

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00029/2017
Original Application No. 180/00039/2017
Original Application No. 180/00155/2017

Thursday, this the 28th day of February, 2019

CORAM:

Hon'ble Mr. Ashish Kalia, Judicial Member

1. Original Application No. 180/00029/2017 -

T.K. Kumaran, S/o. Kunhiraman Nair, aged 59 years, Postman,
Koorachanda Sub Post Offices, Vadakara Postal Division,
Calicut, Department of Posts, residing at Thiruvanchery House,
Mattanode – 673 527. **Applicant**

(By Advocate : Mr. V. Sajithkumar)

V e r s u s

1. Union of India, represented by the Secretary to Government,
Department of Posts, Ministry of Communications, Government of
India, New Delhi – 110 001.
2. The Chief Post Master General, Kerala Circle, Trivandrum-695 001.
3. The Superintendent of Post Offices, Vadakara Postal Division,
Vadakara – 673 101. **Respondents**

(By Advocate : Mr. S.R.K. Prathap, ACGSC)

2. Original Application No. 180/00039/2017 -

H. George, S/o. Henry, aged 60 years, Retired MTS, RMS TV Dn., HRO,
Thiruvananthapuram, residing at Pottayil Puthenveedu, Thamalam,
Poojapura, Thiruvananthapuram – 695 012. **Applicant**

(By Advocate : Mr. V. Sajithkumar)

V e r s u s

1. Union of India, represented by the Secretary to Government,
Department of Posts, Ministry of Communications, Government of
India, New Delhi – 110 001.

2. The Chief Post Master General, Kerala Circle, Trivandrum-695 033.

3. The Senior Superintendent of Post Offices, RMS TV Division, Thiruvananthapuram – 695 033. **Respondents**

(By Advocate : Mr. P.R. Sreejith, ACGSC)

3. **Original Application No. 180/00155/2017 -**

G. Mohandas, S/o. Late P. Gopalan, aged 60 years, Retired MTS, Kollam HO, residing at Smitha Mandiram, Adichanallur, Kollam-6911573. **Applicant**

(By Advocate : Mr. V. Sajithkumar)

V e r s u s

1. Union of India, represented by the Secretary to Government, Department of Posts, Ministry of Communications, Government of India, New Delhi – 110 001.

2. The Chief Post Master General, Kerala Circle, Trivandrum-695 033.

3. The Senior Superintendent of Post Offices, RMS KLM Division, Kollam – 691 001. **Respondents**

(By Advocate : Mr. S. Ramesh, ACGSC)

These applications having been heard on 25.02.2019 the Tribunal on 28.02.2019 delivered the following:

O R D E R

Hon'ble Mr. Ashish Kalia, Judicial Member –

Being identical these Original Applications were heard together and are disposed of by this common order. For reference purpose OA No. 180/29/2017 has been taken as the lead case.

2. The relief claimed by the applicants are to place them notionally in the category of MTS/Postman with effect from the date of occurrence of the vacancy prior to 2004 and extend them the benefits under statutory pension

scheme with all consequential benefits. In the alternatively they sought to grant them the benefits of statutory pension scheme in the light of the directions of the Hon'ble Principal Bench in OA No. 749/2015 and connected cases.

3. The applicants commenced service as Gramin Dak Sevaks. Later the applicants were appointed to the post of Group D/MTS/Postman after 2004. They submitted that they would have got regular appointment prior to the date of introduction of New Pension Scheme i.e. 1.1.2004 had the respondents acted in accordance with law. The applicants have rendered several years of service as GDS prior to their appointment to the cadre of Group D/MTS/Postman. As their appointments were made only after 1.1.2004, they are not getting the benefits as per the CCS (Pension) Rules, 1972 though they are actually appointed against the vacancies prior to 2004. The applicants shall be put to prejudice for the laches on the part of the respondents in delaying the posting of the applicant to the vacancies prior to 2004. They have filed representations pointing out all these aspects. However, the same were not considered. Aggrieved they have filed the present OAs.

4. The applicants have relied on the orders of the different Benches of the Tribunal in OA No. 102/2010 and connected cases dated 17.6.2011, OA No. 260/2003 dated 26.3.2004, OA No. 649/2011 dated 23.5.2013, OA No. 180/749/2015 and connected cases dated 17.11.2016 and OA No. 180/840/2016 and connected case dated 30.07.2018 in support of their

contentions.

5. Notices were issued to the respondents. They entered appearance through Shri S.R.K. Prathap, ACGSC in OA No. 180/29/2017, Shri P.R. Sreejith, ACGSC in OA No. 180/39/2017 and Shri S. Ramesh, ACGSC in OA No. 180/155/2017. They filed all what similar reply statements contending that the applicants were initially engaged as Gramin Dak Sevaks. While holding the post of GDSs they were engaged notionally to the post of MTS/Group-D/Postman. Applicants retired on superannuation from service. The respondents also contend that the applicants' date of appointment to the cadre of Group-D/MTS/Postman is after 1.1.2004 and as such they are covered by the New Pension Scheme introduced by the Government of India for all those who entered into service on or after 1.1.2004. The applicants who chose to accept their date of appointment after 1.1.2004 without a demur would be stopped from raising any claim for antedating the date of appointment after so many years. Respondents pray for dismissing the OAs.

6. Heard Shri V. Sajithkumar, learned counsel appearing for the applicants and Shri S.R.K. Prathap, ACGSC in OA No. 180/29/2017, Shri P.R. Sreejith, ACGSC in OA No. 180/39/2017 and Shri S. Ramesh, ACGSC in OA No. 180/155/2017 appearing for the respondents. Perused the records.

7. The Hon'ble apex court in *Y. Najithamol & Ors. v. Soumya S.D. & Ors.* in Civil Appeal No. 90 of 2015 on 12th August, 2016 held as under:

“3. Aggrieved of the order of the Tribunal, the appellants challenged the correctness of the same by way of filing a Writ Petition before the High Court of Kerala at Ernakulam. The Division Bench of the High Court came to the conclusion that a reading of Columns 11(1) and (2) of the Recruitment Rules does not support the claim that appointments to the said posts are being made by way of direct recruitment instead of promotion. The Division Bench of the High Court held as under:

“We are only concerned with Col.11 (1), 11(2)(i) and 11(2)(ii). The entire vacancies as of now is divided into two portions, i.e. 50% could not be made by promotion from Group D on the basis of their merit in the departmental examination, then the unfulfilled vacancies would go to Extra Departmental Agents on the basis of the rank list in the departmental examination. Then among the other 50%, 25% would go to persons based on the seniority who need not take any departmental examination and for that 25%, if candidates are not sufficient for consideration to the post of Postman based on the seniority, the rest will again go to Extra Departmental Agents based on the merit in the rank list in the departmental examination, then the other 25% from among the Extra Departmental Agents based on the merit in the departmental examination. If still any vacancies are available, from one recruiting division to another postal division is also contemplated and after exhausting that process, if the posts are still remain unfilled again from one postal division located in the same station to another postal division located in the circle. After exhausting the exercise contemplated under Col.11 (1) to (4), if any posts are vacant, then the question of direct recruitment from the nominees of Employment Exchange comes into play. Reading of Column 11(2) to (4), nowhere it refers to any direct recruitment as such. It only says by promotion so far as Group D and if candidates are not sufficient for promotion in Group D, then it goes to Extra Departmental Agents on the basis of merit in the examination. If the intention were to be by promotion only from Group D candidates, then the unfilled from the category under Column 11(1) ought not to have been earmarked for Extra Departmental Agents based on their merit in the Departmental examination.”

The High Court accordingly dismissed the Writ Petitions filed by the appellants herein questioning the correctness of the order passed by the Tribunal. Hence the present appeals.

4. We have heard Mr. V. Giri, the learned senior counsel appearing on behalf of the appellants in the Civil Appeal 90 of 2015 and Mr. N.K. Kaul, learned Additional Solicitor General appearing on behalf of Union of India and Dr. K.P. Kylashnath Pillay, learned senior advocate appearing on behalf of some of the respondents.

5. The essential question of law which arises for our consideration in the instant case is whether the appointment of the appellants to the post of Postman is by way of direct recruitment or by promotion.

6. We first turn our attention to the relevant rules at play in the instant case, which are the Recruitment Rules. The Schedule to the said Recruitment Rules specifies the method of recruitment, age limit, qualifications etc. relating to appointments to the said posts. Column 1 specifies the name of the post as Postman/Village Postman, and Column 3 specifies it to be a Group 'C' post.

7. Column 11 of the Recruitment Rules which is at the heart of the controversy in the present case, reads as under:

"Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer and percentage of the vacancies to be filled by various methods :-

1. 50% by promotion, failing which by Extra Departmental Agents on the basis of their merit in the Departmental Examination.

2. 50% by Extra Departmental Agents of the recruiting division of Unit, in the following manner, namely:

(i) 25% of vacancies of postman shall be filled up from amongst Extra Departmental Agents with a minimum of 5 years of service on the basis of their seniority, failing which by the Extra Departmental Agents on the basis of Departmental examination.

(ii) 25% from amongst Extra Departmental Agents on the basis of their merit in the departmental examination.

3. If the vacancies remained unfilled by EDAs of the recruiting division, such vacancies may be so filled by EDAs of the postal division failing in the Zone of Regional Director.

4. If the vacancies remained unfilled by EDAs of the recruiting units such vacancies may be filled by EDAs of the postal divisions located at the same station. Vacancies remaining unfilled will be thrown upon to Extra Departmental Agents in the region.

5. Any vacancy remaining unfilled shall be filled up by direct recruitment through the nominees of the Employment Exchange."

A careful reading of the above Column makes it clear that essentially two 'pools' are envisaged from which appointments to the post of Postman can be made. One is the pool of those candidates who are being promoted, and the other is the pool of the Extra Departmental Agents who are appointed to the said post after passing a departmental examination. 50% of the candidates being appointed to the post of Postman are selected by way of promotion. The remaining 50% of the candidates are selected in two ways. 25% of the candidates are selected from amongst the Extra Departmental Agents on the basis of their seniority in service, and the other 25% candidates are selected from the Extra Departmental Agents based on their merit in the Departmental Examination.

8. Further, Column 12 of the Recruitment Rules reads as under:

"In case of recruitment by promotion/deputation/transfer grade

from which promotion/deputation/transfer to be made:

1. Promotion from Group 'D' officials who have put in three years of regular and satisfactory service as on the closing date for receipt of applications through a Departmental examination.
2. Extra Departmental Agents through a Departmental Examination.
3. Direct recruitment through a Departmental Examination."

The post in the instant case, that of Postman is a Group 'C' post. Thus, it is quite natural that 'promotion' to the said post can happen only from the feeder post, which in the instant case, are the Group 'D' posts. Admittedly, GDS is not a Group 'D' post, and members of GDS are merely Extra Departmental Agents.

9. At this stage, it is also useful to refer to the decision of this Court in the case of C.C. Padmanabhan & Ors. v. Director of Public Instructions & Ors.- 1980 (Supp) SCC 668, wherein it was held as under:

"This definition fully conforms to the meaning of 'promotion' as understood in ordinary parlance and also as a term frequently used in cases involving service laws. According to it a person already holding a post would have a promotion if he is appointed to another post which satisfies either of the following two conditions, namely-

- (i) that the new post is in a higher category of the same service or class of service;
- (ii) the new post carries a higher grade in the same service or class."

Promotion to a post, thus, can only happen when the promotional post and the post being promoted from are a part of the same class of service. Gramin Dak Sevak is a civil post, but is not a part of the regular service of the postal department. In the case of Union of India v. Kameshwar Prasad – (1997) 11 SCC 650 this Court held as under:

"2. The Extra Departmental Agents system in the Department of Posts and Telegraphs is in vogue since 1854. The object underlying it is to cater to postal needs of the rural communities dispersed in remote areas. The system avails of the services of schoolmasters, shopkeepers, landlords and such other persons in a village who have the faculty of reasonable standard of literacy and adequate means of livelihood and who, therefore, in their leisure can assist the Department by way of gainful avocation and social service in ministering to the rural communities in their postal needs, through maintenance of simple accounts and adherence to minimum procedural formalities, as prescribed by the Department for the purpose. [See: Swamy's Compilation of Service Rules for Extra Departmental Staff in Postal Department p. 1.]"

Further, a three-judge Bench of this Court in the case of The Superintendent of Post Offices & Ors. v. P.K. Rajamma - (1977) 3 SCC 94

held as under:

“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 Court in Kanak Chandra Dutta's case (supra) are clearly satisfied in the case of the extra departmental agents.”

(emphasis laid by this Court)

A perusal of the above judgments of this Court make it clear that Extra Departmental Agents are not in the regular service of the postal department, though they hold a civil post. Thus, by no stretch of imagination can the post of GDS be envisaged to be a feeder post to Group 'C' posts for promotion.

10. A Full Bench of the Ernakulam Bench of the Central Administrative Tribunal in the case of M.A. Mohanan v. The Senior Superintendent of Post Offices & Ors. - OA No. 807 of 1999 decided on 3.11.1999 had the occasion to consider a similar question. The majority opinion of the Tribunal held as under:

“As the name itself indicates, EDAs are not departmental employees. They become departmental employees from the date of their regular absorption as such. And promotions are only for departmental employees. Therefore, EDAs cannot be treated as 'promoted' as Postmen. They can be treated as only appointed as Postmen. It is further seen from instructions of Director General Posts under Rule 4 of Swamy's publication referred to earlier that EDAs service are terminated on appointment as Postman and hence they become eligible for ex gratia gratuity. If the recruitment of EDAs as Postman is treated as a promotion, the question of termination will not arise. This also leads one to conclude that the recruitment of EDAs Postman cannot be treated as one of promotion.

Further, Hon'ble Supreme Court in C.C. Padmanabhan and Ors. v. Director of Public Instructions and Ors., 1980 (Suppl.) SCC 668=1981(1) SLJ 165 (SC), observed that 'Promotion' as understood in ordinary parlance and also as a term frequently used in cases involving service laws means that a person already holding a position would have a promotion if he is appointed to another post which satisfies either of the two conditions namely that the new post is in higher category of the same service or class. Applying the above criteria appointment as Postman from EDA cannot be termed as promotion as the posts of Postman and EDA belong to two different services viz. regular Postal Service' and 'Extra Departmental Postal Service'.”

(emphasis laid by this Court)

11. The Tribunal in the instant case sought to distinguish the aforementioned case with the case in hand, by placing reliance on another decision of the Tribunal and holding that the Full Bench was concerned with the cases of those candidates covered under Column 11(2)(i), whereas the case of the candidates in the instant case was covered under Column 11(2)(ii), and thus, the decision of the Full Bench has no bearing on the facts of the case on hand. This reasoning of the Tribunal cannot be

sustained, as the Full Bench of the Tribunal was clearly adjudicating the broader question of whether the appointment of Extra Departmental Agents to the post of Postman is by way of direct recruitment or by way of promotion. The attempt to distinguish the ratio of the Full Bench of the Tribunal on such a superficial ground is akin to reading the decision of the Full Bench like a Statute, which cannot be sustained.

12. The Division Bench of the High Court placed reliance on the wording of Column 11(1) to conclude that since the Extra Departmental Agents being appointed as provided under Column 11(1) can be called as promotees, then the Extra Departmental Agents under Column 11(2)(i) and (ii) also must be treated at par. The said reasoning of the High Court also cannot be sustained. It is nobody's case that the Extra Departmental Agents being appointed under Column 11(1) be called promotees. The language of Column 11(1) itself makes this crystal clear. The use of the words 'failing which' makes it obvious that there is a distinction between those candidates who are being selected by way of promotion, and the candidates who are Extra Departmental Agents and have cleared the departmental examination, and that the latter will be considered for appointment only if there are no eligible candidates under the former category. Thus, the appointment of GDS to the post of Postman can only be said to be by way of direct recruitment and not promotion."

8. The short question raised by the applicants herein is whether they are entitled for placing them in the category of Postman/Group-D/MTS notionally with effect from the date of occurrence of vacancy so as to include them in the statutory pension scheme or not. The Hon'ble apex court in *Y. Najithamol's* case (supra) has held that the selection of extra departmental agents or Gramin Dak Sevaks to the post of Postman under Column 11(2)(ii) of the Recruitment Rules is only by way of direct recruitment and not by way of promotion.

9. The legal position in this matter is crystal clear and there is no scope to interpret this any further. The GDS post being a civil post is not a regular civil post and it is also not the feeder post to the post of MTS. That after clearing the departmental examination from 25% quota with requisite service of 5 years, a GDS gets appointment to the post of Postman/Group-

D/MTS. In other words for the first time it gets inducted into the regular civil post only as a Postman/Group-D/MTS. Therefore, the career start with Department of Posts from the date of appointment as Postman/Group-D/MTS and he/she is entitled for salary, increments, upgradation after requisite service, further chances of promotion to higher post only from the date of appointment as Postman/Group-D/MTS.

10. Hence, this Tribunal is of the view that the prayer of the applicants for placing them in the category of Postman/Group-D/MTS notionally with effect from the date of occurrence of vacancy so as to include them in the statutory pension scheme cannot be allowed to them as the applicants would be granted all benefits of the post of Group-D/Postman/MTS only from the date of joining the post. The applicants are inducted for the first time in regular civil posts from the date of joining the post. They are born in the cadre only from the date of joining the post.

11. Thus, this Tribunal holds that the applicants are not entitled for placing them notionally in the category of Postman/Group-D/MTS from the date of occurrence of vacancies in view of the judgment of the apex court in *Y. Najithamol's* case (supra).

12. The Original Applications fail and hence, dismissed. There shall be no order as to costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**
“SA”

Original Application No. 180/00029/2017**APPLICANT'S ANNEXURES**

Annexure A1 - True copy of the memo No. B2/128/05 dated 21.11.2005 issued by the 3rd respondent.

Annexure A2 - True copy of the memo No. B2/126/2005 dated 1.12.2005 issued by the 3rd respondent.

Annexure A3 - True copy of the representation dated 14.10.2016 submitted by the applicant to the 2nd respondent.

Annexure A4 - True copy of the order in OA 102/2010 and connected cases of this Honourable CAT, Ernakulam Bench.

Annexure A5 - True copy of the circular No. CO/LC/OA/32/08 dated 8.7.2010 issued by the 2nd respondent.

RESPONDENTS' ANNEXURES

Annexure R1 - True copy of notification No. F. No. 5/7/2003-ECB&PR dated 22.12.2003 issued by the Ministry of Finance.

Annexure R2 - True copy of notification No. Rectt/12-2/2002 dated 17.2.2005 issued by the Chief Postmaster General, Kerala circle, Trivandrum.

Annexure R3 - True copy of letter No. Rectt/9-2/2003 dated 25.2.2005 issued by the Postmaster General, Northern Region, Calicut.

Original Application No. 180/00039/2017**APPLICANT'S ANNEXURES**

Annexure A1 - True copy of the order dated 26.3.2004 in OA 260/2003 of this Honourable Central Administrative Tribunal, Ernakulam Bench.

Annexure A2 - True copy of the order dated 17.8.2004 in MA 602/2004 in OA 260/2003 of this Honourable Central Administrative Tribunal, Ernakulam Bench.

Annexure A3 - True copy of the order NO. B-II/11-3/04, dated 17.9.2004 issued by the 3rd respondent.

Annexure A4 - True copy of the representation dated 20.5.2005 submitted by applicant to the 2nd respondent.

Annexure A5 - True copy of the representation dated 5.10.2016 submitted by applicant to the 2nd respondent.

Annexure A6 - True copy of the circular No. CO/LC/OA/32/08 dated 8.7.2010 issued by the 2nd respondent.

Annexure A7 - True copy of the order in OA 840/2016 passed by this Hon'ble Tribunal dated 30.7.2018.

RESPONDENTS' ANNEXURES

Annexure R1 - True copy of the appointment order issued by the competent authority to the applicant dated 10.5.1996.

Original Application No. 180/00155/2017

APPLICANT'S ANNEXURES

Annexure A1 - True copy of the selection memo No. BB/44/2005 dated 30.05.2006 issued by the 3rd respondent to the applicant.

Annexure A2 - True copy of the memo No. BB/MISC dated at Kollam the 26.9.2016 issued by the 3rd respondent.

Annexure A3 - True copy of the representation dated 9.12.2016 submitted by the applicant to the 3rd respondent.

Annexure A4 - True copy of the judgment dated 23.5.2013 in OA No. 649/2011 of the Central Administrative Tribunal, Ernakulam Bench.

Annexure A5 - True copy of the circular No. CO/LC/OA/32/08 dated 8.7.2010 issued by the 2nd respondent.

Annexure A6 - True copy of the order dated 17.11.2016 in OA 745/2015 of the Principal Bench.

Annexure A7 - True copy of the order dated 17.11.2016 in OA No. 749/2015 and connected cases.

RESPONDENTS' ANNEXURES

Annexure R1 - True copy of the order in OA No. 889/2009 dated 31.5.2011.

Annexure R2 - True copy of the judgment in OP (CAT) No. 3130/2011 dated 29.11.2011.

Annexure R3 - True copy of the OM dated 16.5.2001 issued by Government of India.

Annexure R4 - True copy of the judgment in Civil Appeals No. 90/15 and 91/2015 dated 12.8.2016.

Annexure R5 - True copy of the common order in OA NO. 902/2013 and connected cases dated 23.1.2017.

Annexure R6 - True copy of the judgment of Hon'ble High Court of Kerala in OP CAT No. 317/2016 and connected cases dated 18.1.2017.

Annexure R7 - True copy of the judgment in SLP (Civil) No. 17035-17036 of 2013 (Civil Appeals No. 13675-13676 of 2015).

Annexure R8 - True copy of the order in OA No. 1535/2015 of the Calcutta Bench dated 10.2.2017.