

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00032/2017

Thursday, this the 14th day of June, 2018

C O R A M :

**HON'BLE Mr. U. SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER**

1. P.Sreekumar,
S/o.late Purushothaman,
Retired Ex-Postal Assistant,
Oyur SO, Department of Posts.
Residing at Panchavady, 504,
Karingannur, Kollam – 691 516.
2. T.Chakrapani,
S/o.late Thankappan,
Retired Ex-Postal Assistant,
Sasthamcotta P.O., Department of Posts.
Residing at Nirappura Vila Veedu,
East Kallada – 691 502. ...Applicants

(By Advocate – Mr.V.Sajith Kumar)

V e r s u s

1. Union of India represented by the 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 – 695 001.
3. The Senior Superintendent of Post Offices,
Kollam Postal Division, Kollam – 691 001.
4. The Superintendent of Post Offices,
Pathanamthitta Postal Division,
Pathanamthitta – 689 645. ...Respondents

(By Advocate – Mrs.Mini R Menon,ACGSC)

This Original Application having been heard on 7th June 2018, the Tribunal on 14th June 2018 delivered the following :

ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

The applicants who had entered the service of the respondents as Postman in 2005 and had been included under the New Pension Scheme that came into effect for employees appointed after 1.1.2004, contend through this O.A that their appointment should be considered as having taken place in 2003 whereby they would be eligible to be included under the Old Statutory Pension Scheme. The reliefs sought in the O.A are as follows :

1. To direct the respondents to place the applicant notionally in the category of Postman with effect from date of occurrence of vacancy and include him into the Statutory Pension Scheme by extending the benefits ordered Annexure A-4.
2. Alternatively direct the respondents to grant statutory pension in the light of the directions of the Honourable Principal Bench in O.A.No.749/2015 and connected cases.
3. Grant such other reliefs as may be prayed for and as the Court may deem fit to grant, and
4. Grant the cost of this Original Application.

2. The 1st applicant entered service as GDS MC on 13.12.1995 and was appointed as Postman on 8.9.2005. He retired from service on 30.11.2015 while he was working as Postal Assistant. The 2nd applicant commenced his engagement as GDS MD on 2.4.1994 and was appointed as Postman on 8.9.2005. He retired from service on 21.10.2016. As a general policy the New Pension Scheme came into effect for all employees who entered service from 1.1.2004. The applicants in the O.A had applied for the post of

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Postman pursuant to a common notification and had participated in the examination held on 22.5.2005 and 10.7.2005 respectively. They were selected and after successful training were appointed as Postman by order dated 12.8.2005 (Annexure A-1).

3. The primary contention of the applicants is that since the vacancy against which they were posted belonged to the year 2003, they ought to be considered as having commenced their service from the date of occurrence of vacancy, viz. from 2003 and thereby ought to be included in the Statutory Pension Scheme which covered employees appointed till 31.12.2003. They submitted that the representations addressed to the 2nd and 3rd respondents have not been considered favourably. The applicants called to their assistance the order of this Tribunal in O.A.No.102/2010 and connected cases at Annexure A-4 as well as the order in O.A.No.117/2015 at Annexure A-5.

4. Orders of the Principal Bench of this Tribunal in O.A.No.749/2015 and connected cases have ruled that even the GDS service is to be counted for the purpose of pension. Further orders in O.A.No.620/2003 of this Tribunal had also directed the respondents to give notional promotion from the date of promotion of the candidates in the departmental quota. It is further argued that grant of relief to the applicants will not affect the settled right of any third party.

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5. Per contra, the respondents have filed a detailed reply statement disputing the contentions of the applicants. Therein it is stated that while the vacancies were indeed for 2003, a due process was required as prescribed by the O.M dated 16.5.2001 of DoPT, Government of India (Annexure R-1), wherein the respondent department were required to formulate an Annual Direct Recruitment Plan to be finalised through the mechanism of a Screening Committee. This was an initiative recommended by the Expenditure Reforms Commission with a view to optimise direct recruitment to civilian posts and ensure that redundancy was avoided to the maximum extent. In so far as this case is concerned this initiative had the consequence that the final decision to go ahead with the recruitment for 2003 vacancies could be taken only in February 2005. Unfilled departmental quota for promotions vacancies had to be transferred to GDS merit quota under direct recruitment and after internal process were completed the respondents had gone ahead with the notification for fresh notification brought out on 17.2.2005. The examination was conducted and the selected candidates were appointed which included the applicants.

6. The order of this Tribunal in Annexure A-4 dealt with a different question involving examination held in 2002 wherein some candidates came to be placed under the Old Pension Scheme and some who were successful in the same examination but were subsequently appointed found a place under the New Pension Scheme. Therein the department had stated that

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administrative delay had occurred in transferring the vacancies to GDS merit quota. However, in this case no such delay has occurred and whatever time lag has resulted due to the Government of India initiative to optimize its manpower by convening Screening Committee. In any case, clearance of direct recruitment vacancies by the Screening Committee is an administrative procedure common to all Central Government departments and the respondent department were required to adhere to the settled norms. In so far as the order of this Tribunal in O.A.No.117/2015 is concerned it was submitted that the said order has not yet attained finality an an appeal is pending before the Hon'ble High Court of Kerala.

7. Orders of the Hon'ble Apex Court in the case of **Union of India v. Kameshwar Prasad 1988 SCC (L&S) 447** and S.L.P.No.17035-36/2013 would show that GDS are governed by a separate set of rules and the provisions of the rules governing GDS stipulate that the GDS are not entitled to pension. In any case the applicants had joined the service of the respondents as early as in 8.9.2005 as Postman and had chosen to accept the conditions of appointment all this time. Now 12 years later they have approached this Tribunal stating their grievance. They are clearly estopped from challenging the date of appointment at this distance of time. This position has been upheld by the Tribunal in O.A.No.889/2009 as well as in O.A.No.495/2013.

8. Heard learned counsel for both sides and perused the pleadings both documentary and oral. The applicants are appointees to the post of Postman. They had applied in consequence to a notification brought out by the respondent department in 2005 and after a due selection procedure came to be appointed in 8.9.2005 as Postman. As the post of Postman is considered a fresh posting in the respondent department they are treated as direct recruits. Having responded to the notification published in 2005, participated in the examination as well as in other selection procedure, attended the training and gained appointment, they appear to have been fully reconciled to the fact that they are 2005 appointees. They claim that they had submitted representations stating that their seniority should be pre-dated to 2003 with intent to take advantage of the Old Statutory Pension Scheme. But filing a representation by itself will not give rise to a claim on an individuals' part. They have approached the Tribunal in 2017 ie. 12 years after their appointment and also years after their superannuation. This in our view amounts to unexplained delay attracting disqualification from the point of view of limitation.

9. Learned counsel on both sides have relied upon the judgments submitted along with the written statement. As some of them are at variance with each other, it is difficult for this Tribunal to come to a conclusion from an analysis of the same. The applicants have assailed the delay on the part of the respondents in conducting the selection late for the

vacancies of 2003. But the respondents have a valid reason due to the procedure enunciated by the DoPT O.M at Annexure R-1 which certainly cannot be ignored. It is also settled law that a promotion takes place from the date of being granted and not from the date of occurrence of vacancy or creation of post vide **Nirmal Chandra Sinha v. Union of India (2009) 1 SCC 671.**

10. On a consideration of all factors this Tribunal is clearly of the view that the case made out by the two applicants is belated and barred by limitation. We have also examined the case from the point of view of merit and conclude that it is devoid of the same. The O.A is dismissed accordingly. No costs.

(Dated this the 14th day of June 2018)

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

**(U.SARATHCHANDRAN)
JUDICIAL MEMBER**

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List of Annexures in O.A.No.180/00032/2017

- 1. Annexure A-1** – A true copy of the Order No.BB/27/Exam/2004 dated 12.8.2005, issued by the 3rd respondent.
- 2. Annexure A-2** – A true copy of the representation dated 9.11.2016 submitted by the 1st applicant to the 2nd respondent.
- 3. Annexure A-3** – A true copy of the representation dated 21.11.2016 submitted by the 2nd applicant to the 3rd respondent.
- 4. Annexure A-4** – A true copy of the order in O.A.No.102/2010 and connected cases of the Honourable Central Administrative Tribunal, Ernakulam Bench.
- 5. Annexure A-5** – A true copy of the order dated 25.10.2016 in O.A.No.117/2015 of the Honourable Central Administrative Tribunal, Ernakulam Bench.
- 6. Annexure R-1** – A true copy of the DOPT OM dated 16.5.2001.
- 7. Annexure R-2** – A true copy of the relevant portion of Rule 2 of Part-I General of Appendix 37 Rules relating to departmental examination.
- 8. Annexure R-3** – A true copy of the order of the Hon'ble CAT in O.A.No.889/2009.
- 9. Annexure R-4** – A true copy of the order of the Hon'ble CAT in O.A.No.495/2013.
