the Hon'ble High Court of Cennai in W.P. No. 45465 of 2007 which was filed against the order of CAT, Chennai Bench in O.A. No. 1262 of 2001 where special relief to Sri M.R.Palany Swamy



was given and it is ordered that at least the minimum pension by making up the short fall in service to the extent of short fall by taking into account the EDA period of employment was approved. This was done as a special relief to Mr. Palany Swamy and as such it cannot be applied over all officials including the applicant. Though, the said writ petition was taken upto the Hon'ble Apex Court and the Hon'ble Apex Court pleased to dismiss the Special Leave Petition. However, it is observed by the Hon'ble Apex Court that the question of law is left open to be decided by appropriate court in appropriate case.

9. At the out set, it is clear that the applicant joined as EDA in 1971 and in the normal course, had the applicant continued to work as EDMP, he would have continued upto the age of 65 years. But since the applicant was promoted in Group 'D' cadre, he had to retire at the age of 60 years which is the age of superannuation in Govt. service. Thus, promotion in the instant case has come to mean reduction in the age of retirement by five years. Under such circumstances, it is to be seen that the reduction in the retirement age in any way is compensated to the applicant. It may be true that as a Group D employee, the applicant would have received higher pay and allowances. The pertinent factor in this case which requires a mention is that the applicant had lost five years of service as an EDMP and in return he is not getting even the minimum pension because persons who complete 10 years of service alone are eligible for the pro-rata pension. Further, had the applicant served for another few days, he would have become eligible for pro-rata pension as he would have completed the required period for pension.

10. At the time of arguments, the learned counsel for the applicant made a relevant plea that in the Railways, for the casual labourer with temporary status 50% of the temporary status service is taken into account for purpose of qualifying service subsequent to their absorption against regular posts in group D cadre and this has been extended to the temporary status casual labourers for extending the pensionary benefits. Therefore, applying the above analogy to the case on hand and as a modal employer, the respondents



department ought to have come forward to reckon a portion of the service rendered as EDBPM as a qualifying service which would enable person like the applicant to draw the minimum pension.

11. In this connection I would like to place reliance on the Justice Talwar Committee's recommendations to resolve the issue on hand in the interest of justice, based upon which the Department of Posts had issued an O.M. dated 17.12.1998 and the subsequent clarificatory circular dated 10.8.1999, and the relevant portion is extracted below:-

(f) **Severance amount on retirement/death** :- A lump sum severance amount of Rs. 30,000/- may be paid only on retirement of an ED agent at the age of 65 years or on the death of an ED Agent, provided he/she has completed a minimum of 20 years of continuous service. However, in case of an ED Agent who has completed continuous service equal to or more than 15 years but less than 20 years of continuous service, the severance amount shall be only Rs. 20,000/- on retirement or death. These provisions will be effective from the date of issue of these orders.

(g) **Severance amount on absorption on regular basis**:- Severance amount of Rs. 20,000/- may be paid to an ED Agent who has been absorbed on a regular basis against a departmental post after 15 years of continuous service as ED Agent. This provision will be effective from the date of issue of these orders."

12. In short it would appear that after regularization, the ED Agent does not get the same treatment as in the case of a casual labourer. This is an anomalous situation. I therefore, of the view that the respondents as a model employer should apply their mind and formulate a welfare scheme as has been formulated by the DOP&T and Railways which would help many persons like the applicant to get at least the minimum pension.

13. Thus, I am convinced that the applicant's case deserves a sympathetic consideration in view of the fact that there is absolutely

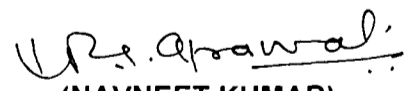


no provision in the service rules for ED staff for pension on absorption as regular Group D. I am constrained to observe that it is for the respondent Department to take into account the overall picture and then take a sympathetic view.

14. I further find that the impugned order has been issued by the Superintendent of Post Offices which in my opinion is not proper as he is not the competent authority to consider the case of the applicant. This is a matter which should be considered at the highest level and the first respondent alone is the competent authority.

15. In the light of the discussion above, I hold that the ends of justice would be met if the following orders are passed:-

- (a) The impugned order dated 28.1.2011 is quashed.
- (b) The first respondent is directed to consider the case of the applicant in a proper perspective and formulate a scheme as has been formulated by the DOP&T in their scheme issued in the O.M. dated 12.04.1991 as also in the Railways by giving weightage for certain percentage or service rendered as an ED Agent for reckoning the same as a qualifying service for purpose 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. This exercise shall be completed within four months from the date of receipt of a certified copy of this order by the respondents. With the above observation, O.A. is disposed of. No costs.

  
(NAVNEET KUMAR)  
MEMBER (J)

HLS./-