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CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A. No. 060/00249/2014

Pronounced on: 29.2.2016

Reserved on: 16.02.2016

CORAM: HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER (J)
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

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1. No. 8372202 N Ex Sep. Faqir Chand S/o Late Sh. Phool Singh aged about 58 years R/o Village Teontha via Fatehpur, Teh & Distt. Kaithal - 136042.
2. No. 8372168Y Ex. WO Baljit Singh S/o Late Sh. Des Raj aged about 57 years R/o VPO Palwal, Distt. Kurukshetra - 136118
3. No. 8372176X Ex WO Yogesh Gaur S/o Late Sh. Ram Dayal Sharma aged about 53 years R/o 668/12, Darra Kheda, Kurukshetra- 136118
4. No. 8372170W Ex WO Bal Krishan S/o Late Sh. Amar Nath aged about 55 years, R/o Vill. Kanipla PO Khanpur Kolyan, The & Distt - 136131
5. No. 8372193X Ex. Sep Balinder Singh S/o Late Sh. Phoora Ram aged about 57 years R/o VPO Thol, Distt. Kurukshetra - 136136.
6. No. 8372197 N Ex Nk. Rajender Pal S/o Late Sh. Manga Ram aged about 50 years R/o VPO Jhansa, Distt. Kurukshetra - 136130
7. No. 8372222X Ex. Sep. Kailash Kumar S/o Late Sh. Joginder Singh aged about 49 years R/o Vill. Balapur, PO Danipur, Distt. Ambala City - 134003.
8. No. 1446126H Ex. Sep. Rajeshwar Sharma S/o Late Sh. Nathu Ram Sharma aged about 54 years, R/o VPO Bhago Majra, Via Radaur, Distt. Yamuna Nagar.
9. No. 8372207W Ex. Nk. Krishan Kumar S/o Late Sh. Om Datt aged about 57 years, R/o VPO Rasina, Via Fatehpur, Distt. Kaithaul - 136042.
10. No. 8372194A Nk. Suresh Kumar S/o Late Sh. Bichha Ram aged about 57 years R/o Vill. Mandhar via Radaur, Distt. Yamuna Nagar - 135133.
11. No. 8372203 W Ex Sep Sat Narain S/o Late Sh. Durga Dutt aged about 56 years R/o VPO Dhand, Distt. Kaithal - 136020.
12. No. 8372215L Ex. Sept Mohinder Kumar S/o Late Sh. Dalip Singh aged about 54 years R/o VPO Teek, Via Kaithal - 136027.
13. No. 8372195-H Ex Sep Birbal S/o Late Sh. Deep Chand aged about 55 years R/o PO Pundir Distt. Kaithal - 136026

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14. No. 8372192 Ex Sep Shri Parkash S/o Late Sh. Bishan Dutt aged about 58 years R/o PO Fatehpur, Kaithal - 136042.

.....**Applicants**
VERSUS

1. Union of India, Ministry of Communication, Department of Posts through Secretary, New Delhi -110011.
2. The Director General, Indian Postal Services, Dak Bhavan, Sansad Marg, New Delhi - 110001.
3. The Additional Director General, Army Postal Services, Kamptee - APO

.....**Respondents**

Present: Mr. Sham Lal Sharma, counsel for the applicants
Mr. Ram Lal Gupta, counsel for the respondents

ORDER
HON'BLE MRS. RAJWANT SANDHU, MEMBER(A):-

1. This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief(s):-

- (i) To pass a judgment order by issuing directions thereby commanding the respondents to grant the service benefits of the total period rendered, with Army Postal Services - military service which may be counted for further service benefits towards the promotions from the date of repatriation to the P & T services at par with those employees who are placed in the same and similarly situated appointment in same and similar cadres of service with respondents.
- (ii) To direct the respondents to prepare by revising the seniority lists after placing the applicants at their respective notional positions after counting their period of service on deputation with APS, thereby fixing the inter-se seniority among the employees of same cadres by considering them as employees having continuous period of service from the date of joining with P & T Department and further joining with parental department after repatriation which may be counted for the purposes of grant promotions etc. with other such consequential benefits in their respective cadres.
- (iii) To quash the impugned order dated 26.11.2013 and 10.05.2011 (Annexure A-4 and A-5 respectively).
- (iv) To grant the applicants same scales of pay and allowances and pension etc. by protecting their pay last drawn in APS prior to joining present posts after being repatriated by APS to present P & T Departments being their parental department to which they were appointed prior to be sent on deputation with APS." Rs _____

2. It is stated in the O.A. that the applicants were initially appointed by Respondent No. 3 as postmen/Clerk/Assistant. Due to shortage of staff and service exigencies, the Army called for volunteers from P & T Department to join the APS and Respondent No. 3 issued a notification Circular No. 4 dated 22.10.1977 (Annexure A-1) in this regard. The applicants were sent on deputation to the APS as U.D. officials by the Supdt. Of Post Offices, Kurukshetra Division, vide appointment letter No. B-4/9 dated 25.01.1991 (Annexure A-2) and appointed by the Army Postal Service for a period of 18 months as per the directions given in the Notification of 1977.

3. The applicants were drawing civil pay scales on deputation with APS including 10% deputation allowance which is included in pay as per civil pay definition. After retirement or release from the APS, the applicants had either joined on repatriation to the parental units or have been released by the Army on attaining superannuation age limits for the Army Service. Their pension and other such benefits are accounted for and dealt with by the P & T Department at Nagpur for all purposes which are debited to Defence Accounts. The pension is paid by the P & T Department after seeking Last Pay Certificate from APS. As per the policy of the P & T Department, when the employees sent on deputation with APS return to the P & T Department, they shall be employed/appointed in the post of same grade and category as attained by them by qualifying various technical/trade examinations while serving in APS. However, the applicants were also given statutory promotions to the posts of time scale promotion which are accorded after completion of 16 years of total service, including APS service. Therefore in both contingencies, the deputationists on return to their parent P & T Department, are placed along with cadre and class of same categories and status of posts as achieved by them in

the APS. Although the applicants were appointed by the P & T Department prior to their joining APS on deputation for a period of 18months only but they had been retained till attaining of superannuation age limit in the APS-Army.

4. In the grounds for relief, it has, inter- alia, been stated as follows:-

- (i) It is well settled law that counting of service rendered by deputationist in an equivalent cadre in the parent department will be taken into account while counting his service in deputed post – Any rule Regulations or executive instructions which have the effect of taking away the aforesaid service would be violative of Articles 14 and 16 of the Constitution of India and liable to be struck down. The applicants who rendered their service with the APS are entitled to the benefits for purposes of fitment in service with the P & T which is their parent department.
- (ii) The applicants are entitled to all service benefits including the period of service rendered on deputation with APS for the purpose of fitment of the seniority amongst the employees of same class and cadres and seniority at notional place/position in seniority list. The applicants are to be considered as employees having their services continuing from the date of their initial recruitment prior to send them on deputations with APS by the P & T Department . Their services from the date of joining with P & T Department, then sent on deputations to APS and later repatriated to P & T Department are considered as period of "continuing service" with parent department. Hence the applicants are entitled to the benefits of continuing period of service till they retire or are released to their parent department on superannuation age limits.
- (iii) The applicants are entitled to benefit of promotion and also for proper fitment in seniority in the seniority list even though they have completed 16 years and considered under the scheme of TBOP for such purposes.

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(iv) S.I. Roop Lal & Others Vs. Lt. Gov. Chief Secy & Others in Civil appeal No. 5363/1997 decided on 14.12.1999, Devijan Chandra Sarkar & Others Vs. U.O.I. & Others (Civil Appeal No. 3098/1983 decided on 15.12.1998, Ram Saran & Others Vs. State of Punjab and Others RSJ 1991(1) 107, Inder Singh Vs. State of Punjab RSJ 1995(1) 592 have been cited to buttress the claim for relief made in the O.A.

5. In the written statement filed on behalf of the respondents, it has been stated that the applicants were Extra Departmental Agents and were formerly governed by ED A (Conduct & Employment) Rules 1964. Now they are called Gramin Dak Sevaks and are governed by Gramin Dak Sevaks (Conduct & Engagement) Rules, 2011 (in short GDS Rules 2011) which are applicable in the Postal Department and are modified time to time. The applicants were engaged under the ED (GDS) Rules, which have been framed by the Govt. of India for the respondent department under executive authority. They were not entitled to enrol on deputation to APS and were not deputed as such to APS by the respondent department as alleged. This has been admitted by the applicants. The competent authority asked the concerned recruiting units to issue the regular appointment orders against the vacant post that existed. NBR certificates were issued from time to time when the vacancy was available for the GDS on seniority cum fitness basis and the services of those applicants counted for promotion either in APS or in civil after discharge from the APS. Being treated as outsiders in the respondent department, the applicants directly approached BRO Ambala Cantt for reenrolment in APS as this does not come within the purview of the scheme as envisaged in the Annexure A-1, being not govt. servants in the Postal Department. The engagement of applicants as EDAs was of contractual nature and the Central Govt. had not issued the regular appointment and therefore, the applicants were not entitled for regular service till the N.B.R. certificate was issued by the

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competent authority of the respondent department on the turn of the relevant applicant, in order of seniority list cum fitness against the vacant posts of M.T.S. cadre as per quota fixed for GDS staff. There is a specific policy for regularization amongst the GDS staff and other casual labourers working in the respondent department subject to the provisions and other conditions as laid down in the policy of the department which is modified from time to time. In the absence of regularization of the service and without the lien on the post (MTS) as required under the rules, the service rendered in APS cannot be counted for the purpose of seniority/promotion/pension in the respondent department i.e. promotion in TBOP/BCR or any MACP cadre as claimed by the applicants by furnishing the various annexures, which are irrelevant under the rules and regulations.

6. It is further stated that the assertion of the applicants that their appointment as Group "D" was a promotion is factually wrong but it was a mere provisional appointment meant to enable their deputation to APS. As such, the applicants continued as GDS in the rolls of the parent division and position in the roster did not get altered due to the provisional appointment. The issue had been clarified by DG Post New Delhi vide letter No. 93-25/2003-SPB II dt. 21.07.2010 (Annexure A-5) consequent upon the dismissal of civil Appeal No. 5379 of 2005 titled Union of India & others Vs. M. Mathivanan by the Hon'ble Supreme Court vide their order dated 09.06.2006 and the order dated 03.04.2002 of the CAT Madras Bench, pronounced in O.A. No. 1094 of 2001 was implemented, subject to condition that the applicant will not be entitled to claim any seniority over those appointed/absorbed in the Postal Department before the applicants were considered to be absorbed for any purpose whatsoever. M —

7. Affidavit dated 07.07.2015 was filed on behalf of the applicants to further clarify their claim applicant wise.

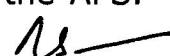
8. In the counter affidavit filed on behalf of the respondents on 14.09.2015, it has been stated that separate provisions for recruitment of EDAs for deputation to APS were made in addition to the provisions that already existed under which only Group D officials were to be deputed to APS in their corresponding rank of Sepoy. In this regard provision was made as per GOI, Ministry of Communication Department of Posts letters No. 47-7/96-SPB-1 dated 28.05.1997 and 23.07.2003 (Annexures R-1 and R-2 respectively). As per these letters, EDAs who were willing to join APS on deputation were given technical appointment in Group-D post for one day after completion of medical examination, with the condition that on repatriation to civil department, their seniority will be given as per their position in the corresponding civil seniority list. When any official on deputation to APS qualifies the departmental examination after fulfilling the eligibility criteria fixed for such exams and promoted to the post of Postman/PA/SA as applicable, he is also promoted to the Army rank of NK/PM and Warrant Officer (PA/SA) after completing the promotion cadre course conducted by APS. Some of the officials who appeared in field promotion examination conducted for promotion exclusively for APS only, were granted promotion to the rank of WO but for APS only without affecting their civil status. (A copy of ADGAPS order No. 02/2004 dated 13.01.2004 is annexed as annexure R/3). On repatriation to Department of Posts, these officials were given the civil post as per their civil lien in their parent department either by virtue of their seniority or by passing departmental promotion examination conducted by postal department which was applicable to each individual according to their civil post. These individuals were repatriated on completion of service limits fixed for APS or

on request for discharge from APS to their department from where they were voluntarily on deputation to APS. Records are stated not to be available with P & T Adm Cell being obsolete and old cases.

9. Arguments advanced by learned counsel for the parties were heard. Learned counsel for the applicants reiterated the content of the O.A. He stated that while the applicants were on deputation with the APS, they were given promotion in the APS itself on the basis of examinations passed by them. On completion of their tenure of service in the APS, on repatriation to P&T Department, they were not given weightage of seniority for the service rendered by them in the APS. He also prayed that the last pay drawn by the applicant in the APS should have been protected when they were repatriated to the P & T Department. Learned counsel for the applicant also stated that the applicants had submitted their representation to the respondent department in this regard and for grant of TBOP but to no avail. As per letter No. B-4/16/TBOP Postman Gr'D' dated 26.11.2013 (Annexure A-4), the authorities had categorically rejected the claim of the applicants for TBOP and also conveyed that there was no ruling for counting of service of APS for MACP purpose.

10. Learned counsel for the respondents took the preliminary objection that O.A. was time barred, since as per the statement (Annexure A-11) placed on the record by the applicants themselves, it was clear that long years had passed since the applicants had rejoined the P& T Department. The cause of action regarding counting of service rendered in APS for benefits as claimed by the applicants in the O.A. arose at the time when they left the APS and these dates ranged from April, 1995 to April, 2010, while the present O.A. had been filed in March, 2014.

11. On merits, learned counsel for the respondents stated that the applicants were EDAs in 1988 when they joined the APS. They had been





paid as per the APS scales and got their promotions within the APS. Based on the seniority as EDAs, they had been given their promotions as Group-D/Postman/Postal Assistant in their parent department keeping in view the aspect regarding passing of the departmental examination for promotion to the higher levels. The applicants could not claim protection of pay and grant of seniority on account of their service rendered in APS since they were not Govt. Employees before they joined the APS. In view of the shortage in APS, the EDAs were allowed to join the APS as a special dispensation but they could not get any jump in their seniority as EDA on that account and hence could not claim seniority and pay protection benefits.

12. We have carefully perused the pleadings of the parties, the material on record and heard learned counsel at length. There can be no dispute about the fact that the applicants were EDAs when they were allowed to join the APS and for the service rendered in APS, they got the regular scales of pay and promotions as admissible to them on the basis of their passing the Army examination for promotion to the higher levels. On completion of their tenure of service in the APS, the persons who joined the APS on deputation had a choice to either rejoin as EDA or the P & T Department if they have been promoted as Group D/postman/postal assistant etc meanwhile, or to take retirement from the APS. To address the issue regarding treatment of EDAs who joined the APS, the P & T Department issued instructions from time to time vide letter No. 47-1/2003-SPB-I dated 13.06.2007, (Annexure R-3) and letter No. 93-25/2003-SPB-II dated 21.07.2010 (Annexure R-5). A combined reading of these letters would show that in June, 2007, it was decided to regularise the GDS as Group-D from the date of their entry in APS/technical promotion given earlier. These persons would rank junior most in seniority

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in the civil gradation list. Besides, service rendered in APS as Group - D would, for all purposes, be counted as regular service except in claiming seniority on the civil side. It is also stated that the consequential benefits including TBOP/BCR would accrue since the date of regularisation of these persons in APS. In the letter dated 21.07.2010, the relevant paras 3 to 6 read as follows:-

- " 3. In view of the dismissal of Civil Appeal No. 5739 of 2005- Union of India and Others Vs. M. Mathivanam by the Hon'ble Supreme Court on the above grounds vide their order dated 09.06.2006, the order dated 03.04.2002 of the Hon'ble CAT, Madras Bench pronounced in O.A. No. 1094 of 2001 was implemented subject to condition that the official will not be entitled to claim any seniority over those absorbed in the Postal Department before he was absorbed, for any purpose whatsoever.
- 4. It had been brought to the notice of the Directorate that a number of cases have been filed by the officials who have rendered adhoc service in APS seeking the benefits of above stated Apex Court order in their cases also. The Department has considered the matter. Department of Personnel & Training and D/o Legal Affairs have also been consulted in the matter.
- 5. Keeping in view the Apex Court's decision in M. Mathivanam's case and the fact that TBOP is not to be granted on the basis of seniority, it has been decided with approval of competent authority to extend the benefit of the Apex Court's order to similarly placed serving officials.
- 6. The TBOP scheme now stand withdrawn w.e.f. 01.09.2008 after introduction of Modified Assured Career Progress Scheme (MACPS)./ It is, therefore, advised that all the cases of officials similar to the case of Shri Mathivanan for grant of TBOP/BCR up to the period 31.08.2008 may be decided by counting the adhoc service rendered by them in APS.

13. It is also seen that as per Annexure R-7, appended with the written statement filed on behalf of the respondents, there is mention of promotion and NBR certificate being issued to some of them. The applicants would obviously be entitled to seniority in the cadre to which they were promoted from the date the promotion as per NBR was effective. They cannot claim any seniority in the P & T Department cadres on the basis of their service/promotions in the APS. They can also have no claim to protection of pay drawn by them in the APS after their repatriation to the P & T as such pay protection is not available to "deputationists" which

was positively the status of the applicants. However, the applicants, who were EDAs when they were selected for appointment in the APS, were given Group-D status for one day on notional basis to enable their appointment. Through letter dated 13.06.2007 (Annexure R/3) and letter dated 21.07.2010 (Annexure R/5) , the GDS officials, who were deputed to APS, were proposed to be regularised as Group D from the date of their entry in APS and their service is to be counted from that date for TBOP/BCR benefits but not for seniority in P & T cadres. Although these letters would appear to apply to the GDS working with APS at the time when these directions have been given but there appears to be no good ground to deny this benefit to persons such as the applicants who joined the APS in 1988 and were repatriated to the P & T Department later. Hence, we conclude that those of the applicants who joined the APS in 1988 and were given Group D status on notional basis for one day would be entitled to the benefit of financial upgradation under TBOP/BCR/MACP on account of their service in the P & T Department reckoned from 1988 provided they are otherwise eligible as per the guidelines of these Schemes. The respondents are directed to review the case of each applicant in the light of above observations, re-fix their pay/pensionary benefits and release the arrears due to them, if any, on this account within a period of four months of a certified copy of this order being served upon them. The O.A. is disposed of accordingly. No costs.

As
(RAJWANT SANDHU)
MEMBER (A)

Place: Chandigarh
Dated: 29.2.2016

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(JUSTICE L.N. MITTAL)
MEMBER (J)