

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00399/2017

DATED THIS THE 25TH DAY OF OCTOBER, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI DINESH SHARMA, MEMBER (A)

1. Anthony Jaison C.F.
S/o Francis C.T.
Aged about 40 years,
Working as Postal Assistant,
Bengaluru G.P.O.
Residing at:
No. 7, 6th Street,
2nd Block, Prakurthi Township,
Near Logos,
Bengaluru – 560 043

2. Shivamurthy,
S/o Veerabhadraiah,
Aged about 47 years,
Working as Postman,
Bengaluru GPO,
Residing at:
No. 35, 5th Cross,
Cholurupalya, Magadi Road,
Bengaluru – 560 023

3. Rangaswamy R
S/o Ramanna,

Aged about 40 years,
Working as Postal Assistant,
Bengaluru GPO
Residing at:
No. 173, 1st Main, 3rd Cross,
Ekadantanagara,
Bengaluru – 560 091

.....Applicants

(By Advocate Shri P. Kamalesan)

Vs.

1. Union of India,
Rep. By its Secretary,
Department of Post,
Dak Bhavan,
New Delhi – 110 001

2. Chief Post Master General,
Karnataka Circle,
Bengaluru – 560 001

3. Chief Post Master,
Bengaluru GPO,
Bengaluru – 560 001

....Respondents

(By Shri S. Sugumaran, Counsel for the Respondents)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J)

Heard. The matter in issue is only this. Following the DoPT circulars that in matters of pension there can be continuity in service where a person had been in an autonomous body and come out to Government or vice versa also the matter has been examined in great detail. Both the

parties have filed written argument note which we have examined in the closest detail. The Hon'ble Apex Court in the Superintendent of Post Offices and Others Vs. P.K. Rajamma in Civil Appeal No. 2275 of 1972 reported in AIR 1977 SC 1677 have categorically and clearly held that the extra departmental employees of department also are part of the employee system of the governance. We quote from it:

"The Judgment of the Court was delivered by GUPTA, J:-The respondents in all these fourteen appeals, some of which are on certificate and some by special leave, are extra-departmental agents connected with the postal department. Six of these. appeals are from the Kerala High Court, seven from the Andhra Pradesh High Court and one from. the Orissa High Court. These respondents were either dismissed or removed from service during the period between January 1, 1966 and June 18, 1974, and admit- tedly the order of dismissal or removal was passed without complying with the provisions of Article 311(2) of the Constitution. The question in each case is whether the respondent held a civil post as contemplated in Article 311 of the Constitution; if he did the dismissal or removal, as the case may be, would be unquestionably invalid for non-compliance with Article 311(2).

2. *The conditions of service of the respondents are governed by a body of rules called the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 (hereinafter called the rules) issued under the authority of the Government of India. Rule 2(b) of the rules defining "Extra Departmental Agent" includes within the category, among others, Extra Departmental Sub Postmaster's, Extra Departmental Branch postmasters, Extra Departmental Delivery Agents, and several sections of class IV employees. Eleven of the respondents are extra departmental branch postmasters, one is an extra departmental delivery agent, and two are class IV extra departmental employees. In all these cases the High Courts have found that the respondents held civil posts under the Union of India and the orders terminating their services in violation of Article 311(2) of the Constitution were invalid.*

3. *This Court in State of Assam and others v. Kanak Chandra Dutta(1967)1SCR 679 at p. 682 : (AIR 1967 SC 884 at p. 886) has*

explained what a civil post is. In that case the respondent who was a Mauzadar in the Assam Valley was dismissed from service in disregard of the provisions of Article 311 (2). It was held that "having regard to the existing system of his recruitment, employment and functions", he was "a servant and a holder of a civil post under the State", and therefore entitled to the protection of Article 311(2). This Court observed:

" a civil post means a post not connected with defence and outside the regular civil services. A post is a service or employment There is a relationship of master and servant between the State and a person holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration."

A post, it was explained, exists apart from the holder of the post. "A post may be created before the appointment or simultaneously with it. A post is an employment, but every employment is not a post. A casual labourer is not the holder of a post. A post under the State means a post under the administrative control of the State. The State may create or abolish the post and may regulate the conditions of service of persons appointed to the post." Turning now to the rules by which the respondents were admittedly governed, it appears that they contain elaborate provisions controlling the appointment, leave, termination of services, nature of penalties, procedure for imposing penalties and other matters relating to the conduct and service of these extra departmental agents. There is a schedule annexed to the rules naming the appointing authorities in respect of each category of employees. Rule 5 states that the employees governed by these rules shall be entitled to such leave as may be determined by the Government from time to time and provides that if an employee fails to resume duty on the expiry of the maximum period of leave admissible and granted to him or if an employee who is granted leave is absent from duty for any period exceeding the limit upto which he could have been granted leave he shall be removed from the service unless the Government decides otherwise in the exceptional circumstances of any particular case. The services of employees who had not put in more than three years' continuous service are liable to be terminated at any time under rule 6 for unsatisfactory work or for any administrative reason. The rules also indicate the nature of penalties which may be imposed on an employee and the procedure

for imposing them. A right of appeal is provided against an order imposing any of the penalties on the employee. Various other conditions of service are also provided in these rules.

4. It is thus clear that an extra departmental agent is not a casual worker but he holds a post under the administrative control of the State. It is apparent from the rules that the employment of an extra departmental agent is in a post which exists "apart from" the person who happens to fill it at any particular time. Though such a post is outside the regular civil services, there is no doubt it is a post under the State. The tests of a civil post laid down by this Court in Kanak Chandra Dutta's case (*supra*) are clearly satisfied in the case of the extra departmental agents.

5. For the appellants it is contended that the relationship between the postal authorities and the extra departmental agents is not of master and servant, but really of principal and agent. The difference between the relations of master and servant and principal and agent was pointed out by this Court in *Lakshminarayan Ram Gopal v. Government of Hyderabad* (1955) 1 S.C.R. 393 (AIR 1954 SC 364) On p.401 of the report 1955-1 SCR (at p. 367 of AIR 1954 SC) the following lines from *Halsbury's Laws of England* (Hailsham Edition) Vol.1, at page 193, Art 345, were quoted with approval in explaining the difference:

"An agent is to be distinguished on the one hand from a servant, and on the other from an independent contractor. A servant acts under the direct control and supervision of his master, and is bound to conform to all reasonable orders given him in the course of his work, an independent contractor, on the other hand, is entirely independent of any control or interference and merely undertakes to produce a specified result, employing his own means to produce that result. An agent, though bound to exercise his authority in accordance with all lawful instructions which may be given to him from time to time by his principal, is not subject in its exercise to the direct control or supervision of the principal. An agent, as such is not a servant, but a servant is generally for some purposes his master's implied agent, the extent of the agency depending upon the duties or position of the servant."

The rules make it clear that these extra departmental agents work under the direct control and supervision of the authorities who obviously have the right to control the manner in which they must carry out their duties. There can be no doubt therefore that the relationship between the postal authorities and the extra departmental agents is one of master and servant. Reliance was placed on behalf

of the appellants on two decisions, one of the Orissa High Court Venkata Swamy v. Superintendent, Post Offices, AIR 1957 Orissa 412 and the other of the Madras High Court V. Subbaravalu v. Superintendent of Post Offices, AIR 1961 Mad 166. The judgments in these cases were rendered before the elaborate rules governing the conduct and service of these extra departmental agents were brought into operation in 1964. We do not therefore think an examination of these two decisions will be relevant or useful for disposing of the appeals before us.

6. The appeals are accordingly dismissed with costs: one set of hearing fee in respect of all the appeals except C.A. 1172 of 1972 C.A. 1751 of 1972 and C.A. 2275 of 1972 in which separate orders as to costs was made earlier.

Appeals dismissed."

2. Therefore the Hon'ble Apex Court having settled this issue that these people like the applicants were also holding a civil post then on what premise can we deny them equality of consideration is the issue.

3. Following this the Hon'ble High Court of Karnataka sitting at Gulbarga in Writ Petition No. 81669/2011 dated 17.06.2011 had clearly held that the post of Extra Departmental Mail Carrier which was subsequently redesignated as Gram DakSevak is also equivalent and under Rule 49 the amount of pension has to be calculated. We quote from it:

"Through the instant writ petition, the Union of India has assailed the order passed by the Central Administrative Tribunal, Bangalore Bench, Bangalore dated 23.3.11 rendered in O.A.No. 245/10 whereby the sole respondent herein, has been held to be entitled to pensionary benefits under CCS (Pension) Rules, 1972.

2. It is not a matter of dispute that the respondent came to be inducted as an Extra Departmental Mail Carrier in the employment of postal authorities at Shahabad head office on 22.11.71.

3. The post of Extra Departmental Mail Carrier, was subsequently re-designated as Gram Dak Sevak – Mail Carrier.

4. The claim of the respondent was considered for selection and appointment to the Group-D cadre in 1995. Having found him suitable, and having selected him as such, he was appointed to the Group-D cadre by a memorandum dated 16.1.1995. The respondent continued to discharge his duties in the Group-D cadre till he attained the age of superannuation on 31.7.03. For having rendered uninterrupted service from 1971 to 2003, the respondent claimed pensionary benefits under Rule 49 of the CCS (Pension) Rules, 1972.

49. Amount of Pension – (1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of qualifying service.

(2) (a) In the case of Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years the amount of pension shall be calculated at fifty per cent of average emoluments, subject to a maximum of four thousand and five hundred rupees per mensem.

(b) in the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty three years but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under Cl. (a) and in no case the amount of pension shall be less than ²(rupees three hundred seventy-five per mensem;

(c) notwithstanding anything contained in Cl. (a) and Cl. (b), the amount of invalid pension shall not be less than the amount of family pension admissible under sub-rule(2)k of rule 54.

³(3) In calculating the length of qualifying service, fraction of a year to ⁴[(three)] months and above shall be treated as a completed one half year and reckoned as qualifying service.

¹[(4) The amount of pension finally determined under Cl. (a) or Cl. (b) of sub-rule (2), shall be expressed in whole rupees

and where the pension contains a fraction of a rupees it shall be round off to the next higher rupee.

5. The claim of the respondent having not been considered favourably, he preferred Original Application bearing No. 245/10 before the Central Administrative Tribunal, Bangalore. The aforesaid Original Application came to be allowed by the Central Administrative Tribunal by its order dated 23.3.11. The aforesaid order dated 23.3.11 has been assailed by the Union of India through the instant writ petition.

6. The first contention advanced by the learned Counsel for the petitioner before this Court was, that respondent No. 1 was not entitled to the benefit of his entire service from 1971 to 2003 for determining his eligibility for pensionary benefits. It was contended that he was entitled to benefit for the period from 1995 to 2003 only. In so far as the submission of the learned Counsel for the petitioners is concerned, he desires this Court to hold, that the petitioner was entitled for consideration for pensionary benefits, only with effect from the date when he came to be appointed to the Group-D cadre i.e., with effect from 4.2.95. It is the contention of the learned counsel for the petitioner, that service rendered by the respondent from 4.2.95 to 31.7.03 only, can be considered as qualifying service. Based on the aforesaid service rendered by the respondent in Group-D cadre, the learned counsel for the petitioners submits, that the respondent who had not completed 10 years of qualifying service, was not entitled to pensionary benefits.

7. We have heard the submission advanced at hands of the learned counsel for the petitioner – Union of India. We find no justification, whatsoever, in the same to dissect the services rendered by the respondent into two components ie., from 22.11.1971 upto 15.1.1995 and thereafter, from 16.1.1995 to 31.7.2003. The first part of service referred to herein above was rendered as an Extra Departmental Mail Carrier (subsequently re-designated as Gram DakSevak Mail Carrier). The subsequent service which was rendered as member of the Group-D cadre we were given the impression that the appointment of the respondent to the Group-D cadre was a fresh appointment which had no nexus to the earlier service. We find no merit in this impression. On 16.1.95, the respondent came to be appointed by a process of selection to the Group-D cadre. Perusal of the memorandum dated 16.1.95, appointing the respondent by

selection to the Group-D cadre, is available in the record as Annexure A2. A relevant extract of the aforesaid order is reproduced hereunder.

DEPARTMENT OF POSTS

(OFFICE OF THE SR. SUPDT. OF POST OFFICES,

GULBARGA DISTRICT)

(Memo No. B2/C1.IV/Dlgx. Dated at Gulbarga-1 the,

16.01.1995

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*The following allotment of approved candidates for appointment to group "D" and request transfers as noted against each are hereby ordered to have with immediate effect.*

| <i>Sl. No.</i> | <i>Name &amp; Designation the Officer</i>                                     | <i>Allotted to</i>                                                                                    |
|----------------|-------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| 1.             | <i>Sri Anand Rao, (OC) BPM, Kawalga BO a/wAlund SO (Approved Candidate)</i>   | <i>To the SPM, Alund SO Vice Sri Sidramappa CI.IV Alund Transferred to GB HO Unit.</i>                |
| 2.             | <i>Sri Dattappa (SC) EDMC, Kadni BO a/wFarhatabad SO (Approved Candidate)</i> | <i>To Postmaster, Shahabad HO Unit against vacant post.</i>                                           |
| 3.             | <i>Sri Siddappa (S) Ed Pkr. Chandapur SO (Approved Candidate)</i>             | <i>To SDI (P) Shahabad Unit vice Sri Shankar CI.IV Shahabad ACC Transferred to GB-Brahmanipure SO</i> |
| 4.             | <i>Sri Shankar CI.IV Shahabad ACC SO</i>                                      | <i>To ASP I/c, GB-II Sub Dn Unit against vacant post (At request, no TA/TP)</i>                       |
| 5.             | <i>Sri Sidramappa, C.IV Alund SO</i>                                          | <i>To Gulbarga HO unit against vacant post (At request No TA/IP)</i>                                  |

*The appointing Units concerned may issue appointments/transfer orders of the above approved candidates after observing all the usual formalities including the verification of case of SC/ST candidate in*

*particular within a fortnight. The copy of appointment/Transfer order along with charge reports may please so enclosed to this office.*

*The above said selected EDAS should not be promoted if any vigilance/Disc. Action is either pending or contemplated against them and report sent to this office forthwith."*

*8. From the perusal of the aforesaid extract, it emerges that the respondent was "promoted" from the cadre of Extra Departmental Mail Carrier to the Group-D cadre. For all intents and purposes, the employment was continuous in nature and not as if it was from one service to another, as suggested. Since the appointment of the respondent was continuous under the employer, we find no justification whatsoever for the petitioners herein to bifurcate the services rendered by the respondent into two separate components. If the service of the respondent is treated as continuous, he would definitely be found to have rendered the qualifying service prescribed for entitlement to pensionary benefits under Rule 49 extracted hereinabove.*

*9. The action of the petitioner in assailing the order passed by the Central Administrative Tribunal, Bangalore Bench, Bangalore astonishes us, inasmuch as, the impugned order passed by the Central Administrative Tribunal dated 23.3.11 reveals, that on identical controversy pertaining to another employee of the postal organisation, the Central Administrative Tribunal, Madras Bench accepted the same plea, while disposing of OA 1246/01 by an order dated 18.4.02. The aforesaid order passed by the Central Administrative Tribunal, Madras Bench, was assailed by the Postal authorities before the Madras High Court in W.P. No. 45465/02. However, the order of the Central Administrative Tribunal Madras Bench, was affirmed by the High Court. Dis-satisfied with the orders passed by the Central Administrative Tribunal, Madras Bench, as also Division Bench of the High Court of Madras, the postal authorities approached the Supreme Court by preferring Petition for Special Leave-to-Appeal (Civil) No. 138/09. The aforesaid special leave petition came to be dismissed on 17.10.08.*

*10. We are astonished because despite the fact that similar efforts made by the petitioner herein, on the similar controversy, had failed upto the Supreme Court, the petitioners have chosen to contest the impugned order, inspite of the fact that the petitioners have not been able to pointout single distinguishable feature as in the present controversy, from the one adjudicated by the Central Administrative*

*Tribunal, Madras in O.A. No. 1264/01. In the circumstances, we are satisfied that exemplary costs deserve to be imposed on the postal authorities. We are satisfied that such an attitude at the hands of the Union of India, especially the postal authorities, should be curbed with a strong hand, since the instant attitude which require a court to decide the same issue repeatedly, even after the same submission failed earlier. We accordingly impose Rs.1,00,000 as cost on the petitioners. The aforesaid costs shall be deposited with the Gulbarga Bar Association, High Court Unit, Gulbarga within three months from today for raising library for the Bar Association. In case the aforesaid costs are not deposited within the time indicated above, the Registry of this Court is directed to re-list this case for recovery of costs.*

*Disposed of in the aforesaid terms.”*

4. Thereafter we had opportunity to consider this matter wherein we distinguished the Madras Bench decision based on the Hon'ble Supreme Court judgment in OA No. 1705/2015 dated 30.06.2016 which we quote:

*“Heard. The matter involves grant of pension or not under the old scheme or the new scheme which came into force in 2004. Applicant who had worked for more than 30 years as GDS was selected as Postman and had a service of about 10 years plus as such and, therefore, became entitled to the pension.*

2. *But the respondents had taken a ground that applicant will be entitled only to the New Pension Scheme which is qualitatively lesser than the old scheme. Applicant challenges this.*

3. *But a similar matter had been taken up by the Bench at Madras in OA No. 1264/2001 dated 18.04.2002. It will be proper to quote from paragraph 5 to 12 of the said judgment in which the Bench had clearly explained as to how and why the provisions of rules regarding pension are applicable to similarly situated persons:*

*“5. At the outset, we find that the applicant had worked as an ED BPM from 1.6.1963 to 1.7.1992. In the normal course, had the applicant continued to work as an ED BPM he would have continued up to the age of 65 years and could have continued in service even now. But in view of the fact that he was promoted to the Gr. D cadre he had to retire at the age of 60 years which is the age of superannuation in Govt. service. Thus promotion in the instant case has come to mean reduction in the age of retirement by five years. Under such circumstances it*

*is to be seen that the reduction in the retirement age in any way is compensated to the applicant. It may be true that as a Gr. D employee the applicant would have received higher pay and allowances. Therefore, to earn the increased pay and allowances the applicant was required to work full-time. But on the contrary as an ED BPM, which was only a part-time job, it carried a lesser salary. Thus, the increased working hours as a Gr. D employee had resulted in increase in wages. In other words the applicant had not gained much by way of promotion.*

*6. The pertinent factor in this case which requires a mention is that the applicant had lost five years of service as an ED BPM and in return he is not getting even the minimum pension because persons who complete 10 years of service alone are eligible for the pro-rata pension. Further, had the applicant served for another three months he would have become eligible for prorata pension as he would have completed 20 half-yearly periods but no his credit he has only the half yearly periods and therefore he is not eligible for any pension. In other words all the service rendered by him as an ED BPM to the extent of 29 years are of no use in so far as the pension is concerned. It is this aspect of the matter which required consideration.*

*7. Keeping the above point in mind we would like to observe that in cases where the employees had been dismissed or removed from service they are also eligible to get what is called 'compassionate allowance' not exceeding 1/3rd of the pension according to Rule 41(1) of the CCS(Pension) Rules which is subject to the orders of competent authority. But in the instant case even though the applicant had served for nearly 29 years as an ED BPM, he is not eligible for any pension because he fell short of one half-yearly period. Therefore, this is a matter which requires to be examined by the highest authority after an indepth analysis into the whole matter.*

*8. At the time of arguments, the learned counsel for the applicant made a fervent plea that in the Railways, for the casual labourers with temporary status, 50% of the temporary status service is taken into account for purposes of qualifying service subsequent to their absorption against regular posts in Gr. D cadre and this benefit has been extended to the temporary status casual labourers for extending the pensionary benefits. Therefore, applying the above analogy to the case on hand and as a model employer, the respondent department ought to have come forward to reckon a portion of the service rendered as ED BPM as a qualifying service which would enable persons like the applicant to draw the minimum pension.*

*As again the above suggestion of ours, there can be two opinions, one in favour of the suggestion and the other against.*

*In this connection we would like to place reliance on the Justice Talwar Committee's recommendations to resolve the issue on hand in the interest of justice, based upon which the Dept. of Posts had issued an OM dated 17.12.1998 and the subsequent clarificatory circular dated 10.8.1999, and the relevant portion is extracted below:-*

*"(f) Severance amount on retirement/death:- A lumpsum severance amount of Rs. 30,000/- may be paid only on retirement of an ED Agent at the age of 65 years or on the death of an ED Agent, provided he/she has completed a minimum of 20 years of continuous service. However, in case of an ED Agent who has completed continuous service equal to or more than 15 year but less than 20 years of continuous service, the severance amount shall be only Rs. 20,000 on retirement or death. These provisions will be effective from the date of issue of these orders.*  
*(g) Severance amount on absorption on regular basis- Severance amount of Rs. 20,000/- may be paid to an ED Agent who has been absorbed on a regular basis against a departmental post after 15 years of continuous service as ED Agent. This provision will be effective from the date of issue of these orders".*

*9. A conjoint reading of the above provisions would go to show that an EDA who had rendered a continuous minimum service of 20 years would be entitled for the severance amount of Rs. 30,000 and in the case of absorption of an EDA against a regular post in the department after rendering a continuous service as an EDA for 15 years, he would be entitled to severance amount of Rs. 20,000/-. In the instant case, we find that the applicant has rendered 29 years of service as an EDA before his promotion to the Group-D cadre. But the service rules for ED Staff are silent with regard to reckoning a portion of service as an ED Agent as a qualifying service on absorption as a regular Gr. D or on promotion as a Grou D against the departmental post. Here we would like to invite a reference to the OM dated 12.04.1991 issued by the DOPT with regard to regularisation of casual labourers are concerned. In the said scheme there is a clause stating that 50% the service rendered as temporary status employee will be reckoned as a qualifying service for regulating the retiral benefits after regularisation against Gr. D Posts. This provision is on similar lines prevailing in the Railways and other Govt. of India departments. In a nutshell the essence is that even in respect of casual labourers*

*who get regularised at a subsequent date against regular Gr. D Posts. a portion of their service rendered with temporary status is reckoned as qualifying service for regulating the retiral benefits.*

*10. On the other hand, there is no such welfare scheme in respect of ED Agents. One reason may be that the ED Agents are part-time workers and therefore no weightage is called for. It is in this connection we would like to observe that a distinction has to be made in respect of a person who works as an ED employee and retires as such and a person who works for some time as an ED Agent and gets absorbed as a Gr. D official. In the former case since the employee retire as an ED Agent, there is no scope for any pension at all. On the other hand, in the latter case since the employee retires as a Gr. D official after regularisation, the department has to decide whether any weightage need be given for the services rendered by him as an ED Agent for well over several years.*

*11. The above point will have to be seen in the light of the fact that on regularisation as a Gr. D employees, the age of superannuation of the employee gets reduced from 65 years. Surely this amounts to a reduction in the superannuation age and deserves to be adequately compensated. Thus it would appear that on promotion to the Gr. D cadre, the ED employee does not gain and on the contrary he seems to be more on the losing side. We therefore hold that this position has to be adequately corrected by reckoning a portion of the service rendered as an EDA as a qualifying service for pensionary purposes.*

*12. We would like to observe that this need not be 50% of the service as in the case of a casual labourer with temporary status, but perhaps a lesser percentage may be reckoned as a qualifying service in respect of the service rendered as an ED Agent. This can be any where around 20 to 25%. But, to say that no weightage will be given to the service rendered as an ED Agent, even after regularisation on absorption or, promotion as a Gr. D employee will not be in harmony with other schemes obtaining in other departments of the Govt. Principles of equity and fair play require that certain portion of the service rendered as an EDA should be reckoned as a qualifying service for pension purposes and if that is done, persons like applicant would get over the shortfall and it will entitle them for at least minimum pension, especially when similar benefits are extended to persons working in Railways and other departments of the Govt. of India. In short, it would appear that after regularisation, the ED Agent does not get the same*

*treatment as in the case of a casual labourer. This is an anomalous situation. We therefore hold that this is a fit case where the respondents as a model employer should apply their mind and formulate a welfare scheme as has been formulated by the DOPT and Railways which would help many persons like the applicant to get at least the minimum pension."*

4. *This was challenged by the department in the Hon'ble High Court and Hon'ble High Court having confirmed the order of the Tribunal, it was again challenged in the Hon'ble Supreme Court vide CC No. 13829/2008 dated 17.10.2008 which was filed against the judgment in Writ Petition No. 45465/2002 in the Hon'ble High Court of Madras dated 04.10.2007. Apparently this was implemented vide order No. 99-3/08-Pen dated 09.10.2009, that being so, this is covered by order of the Hon'ble Supreme Court in similar matter.*

5. *At this point of time, the learned counsel bring to our notice that there is another Hon'ble Supreme Court judgment which is produced as Annexure-R1 in Civil Appeal No. 13675-13676/2015 dated 24.11.2015 wherein apparently the Palanisamy judgment is not seen recorded. In all probability, this would not have been brought to the notice of Hon'ble Apex Court. Apparently, the ground taken would have been that the GDS employee who was promoted as in this case is a part-time employee. The learned counsel now would say that the present employee is also a part-time casual labourer and, therefore, would be entitled to only a similar treatment. But then in Umadevi and another connected cases the Court have frowned upon keeping people in neither-here-nor-there position after longer years of service. Once he had been selected, the dictum of Palanisamy will come into play. The dictum of the Palanisamy judgment is that the past service cannot be washed away as has been held in Renu Malik's case and other connected cases. That being so, the second judgment of the Hon'ble Apex Court produced as Annexure-R1 do not reveal any principle which will militate against the Palanisamy judgment as since Palanisamy judgment has already been implemented the applicant is entitled to parimateria treatment under Article 14. This is particularly so as it is covered by Article 13 as well otherwise his fundamental right to life will be curtailed atleast to that extent since the old pension rules and new pension rules have lessening effect on the actual benefit conferred. That being so, the applicant is entitled to 25% of his earlier service as GDS counted as service counting backward from the date on which he was posted as Postman and the new date thus arrived at will be the commencement point of his service. His pension and benefits would thus be calculated as such and awarded to him within two months next. OA is allowed. No order as to costs."*

5. Thereafter the department challenged it in Writ Petition No. 39725/2013 dated 03.11.2015 and we quote from it:

*"The order dated 7th June 2013 passed by the Central Administrative Tribunal ('CAT' for short), Bangalore in Original Application NO.932/2012 is called in question in this writ petition.*

*By the said order, the Tribunal has concluded that the respondent herein is entitled for the benefits flowing from the Pension Scheme which was in existence prior to 1.1.2004.*

*2. The records reveal that the respondent herein who was working in the Department of Posts as Casual Labourer was granted temporary status on 29.11.1989 under Casual Labourers (Grant of Temporary Status and Regularization) Scheme. He continued as a temporary status employee from 29.11.1989 till 24.1.2008, on which day he was selected as Group-D employee on regular basis. However the respondent assumed charge as Group-D employee on 17.7.2008. He retired after attaining the age of superannuation on 31.5.2010. In the meanwhile, a new Pension Scheme came into effect from 1.1.2004. After the retirement, the respondent claimed the benefit flowing from the pension scheme which existed prior to 1.1.2004 inasmuch as he was working as temporary status employee prior to 1.1.2004. The said prayer of the respondent is turned down by the petitioners as per the order dated 18.7.2012 vide Annexure-A1. The order at Annexure-A1 dated 18.7.2012 was called in question by the respondent before the Tribunal in Original Application No.932/2012 which came to be allowed by the impugned order.*

*3. We do not find any ground to interfere in the impugned order inasmuch as the same is just and proper under the facts and circumstances of the case. The question similar to the question involved in this writ petition was the subject matter in Writ Petition No.11679/2011 before the Division Bench of this Court which came to be decided in favour of the employees by the order dated 7.4.2015 concluding that the employees therein are entitled for benefits flowing from pension scheme which was in existence prior to 1.1.2004.*

*4. The Division Bench of this Court in Writ Petition No.11679/2011 while coming to the conclusion as mentioned supra has relied upon the judgment of the Delhi High Court in WP (C) No.14247/2006, WP(C) No.8491/2006, WP (C) No.17528-30/2006 and WP(C) No.4806/2007 decided on 4.7.2008. It seems the CAT, Jaipur Bench as well as CAT, Mumbai Bench have also decided in favour of the similarly placed employees by concluding that such employees are entitled to benefits under old Pension Scheme.*

*5. In this matter, it is not in dispute that the respondent herein was granted temporary status in service on 29.11.1989. He continued as temporary status employee till 17.7.2008, on which date he assumed charge as regular Group-D employee. He retired on 31.5.2010. Under the similar circumstances, this Court in Writ Petition No.11679/2011 and the Delhi High Court in the aforementioned matter have concluded that those employees who have been granted temporary status prior to coming into force the new pensionary scheme, those employees who were given the benefit of General Provident Fund under the old pensionary rules, those employees who had been given the benefit of having their period of temporary service counted for the pensionary benefit, were certainly entitled to be covered by the CCS (Pension) Rules 1972 i.e., the old Pension Rules. Such employee would not be covered by the new pension scheme of 2004. Same is the order passed by the CAT which is impugned in this writ petition.*

*Since the impugned order is just and proper, no interference is called for. Petition fails and the same stands dismissed. Three months time is granted to comply with the order.*

6. The Hon'ble High Court held that the impugned order, which is the order of this Tribunal, is just and proper and no interference is called for and dismissed the petition.

7. Apparently thereafter the matter was taken up in the Principal Bench and the Principal Bench having ordered in favour of the employees it has been implemented by the department also.

8. Therefore the respondents now points out to the decision of Justice V. Gopala Gowda in Y. Najithamol and others v. Soumya S.D. and others reported in AIR 2016 SC 3789 wherein the Hon'ble Apex Court distinguished between "appointment to the post of Postman – whether by direct recruitment or promotion- Postman being Group 'C' post, promotion to the said post can happen only from the feeder post, viz. Group D posts and GDS is not a Group 'D' post and cannot be envisaged to be a feeder post for

promotion to the post of Postman. The Hon'ble Apex Court held that GDS is a civil post but is not a part of the regular service of Postal Department. This version put forth by the respondents is correct. Had it not been so, the GDS also would have been eligible for a payscale and other protection under Article 311 of the Constitution. They remain a separate portion because of the huge volumes and the remote places which the Postal Department has to cater to. It remains an anathema to proper governance but at the same time the rights which have been granted to them as otherwise must be protected. One such right is that the more competitive amongst them can aspire to be in the regular post through LDCE and therefore having succeeded in their venture what would be the criteria which shall govern their enhancement of career prospects if it is to be held that they are to be governed on the scenario of even though holding a civil post they have to be discriminated against. It will be a violation because if other persons in government service are entitled to have their earlier service counted for benefits such as promotion and pension there is no ground to deny this benefit to the applicants also. In fact the Hon'ble Apex Court had made it very clear that these people being equal to others in certain aspects in governance cannot be discriminated against on the basis of technicalities. Therefore this ruling of the Hon'ble Apex Court may not be fully in line with the other rulings which have been cited in earlier case. The judgment of this Tribunal in a similar matter has been upheld by the Hon'ble High Court. Therefore nothing more remains. In this case one more aspect is pointed out that the New Pension Scheme stipulates that it shall be applicable to all new

recruits after 01.01.2004. But then under no circumstances can it be said that applicants can be deemed as coming under the title of new recruits. They are absolutely not a new recruit as they had been selected through a Limited Departmental Competitive Examination meaning whereby that they are inside the department all these times. That being so, the New Pension Scheme is not applicable to them. Therefore it is hereby declared that applicants are eligible and entitled to being included in the Old Pension Scheme.

9. At this point of time one more submission is made by the respondents counsel that the Fundamental Rules are not applicable to them except for the effect of Article 311 which has been brought into force through judicial compulsion. If Article 309, 310 and 311 are applicable to a set of employees, then we cannot really understand why FR is not applicable but then we understand the difficulties of the department also. It serves even the remotest points of the nation of India. The volume of business at such place may not be conducive and compulsive enough to post a regular employee there as then the burden will be cumbersome, therefore, from the earliest point of time a methodology had been found to have extra departmental persons to man such posts. It is to be noted that all these people are totally under the administrative control of the department and their duty hours, even though specific for the purpose of grant of wages, naturally and normally it spills over and even though there is a stipulation that they can engage in other private employments also practically this must be difficult in terms of the workload of each station which had been manipulated and

formulated in such a way as to obtain maximum benefit for the department. That being so, even though theoretically it may be said that these people are eligible for outside employment also, till all these time no such factum has been brought to our notice. Even after 10 years of examination of these things, this has not been a ground raised by the department in any of the cases relating to GDS ranging from 2009 to till date. Therefore this argument will not hold water. Even assuming that department had permitted them to obtain outside employment also, after having obtained total loyalty and total sincerity to the department and having subjected them to a competitively assessment operation the department cannot turn over and say that there is a possibility that these people may have obtained an outside employment also. This outside employment in the nature of the agreement entered into between them and the department is to the effect they can be agriculturists or they can be small time businessman. The respondents counsel would say that teachers were also engaged in the earlier times but not now. But assuming that they were also teachers they had also enure to the challenges of the department as they were paid pittances in terms of the work done by them. The department cannot have both ways. We understand that because of the huge volume of business they conduct and the remoteness of the places where they operate it may not be commercially viable to have regular employees at those places but at least pittances of benefits must visit these unfortunate people as since the Hon'ble Apex Court have clearly held that these people are also part of governance system then the DoPT circular relating to continuance of service must operate in favour

of the applicants also. It is once again declared that applicants are eligible for the Old Pension Scheme since their service will date back from the date of their appointment as GDS and not on the selected/promoted date to the post of Postman which is later on.

10. The OA is thus allowed. Benefits to be made available within two months next. No order as to costs.

(DINESH SHARMA)

MEMBER (A)

(DR.K.B.SURESH)

MEMBER (J)

/ksk/

**Annexures referred to by the applicant in OA No. 170/00399/2017**

Annexure A1 Copy of the letters dated 22.07.1999, 20.05.2004 and 24.03.1999

Annexure A2 Copy of the letters dated 25.01.2007, 19.03.2011 and 04.05.2006

Annexure A3 Copy of the order in Civil Appeal No. 1172, 1354, 1355, 1751 of 1972

Annexure A4 Copy of the order of Principal Bench, New Delhi in O.A. No. 749/2015 dated 17.11.2016

Annexure A5 Copy of the order of Central Administrative Tribunal, Chennai Bench in O.A. No. 1676/2014

Annexure A6 Copy of the order of Hon'ble High Court of Karnataka in Writ Petition No. 81669/2011

Annexure A7 Copy of the representations of the applicants

**Annexures with reply statement**

Annexure R1 Copy of the extract of GDS Rules regarding pension

Annexure R2 Copy of the extract of Central Civil Services Pension Rules

Annexure R3 Copy of the Ministry of Finance Resolution dated 10.10.2003

Annexure R4 Copy of the judgment of Hon'ble Supreme Court in Civil Appeal No. 90 of 2015

Annexure R5 Copy of the judgment of Hon'ble Supreme Court in Civil Appeal No. 13675 of 2015

Annexure R6 Copy of the judgment of Central Administrative Tribunal, Bangalore Bench in O.A. No. 1651/2015

Annexure R7 Copy of the judgment of Central Administrative Tribunal, Bangalore Bench in O.A. No. 254/2016

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