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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00656/2016

Wednesday this the 9th day of January, 2019

CORAM:

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

M.Jamal Muhammed,
S/o.Meeran Moideen,
Retired Postman, Anchal P.O.
Residing at J.B.Manzil, Thottammukku,
Bharathipuram P.O., Error,
Pathanamthitta – 691 312. ...Applicant

(By Advocate Mr.V.Sajith Kumar)

v e r s u s

1. Union of India
represented by the Secretary to the Government of India,
Department of Posts, Government of India,
New Delhi – 110 001.
2. The Chief Postmaster General,
Kerala Circle, Trivandrum – 695 033.
3. The Superintendent of Post Office,
Pathanamthitta Postal Division,
Pathanamthitta – 689 645. ...Respondents

(By Advocate Mrs.P.K.Latha, ACGSC)

This application having been heard on 2nd January 2019, the Tribunal on 9th January, 2019 delivered the following :

ORDER

O.A.No.180/656/2016 is filed by Shri.M.Jamal Muhammed, retired
Postman with 9 years and 3 months of service in the cadre and another two

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decades of GDS service. Aggrieved by denial of claim for minimum pension for “frivolous reasons” the applicant has filed this O.A seeking the following reliefs :

1. To quash Annexure A-1 and Annexure A-1(a).
2. To declare that applicant was entitled to notional service as Postman with effect from the actual date of occurrence of vacancy against which he has been promoted as Postman, for the purpose of pensionary benefits.
3. To direct the respondents to grant minimum pension to the applicant by giving him notional promotion as Postman from the date of occurrence of the vacancy against which he has been promoted with all consequential benefits including minimum statutory pension.
4. Alternatively direct the respondents to give weightage to GDS service to make good the shortage of service in the Postman cadre for the purpose of minimum pension as ordered in Annexure A-4 and grant him with minimum statutory pension.
5. Grant such other reliefs as may be prayed for and as the Court may deem fit to grant, and
6. Grant the cost of this Original Application.

2. It is submitted that the applicant had entered into service as a GDS with effect from 14.12.1982. He applied for the post of Postman against the vacancies of the year 2002, examination for which was held on 24.11.2002. He got appointed with effect from 14.3.2003. Applicant submits that had he been appointed with effect from the date of occurrence of vacancy or at least with effect from the initial date fixed for the examination he would have qualified for minimum pension. According to him the shortfall of regular service can be made good even by giving due weightage to GDS service also.

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3. It is submitted that the applicant has approached this Tribunal twice vide O.A.No.187/2013 and O.A.No.180/562/2014. On both these occasions the O.As were disposed of directing the respondents to exercise the relaxation under Rules 88 of the CCS (Pension) Rules, 1972 and communicate the decision to the applicant. Pursuant to the directions of this Tribunal in the aforesaid O.As the respondents issued Annexure A-1 and Annexure A-1(a) orders, rejecting the claim of the applicant.

4. The respondents in their reply statement submitted that there has been no inordinate delay in the appointment of the applicant and he retired from service on superannuation on 30.6.2012 without having the prescribed minimum service ie. 10 years as on the date of retirement, to be eligible for receipt of pension. There was a shortage of more than 8 months service and hence his request for grant of pension could not be considered by the respondents. In this regard the respondents relies on the judgment of the Hon'ble Supreme Court in the case of **Union of India & Ors. v. the Registrar & Anr. SLP(C) Nos.17035-17036/2013** dated 24.11.2015 wherein while allowing the appeal filed by the department it has been held that the GDS are governed by a separate set of rules and the provisions of the rules governing the GDS stipulate that the GDS are not entitled to pension. It further held that the directions to the department for formulation of scheme for giving some weightage to GDS service to make good the shortfall in minimum qualifying service of 10 years in regular employment, ought not to have been

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passed by the Tribunal and approved by the Hon'ble High Court. It is argued that the service of any official commences in a cadre only after the declaration of result and after the successful completion of the induction training. In the instant case, even if it is assumed that the date of appointment is advanced by two months ie. the period between the date of initial examination and the date of subsequent examination, the applicant still would not have completed the mandatory minimum service.

5. The applicant has filed two M.As producing the order of Principal Bench of this Tribunal in O.A.No.749/2015 and connected case and common order of this Tribunal in O.A.No.180/655/2016 and O.A.No.180/840/2016 passed in favour of the applicants therein declaring that the period spent as GDS will be counted in toto for the purpose of pensionary benefits.

6. Respondents have filed reply statement to the M.As stating the the order of the Principal Bench in O.A.No.749/2015 has been challenged before the Hon'ble High Court of Delhi and it has not attained finality. They further submitted that the Postal Services Board in its 8th Meeting held on 30.9.2013 has examined in detail the issue of counting GDS service towards qualifying service for pension and it has been decided that the department had no option but to adhere to the statutory pension provision and there can be no relaxation of provisions contained in Rule 49 of the CCS (Pension) Rules which provides for a minimum of 10 years of departmental service to become

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eligible for pension and there was no scope for counting of part of GDS service towards regular employment to enable them to make up for the shortfall in the minimum required length of service.

7. We have heard Shri.V.Sajithkumar, learned counsel for the applicant and Smt.P.K.Latha, learned ACGSC for the respondents. Perused all the pleadings and documents available on record. Administrative Tribunal and High Courts had in a catena of decisions considered this issue in hand. In an identical case this Tribunal had as recently as on 30.7.2018 in O.A.No.180/655/2016 and O.A.No.180/840/2016 passed the following orders :

“12. As mentioned already, the issue involved in both these cases are one and the same. Both the applicants in the two OAs have fallen short of required service period for claiming minimum pension on account of factors beyond their control. Sri Sajithkumar, learned counsel for the applicants in both OAs chose to lay stress on the orders of the Madras Bench of this Tribunal, since confirmed by the Hon'ble High Court of Madras and the Hon'ble Supreme Court as well as in the orders of the Principal Bench of CAT in OA 749/16. Sri P.R.Sreejith, ACGSC and Sri Sinu G.Nath, ACGSC appeared for the respondents in the respective OAs and argued that both these judgments can be interpreted only as judgments *in persona*. The respondents' counsel further pointed out that the orders in both cases had not attained finality as in the case of OA No. 749/15, SLP filed is currently pending before the Hon'ble Supreme Court, whereas the decision of the Madras Bench of this Tribunal was clearly *in persona*.

13. This Tribunal finds no merit in the argument. The issue involved is simple and unambiguous and the two judgments referred to relating to taking a part or whole of GDS service into account for considering grant of minimum pension is directly relevant. Leaving aside the question whether their appointment as Postmen is to be ante-dated to the date of occurrence of vacancy, the order, particularly of the Principal Bench of CAT, is unambiguous and categorical, ruling that “*for all GDS who have been absorbed as regular Group-D staff, the period spent as GDS would be counted in toto for the purpose of pensionary benefits.*” In the two OAs, the applicants have already pleaded for

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taking a part of the GDS service for making up the shortfall in the 10 year minimum period required for grant of pension. This Tribunal is of the view that theirs is a justified plea. OA succeeds. The prayers contained in the OA are allowed. The two OAs are accordingly disposed of. No order as to costs.”

8. In view of the above, this Tribunal is of the view that the aforesaid order is squarely applicable to the case in hand. Accordingly the O.A is allowed. Leaving open the question of ante-dating the appointment as Postman from the date of occurrence of vacancy, the prayer of the applicant to count the period spent as GDS to make the shortage of service in the Postman cadre for the purpose of pensionary benefits is granted. The above exercise shall be completed with disbursement of all consequential benefits arising therefrom within a period of three months from the date of receipt of a copy of this order. No costs.

(Dated this the 9th of January 2019)

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

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List of Annexures in O.A. No.180/00656/2016

- 1. Annexure A1** – A copy of the Order No.99-76/2013-Pen. Dated 28.1.2014 issued on behalf of the 1st respondent.
- 2. Annexure A1(a)** – A copy of the Order No.99-76/2013-Pen. Dated 27.4.2016 issued on behalf of the 1st respondent.
- 3. Annexure A2** – A copy of the communication dated 4.10.2002 issued by the 2nd respondent.
- 4. Annexure A3** – A copy of the Order No.CO/LC/OA/32/08 dated 8.7.2010 issued by the 2nd respondent.
- 5. Annexure A4** – A copy of the Order No.99-3/08-Pen. Dated 9.10.2009 issued on behalf of the respondent.
- 6. Annexure A5** – A copy of the judgment dated 10.8.2009 in CWJC No.3893/2009 of the Hon'ble High Court of Judicature at Patna.
- 7. Annexure A6** – A copy of the Order dated 17.6.2011 in O.A.No.102/2010 and connected cases of the Central Administrative Tribunal Ernakulam Bench.
- 8. Annexure A7** – A copy of the Order dated 24.9.2013 in O.A.No.187/2013 of the Central Administrative Tribunal Ernakulam Bench.
- 9. Annexure A8** – A copy of the judgment dated 29.9.2015 in O.A.No.562/2014 of the Central Administrative Tribunal, Ernakulam.
- 10. Annexure A9**- A copy of the application under RTI Act dated 9.5.2016.
- 11. Annexure A10** –A copy of the reply issued as per Letter No.CCC/RTI/48/2016 dated 14.6.2016 issued by the 3rd respondent.
- 12. Annexure A11** – A copy of the Order dated 17.11.2016 in O.A.No.749/2015 and connected cases of the Principal Bench of this Hon'ble Tribunal.
- 13. Annexure A12** – A copy of the common order by this Hon'ble Tribunal dated 30.7.2018 in O.A.No.655/2016 and O.A.No.840/2016.
- 14. Annexure R1** –
- 15. Annexure R2** –

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16. Annexure R3 –

17. Annexure R4 –
