

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.1289/2015

Order Reserved on: 05.05.2016
Order pronounced on 19.05.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Dr. B. K. Sinha, Member (A)

Jaipal Singh Sharma
S/o Sh. Desraj Singh Sharma
Aged about 70 years
Designation: EDA
Department: Post Office
Group : D
C/o Choudhary Jaiveer Singh
Village Chilla, Myur Vihar
Phase-1, Delhi-91.

... Applicant

(By Advocate: Mrs. Rani Chhabra)

Versus

1. Union of India
Through Secretary
Ministry of Communication
Dak Bhawan, Sansad Marg
New Delhi.
2. Director General
Department of Posts
Dak Bhawan, Sansad Marg
New Delhi.
3. Postal Service Board
Through Deputy Director General

(Establishment)
Department of Posts
Dak Bhawan, Sansad Marg
New Delhi.

4. Chief Postmaster General
U.P.Circle, Lucknow, U.P.

5. Postmaster General
Bareilly Region, Bareilly, U.P.

6. Senior Superintendent of Post Offices
Meerut Division, Meerut, U.P. ... Respondents

(By Advocate: Dr. Ch. Shamsuddin Khan and Mr. B.K.Barera)

ORDER

By V. Ajay Kumar, Member (J):

The applicant was appointed as Extra Department Agent (in short, EDA) on 05.10.1967 in the respondent-Department of Posts at Benoli, Baraut, Meerut Division. When two of the juniors of the applicant, namely, Mehrajuddin and Rajender Prasad were appointed to Group 'D' cadre, ignoring the seniority of the applicant, he made a representation and thereon the applicant was appointed on regular basis to the post of Group 'D' against an existing vacancy vide Annexure P3 dated 16.12.1995. Later, the applicant was also given the appropriate seniority over the aforesaid persons, but arrears were denied. The OA No.1347/2002 filed by the applicant for arrears was dismissed on 16.12.2002 (Annexure P5).

2. The applicant retired, on attaining the superannuation age of 60 years, on 30.07.2005. Accordingly, the applicant rendered service of 28 years 2 months and 10 days as EDA, i.e., from 05.10.1967 to 15.12.1995 and he rendered 9 years 7 months and 14 days, i.e., from 16.12.1995 to 30.07.2005, as Group 'D'. Though the applicant rendered sufficient service under the respondent-Department of Posts as EDA and Group 'D' employee, but he was not granted the pension under the CCS Pension Rules, 1972 on the ground that he was not worked for a minimum period of 10 years qualifying service as Group 'D'. The representations of the applicant to grant pension by adding the short-fall of Group 'D' service from the service rendered as EDA is not acceded to by the respondents. Hence, the OA.

3. Heard Mrs. Rani Chhabra, the learned counsel for the applicant and Dr. Ch. Shamsuddin Khan and Mr. B. K. Barera, the learned counsel for the respondents, and perused the pleadings on record.

4. Rule 49 of the CCS (Pension) Rules, 1972, prior to 2011 amendment, reads as under:

õ49. Amount of Pension:

(1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of qualifying service.

(2) (a) In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years, the amount of pension shall be calculated at fifty per cent of average emoluments, subject to a maximum of four thousand and five hundred rupees per mensem.

(b) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty-three years, but after competing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under Clause(a) and in no case

the amount of pension shall be less than Rupees three hundred and seventy-five per mensem.

(c) notwithstanding anything contained in Clause (a) and Clause (b), the amount of invalid pension shall not be less than the amount of family pension admissible under sub-rule(2) of Rule 54.

- (3)
- (4)
- (5) Deleted
- (6) Deleted."

5. Rule 49 of the CCS (Pension) Rules, 1972, after 2011 amendment, is provided as under:

“49. Amount of Pension

[(1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of qualifying service.

(1A) The dearness allowance admissible on the date of retirement shall also be treated as emoluments for the purpose of sub-rule (1).} Inserted vide notification GSR No.928 (E), dated 21st December, 2012 [[F.No.38/80/08-P&PW](#)]

(2)	[In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than ten years, the amount of pension shall be calculated at fifty per cent of emoluments or average emoluments, whichever is more beneficial to him, subject to a minimum of three thousand and five hundred rupees per mensem and maximum of forty-five thousand rupees per mensem.];	
(2-A)	In addition to pension admissible in accordance with sub-rule (2), after completion of eighty years of age or above, additional pension shall be payable to the retired Government servant in the following manner:-	
	Age of Pensioner	Additional pension
	From 80 years to less than 85 years	20% of basic pension
	From 85 years to less than 90 years	30% of basic pension
	From 90 years to less than 95 years	40% of basic pension
	From 95 years to less than 100 years	50% of basic pension
	100 years or more	100% of basic pension

Since the applicant retired from service on superannuation on 30.07.2005, Rule 49(2)(b) of the CCS (Pension) Rules, 1972, prior to its amendment is applicable.

6. The issue of granting pension to former ED Staff who were later appointed on regular basis as Group 'D' but not worked for 10 years as Group 'D' before their superannuation, by taking into account their service rendered as ED Staff in respect of the short fall period has come up before this Tribunal and other Courts number of times.

7. In **M. R. Palanisamy v. Union of India, Represented by Secretary, Department of Posts & Others**, OA No.1264/2001, a Coordinate Bench of this Tribunal at Madras by its Order dated 18.04.2002 (Annexure P11), after considering the rules in force, and noticing that there is absolutely no provision in the service Rules for ED Staff for pension on absorption as regular Group 'D', allowed the said OA as under:

"15. In the light of the discussion above, we hold that the ends of justice would be met if the following or areal are passed:-

- (a) The impugned order dated 6.11.2011 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 DOPT in their, scheme issued in the OM or 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 purposes of pension in respect of persons who get absorbed or promoted against regular Gr. D posts in the department which would enable such employees to get the minimum pension. This exercise shall be completed within four months of receipt of a copy of this order by the respondents.

16. We are directing the Registry to send a copy of this order direct to the first respondent in view of the importance involved in this case and for expecting action thereon.

17. The OA is allowed to the extent indicated above with no order as to costs."

8. Writ Petition (C) No.45465/2002 dated 04.10.2007, filed against the aforesaid order in the Hon'ble High Court of Madras, was dismissed, however, restricting the relief only to the applicant therein. The SLP No.13829/2008 filed by the respondents before the Hon'ble Supreme Court was also dismissed on 17.10.2008 (Annexure P12), however, keeping the question of law open to be decided by appropriate Court in appropriate case.

9. In number of identical cases, this Tribunal and various Hon'ble High Courts, after considering the orders in **M. R. Palanisamy** (supra), as restricted to the applicant therein only by the Hon'ble High Court of Madras, passed identical orders directing the respondent-Department of Posts to consider to grant pension to those ED Staff who were later appointed on regular basis as Group 'D' and who were fallen short of small periods to complete the required 10 years qualifying service for the purpose of pension.

10. In **A. Kannayan v. Union of India, Represented by the Secretary, Department of Posts and others**, 2014 (1) LLN 713(Mad); Manu/TN/2991/2013, a Division Bench of the Hon'ble High Court of Madras, in WP(C) No.18988/2013, decided on 28.11.2013, the applicant rendered 9 years 6 months and 1 day as regular Group 'D' before retirement and thereby become not entitled for granting of pension as the said period is less than 10 years of qualifying service. On challenging the same his OA was dismissed. The Hon'ble High Court, however, allowed the Writ Petition filed by Kannayan, as under:

"4. The learned counsel appearing for the respondents 1 to 4 argued that the pensionary benefits could not be extended to the petitioner as he had not rendered the minimum service of 10 years in the cadre of Postman for grant of pension as per Rule 49(2)(b) of the CCS Pension Rules, 1972 and the Tribunal is justified in dismissing the Original Application. Therefore, the learned counsel for the respondents 1 to 4 submitted that as the petitioner has put in only 9 years, 6 months and 1 day of qualifying service, pensionary benefits could not be extended to him.

5. The learned counsel for the petitioner on the other hand submitted that considering the ED Staff service of the petitioner from 08.08.1970 and his continuity upto 30.06.2008, the Tribunal dismissed the application by rendering that the petitioner has completed only 9 years and 9 months and not completed the qualifying service of 10 years for the purpose of sanction pension.

6. The learned counsel for the petitioner also relied on the judgment of the Division Bench of this Court made in Writ Petition No.45465 of 2002 dated 4.10.2007 (Union of India rep. by the Secretary, Dept. of Posts, Dak Bhawan, New Delhi 110 001 v. M.R.Palanisamy), wherein a similar issue was raised by an E.D.Staff, who served for 29 years before his permanent absorption as Group "D" staff and he was ordered to be granted pension treating the person as completed 10 years of qualifying service, though he was having a regular service of 9 years, 3 months and 29 days, with reference to the E.D.Staff service. The said judgment was challenged before the Hon'ble Supreme Court in SLP No.13829 of 2008 and the Hon'ble Supreme Court also dismissed the Special Leave Petition on 17.10.2008 and thereafter, the very same Department sanctioned pension to the said person, viz., M.R.Palanisamy by order dated 9.10.2009.

7. Even though the order of the Division Bench in Writ Petition No.45465 of 2002 dated 4.10.2007 restricted the relief only to the first respondent in the said Writ Petition, another Division Bench of this Court in Writ Petition No.22833 of 2010 (T.Jayaraman v. The Post Master General, Central Region, T.N.Circle, Trichy and others), noticing the similar set of facts, allowed the Writ Petition by order dated 10.11.2010 noticing the earlier order, which was confirmed by the Supreme Court and which was also implemented by the Department.

8. Again, in the order dated 14.02.2013 passed by this Court in Writ Petition No.22496 of 2009, (Union of India, rep. by the Secretary, Department of Posts, Dak Bhavan, New Delhi 110 001 and others v. G. Thulasidasan), similarly placed person was ordered to be granted pension, considering the long number of years of service as E.D.staff.

9. A Division Bench of Karnataka High Court by order dated 25.3.2013 in Writ Petition No.72872 of 2012 (S-CAT) (Union of India, rep. by the Secretary, Department of Posts, Dak Bhavan, New Delhi 110 001 and others v. B.V.Dambal) also passed similar order.

10. Therefore, there is consistent view on this aspect and the matter having been attained finality, it is not proper for the petitioners/Postal Department to repeatedly challenge the order before this Court.

11. Further, the facts in the above referred cases are exactly similar to the case of the petitioner as he served as E.D.Staff from 08.08.1970 and after 28 years of service, he was appointed as postman from 31.12.1998.

12. In view of the above, the decision rendered by the Tribunal is set aside. The Writ Petition stands allowed. No costs."

11. The contention of the respondents that they have taken a policy decision after considering the decision in **M. R. Palanisamy** (supra) vide Annexure P1, dated 25.10.2013, that there is no scope for counting of part of GDS service towards regular employment to enable to make up for the short fall in the minimum required length of service, does not stand to the legal scrutiny in view of the categorical finding of the Hon'ble High Court of Madras in **A. Kannayan** (supra), wherein the observation of the Madras High Court in **M.R.Palanisamy** that the relief was restricted to him only and the observation of the Hon'ble Apex Court that the law is kept open in the SLP filed in **M.R.Palanisamy** case, were also considered and still it was directed to grant pension, by giving reasons.

11. It is also to be noted that in **A. Kannayan** (supra), the Hon'ble High Court of Madras also considered other identical decisions of the same Court and also of the Hon'ble High Court of Karnataka wherein also directions were issued to count the part of the GDS service to make up for the shortfall in the minimum qualifying service.

12. Since the facts of this case are also identical to the facts in **A. Kannayan** (supra) and other decisions referred therein, the applicant is also entitled for granting of similar reliefs.

13. In the circumstances and for parity of reasons, the OA is allowed and the respondents are directed to count the part of the EDA service of the applicant towards the short-fall in the minimum qualifying service of 10 years of the applicant and accordingly consider his case for pension and other pensionary benefits. However, the applicant is not entitled for any arrears. This exercise shall be completed within two months from the date of receipt of a copy of this order. No costs.

(Dr. B. K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

/nsnrvak/