

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/020/00951/2015

Date of CAV : 06-11-2015
Date of Order : 29-11-2018

Between :

1. S. Rama Subba Rao S/o S. Nageswara Rao,
Aged about 49 years, Sub Postmaster,
Chennur SO -516162, Cuddapah Division.
2. D. Sree Ramulu S/o D. Lakshmanna,
Age about 42 years, Sub Postmaster,
T. Sundupalli S.O. 516130,
Cuddapah Division.Applicant

AND

1. Union of India, represented by
Its Secretary to the Government of India,
Ministry of Communications & IT,
Department of Posts, Dak Bhavan,
Sansad Marg, New Delhi – 110001.
2. The Chief Postmaster General,
A.P. Circle, “Dak Sadan”,
Abids, Hyderabad 500001.
3. The Superintendent of Post Offices,
Cuddapah Division, CUDDAPAH – 516001. ...Respondents

Counsel for the Applicant: Mr.M.Venkanna

Counsel for the Respondents : Mr.T.HanumanthaReddy, Sr. PC for CG

CORAM :

THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This application is filed under section 19 of the Administrative Tribunal's Act, 1985 for the following reliefs :

- (i) To declare that applicants are entitled to be granted the benefit of notional service, from the date of occurrence of vacancies against which they have been promoted and posted for the purpose of qualifying service for the purpose of pensionary benefits ;
- (ii) To issue appropriate orders / directions directing the respondents to grant the applicants the benefit of CCS (Pension) Rules, 1972, deemed to have been appointed with effect from the date of occurrence of the vacancies against they have been appointed counting the service, from the date of occurrence of the vacancies, as qualifying service for pensionary benefits;
- (iii) And to pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. The brief facts of the case are that the applicants are the GDS BPMs of Kotlur BO and Birujupalle II B.O under Cuddapah Division who were appointed on various dates and after completing the minimum eligible service, they were entitled to appear for the promotional examination to the cadre of Postman / Mail Guard and Group D.

3. That the 3rd respondent was pleased to notify the vacancies of Postman and Mail Guard for the year 2002 vide him memo No.RE/1-3/2002, dated 02-04-2002 whereby it is stated that the respondents were proposing to conduct the examination for the departmental quota and merit quota of outsiders on 30-06-2002. The outsiders in strict sense are non other than the GDS for whom the Outsider quota is confined to. Accordingly they were

responded to the notification since they have put in more than 5 years of satisfactory service as on 01-01-2002 and within the upper age limit of 50, 53 and 55 years applicable to OC, OBC and SC/STs respectively.

4. It is submitted that the examination for promotion to the cadre of Postman / Mail Guard was held on 30-06-2002 but the results were withheld for about 4 years and they were announced only on 28-03-2006 vide Memo No. SP/Con/PM/Exam/2002, dated 28-03-2006. The applicants were directed to undergo Postman Training for a period of 10 days with effect from 01-04-2006 to 10-04-2006 vide Memo No.B2/PM/EX/2002, dated 29-03-2006. After undergoing the required induction training for 10 days, the 4th respondent had issued Memo No.B2/PM/Exam/2002, dated 06-04-2006 posting the applicants as Postman and all the applicants have assumed their duties as Postman after due process of appointment by the 4th respondent.

5. Both the applicants were appointed as Postal Assistants on 31-07-2010 and 15-07-2012 respectively to the cadre. The Government of India like the 1st respondent herein was pleased to introduce a new Pension Scheme with effect from 01-01-2004 which is otherwise called Contributory Pension Scheme in place of General Provident Fund cum statutory Pension.

6. That because of the delay in announcement of results of the promotional examination held in 2002 for the vacancies of 2002 or prior to that year, the applicants were deprived of the benefit of old statutory

pension scheme cum GPF that were governed by CCS (Pension) Rules, 1972 and GPF Rules respectively. No reasons can be ascribed for the delay to the applicants in announcing the results belatedly only in the year 2006.

7. That the 4th respondent vide his Memo No. B/PF/SRSR, dated 4-6-2015 and memo No. B/PF/DSR, dated 08-06-2015 had summarily rejected the claim of the applicants stating that the applicants cannot be brought under the pension scheme of 1972 in as much as they are converted under New pension Scheme. Hence this application.

8. Respondents have filed the reply statement stating that the 1st applicant joined as GDSBPM, Kotlur SO s/w Khajipet SO on 06-01-1993 and the 2nd applicant joined as GDSBPM, Burujupalle BO a/w Galiveedu SO on 05-06-1996. Both the applicants applied for the Postmen Examination for the year, 2002 called for by R.O., Kurnool vide letter No.RE/1-3/2002, dated 02-04-2002 communicated in SPos, Cuddapah letter No.B2/EX/PM/2002, dated 09-04-2002. The said examination was conducted on 30-06-2002. But the said examination results were declared vide SPos, Cuddapah memo No.B2/PM/EX/2002, dated 29-03-2006. After completion of the said training the applicants were posted as Postmen, Yerramukkapalle SO and Rayachoti SO vide SPos, Cuddapah memo No.B2/PM/Ex/2002, dated 06-04-2006.

9. The 1st applicant joined as Postman on 10-04-2006 afternoon after completion of practical training. Sri D. Sreeramulu joined as Postman on 13-04-2006. Subsequently they appeared LGO Examination and after qualifying the same they were working as Postal Assistants. As they were

joined in the Department on 11.04.2006 and 13.04.2006, they were not eligible for General Provident Fund cum Statutory Pension. As the both applicants joined their duties as Government servants after 01-01-2004, both of them were eligible for Contributory Pension Scheme which was introduced by the Department vide O.M.No.56-10/2003-04/PA(Tech-1) 83-147, dated 20-07-2004. Accordingly they were allowed for new pension scheme.

10. Both of the applicants represented this office on 02-06-2015 to consider them for Old pension scheme. But they were informed that they were not eligible for the same as they were joined their posts after 01.01.2004. As per CO instructions in letter No.RE/1-22/Review/02, dated 25-07-2002, Group-D posts from GDS and 50% of Postman vacancies through GDS cannot be treated as Promotional prospects and has to be taken as DR. With these submissions, respondents pray for dismissal of the OA as the same is devoid of merits.

11. We have heard Mr.M.Venkanna, learned counsel for the applicants and Mr.T.Hanumantha Reddy, learned Sr PC for Central Govt., for Respondents.

12. In support of his contentions, learned counsel for the applicants relied on the common order

(i) of CAT, Ernakulam Bench in OA Nos.102, 838 & 972 of 2010, dated 17-06-2011 [R.Aravindaksha Kurup & Ors Vs. The CPMG, Kerala Circle, Thiruvananthapuram 695 033 & Ors],

(ii) OA No.724/2012, dated 28-06-2013 of CAT, Ernakulam Bench.

13. In the present case, the Departmental Promotion examination for was notified on 02.04.2002. The examination was held on 30.06.2002. After a lapse of about four years, the results of the examination were announced on 28.03.2006. The applicant assumed charge of the post on 06.04.2006. They have been subsequently promoted in the month of July, 2010. The New Pension Scheme came into force on 01.01.2004. In the facts and circumstances of the present case, the decisions passed by CAT, Ernakulam Bench, as cited above are fully applicable to the facts and circumstances to the present case, relevant portion of which reads as under :

“8. The order in OA No.849 of 2010 and connected matters does support the case of the applicants. The only difference is that therein it relates to notional fixation of date of promotion for the purpose of working out the qualifying service for eligibility to appear in the competitive examination for the post of Postal Assistant etc.,. In the instant case the claim is for reckoning the period of qualifying service from the notional date of promotion for the purpose of eligibility to be governed under the CCS (Pension) Rules, no other benefit is likely to accrue as well. Their contribution towards contributory provident fund hitherto made shall be diverted to general provident fund and accumulated in that account.

9. In view of the above the OA is allowed. It is declared that the applicants are deemed to have been promoted from the date the vacancy arose and thus notional date of promotion is only for the purpose of reckoning the qualifying service for pension under the CCS (Pension) Rules, 1972. The respondents are directed to pass suitable orders in this regard and make necessary entry in the service book of the applicants indicating clearly the date of notional promotion and the purposes of reckoning the same.

10. Further, the respondents shall collect necessary subscription under the provident fund rules during the rest of their services and stop any recovery to the contributory provident fund.

11. There shall be no order as to costs.”

This Tribunal is satisfied that without any fault of the applicants, they could

not be appointed earlier although the examination was conducted on 30.06.2002 in pursuance to the notification dated 02.04.2002. The Respondents cannot take advantage of their own mistake. Hence this Tribunal declares that the applicants are deemed to have been appointed as Postman with effect from 02.04.2002 and their pay be fixed notionally accordingly. The applicants are also entitled to notional promotion by taking into consideration the notional appointment as on 02.04.2002. They are entitled to consequential relief ie fixation of pay at higher stage and also entitled to other allowances including annual increments.

14. Original Application is accordingly allowed. No order as to costs.

(SWARUP KUMAR MISHRA)
JUDICIAL MEMBER

Dated : 29th November, 2018.

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