

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH, KOLKATA**

O.A. NO. 575 of 2013

Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member

Jadab Chandra Mahato,  
Son of Late Bharu Mahato,  
Aged about 64 years,  
Worked as Post Man Cadre  
Under Midnapore Division,  
Kharagpur, Midnapore,  
Residing at Village – Amalia,  
Post Office – Lalgarh,  
Police Station – Lalgarh,  
District – Paschim Medinipur,  
Pin – 721 516.

..... Applicant.

**-Versus-**

1. Union of India,  
Service through the Secretary,  
Department of Post,  
Ministry of Communication,  
Dak Bhavan,  
New Delhi – 110 001.
2. Chief Post Master General,  
West Bengal Circle,  
Yogayog Bhavan,  
12, C.R. Avenue,  
Kolkata – 700 012.
3. Senior Superintendent of Post Office,  
Midnapore Division,  
Paschim Medinipur,  
Pin – 721 101.
4. The Director of Accounts (Postal),  
Kolkata – 700 069.

..... Respondents.

For the applicant : Mr. T.K. Biswas, Counsel  
Mr. A. Chakraborty, Counsel

For the respondents : Mr. L.K. Chatterjee, Counsel  
Mr. M.K. Ghara, Counsel

Heard on 29.06.2018

Order dated: 17.07.2018

ORDER

Per Bidisha Banerjee, Judicial Member

This application is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT, Rules of Practice, as no complicated question of law is involved and with consent of both sides.

2. The admitted facts in a nutshell are as under:

The applicant, Sri Jadav Chandra Mahato, initially rendered his service as Extra Departmental Employee (ED-MC-Lalgarh, Bhimpore line) in the Department with effect from 23.03.1983 up to 25.08.1999.

On being qualified for the post of Postman, he joined as a Postman of Kharagpur S.O. with effect from 26.08.1999 on purely temporary and adhoc basis worked as Postman till retirement on superannuation on 31.01.2009 A/N.

As such he rendered his service as Departmental staff only for 9 years, 5 months and 6 days i.e. 3 months and 24 days short of 9 years and 9 months which is essential to make him eligible for grant of pensioner benefit as admissible to the Central Govt. Employee as per C.C.S. pension Rule.

An amount of Rs. 51352.00 as Retirement Gratuity and Rs. 102,705.00 as Service Gratuity, as found due and admissible, was paid to him.

He preferred O.A. No. 1467 of 2010 praying for making up the shortfall period from the period of service rendered by him as Extra Departmental Employee. The O.A. was dismissed by this Tribunal on 04.04.2012.

Aggrieved he filed a writ petition under W.P.C.T. No. 121 of 2012 before the Hon'ble High Court which was disposed of on 17.10.2012 with a direction to this Department to consider his case in the light of the Rule 88 of the C.C.S. (Pension) Rules within 4 weeks.

3. The applicant has sought for benefit of a decision in Palaniswamy etc.

Which has been contradicted by respondents.

4. The respondents have averred that the benefit granted in H.R. Palaniswamy case was confined to that case only not to be treated as a precedent for others to follow, as specified in Hon'ble High Court of Madras order dated 04.10.2007 (WP No. 45465 of 2002 and WPMP No. 66391 of 2002.

The decision of Directorate was communicated to the applicant vide Senior Superintendent of Post Offices, Memo dated 05.04.2013.

Being aggrieved the applicant filed contempt petition before the Hon'ble High Court under No. CPAN 288 OF 2013.

Hon'ble High Court did not find it necessary to issue rule in that matter as the Department had complied their order and had taken a decision not to relax the requirement of qualifying service and accordingly the contempt petition was dismissed by the Hon'ble High Court on 03.05.2013 without issuing any further order to the Department to reconsider the case.

5. The issue therefore fell for consideration whether the applicant would be entitled to benefit of Rule 88 of CCS (Pension) Rules.

6. The provision reads as under:

**"88. Power to relax**

Where any Ministry or Department of the Government is satisfied that the operation of any of these rules, causes undue hardship in any particular case, the Ministry or Department, as the case may be, may, by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner:

6

Provided that no such order shall be made except with the concurrence of the Department of Personnel and Administrative Reforms."

7. Applicant has cited the following decision in support of his claim:

(1) WPCT 453/13 Nirmal Kumar Basuli -vs- UOI & Ors., in a case where petitioner rendered only 5 years 9 months & 25 days service as postman, Hon'ble High Court directed:

" For the reasons discussed hereinabove, we also set aside the impugned order passed by the learned Tribunal and affirm the decision passed by the Central Administrative Tribunal, Madras Bench in the case of M.R. Palanisamy vs. Union of India & Ors. (O.A. 1264 of 2001).

The respondent authorities are therefore, directed to take note of the long 27 years of service of the petitioner herein as Extra Departmental Agent for the purpose of reckoning the same as a qualifying service in order to enable the said petitioner to get minimum pension. The respondent authorities are further directed to grant the benefit of pension to the petitioner herein from the date of super-annuation in terms of this order without any further delay but positively within a period of six weeks from the date of communication of this order.

Needless to mention that while granting the pensionary benefits in terms of the order, if the respondent authorities are of the opinion that any amount has already been disbursed to the petitioner herein in excess of his entitlement then the same may be adjusted against the arrear dues of the said petitioner towards the pensionary benefits.

8. Per contra respondents relied upon the following:

(i) UOI -vs- the Registrar by Supreme Court, Civil Appeal Nos. 13675-13676 of 2015 where respondent No. 2 viz N.S. Poonusamy worked as an Extra Departmental Agent in the Postal Department from the year 1968 to 1993. He was regularized on 01.04.1993 and retired on 31.05.2002. The second respondent had completed nine years and two months of service but he was not granted any pension. Therefore, he approached the learned Tribunal which directed that a Scheme be framed to give some benefit of service rendered by such employees as Extra Departmental Agents so as to enable them to earn the requisite period of qualifying service for pension i.e. 10 years. Hon'ble Apex Court held, we are of the view that the impugned directions ought not to have been passed by the learned Tribunal and approved by the High Court. The matter pertains to policy and involves financial implications. That apart, in view of the facts placed before us, as noted above, we deem it proper to

interfere with the impugned directions and allow these appeals filed by the Union of India. We, however, make it clear that the pension granted to the second respondent will not be affected by this order and the said respondent will continue to enjoy the benefit of pension in accordance with the provisions of law."

(ii) O.A. 1535/15 where the O.A. was dismissed on the basis of the decision supra.

A bare perusal of the orders manifested that Rule 88 and its implication and applicability etc. were not deliberated upon. Therefore, these do not lay down any law on the same hence their ratio is not applicable to the case at hand.

9. It is noticed that the prayer of the applicant has been turned down on the ground that the matter has been examined by the Directorate in the context of consideration of relaxation under Rule 88 of pension rules and the Competent Authority i.e. the Secretary (Posts) has decided that "no relaxation can be considered under Rule – 88 of Pension Rules as further relaxation would result into cascading effect leading to nullification of the relevant rules" and the Directorate vide Memo No. 99-14/2013-PEN dtd. 5.4.2013 has communicated the above decision.

However, what rules would be nullified has not been dealt with.

10. In such view of the matter order dt. 5.4.13 is quashed and the O.A. is disposed of, with a direction upon the respondents to re-examine the case in the light of Rule 88 supra and issue a speaking order by 8 weeks. No costs.

(Bidisha Banerjee)  
Judicial Member