

**Central Administrative Tribunal
Ernakulam Bench**

OA/180/00655/2016 &
OA/180/00840/2016

Monday, this the 30th day of July, 2018.

CORAM

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

1. OA/180/00655/2016

V.Mundankutty, aged 64 years
S/o Kunjukutty
Retired Postman
Pullikkal, Manjeri Postal Division
Kerala: Residing at Krishna Divas
Kizhissery, Kuzhimana P.O.,
Malappuram District.

Applicant

(Advocate: Mr.V.Sajithkumar)

versus

1. Union of India represented by
the Secretary to the Government
Department of Posts
Ministry of Communications
Government of India,
New Delhi-110 001.

2. The Chief Postmaster General
Kerala Circle
Trivandrum-695 033.

3. The Superintendent of Post Offices
Manjeri Postal Division
Malappuram District-676 121

Respondents

(Advocate: Mr.Sinu G.Nath, ACGSC)

2. OA/180/00840/2016

K.K.Gopalakrishnan, aged 64 years
 S/o Late Kesavan Achary
 Retired Postman
 Elavaumthitta, Pathanamthitta Postal Division.
 Residing at Kavungal Memurick,
 Oonnakavu P.O., Angadi,
 Pathanamthitta District-689 674.

Applicant

(Advocate: Mr.V.Sajithkumar)

versus

1. Union of India represented by
 the Secretary to the Government
 Department of Posts
 Ministry of Communications
 Government of India,
 New Delhi-110 001.
2. The Chief Postmaster General
 Kerala Circle
 Trivandrum-695 101.
3. The Superintendent of Post Offices
 Pathanamthitta Postal Division
 Pathanamthitta-689 645

Respondents

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

These two applications having been taken up together and heard on 25th July, 2018, the Tribunal delivered the following common order on 30th July, 2018:

ORDER

These two Original Applications are filed by two applicants who are retired postmen, aggrieved by the inaction on the part of the respondents to release them minimum pension by granting notional service in the cadre of postmen with effect from the date of occurrence of vacancy or in the alternative by granting weightage to their GDS service. Since the same issues of law and facts are raised in the two OAs, they are being disposed of by this common order.

2. OA No.840/16 is filed by Sri K.K.Gopalakrishnan. He commenced his service as GDS with effect from 23.3.1981. he was appointed as a Postman with effect from 6.1.2004, but was assigned a vacancy arising in 2002. He retired from service on 30.4.2012. He is short of 10 years service by 9 months for claiming minimum pension. He has sought minimum pension by requesting to be placed notionally with effect from the date of occurrence of vacancy for the minimum pension or in the alternative, to count a certain percentage of GDS service, to make good the shortfall of qualifying service under the Statutory Pension Scheme.

3. The applicant strongly pleads for considering at least a part of his GDS service to make up for the shortfall in the period required for minimum pension. He calls to his assistance the order of CAT, Madras Bench in OA 1264/2001, a copy of which is available at Annexure A8. This decision was upheld by the Hon'ble High Court of Madras in Writ Petition (C) No.45465/2007. The SLP filed by the respondents before the Hon'ble Supreme Court also did not meet with success being dismissed on 17.10.2008. An order restricting its implementation to the parties to the litigation was issued by the Deputy Director General, Department of Posts on 9.10.2009, a copy of which is at Annexure A9.

4. He further argues that it was on account of administrative delay in ordering postings of Postman that his appointment as Postman was delayed. Various procedures such as clearance by Screening Committee etc were cited in causing delay in making the said appointment. This resulted in the applicant losing at least 18 months of service. Hence it is pleaded that giving due weightage to 28 years of his service as GDS Postman, he should be declared as having the minimum qualifying service of 10 years for grant of minimum

statutory pension. Rule 88 of CCS (Pension) Rules, 1972 confers power on the competent authority to relax the rules in deserving cases.

5. As mentioned already, if the proposal to count the applicant's service from the date of occurrence of vacancy is not possible, the decision of the Principal Bench as well as that of the Madras Bench of this Tribunal, the latter having been confirmed in appeal, could be utilized and part, if not the whole of his GDS service, reckoned for making up the shortfall in minimum service.

6. Respondents have filed a reply statement wherein the details of tenure of the applicants are admitted. It is stated that the delay in filling up the vacancies of Postman was on account of unavoidable procedural issues. As the applicant in OA 840/16 approached this Tribunal by filing OA No.484/2014 requesting for inclusion in the erstwhile Statutory Pension Scheme, the respondents had considered his representation as directed by this Tribunal and allowed the facility. Further, as directed by this Tribunal in OA No.1105/2014, Annexure A6 representation filed by the applicant was duly considered by the 1st respondent but his prayer could not be allowed. The respondents go on to quote this Tribunal's order in OA No.145/2010 which held that "*it is settled law that the promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of posts.....An employee does not have an indefeasible right to promotion. His right is for consideration for promotion only....*"

7. On the second question of favourable orders which have been cited by the applicants, in OA No.1264/2001 and W.P.(C) No.45465/2007, it is argued that the Hon'ble High Court of Madras had specifically held that the relief sought in the Writ Petition is confined to the applicant in the case only, which should not be treated as a precedent for others to follow. Also, while admitting that the SLP

filed by the respondents had been dismissed by the Hon'ble Supreme Court, the question of law involved has been left open to be decided by the appropriate Court in appropriate case.

8. The applicant goes on to quote judgment at Annexure R1 where the Hon'ble Supreme Court has laid down that the appointment of Postman is to be considered as direct recruitment and not as promotion.

9. In OA No.655/2016, applicant Sri V.Mundankutty has similar pleas to make. He entered service as GDS on 19.9.1974 and retired as Postman on 30.11.2011. He claims that he got selection for appointment to the cadre of Postman on seniority basis for the vacancies of the year 2000 and 2001. However, he came to be appointed as Postman under the seniority quota only with effect from 10.3.2003 and as a result, has got only 8 years and 8 months of service which excluded him from getting the minimum pension as per Rule 49 (1) of the CCS (Pension) Rules. He cites the orders of the Hon'ble High Court of Patna in CWJC No.3893 as well as the Hon'ble High Court of Jharkhand in W.P. (S) No.5331 of 2009, which directed the respondents to treat the employees as having completed the minimum qualifying service of 10 years and allowed them pension on that basis, even though they fell short of the required period of regular service. In this case, it is clear that the applicant had been deprived of service period which would have been his, for no fault of his.

10. The applicant had about 37 years of service with the respondents, of which 8 years and 8 months were as Postman. As per the Scheme ordered to be framed in pursuance to the judgment in OA 1264/2001, the Madras Bench of the CAT had ordered that weightage need to be given for ED service for reckoning the same as qualifying service for purpose of pension.

11. The respondents have admitted the details pertaining to the applicants' service mentioned in the OA. They cite administrative reasons for the delay in filling up the vacancies of 2000 and 2001 of Postman and contend that the decision of the Madras Bench of this Tribunal had been *in persona*, just as the orders of the Hon'ble High Courts of Patna and Jharkhand already referred to. In the judgment in Civil Appeal No.90/15 in ***Y. Najithamol & Ors vs. Soumya S.D. & Ors.***, dated 12.8.2016, the Hon'ble Supreme Court had concluded that the selection of ED Agents or Gramin Dak Sevaks to the post of Postman is by way of direct recruitment and not by way of promotion. Hence there is no valid ground for the applicants to seek counting of GDS service for the purpose of pension.

12. As mentioned already, the issue involved in both these cases are one and the same. Both the applicants in the two OAs have fallen short of required service period for claiming minimum pension on account of factors beyond their control. Sri Sajithkumar, learned counsel for the applicants in both OAs chose to lay stress on the orders of the Madras Bench of this Tribunal, since confirmed by the Hon'ble High Court of Madras and the Hon'ble Supreme Court as well as in the orders of the Principal Bench of CAT in OA 749/16. Sri P.R.Sreejith, ACGSC and Sri Sinu G.Nath, ACGSC appeared for the respondents in the respective OAs and argued that both these judgments can be interpreted only as judgments *in persona*. The respondents' counsel further pointed out that the orders in both cases had not attained finality as in the case of OA No. 749/15, SLP filed is currently pending before the Hon'ble Supreme Court, whereas the decision of the Madras Bench of this Tribunal was clearly *in persona*.

13. This Tribunal finds no merit in the argument. The issue involved is simple and unambiguous and the two judgments referred to relating to taking a part or whole of GDS service into account for considering grant of minimum pension is directly relevant. Leaving aside the question whether their appointment as Postmen is to be ante-dated to the date of occurrence of vacancy, the order, particularly of the Principal Bench of CAT, is unambiguous and categoric, ruling that "*for all GDS who have been absorbed as regular Group-D staff, the period spent as GDS would be counted in toto for the purpose of pensionary benefits.*" In the two OAs, the applicants have already pleaded for taking a part of the GDS service for making up the shortfall in the 10 year minimum period required for grant of pension. This Tribunal is of the view that theirs is a justified plea. OA succeeds. The prayers contained in the OA are allowed. The two OAs are accordingly disposed of. No order as to costs.

**(E.K.Bharat Bhushan)
Administrative Member**

aa.

Annexures filed by the applicant in OA/180/00655/2016

Annexure A1: Copy of the order No.AP/PEN/CC-5/2013 dated 10.6.2013 issued by the 2nd respondent.

Annexure A2: Copy of the Selection Memo No.B2/Exam/PM/2002 issued by the 3rd respondent dated 24.2.2003.

Annexure A3: Copy of the order in W.P.(S) No.5331 of 2009 of Hon'ble Jharkhand High Court dated 29.3.2010.

Annexure A4: Copy of the representation dated 2.5.2012 submitted by the applicant to the 1st respondent.

Annexure A5: Copy of the order No.B2/Misc/III dated 19.1.2012 issued by the 3rd respondent.

Annexure A6: Copy of the letter issued by the 1st respondent with No.IR 674/2012/Pension dated 23.5.2012.

Annexure A7: Copy of the order in OA 120/2013 dated 12.2.2013 of the CAT, Ernakulam.

Annexure A8: Copy of the judgment dated 6.11.2015 in OA 657/2013 of the CAT, Ernakulam.

Annexure A9: Copy of the order No.99-20/2013-Pen dated 13.5.2016 issued by the 1st respondent.

Annexure A10: Copy of the order dated 17.11.2016 in OA No.749/2015 and connected cases of the Principal Bench of CAT.

Annexures filed by the applicant in OA/180/00840/2016

Annexure A1: Copy of the letter No.B3/27/Exam/2003 dated 11.12.2003 issued by the 3rd respondent.

Annexure A2: Copy of the order No.B2/Posting/2004 dated 6.1.2004 issued by the 3rd respondent.

Annexure A3: Copy of the order in OA 449/2012 dated 11.10.2012 of the CAT, Ernakulam Bench.

Annexure A4: Copy of the Memo No.CAT/OA/449/12 dated 27.2.2013 issued by the 3rd respondent.

Annexure A5: Copy of the Memo No.CAT/OA/484/14 dated 17.11.2014 issued by the 3rd respondent.

Annexure A6: Copy of the representation dated 20.6.2014 submitted by the applicant to the 1st respondent.

Annexure A7: Copy of the communication No.IR.No.780/2014/pension dated 26.6.2014 issued on behalf of the 1st respondent to the 2nd respondent.

Annexure A8: Copy of the order in OA 1264/2001 dated 18.4.2002 of the CAT, Madras Bench.

Annexure A9: Copy of the order No.99-3/08.pen, dated 9.10.2009 issued by Mr.A.K.Sharma, Deputy Director General, Department of Posts.

Annexure A10: Copy of the judgment dated 4.1.2013 of the Principal Bench as obtained from Swamy's News.

Annexure A11: Copy of the order in W.P.(S) No.5331 of 2009 of Hon'ble Jharkhand High Court dated 29.3.2010.

Annexure A12: Copy of the order dated 17.5.2016 in OA 1105/2014 of the CAT, Ernakulam Bench.

Annexure A13: Copy of the order No.99-41/2016-Pen dated 19.8.2016 issued by the 1st respondent.

Annexures filed along with reply statement:

Annexure R1: Copy of the judgment of the Hon'ble Supreme Court dated 12.8.2016 in Civil Appeal No.90/15.

Annexure R2: Copy of the judgment of the Hon'ble High Court of Madras in W.P.No.45465/2002.

Annexure R3: Copy of the judgment of the Hon'ble Supreme Court, dated 24.11.2015 in SLP No.17035-17036 of 2013.
