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**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00419/2016

Monday, this the 24th day of September, 2018

C O R A M :

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

1. Vijayan.A., S/o.Madhavan Nair,
Multi Tasking Staff, Calicut Civil Station Head Post Office.
Residing at Puliyaikkunnummal, Kannankara P.O.,
Chelannur – 673 616, Kozhikode District.
2. Raman.M.A., S/o.Achappan,
Multi Tasking Staff, Calicut Head Post Office.
Residing at Mathirikkal House,
Chennarode P.O., Kalpetta North,
Kozhikode District – 673 122.
3. Cherian.C.V., S/o.Varghese,
Multi Tasking Staff,
Puduppady Post Office.
Residing at Chenakuzhiyil House,
Puduppady P.O., Kozhikode District – 673 586.
4. Suresh Babu.K., S/o.Raman Nair,
Multi Tasking Staff, Nadakavu Post Office.
Residing at Tharammal House,
Kuthiravattom.P.O., Kozhikode District – 673 016.
5. Bhaskaran.P.M., S/o.P.Chami,
Multi Tasking Staff, Marikunnu Post Office.
Residing at Ambalakunnu House, Kaniyambetta P.O.,
Kalpetta – 673 122, Waynad District. ...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.

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3. The Post Master General,
Northern Region, Kerala Circle,
Kozhikode – 673 011.
4. The Senior Superintendent of Post Offices,
Calicut Division, Calicut – 673 003. ...Respondents

(By Advocate Mr.S.Ramesh,ACGSC)

This Original Application having been heard on 12th September 2018, the Tribunal on 24th September 2018 delivered the following :

ORDER

O.A.No.419/2016 is filed by Shri.Vijayan.A, Multi Tasking Staff and four others who are also Multi Tasking Staff working under the 3rd respondent in various parts of North Kerala. They are aggrieved by their non inclusion in the old Statutory Pension Scheme for which they claim that they are entitled to, on account of Annexure A-1 and Annexure A-2. The reliefs sought by the applicants are as follows :

1. Declare that the applicants are eligible to be promoted to the cadre of Group D, notionally with effect from the date of arising of vacancy shown in Annexure A-2 that is from the date of arising of the vacancy in 2002 and 2003.
2. Declare that the applicants be admitted to the General Provident Fund and Pension Scheme prevalent in the year 2002 and 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.

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2. The applicants while functioning as Extra Departmental Agents (redesignated as Gramin Dak Sevaks) were due to be appointed as Group D in the seniority quota for the vacancies of the years 2002-2003. The said posting against the seniority quota was inordinately delayed by the respondents till 2010 and finally due to the consistent entreaties made by the Staff Union as well as by others, the 4th respondent issued Memo No.B2/61 dated 17.7.2010 (Annexure A-1). Subsequently Annexure A-1 was modified by Memo No.B2/61 dated 29.7.2010 by the same respondent, a copy of which is available at Annexure A-2. Accordingly the 5 applicants (Sl.No.2-6) have been granted promotion under the seniority quota to Group D as per the following table :

Sl. No.	Name and designation of the GDS	Sub Division/ Unit to which allotted	Remarks
1	Shri.KP Sasidharan, GDSMC Varambatta	Calicut HPO	Vacancy caused due to retirement of Shri.P.Sreekumaran Nair on 27.2.2002.
2	Shri.Vijayan.A, GDSMD Kannankara	Calicut HO	Vacancy caused due to retirement of Shri.M.V.Lakshmy on 31.3.2002.
3	Shri.Raman.M.A., GDSMD Chennalode (ST)	Calicut HPO	Vacancy caused due to retirement of Shri.N.Swaminathan on 31.5.2002.
4	Shri.Chерian.C.V., GDSMC Pudupadi	Kallai	Vacancy caused due to retirement of Smt.K.Soudamini on 31.3.2003.
5	Shri.Suresh Babu K, GDS BPM, Vrindavan Colony	Calicut North Sub Division, Nadakavu	Vacancy caused due to retirement of Shri.A Balakrishnan Nair on 31.5.2003.
6	Shri.P.M.Bhaskaran, GDS MD, Kaniyambetta (SC)	Calicut North Sub Division, Marikunnu	Vacancy caused due to retirement of Smt.AT Mary on 31.5.2003.

3. Upto 31.12.2003 the Central Government employees had been governed by the CCS (Pension) Rules, 1972 and GPF Rules. This scheme was replaced by the New Pension Scheme and the GPF Scheme was withdrawn. The earlier Pension Scheme was significantly more beneficial to the employees than the New Pension Scheme because the liability to pay pension rested entirely on the shoulders of the employer whereas under the New Scheme the employees were required to contribute their part as well. The New Pension Scheme which came into vogue with effect from 1.1.2004 was to be implemented in the case of all employees who joined service with effect from that date. Applicant No.1 who was notionally promoted along with other applicants with effect from 27.2.2002 approached this Tribunal by filing O.A.No.714/2015 seeking a declaration that as his notional appointment was from 2002 onwards, the Hon'ble Tribunal may be pleased to allow the O.A declaring that the applicant will be eligible to be included in the Old Pension Scheme. He was successful and by orders issued on 17.3.2016, this Tribunal ruled in his favour (Annexure A-3). Similar cases were considered by this Tribunal since 2004 and in O.A.No.614/2013 which was challenged by the respondents by filing O.P.(CAT) No.15/2015 both orders went in favour of the applicants therein. This being the law on the subject, the question involved in the O.A is seen squarely covered under the said judgments and there is no reason why the respondents should continue to deny the rightful claim of the applicants.

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4. The respondents, on the other hand, submitted that the decision of the Supreme Court in **Y.Najithamol & Ors. v. Soumya SD & Ors. 2016 (U) KHC 280 (SC)** appointment of GDS is by direct recruitment. The applicants were all appointed after 1.1.2004 on which date the New Pension Scheme had come into being and the applicant can have no case having been all inducted into Group D services between 18.7.2010 to 31.7.2010.

5. It is also maintained that there has been no deliberate delay or negligence on the part of the respondents in filling up Group D vacancies from 2002 to 2003 as alleged by the applicants. The applicants contend that this is the reason why they have lost out in their claim to be included in the Old Pension Scheme. However it can be seen that there were various procedures to be completed while filling up the vacancies which had to be gone through, not the least of which were the various court decisions which examined the issue in the meanwhile. After a ban was imposed on appointment to these cadres among others in Government of India, their filling up was dependent on Screening Committees which were formed in various departments to consider how many vacancies were necessary to be filled up. This was an inevitable process. This was the reason why these vacancies could be taken up only later.

6. The applicants have filed rejoinder reiterating their contentions made in the O.A and the respondents have filed two additional reply statements wherein they have stood by the arguments made. The latter has also called to their support various court orders given on different aspects of appointment coming under the respondent organisation.

7. Smt.R.Jagada Bai, learned counsel for the applicant was heard as well as Shri.S.Ramesh, learned ACGSC for the respondents. All documents and pleadings were examined. Learned counsel for the applicants relied on the following orders/judgments in support of their case :

1. O.A.No.180/377/2016 – Rajan.N.P. & Ors. v. UOI & Ors.
2. O.A.No.321/2012 – S.Krishnan & Ors. v. The Senior Supdt. & Anr.
3. O.P(CAT) No.146/2016 – Senior Supdt. & Anr. v. S.Krishnan & Ors. against the order in O.A.No.321/2012.

8. The issue involved has been considered at length by this Tribunal as well as by the Hon'ble High Court when the decision of the Tribunal was taken up in appeal. During the last date of hearing, learned counsel for the applicant also brought to our notice the order of the Tribunal in O.A.No.377/2016 wherein an identical issue had been considered and decided, the only difference being that the appointee in that case had to go through an examination whereas the applicants here were eligible for promotion under the Department quota. The other facts are entirely identical. The applicants were all in GDS category and were aspirants for regular appointment as Group D. They were all given

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promotions/appointments as Group D on varying dates between 18.7.2010 and 31.7.2010. The 1st applicant had challenged the same stating that they were eligible for appointment to vacancies in 2002. This issue has been settled by issuance of Annexure A-1 and particularly Annexure A-2. In Annexure A-2, following dates are mentioned with regard to appointment including that of the 5th applicant whose name can also be seen :

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|----|--------------------|---|-----------|
| 1. | Shri.Vijayan A | - | 31.3.2002 |
| 2. | Shri.Raman.M.A. | - | 31.5.2002 |
| 3. | Shri.Cherian.C.V | - | 31.3.2003 |
| 4. | Shri.Suresh Babu K | - | 31.5.2003 |
| 5. | Shri.P.M.Bhaskaran | - | 31.5.2003 |

9. Now the only question is whether having been granted appointment to the vacancies of pre 2004, they are to be considered as covered under the Old Pension Scheme. As already been mentioned this issue has been squarely covered by the judgment of this Tribunal in O.A.No.614/2013 as well as O.A.No.377/2016. The former order had been taken up in O.P (CAT) but the decision of the Tribunal was confirmed. There appears to be no further aspect in the case to be adjudicated by this Tribunal again. The various orders produced by the respondents along with second additional reply statement examined different aspects of appointment to Government service. They are not specifically with regard to the issue that we are dealing with here. In any case Najithamol's case (supra) pronounced in

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2016 has only prospective effect whereas this is about the personnel who were appointed as early as 2010, the respondents themselves having pre-dated their appointment on notional basis to 2002-2003.

10. Under the circumstances the O.A succeeds. The benefits sought in the O.A are to be granted in full by the respondents. In the meanwhile, recovery already made from the applicants is to be returned to the GPF accounts of the applicants. The orders above are to be implemented within two months positively from the date of receipt of a copy of this order. No costs.

(Dated this the 24th day of September 2018)

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00419/2016

1. **Annexure A1** – True copy of the Senior Superintendent of Post Offices Calicut Division Memo No.B2/61 dated 17.7.2010.
2. **Annexure A2** – True copy of the Senior Superintendent of Post Offices Calicut Division Memo No.B2/61 dated 29.7.2010.
3. **Annexure A3** – True copy of the order of this Hon'ble Tribunal in O.A.No.180/714/2015 pronounced on 17.3.2016.
4. **Annexure A4** – True copy of the order of this Hon'ble Tribunal in O.A.No.614/2013 pronounced on 3.9.2014.
5. **Annexure A5** – True copy of the order of the Hon'ble High Court of Kerala in OP(CAT) No.50 of 2015 pronounced on 3.9.2014.
6. **Annexure A6** – True copy of the order of this Hon'ble Tribunal in Contempt Petition No.180/45/2015 pronounced on 4.1.2016.
7. **Annexure A7** – True copy of the Senior Superintendent of Post Offices, Calicut Division Memo No.B3/Misc.NP dated 25.11.2016.
8. **Annexure A8** – True copy of the “Casual Laborers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993”.
9. **Annexure A9** – True copy of the Government of India, Ministry of Communication and IT, Department of Posts order No.01-07/2016-SPB-I dated 12.9.2016.
10. **Annexure A10** – True copy of the Hon'ble Central Administrative Tribunal, Principal Bench order in O.A.No.749/2005 (heard together), pronounced on 17.11.2016.
11. **Annexure R1** – True copy of the Supreme Court judgment in the case of Y.Najithamol & Ors. V/s.Soumya.S.D & Ors. 2016 (U) KHC 280 (SC).
12. **Annexure R2** – True copy of the Letter No.GL/Gr.D/2010 dated 19.7.2010.
13. **Annexure R3** – True copy of the Letter No.GL-4 dated 19.7.2010.
14. **Annexure R4** – True copy of the Letter No.GL/2 dated 19.7.2010.

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15. Annexure R5 – True copy of the Office Memorandum dated 14.1.2004 on New Pension Scheme.

16. Annexure R6 – True copy of the order of Hon'ble CAT, Ernakulam Bench dated 21.3.2017 in K.Bhuvanachandran v. Union of India and others in O.A.No.180/1125/2014.

17. Annexure R7 – True copy of the order of Hon'ble High Court of Kerala dated 13.3.2017 in P.Sekharan v. Union of India and others in OP CAT No.58/2017.

18. Annexure R8 – True copy of the order of Hon'ble High Court of Kerala dated 18.1.2017 in Indukala C.S. v. Union of India and others in OP CAT No.327/2016.
