

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
Original Application No.180/00672/2016
& M.A No.180/885/2016**

Wednesday, this the 19th day of September, 2018

CORAM:

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

Mr.Balakrishnan.S, Aged 40 years
S/o.Appu Patali
Sorting Assistant
SRO RMS 'CT' Division
Kasaragod, Residing at 'Samthila'
Nekraje P.O,Chengala-671 544
Kasaragod District

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Applicant

(By Advocate – Mrs.R.Jagada Bai)

V e r s u s

1. Union of India, represented by the Secretary
to Department of Posts, NewDelhi-110 001
2. The Chief Post Master General
Kerala Circle, Thiruvananthapuram-695 033
3. The Post Master General
Northern Region,Kerala Circle
Kozhikode – 673 011
4. Senior Superintendent RMS 'TV' Division
Trivandrum -695 033
5. Superintendent RMS 'CT' Division
Kozhikode -673002
6. Sub Record Officer, RMS 'CT' Division
Kasaragod 671 121

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Respondents

(By Advocate –Mr.Brijesh,ACGSC)

This Original Application having been heard on 12.9.2018, the Tribunal on 19.9.2018 delivered the following:

ORDER

Per: Mr.E.K.Bharat Bhushan, Administrative Member -

O.A 672/2016 is filed by Shri.Balakrishnan.S, Sorting Assistant,SRO RMS 'CT' Division, Kasaragod. He is a physically challenged person having 75% visual disability. He was selected as a Sorting Assistant in the category reserved for physically handicapped persons for the year 2002-2003 and was allotted to RMS TV Division by the memo dated 7.11.2003, a copy of which is available at Annexure A-2. The applicant along with three other candidates were deputed for theoretical training to Postal Training Centre, Mysore by the Senior Superintendent of Post offices RMS TV Division vide memo dated 20.11.2003, a copy of which is available at Annexure A-3. In the said Memo, the date of commencement of the theoretical training was not specifically mentioned and instead, candidates were directed to report before the Director, Postal Training Centre, Mysore “immediately”. Having received this Memo on 24.11.2003, the applicant reported to the Postal Training Centre at Mysore on 1.12.2003. Being a handicapped person, he required the assistance of one of his relatives to accompany him. When he reported at the PTC, he was told that the training session had already commenced on 17.11.2003 itself i.e, even prior to the issue of Annexure A-3. He was duly instructed by the Director to attend the next training session commencing in Feb 2004. Copy of letter confirming this, dated 1.12.2003, may be seen at Annexure A-4.

2 Accordingly, the applicant reported for theoretical training at PTC

Mysore on 9.2.2004. On successful completion of training on 23.4.2004, the applicant underwent practical training at SRO Changanassery w.e.f 23.4.2004. Again after completion of prescribed practical training, he was appointed as Time Scale Sorting Assistant at SRO Changanassery w.e.f 11.5.2004. At present, he functions as Sorting Assistant SRO RMS CT Division, Kasaragod.

3. The delay in his joining had disastrous consequences for his career. Upto 31.12.2003, Central Government employees were covered under the Old Pension Scheme governed under CCS(Pension) Rules, 1972, the terms of which were significantly more beneficial to the employees. This pension scheme was substituted by the New Pension Scheme w.e.f 1.1.2004 under which Central Government employees are required to contribute 10% of the basic pay as pension contribution. While the applicant's three other colleagues who were selected for the vacancies of 2002-2003 and who were deputed for theoretical training prior to 31.12.2003 were all included in the old Pension Scheme, the applicant missed the bus on account of the fact that his training spell had commenced only on 9 Feb 2004 which was after 1.1.2004.

4 The thrust of the case made by the applicant in the O.A is that he was issued a communication at Annexure A-3 which itself was dated 20th November 2003 asking to report “immediately” for training while the training itself had commenced three days prior to the issue of the said memo. Those who reported after the commencement of the training excluding the

applicant were allowed to join. This enabled them to take advantage of the cut off date of 1.1.2004 and on the ground that they had joined service prior to the said date got the benefit of being included under the Old Pension Scheme whereas the applicant was only considered as a post 1.1.2004 entrant.

5. As grounds the applicant reiterates the unfortunate sequence of events for which he was in no way responsible. The omission on the part of the respondents has proved to be costly to the applicant as he lost the opportunity to be included under more beneficial Old Pension Scheme like his colleagues and was forced to be included under the Contributory Scheme which was operated w.e.f 1.1.2004.

6. The respondents have filed a reply statement, where the facts of the case mentioned by the applicant in the O.A have been admitted. The reasoning adopted by the respondents is that while admitting that the notice seeking attendance of successful candidates dated 20.11.2003 (Annexure A-3) was issued *after* the training commenced on 17.11.2003, it did not prevent the other applicants from joining the programme although on a subsequent date. The three other candidates according to the respondents joined on 24.11.2003 whereas the applicant in question offered himself only on 1.12.2003. As a significant portion of the training had already got over, the applicant was asked to report for the next spell of training commencing on 9.2.2004. This had resulted in his joining service only post 1.1.2004 whereby he could be included only under the new scheme.

7. The applicant had filed M.A No.180/885/2016 for condonation of delay with required affidavit seeking condonation of delay of 7 days. In the interest of justice, this Tribunal finds the reasons adduced valid and accordingly, condones the delay. Heard Mrs.Jagada Bai, learned counsel for the applicant and Mr.A.S.Brijesh,ACGSC, learned counsel for the respondents and perused the documents.

8. The issue involved in the case lies in a narrow compass. Smt.Jagada Bai representing the applicant pointed out that the applicant had been the victim of a set of circumstances not of his making. As soon as he received the notice dated 20.11.2003, the applicant had hurried as much as he could in his physical condition, to join the training programme and could reach Mysore only on 1.12.2003. And it should also be remembered that Annexure A-3 notice seeking immediate attendance did not specify a date from which the training commenced unlike the invitation for joining subsequent training programmes as at Annexure A-6. Shri.A.S.Brijesh,ACGSC representing the respondents submitted that while the notice itself was issued only after the training had started, this had not prevented the other three successful candidates from joining the same programme whereas the applicant reported much too late to be included.

9. There is very little merit in the contentions raised by the respondents. It is admitted that there has been ambiguity in the manner in which Annexure A-3 was issued. Firstly, sending out a notice seeking attendance of candidates for a training that had already commenced before the date of

issue of the notice itself, does not bring credit to the organizational competence of a reputed organization such as the Postal Department. Clearly, there was an unmitigated mistake. In *A.K. Lakshmipathy v. Rai Saheb Pannalal H. Lahoti Charitable Trust*, (2010) 1 SCC 287, it is given:

" they cannot be allowed to take advantage of their own mistake and conveniently pass on the blame to the respondents."

Also in *Rekha Mukherjee v. Ashis Kumar Das*, (2005) 3 SCC 427, it is given:

“ The respondents herein cannot take advantage of their own mistake.”

10. Clearly this case falls within the category mentioned in these judgments. The applicant was certainly not at fault in reporting late because he had not been indicated on which date he was expected to join, apart from the fact that the notice seeking the attendance of the candidates was itself issued after the training had commenced. Under the circumstances, the applicant has a good case to be treated on par with his colleagues who got the benefit of the old pension scheme.

11. The Original Application succeeds. The relief sought in the O.A are allowed in full. The contribution that the applicant had already made under the new pension scheme is to be refunded to the applicant and credited to his GPF account. Action pursuant to these orders will be implemented within a month of receipt of a copy of this order. No costs.

(E.K.Bharat Bhushan)
Administrative Member

List of Annexures

Annexure A-1 - A copy of the Disability Certificate No.41 dated 7.6.2002 issued by the Medical Board, Government Taluk Head Quarters Hospital, Kasaragod.

Annexure A-2 - A copy of the Chief Post Master General, Kerala Circle, Trivandrum Memo No. Rectt/4-3/2002 dated 7.11.2003

Annexure A-3 - A copy of the Senior Superintendent, RMS 'TV' Division vide Memo No. B.46(a) dated 20.11.2003.

Annexure A-4 - A copy of the Director Postal Training Centre, Mysore letter confirming his report at the Postal Training Centre, Mysore on 1.12.2003 issued under letter No. TRG-1/2-1/163 dated 1.12.2003.

Annexure A-5 - A copy of the representation dated 2.12.2003 submitted by the applicant to the Senior Superintendent RMS 'TV' Division with a copy to the respondent no.2 and the Director Postal Training Centre Mysore.

Annexure A-6 - A copy of the Senior Superintendent RMS 'CT' Division, Trivandrum Memo No. B.46(a) dated 22.12.2003.

Annexure A-7 - A copy of the Senior Superintendent RMS TV Division, Trivandrum Memo No. B-46(a) dated 15.4.2004.

Annexure A-8 - A copy of the Senior Superintendent RMS TV Division Memo No. B-38(a) dated 7.5.2004

Annexure A-9 - A copy of the Department of Pension and Pensioner's Welfare Office Memorandum No. 38/58/06-P&PW(A) dated 5.3.2008

Annexure A-10 - A copy of the Senior Superintendent, RMS 'TV' Division Memo No. B 38(a) dated 12.11.2008

Annexure A-11 - A copy of the representation dated 12.1.2015 submitted by the applicant to the Chief Post Master General, Kerala Circle, Trivandrum (Respondent No.2) praying for his inclusion in the pension scheme governed by under CCS (Pension) Rules, 1972

Annexure A-12 - Copy of the Superintendent RMS CT Division, Calicut 673 032 issued under No. PEN/GEN dated 27.7.2015 addressed to the SRO, Kasaragod and copy supplied to the applicant.

Annexure A-13 - A copy of the order of this Tribunal in O.A No. 180/00020/2015 pronounced on 15th day of February, 2016.