

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/01599/2015
Dated Friday the 20th day of July Two Thousand Eighteen

PRESENT

HON'BLE MR. R. RAMANUJAM, Member (A)

M.Sathieshkumar,
S/o late D. Meshak,
No. 1B/76, Banar Street,
Maraimalaiadigal street,
Palavanthangal, Chennai 600114.Applicant

By Advocate M/s. R. Malaichamy

Vs

1.Union of India,
rep by the Secretary,
Ministry of Personnel,
Public Grievances and Pensions,
Dept of Pensions and Pensioners Welfare,
3rd Floor, Lok Nayak Bhawan,
Khan Market, New Delhi 110003.

2.The Secretary,
Ministry of Communications & IT,
Dept of Posts,
Dak Bhavan,
Sansad Marg, New Delhi 110011.

3.Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai, Chennai 600002.

4.Senior Superintendent,
Railway Mail Service,
Airmail Sorting Division,
Chennai 600027.

5.Head Record Officer,
Airmail Sorting Division,
Chennai 600027.Respondents

By Advocate Mr. G. Dhamodaran

ORAL ORDER

(Pronounced by Hon'ble Mr. R. Ramanujam, Member(A))

Heard both. The applicant has filed this OA under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

- "i. To call for the records of the 4th respondent pertaining to his order made in No. Nil dt. 16.10.2015 and set aside the same,
- ii. Direct the respondents 1 to 5 to grant pension to the applicant under Old Pension Scheme and also encashment of leave to the applicant including arrears of pension etc by extending the benefit of judgments of the Bangalore Bench of this Hon'ble Tribunal made in OA 932/2012 and OA 138/2010 and
- iii. To pass such further or other orders as this Hon'ble Court may deem fit and proper."

2. Following the death of the applicant on 16.01.2016, the legal heir of the applicant was substituted. It is the contention of the applicant / legal heir that the applicant had served the 4th respondent as casual labourer with temporary status w.e.f. 01.01.2001. As such, he was entitled to be granted pension in accordance with the CCS (Pension) Rules, 1972 after regularisation in service. The applicant was discharged from service w.e.f. 13.10.2015 following his attaining 60 years of age. It is submitted that the applicant having worked under temporary status for over 14 years could not be denied pension under the Old Pension rules on the plea that the applicant had not been regularised.

3. Learned counsel for applicant seeks to rely on the following judgments to argue that in the case of persons who had served on

temporary status for very long periods but could not be regularised for no fault of theirs, an exception should be made and they should be granted pension :-

- i. Order dt. 26.10.2016 in OA 895/2015 (K. Hemavathy vs. UOI (CAT, Madras Bench)),
- ii. Order dt. 06.01.2017 in OA 220/2016 (B.Ponnuraj vs UOI (CAT, Madras Bench))
- iii. Order dt. 28.12.2011 in OA 138/2010 (Smt. Rajeswari vs UOI (CAT, Bangalore Bench))
- iv. Order dt. 11.07.2013 in WP 7258/2012 (S-CAT) (UOI vs Smt. Rajeswari (Hon'ble High Court of Karnataka, Bangalore))
- v. Order dt. 08.07.2014 in SLA (C) CC No. 1135/2014 (UOI vs. Rajeswari (Hon'ble Supreme Court of India))

4. Learned counsel for respondents would, however, vehemently oppose the prayer and submits that the cases relied upon by the applicant were not applicable to the facts of this case. Attention is drawn to the reply of the respondents at para 3(g) wherein it is stated that the applicant was selected for appointment for the cadre of MTS under the 25 % vacancies allotted to Temporary Status Casual Labourer (TSCL) at Kanchipuram division for which Airmail Sorting Division was the neighbouring division and was issued with the selection order dt. 27.05.2014 which was received by the applicant on

13.06.2014. However, the applicant expressed his unwillingness to accept the appointment by a representation dt. 13.06.2014. Since the applicant expressed his unwillingness, the next willing TSCL was granted appointment. As the applicant had not accepted regular appointment, his legal heir could not now claim pension and other benefits available only to regular employees.

5. I have considered the facts of the case and the pleadings. It is not in dispute that the applicant had been offered regularisation nearly 14 years after he was granted temporary status. It is also not in dispute that the applicant was suffering from an ailment at the time when the offer was made which prevented him from accepting the offer of regularisation in the neighbouring division due to medical advice. It is also a fact that the applicant had not been regularised on the post before his retirement as he could not accept the offer of regularisation which involved a dislocation at the relevant time. To this extent, the facts of the case would appear to differ from the ones relied upon by the learned counsel for applicant.

6. At this stage, learned counsel for applicant would submit that the applicant, at the relevant time had only submitted that he was unable to join the post of MTS at Kanchipuram division and, therefore, he may be permitted to continue in Chennai as his residual service was only 15 months. There is no evidence of the respondents

having considered the matter sympathetically. In any case, the applicant was entitled to a reply to the representation either accepting or rejecting the same. However, there is no evidence of any order passed by the respondents and, therefore, the applicant could not be faulted. Accordingly, the legal heir would wish to make a fresh representation to the respondents to consider if the applicant could be granted regular appointment w.e.f. 13.06.2014 in the Airmail Sorting Division itself ex post facto as a special case and he would be satisfied if the respondents are directed to consider the case sympathetically and pass orders.

7. As the deceased employee had indeed submitted a representation to be permitted to continue in Airmail Sorting Division at Chennai and had not exactly declined the offer, I am of the view that in the interest of justice, the legal heir of the applicant could be permitted to make a representation to the respondents for ex post facto regularisation of the deceased employee w.e.f. 13.06.2014 at the same station within a period of one month from the date of receipt of a copy of this order. On receipt of such representation, the respondents may consider the same sympathetically and examine if pension could be granted in relaxation of the rules or by granting ex post facto regularisation in situ as a special case, keeping in view also the spirit of the precedent cases cited in para 3 of this order. A reasoned and

speaking order shall be passed within a period of three months from the date of receipt of a copy of this order. It is to be hoped that the legal heir of the deceased employee would not be driven to another round of litigation before this Tribunal.

8. OA is disposed of in the above terms. No costs.

**(R. Ramanujam)
Member(A)
20.07.2018**

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