

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00249/2017

Friday, this the 16th day of March, 2018

CORAM:

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

1. Riji K.G., aged 40, S/o. Govindan Kutty K.K.,
 Postal Assistant, Orumanayur Post Office,
 Residing at Kadayil House, Kandassankadavu PO,
 Thrissur 680 613.
2. Pradeep Kumar V., aged 44, S/o. Paarameswaran Nair,
 Postal Assistant, Pazhanji Post Office, Residing at
 Vadukottayil House, Thippilassery PO, Karikkad,
 Thrissur 680 519.
3. Jancy P.N., aged 62, D/o. Nanukutty,
 Postman Engandiyur (Retired),
 Residing at Chulliyil House,
 Engandiyur PO, Thrissur 680 615.
4. Beena V.Y., aged 47, D/o. Yesudasan,
 Postal Assistant, Pazhanji Post Office,
 Residing at Variyedath House, Katakampal PO,
 Thrissur 680 544.
5. Subhadhra M., aged 54, D/o. Narayanan Nair,
 Postal Assistant, Pazhayannur Post Office,
 Residing at Kaveettil House, Kumaranellur PO,
 Thrissur 680 590. **Applicants**

(By Advocate : Mrs. R. Jagada Bai)

V e r s u s

1. Union of India, represented by the Secretary,
 Department of Posts, New Delhi 110 001.
2. Chief Post Master General, Kerala Circle,
 Trivandrum 695 033.

3. The Post Master General, Central Region,
Kerala Circle, Kochi – 682 020.

4. The Senior Superintendent of Post Offices,
Thrissur Division, Thrissur 680 001. **Respondents**

(By Advocate : Mr. P.R. Sreejith, ACGSC)

This application having been heard on 13.03.2018, the Tribunal on 16.03.2018 delivered the following:

O R D E R

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

Heard Smt. R. Jagada Bai, learned counsel appearing for the applicants and learned ACGSC appearing for the respondents on the admissibility and maintainability of this OA.

2. The applicants, 5 in number, are presently working as Postal Assistants. While they were functioning as Extra Departmental Agents [(re-designated as Gramin Dak Sevaks), GDS for short] they had appeared in the examination for recruitment to the cadre of Postman held on 23.3.2004 for the vacancies of 2003. They were posted as Postman vide Annexure A2 memo dated 28.7.2004. They were regularly appointed as Postman only after the commencement of the New Pension Scheme (for short NPS) which came into force on 1.1.2004. According to them the erstwhile CCS (Pension) Rules, 1972 which was in force till 31.12.2003 had been more beneficial to them and if they had been appointed when the vacancies arose in 2003 itself they could have enjoyed the benefits of the CCS (Pension) Rules, 1972. They further contend that as per Annexure A4 order dated 12.9.2016 of the Department of Posts, the casual labourers who were

granted temporary status and were later on regularised even after the commencement of the New Pension Scheme ie.1.1.2004 had been given the benefit of CCS (Pension) Rules, 1972 and therefore, the applicants who had been formerly working as GDS had been discriminated from having the benefits of the CCS (Pension) Rules, 1972. It is also contended by the applicants that the Principal Bench of this Tribunal vide Annexure A6 order dated 17.11.2016 in OA No 749/2005 of that Bench has held that the GDSs service rendered prior to regularisation in the Department will count for pension under CCS (Pension) Rules, 1972. Taking these circumstance together, the applicants contend that had they been appointed at the time when vacancies arose in 2003 they could have enjoyed the benefit of CCS (Pension) Rules, 1972 and hence they pray for the relief as under:

“(1) Declare that the Extra Departmental Service rendered by the applicants prior to their regularization be counted for their pensionable service for the limited purpose of including them under the CCS (Pension) Rules, 1972.

(2) Declare that the applicants be admitted to the General Provident Fund and Pension Scheme prevalent in the year 2003 within a time frame.

(3) To direct the respondents to stop the recoveries towards contribution under the New Pension Scheme and refund the amount already recovered within a time frame.

(4) Any such remedy deemed fit and proper as this Hon'ble Tribunal may be pleased to order.

(5) Grant costs to the applicant for dragging him into an unnecessary litigation.”

3. Respondents filed reply statement resisting the contentions of the applicants. According to the respondents as applicants were appointed in the regular posts only after the commencement of the NPS they are not entitled to the benefits of CCS (Pension) Rules, 1972. It is also contended by the respondents that the GDSs are not regular Government servants and

that they become the departmental employees only from the date of their regular appointment.

4. After hearing both sides were are of the view that the controversy in this case has already been resolved by the apex court by declaring the status of the GDSs when they appear for departmental examination for promotion to the post of Postman or other regular posts. In *Najithamol Y. & Ors. v. Soumya S.D. & Ors.* – 2016 (4) KHC 280 (SC) [Civil Appeal No. 90 of 2015] the apex court made it clear that the Gramin Dak Sevaks not being a regular Government employee, cannot claim promotion in the recruitment process to the regular posts as they can be treated as only as direct recruits who have participated in such recruitment process.

5. In the light of the above clear finding of the Hon'ble apex court we are of the view that the claim made by the applicants in this OA is not legally sustainable and they cannot claim to have been appointed in 2003 when the vacancies of Postman arose because they could be treated only as direct recruits for the selection which has lead to their regular appointment as Postman.

6. With regard to the argument of the applicants that they have been discriminated by not treating on par with the beneficiaries of the administrative instruction of the Department that the casual employees who have been conferred 'temporary status' in accordance with the 1993 Scheme of government of India on regularisation would be governed by the CCS (pension) Rules 1972 . Applicants point out that as per the above

administrative instruction such casual employees with temporary status would get the benefits of CCS(pension) Rules 1972 even if their regular appointment is after 1-1-2004. However, we feel that applicants cannot compare themselves with the beneficiaries of the aforesaid 1993 Scheme of Government of India scheme, because such beneficiaries are a distinct class by themselves. *Najitha mol* decision (*supra*) has made it clear that GDSs cannot be considered as civil servants though they are holders of civil posts. But in the case of the casual employees conferred with 'temporary status' under the 1993 Scheme carry all the trappings; traits and characteristics of temporary government servants. The 1993 scheme enables them to carry forward certain service benefits they have acquired during their 'temporary status', when they are given regular employment. Besides the period of temporary service is counted for determining the qualifying service for pension under Rule 13 of CCS (Pension) Rules, 1972. Such facilities are not available to the GDSs who get regular appointment as direct recruits from the open market.

7. In the above circumstances we hold that the applicants cannot succeed in this OA. Accordingly the OA is dismissed. Parties shall suffer their own costs.

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

**(U. SARATHCHANDRAN)
JUDICIAL MEMBER**

“SA”

Original Application No. 180/00249/2017**APPLICANT'S ANNEXURES**

Annexure A1 – True copy of Senior Superintendent of Post Offices, Thrissur Division (Respondent No. 4) Memo No. B2/Rectt/Postman/2003 dated 2.7.2004.

Annexure A2 – True copy of the Senior Superintendent of Post Offices, Thrissur Division (Respondent No. 4) Memo No. B2/Rectt/Postman/2003 dated 28.7.2004.

Annexure A3 – True copy of the Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993.

Annexure A4 – True copy of the Government of India, Ministry of Communication and IT, Department of Posts order No. 01-07/2016-SPB-I, dated 12.09.2016.

Annexure A5 – True copy of the representations dated 16.08.2016 except that of the Applicant No. 3, preferred by the applicants to the respondents.

Annexure A6 – True copy of the order of the Hon'ble Central Administrative Tribunal, Principal Bench through an order in OA No. 749/2005 (heard together), pronounced on 17.11.2016.

RESPONDENTS' ANNEXURES

Annexure R1 – True copy of the notification issued the office of the 3rd respondent vide letter No. ST/90-4/2003 dated 20.1.2004.

Annexure R2 – True copy of the letter No. B2/Rectt/Postman/03 dated 29.01.2004 issued by the 4th respondent.

Annexure R3 – True copy of the representations of the applicants forwarded by the 4th respondent to the 3rd respondent vide letter No. B2/Misc./Dig dated 31.8.2016.

Annexure R4 – True copy of the letter No. Rectt/4-5/2003 II dated 24.6.2004 issued by the 2nd respondent through the 3rd respondent vide Endt. No. ST/90-4/2003 dated 28.6.2004.

Annexure R5 – True copy of the order dated 9.11.2016 passed by the Hon'ble Tribunal in OA No. 588/2014 filed by P. Sekharan.

Annexure R6 – True copy of the order dated 21.03.2017 passed by the Hon'ble Tribunal in OA No. 1125/2014 filed by K. Bhuvanachandran.

Annexure R7 – True copy of the judgment in OP (CAT) No. 58/2017 passed by the Hon'ble High Court dated 13.03.2017.

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