

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 180/00377/2016

Wednesday, this the 21st day of February, 2018.

CORAM:

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

1. Rajan N.P., 45 years,
S/o. Chayichan,
Postal Assistant,
Kalpakancherry (P.O),
Residing at : Nayar Padickal House,
Kallingal, Kalpakancherry (P.O),
Malappuram District – 676 551.
 2. Jayadas A., 49 years,
S/o. Velayudhan,
Postal Assistant,
BP Angadi Post Office,
Residing at Achampat House,
Muthur, Tirur (P.O),
Malappuram – 676 101.
- Applicants

(By Advocate Mrs. R. Jagadabai)

Versus

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,
Northern Region,
Kerala Circle, Kozhikode – 673 011.
 4. The Superintendent of Post Offices,
Tirur Division, Tirur – 676 106.
- Respondents

[By Advocate : Mrs. Mini R. Menon, ACGSC]

The application having been heard on 08.02.2018, the Tribunal on 21.02.2018 delivered the following:

ORDER**Per: E.K. Bharat Bhushan, Administrative Member**

The applicants in O.A No. 377 of 2016 are aggrieved by the refusal on the part of the respondents to include them under the CCS (Pension) Rules, 1972 on the ground that they were appointed as Postman after 01.01.2004 i.e the cut off date under which the New Pension Scheme had come into effect. The two applicants were appointed as Extra Departmental Branch Postmasters (now called GDS) in Tirur Postal Division at Valavannur Post Office and Thekkan Kuttur Post Office with effect from 23.01.1995 and 08.09.1995 respectively. The applicants, while they were functioning as Extra Departmental Mail Deliverers / GDS appeared for examination for promotion to the cadre of Postman for the vacancies of the Recruitment Year 2002, the examination being held on 28.03.2004. The notification for filling up the vacancies was dated 15.01.2004, a copy of which is at Annexure A-1. The result of the examination was declared by Memo dated 05.07.2004 (Annexure A-2). Both the candidates were successful in the examination. The applicants were appointed as Leave Reserve Postman in Tirur Postal Division vide the Memo issued by respondent No. 4 dated 20.07.2004 (Annexure A-3). The primary contention raised in the O.A is that the appointments made were in relation to the vacancies which occurred in 2002 and they should be given notional appointment from 2002 itself so that the applicants can get the benefit of being included

under the CCS (Pension) Rules, 1972 and not the New Pension Scheme which is significantly less favourable to the employees. The relief sought in the O.A has been spelt out as follows:-

- “1) Declare that the applicants are eligible to be promoted to the cadre of Postman, notionally from the date of arising of the vacancy in 2002.*
- 2) Declare that the applicants are to be admitted Pension Scheme under CCS (Pension) Rules, 1972 which was prevalent in the year 2002 within a time frame.*
- 3) Declare that the applicants are to be admitted General Provident Fund Scheme which was prevalent in the year 2002 within a time frame.*
- 4) To direct the respondents to refund the amount already recovered towards contribution under the New Pension Scheme and within a time frame.*
- 5) Any such remedy deemed fit and proper as this Hon'ble Tribunal may be pleased to order.*
- 6) Grant costs to the applicant for dragging him into an unnecessary litigation.”*

2. The applicants argue that it was sheer negligence on the part of the respondents that was responsible for the inordinately delayed appointment. Clear vacancies had existed in the respondents' organisation and in so far as the critical year of 2002 is concerned the vacancies had been computed also well in time. The respondents, if they had moved promptly could have easily completed the process, conducted the examination and issued the appointment orders so that the applicants could have both been given appointment well before 01.01.2004. It is pointed out that the same question had been raised before this Tribunal in O.A. No. 724/2012 by which five applicants got benefit. It was ruled that the applicants in that O.A will get the notional date of promotion from the date the vacancies occurred which would enable them in turn for inclusion under the CCS (Pension) Rules, 1972. The decision in this

O.A was upheld by the High Court in O.P (CAT) No. 50/2015. The High Court had rejected the appeal by the respondents on the ground that the Departmental higher ups ought to have moved with much greater alacrity and the negligence on the part of the respondents ought not to be allowed to recoil on the applicants. Again, the applicants have pressed to their support the decision of this Tribunal in O.A 648/2013, where the same question was considered and decided in favour of the applicants.

3. Per contra, the respondents in their reply statement have argued that while it is true that these applicants were recruited for the 2002 vacancies, inevitable and necessary procedures had to be gone through before the examination could be conducted and appointments made. There was no unnecessary delay and the time lag had occurred only to ensure that all procedures were fulfilled. It is further argued that in so far as the decisions in Annexures A-4, A-6 and A-7, they are only applicable to the applicants in those O.As only.

4. The applicants have filed a rejoinder reiterating the contentions raised in the O.A.

5. Smt Jagada Bai, learned counsel appeared on behalf of the applicants and Smt Mini R. Menon, learned ACGSC appeared on behalf of the respondents. All pleadings were examined and arguments of both sides considered.

6. The issue lies in a narrow compass. The applicants were posted as Postman in the year 2004 i.e. well after the New Pension Scheme

came into being with effect from 01.01.2004. But, the vacancies were for the year 2002. Admittedly, the procedure in the respondents' organisation that had to be gone through was responsible for the time lag in conducting examination and announcing the results. But this time lag has been costly so far as the applicants are concerned. As is known, till the New Pension Scheme came into existence with effect from 01.01.2004 the pension of employees in the respondents' organisation and in Government of India was covered by the CCS (Pension) Rules, 1972. The earlier system was extremely beneficial to the employees in the sense that the entire burden of providing the pension of the retired employees rested on the shoulders of the employer. With the adoption of the New Pension Scheme, the situation changed, the new scheme being a contributory scheme requiring the employees also to make substantial contributions in order to ensure regular payment of pension once they retired from service. This is the genesis of the grievance of the applicants and those who took up the issue in the cases referred to at Annexures A-4, A-6 and A-7.

7. Now we see that this issue has been unequivocally settled by the judgments at Annexures A-4, A-6 and A-7 and there is nothing more for this Tribunal further adjudicate now. In fact, the decision to pre-date the appointment to the year when the vacancy occurred against which the appointments are being made, exclusively for pension purposes holds the filed. Hence, on the ground that this is a matter which is squarely covered by the earlier judgments referred to, I have no hesitation in

allowing the O.A. It is ordered that applicants are eligible to be considered as appointed from the date of arising of the vacancy i.e. 2002. This benefit is only for admission of the applicants in the pension scheme under CCS (Pension) Rules, 1972, which was current in the year 2002. The contribution which they have already made to the New Pension Scheme will be deposited in the General Provident Fund Account to be opened in the names of the applicants. These steps should be taken and completed within three months of receipt of copy of this order. O.A is disposed of as above. No order as to costs.

(Dated, 21st February, 2018.)

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

ax

Applicant's Annexures

Annexure A1	A copy of the Post Master General, Northern Region, Kerala Circle, Calicut (Respondent No. 3) Memo No. Rectt/3-2/2003 dated 15.01.2004.
Annexure A2	A copy of the Superintendent of Post Offices, Tirur Division, Tirur (Respondent No. 4) Memo No. B2/Rectt/3/2004 dated 05.07.2004.
Annexure A3	A copy of the Superintendent of Post Offices, Tirur Division, Tirur (Respondent No. 4) Memo No. B2/Allotment/01 dated 20.07.2004.
Annexure A4	A copy of the orders of this Hon'ble Tribunal in O.A. No. 724/2012 pronounced on 28.06.2013.
Annexure A5 (Series)	Copy of the representations dated 07.12.2015 submitted by the Applicants to the respondent No. 2 – 4.
Annexure A6	A copy of the order of the Hon'ble High Court of Kerala through OP (CAT) 50 of 2015, pronounced on 03.09.2014.
Annexure A7	A copy of order of this Hon'ble Tribunal in O.A No. 648/2013 pronounced on 28.01.2015.
Annexure A8	A copy of the “Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993.”
Annexure A9	A copy of order 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 A10	A copy of order of the Hon'ble Central Administrative Tribunal, Principal Bench order in O.A No. 749/2005 (heard together) pronounced on 17.11.2016.

Annexures of Respondents

Annexure R-1	True copy of the Letter No. Rectt/3-2/2003 dated 26.03.2004.
Annexure R-2	True copy of the Letter No. B2/Rectt/3/2001 dated 13.05.2004.
Annexure R-3	True copy of the Letter No. Rectt/4-5/2003 II dated 24.06.2004.
Annexure R-4	True copy of the Letter No. B2/Rectt/3/2004 II dated 12.07.2004.
Annexure R-5	True copy of the Memo No. B2/Rectt/3/2004 II dated 05.07.2004.
Annexure R-6	True copy of the Letter No. B2/Allotment/01 dated 20.07.2004.
Annexure R-7	True copy of the Letter No. 4-28/03-Pen dated 19.01.2004.
Annexure R-8	True copy of the Rule 13 and 14 of CCS Pension Rules.
