

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 180/01128/2014

Friday, this the 10^h day of August, 2018.

CORAM:

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

HON'BLE Mr. ASHISH KALIA, JUDICIAL MEMBER

P. Dorai, 62 years,
S/o. Sri. Ponnuswami,
Multi Tasking Staff (Retd.),
Olavakkode.
Residing at 'Prayag Vihar',
Ambikapuram (P.O), Palakkad – 11. - Applicant

**[By Advocates Mr. O.V. Radhakrishnan, Senior
Mr. Antony Mukkath]**

Versus

1. Senior Superintendent of Post Offices,
Palakkad Division, Palakkad – 678 001.
2. Postmaster General,
Northern Region, Kozhikode – 673 011.
3. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram – 695 033.
4. Director General of Posts,
Dak Bhavan, New Delhi – 110 001.
5. Union of India represented by its Secretary,
Ministry of Communications,
New Delhi – 110 001. - Respondents

[By Advocate : Mr. N. Anilkumar, Senior PCGC]

The application having been heard and reserved for orders on 01.08.2018, the Tribunal on 10.08.2018 delivered the following:

ORDER

Per: Ashish Kalia, Judicial Member:

The present Original Application is filed by the applicant seeking the following reliefs:

“i) to declare that the applicant is entitled to get promoted to the cadre of Group D retrospectively with effect from the date of his turn and entitlement against a vacancy of the year 2002 and to get full service benefits from the date of his retrospective notional promotion and also to get retiral benefits and pension determined on that basis reckoning his qualifying service for pension from the date of his retrospective promotion;

ii) to declare that the applicant is entitled to count his ad hoc service in the post of Group D with effect from April, 2002 till the date of his retrospective promotion as Group D against the vacancy of the year 2002 towards qualifying service for all purposes including pension and pensionary benefits.

iii) to call for the records leading to Annexure A-5 and to set aside the same;

iv) to issue appropriate direction or order directing the respondents to grant retrospective promotion to the cadre of Group D with effect from the date of occurrence vacancy in the year 2002 and to grant him full service benefits admissible to the applicant consequent on his retrospective notional promotion to the cadre of Group D against the vacancy of the year 2002 including due annual increments, arrears of pay, seniority, etc. and to treat him as a pre 01.01.2004 employee for the purpose of Pension under CCS (Pension) Rules, 1972 and to disburse the arrears of pay and allowances within a time-frame that may be fixed by this Hon'ble Tribunal;

v) Issue appropriate direction or order directing the respondents to reckon the ad hoc service of the applicant in the post of Group D with effect from April, 2002 till the date of his retrospective promotion against the vacancies of the year 2002 as qualifying service for all purposes;

vi) to grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case such other;
and

vii) to award costs to the applicant.”

2. The brief facts of the case are that the applicant was working as Multi Tasking Staff (MTS) under the Palakkad Postal Division and superannuated on 30.11.2012. He was initially working as Extra Departmental Mail Packer, Ambikapuram w.e.f. 15.3.1973. Thereafter the applicant who was ordered to work as an outsider on adhoc basis in the vacant Group D post under the Palakkad Head Post Office from April, 2002

and he continued as such till 31-12-2003 till 31.12.2003 as on the date of his regular appointment as Group D post under the Palakkad Head Post Office. On 1st April 2004 applicant was appointed as Group D with the Sub Divisional Inspector (Postal) and applicant continued as such till his retirement from service on superannuation on 30.11.2012. In May 2014, applicant made a representation to promote him retrospectively from the date of occurrence of vacancy in the year 2002 and to grant him pension and pensionary benefits in accordance with the provisions contained in Central Civil Service (Pension) Rules, 1972. His representation was rejected by the Department with the remarks that Central Govt. appointed on or after 1.1.2004 are covered under the new Pension Scheme Rule and are not eligible for statutory pension which are in force upto 31.12.2013. Aggrieved by the rejection of his representation applicant approached this Tribunal for redressal of his grievance.

3. Notices were issued. Respondents put appearance and filed detailed reply stating therein that the applicant was working as GDS Mail Packer, with effect from 31.12.2003. The second respondent vide its order dated 10.12.2003 communicated approval of the Screening Committee for filling up two posts of group D in Palakkad Division for the year 2002. These two posts were ear marked for filling up from "OC" and "OBC" candidates one each. The Departmental Promotion Committee that met on 23.12.2003 selected the applicant by giving age relaxation for the post of Group D post ear marked for OBC and he was allotted to Palakkad North Sub Division as Group D post with effect from 1.1.2004. It is further submitted that the applicant was a member of NPS from 1.1.2004 and he was allotted PRAN No. 1100200289818. He has contributed 10% of his pay every month from

January 2004 to November 2012 and the Govt. has also made contribution equal to his contribution. After his retirement he has preferred stipulated application for payment of wealth accumulation under NPS as envisaged under NPS he has been paid Rs. 161610/-. Out of which 60% has been credited to his account and 40% accumulation has been held by National Securities Depository Ltd. (NSDL). It is further submitted that in May 2014 the applicant has requested to promote him retrospectively from the date of occurrence of vacancy i.e. in the year 2002. It is further submitted as claimed by the applicant that he has worked as an outsider on ad hoc basis in the vacant post of Group "D" post from April 2002 to 31.12.2003 at Palakkad HPO. No records are available to substantiate the claim of the applicant that he was ordered to work as ad hoc Gr D Palakkad HO from April 2002 to Dec 2003.

4. In the absence of any documentary evidence the claim does not stand. It is further submitted that GDS are distinct categories of employees governed by separate set of rules viz Gramin Dak Sevak (Conduct and Engagement) Rules 2011. The system of engaging EDS is exclusive to the Department of Post and the sevaks so engaged are not required to perform duty beyond a maximum period of 5 hours in a day. They are permitted to be retained upto 65 years of age.

5. It is mandatory for a sevak to furnish an undertaking that he/she has other sources of income besides the allowances paid by the Govt for adequate means of livelihood for himself and his family and thereby the existing system allows them a supplementary source of income and to derive income by engaging in private business/employment. The period of engagement of a GDS is not considered as regular Govt. Service. Therefore,

before entering into a Government Service, there is no question of entitlement for promotion in that service therefore their absorption as group D as per RR 2002 is by way of direct recruitment only. All the benefits of reservation as applicable to direct recruitment is given in the recruitment process.

6. In nutshell the respondents have negated the claim of the applicant and prayed for the dismissal of the present Original Application.

7. We have heard the learned counsel appearing on both sides and perused the pleadings and considered the rival submissions.

8. A landmark judgement delivered by the Hon'ble Apex Court on the above subject in the case of *Y. Najithamol & Ors v. Soumya S.D. & Ors.* - *Civil Appeal No.90 of 2015* it was held as under:

“ GDS cannot be treated as feeder post to the group 'C' posts by promotion and as per the recruitment rules of the GDS they can participate in the recruitment of posts of the postman only by way of direct recruitment not by way of promotion.”

9. In order to resolve the controversy in the present application, this Tribunal is of the view that the applicant was working as GDS which is admitted held by various courts that it is not a civil post and GDS is an Extra Departmental Agent working for limited hours in a day with consolidated remuneration. The applicant has been appointed with effect from 1.1.2004 in the Group D posts. Meaning thereby the applicant has joined the service of Govt on civil post w.e.f. 1.1.2004 and as claimed by the applicant that he was working in the vacant group D posts on ad hoc basis as engaged by the department. The applicant also not placed any documentary evidence in support of his claim that he had worked on the said post on *ad hoc* basis w.e.f. 30.12.2003.

10. Even otherwise, the post of GDS is not a regular service of the Postal Department, so the applicant cannot claim to be given promotion from the date of occurrence of vacancy. It is also a fact that the applicant has been given the present post after selection by DPC by giving age relaxation under the rules, which otherwise claimed as a matter of right.

11. This Tribunal is of the opinion that in view of the judgement passed by the Apex Court in *Y.Najithamol & Ors.* (supra) it has clearly been laid down the law that promotion to the post can only be allowed when the promotional post and post from which being promoted are in the same class of service whereas in the present case the applicant's service to be counted as Extra Departmental Agent which is temporary in nature. However, applicant cannot claim that he should be considered and give promotion retrospectively with effect from the date of occurrence of the vacancy.

12. In view of the facts and circumstances and the law discussed herein above, the present O.A. fails to convince the Tribunal. The same is dismissed being devoid of merits. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

sj*

Applicant's Annexures

- Annexure A1- Photocopy of the Memo No. B2/Gr.D/Rectt/ allotment dated 30.12.2003 of the 1st respondent.
- Annexure A2 - Photocopy of the Memo No. Dig.3/Gr.D dated 31.12.2003 of the Sub Divisional Inspector, Posts, Palakkad North Sub Division.
- Annexure A3 - Photocopy of the Order dated 26.08.1998 in O.A No. 239/98 and O.A. No. 449/98 of this Hon'ble Tribunal.
- Annexure A4 - Photocopy of the representation dated -05-2014 submitted by the applicant to the 1st respondent with translation.
- Annexure A5 - Photocopy of the Memo No. B2/Postman-MTS/Misc. dated 06/11-06-2014 of the 1st respondent.
- Annexure A6 - Photocopy of the order dated 07.07.2006 in O.A No. 620 of 2003 of this Hon'ble Tribunal.
- Annexure A7 - Photocopy of the Order dated 17.06.2011 in O.A No. 102 of 2010 and connected cases of this Hon'ble Tribunal.
- Annexure A8 - Photocopy of the Order dated 02.01.2013 in O.A No. 848 of 2011 of this Hon'ble Tribunal.
- Annexure A9 - Photocopy of the Order dated 16.09.2009 in O.A No. 462 of 2008 of this Hon'ble Tribunal.
- Annexure A10 - Photocopy of the judgment dated 10.02.2010 in WP(C) No. 18 of 2010 of the Hon'ble High Court of Kerala.
- Annexure A11 - Photocopy of the Memo No. CAT/02/2008 dated 30.09.2010 of the Superintendent of Post Offices, Ottappalam Dn., Ottappalam.
- Annexure A12 - True copy of the order dated 17.11.2016 in O.A No. 749 of 2015 and connected cases (excluding pages 2 to 320 which contains the name and address of applicants 4 to 106) of the Hon'ble CAT, Principal Bench.

Annexures of Respondents

- Annexure R1(a) - True copy of the order dated 07.08.2003 in Civil

Appeal No. 1638-1640 of 1996 of the Hon'ble Supreme Court.

Annexure R1(b) - True copy of the letter No. 66-82/87-SPBI dated 20.07.2000 issued by the 5th respondent.

Annexure R1(c) - True copy of the letter No. 45-28/2004-SPB I dated 08.12.2004.

Annexure R1(d) - True copy of the letter No. Rect/9-2/2002 dated 10.12.2003.

Annexure R1(e) - True copy of the order dated 04.07.2013 in O.A No. 947 of 2012 of this Hon'ble Tribunal.

Annexure R1(f) - True copy of the minutes of the DPC dated 23.12.2003.

Annexure R1(g) - True copy of the letter dated 25.10.2013.

Annexure R1(h) - True copy of Order dated 12.08.2016 of Hon'ble Supreme Court in Civil Appeal No. 90 of 2015, Smt. Y. Najithamol vs. Soumya S D & Others.

Annexure R1(i) - True copy of order of Hon'ble CAT, Ernakulam Bench in O.A 180/588/2014.

Annexure R1(j) - True copy of order of Hon'ble CAT, Ernakulam Bench in O.A 180/954/2015.

Annexure R1(k) - True copy of order dated 24.11.2015 of Hon'ble Supreme Court in Civil Appeal Nos. 13675-13676 of 2015 (Special Leave Petition (Civil) Nos. 17035-17036 of 2013).
