

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00079/2014

Monday, this the 9th day of April, 2018

CORAM:

Hon'ble Mr. U. Sarathchandran, Judicial Member
Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member

K. Haridasan, S/o. Late Kunju Panicker, aged 59 years,
 Postman, Kollam HO – 691 001, residing at Mannath Thekkathil,
 Karthikapalli PO, Alappuzha. **Applicant**

(By Advocate : Mr. V. Sajithkumar)

V e r s u s

1. Union of India, represented by Secretary to Government,
 Department of Posts, Ministry of Communications,
 Government of India, New Delhi 110 001.
2. The Chief Post Master General, Kerala Circle,
 Trivandrum - 695 033.
3. The Senior Superintendent of Post Office,
 Kollam Postal Division, Kollam – 691 001. **Respondents**

(By Advocate : Mr. T.C. Krishna, Sr. PCGC)

This application having been heard on 02.04.2018, the Tribunal on
 09.04.2018 delivered the following:

ORDER

Per Hon'ble Mr. U. Sarathchandran, Judicial Member –

At the time of filing this OA the applicant was working as a Postman under respondent No. 3. He is aggrieved by non-consideration of his claim for counting his provisional service of Group-D for the purpose of pension and also for accommodating him against the available vacancy of the year 2003. He was working as GDS MD from 18.10.1978. He states that by

virtue of seniority he was due for promotion as Group-D/Postman during the period between 2001 to 2003 but due to the ban on appointments on regular posts his promotion was delayed. However, the respondents permitted him to work against regular retirement vacancies from 1.4.2002 vide Annexures A1 and A2. He was accommodated against regular Group-D vacancy by Annexure A3 order in the place of Smt. Remavathy who had superannuated. In the above manner he was working against the regular vacancies from 2002 onwards till he was appointed to the cadre of Postman as per Annexure A4 DPC proceedings for selection/promotion. After training he was appointed as Postman at Kollam HO. After joining service he sent representations to respondent No. 3 to include him in the statutory pension scheme vide Annexures A6 & A7. He was informed by his superiors that his grievance will be settled after getting orders from respondent No. 2. As his retirement in October, 2014 was fast approaching he again sent Annexure A8 detailed representation. As no relief was granted he prays for:

- "(i) To declare that the service of applicant with effect from 1.4.2002 as Group-D on temporary/provisional basis and thereafter as postman on regular basis without break is eligible to be considered as continues service for the purpose inclusion in to the Statutory Pension Scheme existed prior to 1.1.2004.
- (ii) To direct the respondents to count the service of applicant from 1.4.2002 as Group-D on provisional/temporary basis and thereafter as postman on regular basis without break for the purpose of statutory pension existed prior to 1.1.2004 and to grant all consequential benefits.
- (iii) Alternatively accommodate the applicant against the regular vacancy of postman of the year 2003 w.e.f. the date of occurrence of vacancy in terms of the policy formulated in Annexure A9 and grant all consequential benefits including inclusion into statutory pension scheme.
- (iv) Grant such other reliefs as may be prayed for and as the Court may deem fit to grant, and
- (v) Grant the cost of this Original Application."

2. The OA was resisted by the respondents contending that he was appointed to the post of Postman on regular basis with effect from 8.9.2005. As he was appointed after commencement of the New Pension Scheme (for short, NPS) with effect from 1.1.2004 monthly subscription towards the NPS is recovered from the salary. Respondents state that prior to the regular appointment as Postman the applicant was appointed in the vacant posts of Group-D purely on temporary basis as he had expressed his willingness to work in such Group-D posts on extra cost arrangement. According to the respondents such posting as Group-D on extra cost basis was purely on temporary basis. When he was appointed as Postman on regular basis the applicant had applied for inclusion in the New Pension Scheme and was allotted PRAN number without any demur. The respondents pray for rejecting the OA.

3. A rejoinder was filed by the applicant reiterating his pleas in the OA.

4. We have heard Shri V. Sajith Kumar, learned counsel for the applicant and Shri T.C. Krishna, Sr. PCGC for respondents. Perused the record.

5. The arguments of Shri Sajith Kumar, learned counsel for the applicant were two fold. Firstly, his contention was that on the basis of his seniority as GDS the applicant ought to have been considered for the post of Group-D/Postman for the vacancies which arose between 2001 & 2003 but it was due to the ban on appointment and clearance from the department to fill up the vacancies the regular promotion to GDS/Postman could not take place

till the DPC was convened on 24.8.2005 wherein vide Annexure A4 minutes the applicant was considered to be posted against the vacancy year of 2003. Shri Sajith Kumar argued it was not due to the fault of the applicant that he was finally appointed to the regular post of Postman on 8.9.2005 only after the commencement of the NPS i.e. on 1.1.2004. Shri Sajith Kumar contended that in the light of Annexure A10 order passed by this Tribunal applicant ought to have been given appointment on notional basis from the date on which the vacancy arose at least for the purpose of pension.

6. However, it appears to us that in the light of the recent ruling of the apex court in *Najithamol Y. & Ors. v. Soumya S.D. & Ors.* – 2016 (4) KHC 280 (SC) [Civil Appeal No. 90 of 2015] that recruitment of GDS to the regular departmental post like GDS/Postman has to be treated as a direct recruitment, the aforesaid contention of the applicant's counsel will not sustain. If such appointments are considered as appointment on direct recruitment basis, the fact that the vacancy arose long back before the actual joining is of no consequence at all because a direct recruitee can lay claim over the post only from the date of joining,.

7. The second argument of Shri Sajith Kumar, learned counsel for the applicant was for counting of the period during which the applicant was holding temporary of posts by from 1.4.2002 till he was regularly appointed as Postman on 8.9.2005. Respondents state that the posting of the applicant in the different vacant posts of Group-D was purely on temporary basis, on

the basis of the willingness he had furnished. Annexures A2 and A3 are relevant orders issued to the applicant for engaging him against the vacancy of regular hands. According to the respondents the remuneration paid to the applicant for such arrangements was under 'extra cost' system.

8. Referring to Rule 13 of the CCS (Pension) Rules, 1972 Shri Sajith Kumar submitted that while reckoning the qualifying service for the purpose of pension applicant's engagement in a temporary capacity also will have to be taken into account especially when such temporary service was followed without any interruption by his regular appointment as Postman. Rule 13 of CCS (Pension) Rules, 1972 reads:

“13. Commencement of qualifying service

Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity :

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post :

Provided further that –

- (a) in the case of a Government servant in a Group 'D' service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose, and
- (b) in the case of a Government servant not covered by clause (a), service rendered before attaining the age of eighteen years shall not count, except for compensation gratuity.
- *(c) the provisions of clause (b) shall not be applicable in the cases of counting of military service for civil pension under Rule 19.

*Inserted vide Notification No. 28/19/2001-P&PW(B) dated 11-11-2003 published as so no. 3205 in Gazette of India dated 22-11-2003.”

9. There is no dispute for the respondents that the engagement of the applicant from 1.4.2002 till his regular selection as Postman was uninterrupted . Annexures A2 and A3 makes it clear that such arrangement was against the vacancy of Postman/Group-D selected from the GDS

officials on the basis of their seniority and willingness. Therefore, it has to be noted that, such postings to man the vacant post of Group-D/Postman had all characteristics of a temporary/officiating post as envisaged in Rule 13 of CCS (Pension) Rules, 1972.

10. In the above circumstance we are of the view that applicant is entitled to the benefits of CCS (Pension) Rules, 1972 by counting the service put in by him from 1.4.2002 till his regular appointment as Postman plus his regular service as Postman for the purpose of pension. Respondents are directed to refund/adjust the recoveries effected from the applicant under the NPS and to calculate the pension admissible to the applicant. Respondents shall issue Pension Payment Orders to the applicant within two months from the date of receipt of a copy of this order.

11. The Original Application is disposed of with the above directions. Parties shall suffer their own costs.

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

(U. SARATHCHANDRAN)
JUDICIAL MEMBER

“SA”

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APPLICANT'S ANNEXURES

- Annexure A1** – True copy of the letter No. G/5KLM(S) dated 15.3.2002 issued by the 3rd respondent.
- Annexure A2** – True copy of the order No. Pf/Grd/K.Gopalan dated 25.3.2002 issued by the 3rd respondent.
- Annexure A3** – True copy of the order No. BB/44/2003 dated 22.5.03 issued by the 3rd respondent.
- Annexure A4** – True copy of the minutes of DPC to the post of Postman held on 24.8.2005.
- Annexure A5** – True copy of the memo No. BB/27/Trg dated 25.8.2005 issued by the 3rd respondent.
- Annexure A6** – True copy of the representation dated 16.8.2008 submitted by the applicant before the 3rd respondent.
- Annexure A7** – True copy of the representation dated 27.1.2011 submitted by the applicant before the 3rd respondent.
- Annexure A8** – True copy of the representation dated 11.1.2014 submitted by the applicant to the 2nd respondent.
- Annexure A9** – True copy of the order No. CO/LC/OA/32/08 dated 8.7.2010 issued by the 2nd respondent.
- Annexure A10** – True copy of the order dated 23.5.2013 in OA 649/2011 of the Central Administrative Tribunal, Ernakulam Bench.
- Annexure A11** – True copy of the judgment in CWJC No. 3893/2009 dated 10.8.2009 of Patna High Court.

RESPONDENTS' ANNEXURES

Nil

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