

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00473/2016

Tuesday, this the 26th day of February, 2019

**Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member**

P.K.Bijumon
Postal Assistant, Kuthiathodu
Alappuzha District-688 533 **Applicant**

(By Advocate – Mr.B.Unnikrishna Kaimal)

V e r s u s

1. Union of India represented by the
Secretary to Government of India
Department of Posts
New Delhi – 110 001
2. The Chief Postmaster General
Kerala circle, Thiruvananthapuram – 695 033
3. The Postmaster General
Central Region
Kochi – 682 020
4. The Superintendent of Post Offices
Alappuzha Division
Alappuzha – 688 012
5. Nisha V.Kumar
Sub Postmaster, Kavalam
Alappuzha – 688 506 **Respondents**

(By Advocate – Mr.P.G.Jayan,ACGSC for R 1-4)

This Original Application having been heard and reserved for orders on 12.2.2019, the Tribunal on 26.2.2019 delivered the following:

O R D E R

Per: Mr.Ashish Kalia, Judicial Member

Original Application No.180/00473/2016 is filed by Mr.P.K.Bijumon, Postal Assistant, Kuthiathodu, Alappuzha. Applicant is aggrieved by the action of the respondents in inducting him in the New Pension Scheme. The reliefs sought in the Original Application are as follows:

- “i) An order directing the 3rd respondent to induct the applicant in the Pension Scheme governed by the CCS Pension Rules, 1972 and to extend the facility available under the GPF Scheme.
- ii) An order directing the 3rd respondent to stop recovery from the pay of the applicant commenced from 8.9.2005 towards the New Pension Scheme and to refund the amount so far collected with interest at the rate of 6% from the date of recovery in each months till the date of refund.
- iii) An order directing the 3rd respondent to treat the applicant as appointed in the cadre of Postal Assistant with effect from 26.3.2011, the date on which the 5th respondent is shown as entered into the cadre of Postal Assistant.
- iv) An order directing the 4th respondent to grant pay and allowances to the applicant in the cadre of Postal Assistant with effect from 26.3.2011, the date on which the 5th respondent commenced officiating against regular vacancy of Postal Assistant.
- v) An order directing the 4th respondent to fix the seniority of the applicant in the Divisional Gradation List of Postal Assistants above the 5th respondent
- vi) Such other order or direction as this Hon’ble Tribunal may deem fit and proper in the facts and

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circumstances of the case. "

2. The brief facts of the case are as follows:

The applicant is presently working as Postal Assistant in Alappuzha Postal Division. He entered the service as Extra Departmental Delivery Agent. He was promoted as Group D on 27.10.1997 and was on deputation to Army Postal Service (APS for short) from 28.10.1997 till 30.11.2011. He resumed duty in the civil post as Postman under Thuravoor Post Office. While on deputation in APS, the applicant appeared for the examination for promotion to the cadre of Postman conducted against the vacancies of 2003 which was actually held on 22.5.2005 and 10.7.2005. On qualifying the said examination, he was promoted in the cadre of Postman w.e.f 8.9.2005. Thereafter, the applicant appeared departmental examination for promotion to Lower Grade Officials to the cadre of Postal Assistants held on 10.10.2010 and was qualified for the same. On resumption of duty, the applicant was inducted under the New Pension Scheme instead of the CCS Pension Rules, 1972 (old pension scheme) for which he was actually entitled. He made Annexure A-9 and A-14 representations to the 4th respondent and Annexures A 10 and A 15 representations to the 3rd respondent. These representations have not so far been considered by the respondents. Hence, the applicant approached this Tribunal for redressal of his grievances.

3. Notices were issued and the respondents put their appearance through their counsel and filed reply statement. It is stated therein that in order to

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accommodate the applicant in APS, he was technically promoted on temporary and adhoc basis as Group D on 28.10.1997 prior to his relief from the civil post and had he been reverted to the civil post, he would have been entitled for a Gramin Dak Sevak post only. His promotion was given on the basis of GDS service and not as a Group D post. While he was working in APS, he was permitted to appear for the Postman Examination from GDS for the vacancy of 2003 in Alappuzha Division. On declaration of the results, the applicant was posted as Postman w.e.f 8.9.2005. He has joined the departmental service after the crucial date of 1.1.2004. While continuing in APS as Postman, he appeared for LGO Examination held on 10.10.2010 and was qualified for posting as Postal Assistant and continued in APS. The service of the applicant as a Central Civil Servant commences w.e.f 8.9.2005 in Postman cadre after introduction of the New Pension Scheme. He does not come under the purview of the Statutory Pension which was prevalent only up to 31.3.2004. However, the applicant's representation for inclusion in old pension scheme vide Annexure A-9 has been examined and matter referred to CIFA for advice. IFA has returned the case to verify whether the applicant is one among the 847 GDSs whose services were ordered to be regularized from the date of entry in APS from the date of commencement of technical promotion as Group D vide letter dated 13.6.2007. The case has been referred to APS and APS has intimated that the services of only those officials who have rendered their willingness to serve in APS till completion of prescribed age limit and who continue to be GDS in civil lien as on 13.6.2007 have been regularised. The applicant herein was no more GDS as on 13.6.2007 as he became departmental

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employee on 8.9.2005. Thus the applicant is not entitled for inclusion in Statutory Pension Scheme. Respondents pray for dismissing this Original Application.

4. Heard Mr.B.Unnikrishna Kaimal, learned counsel for the applicant and Mr.P.G.Jayan,ACGSC, learned counsel for the respondents. Perused the records.

5. During the course of argument, the applicant's counsel Mr.B.Unnikrishna Kaimal has drawn our attention to Annexure A-17 order dated 12.6.2017 issued by the Government of India, Ministry of Communications.

“ Sub : Service and pensionary benefits to GDS on deputation to APS as Group D.

Madam/Sir,

Vide this Department's letter of even number dated 13-6-2007, service of 847 GDSs who were sent to Army Postal Service (APS) on deputation after giving them one day technical appointment as Group D was regularised.

2. Subsequently, the APS has informed that over and above the said 847 personnel there were 659 more similarly placed personnel who were sent to APS on deputation. List of these 847 and 659 personnel as received from the APS vide their letters No.90413/APS-1C/R-341(B)(Pt) dated 10-2-2017 and dated 22-5-2017 are enclosed.

3. Approval of the competent authority is hereby conveyed for regularisation of service of the remaining 659 GDSs who were deputed to APS after one day technical appointment as Group D, whether currently working in APS or civil side, in line with the regularisation of 849 GDSs with terms and conditions as specified in letter dated 13-6-2007.

4. Regularisation of these 847 and 659 personnel are further subject to the following:

- a. APS Directorate as well as concerned Postal Circles shall verify the details of each and every personnel in the list mentioned above before issue of regularisation order. In this regard, each circle shall constitute Two Members Committee (one each from the Circle and the APS) to scrutinise records for each personnel and shall prepare two sets of documents (to be retained one each in the Circle and the APS), which shall inter alia contain documents of Postal Circle as well as that of APS relating to one day technical appointment in Postal Circle and joining in APS. This exercise may be completed by 15-8-2017 and a compliance report be sent to the undersigned by 31-8-2017. In case of discrepancy in any case, matter shall be reported to Department of posts which shall inter alia include views of both APS and Postal Circle.
- b. In the aforesaid letter dated 13-6-2007 it was conveyed that service of the 847 GDSs would be regularised from the date of entry in APS/from the date the GDSs had been conferred technical promotion as Group D. To remove any kind of ambiguity, it is hereby clarified that the date from which a personnel had drawn salary of Group D post continuously shall be reckoned as the crucial date of regularisation with all consequential benefits from that date. Letter dated 13-6-2007 stands modified accordingly.
- c. Applicability of CCS (Pension) Rules 1972 (Old Pension Scheme) or New Pension Scheme (NPS) would be determined as per the crucial date of regularisation mentioned above.
- d. These 847 personnel plus 659 personnel, after their repatriation to civil side on attaining the retirement age in APS or found medically unfit to serve in APS, will be absorbed in civil side till they attain age of superannuation applicable to civil employee of similar level. The Department of Posts in coordination with APS shall maintain a schedule of repatriation of such personnel from APS to Department of Posts and maintain vacancies in respective grade to ensure continuation of such personnel in civil posts. Further the APS shall not repatriate any of these personnel to civil posts. Further the APS shall not repatriate any of these personnel to

civil side without prior confirmation of vacancy in the Postal Circle and if need be a personnel may be repatriated on the date of availability of vacancy closest to the normal age of retirement in APS. In case APS decides to extend the service of anyone beyond the normal age of retirement in APS prior consent of the Postal Circle shall be obtained and the Circle will give consent after ensuring availability of vacancy at the time of repatriation after such extension in APS.

e. These 847 personnel plus 659 personnel after regularisation of their service as above shall be treated at par with other officials in civil side for appearing in departmental examination and shall compete with them for civil vacancy. Past examination results, irrespective of such personnel being treated at par with other GDS or other official in civil side shall not be re-opened. Their inter se seniority shall be maintained as per their rank in the examination. However, those who are presently working in APS will not be allowed to revert to civil side on qualifying the examination so long as there are found fit to work in APS and vacancy in higher grade is available APS.

f. A person whether figures in the list of 847 and 659 personnel mentioned above or not, who had joined APS as per the practice of deputing GDS after giving them one day technical appointment as Group D, but has subsequently qualified the examination conducted by the Department of Posts, limited to Departmental employee or GDS but not open for all, shall be deemed to be on regular service from the date he had drawn salary of Group D post continuously. The postal Circle in consultation with the APS shall send the details of such personnel, who are covered under this provision but do not figure in the list of 847 and 659 personnel mentioned above to the undersigned while sending the report mentioned at para 4(a) above. Whether such a person shall be covered under CCS (Pension) Rules 1972 (Old Pension Scheme) or not shall be decided as per the crucial date from which he is deemed to be on regular service. If such a person is still serving in APS, he will continue to serve in APS till he is found unfit by APS or attains the retirement age in APS and thereafter will be reverted to civil side till he attains the civil retirement age. If such a person had already left the APS and is currently working in civil side, he may continue in civil side with the option of deputation to APS remaining open. Further the service in APS so regularised shall be treated as regular

service for all purposes including increment/TBOP/BCR/MACP.

g. 847 personnel regularised earlier and 659 personnel regularised now will be included in the civil side seniority list of Group D/MTS in the bottom of the seniority list of the year from which their service is regularised.

h. Any other case not covered above shall be referred to the Directorate by the Circle with views of APS and vice versa.

5. The APS and Postal Circle are directed to review all connected legal matters and cases pending in CAT/Court and individual representations pending with them in the light of the above decision.”

6. Learned counsel for the applicant submitted that the applicant is similar to those GDS who were included in the said Statutory Pension Scheme. During the course of argument learned counsel for the respondents has relied the Ministry of Communication & IT, Department of Posts letter dated 13.6.2007. Paragraphs 4 & 5 reads as follows:

“4. In case the GDSs who are now proposed to be regularised as Group ‘D’ are reverted to Civil for some reason or the other, such personnel will rank junior most in seniority in the Civil gradation list. The date of assumption of charge in a civil post will be deemed to be the date of entry in the grade in the Civil gradation list for the purpose of seniority. However, the service rendered in APS as Group ‘D’ will for all purposes be counted as a regular service except in claiming seniority in the Civil side. An undertaking to this effect should be obtained.

5. All the consequential benefits including TBOR/BCR will accrue since the date of regularization of these personnel in APS. Statutory deductions such as GPF etc., will have to be made in accordance with the rules on the subject.

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7. By reading this, it transpires that all consequential benefits including TBOR/BCR will accrue since the date of regularization of these personnel in APS. Statutory deductions such as GPF etc., will have to be made in accordance with the rules on the subject . The Group D service rendered in APS will for all purposes be counted as a regular service except in claiming seniority in the Civil side and an undertaking to this effect has been sought. Meaning thereby, they are given all these benefits except seniority and statutory deductions such as GPF etc. will have to be made in accordance with rules applicable.

8. The applicant was entered into the service only on 8.9.2005. Had the applicant been continued as GDS in APS till superannuation, his services would have been regularised and he would have been given the benefit of Statutory Pension Scheme. The applicant was not holding the post of GDS with APS on the crucial date and he became Central Civil Servant w.e.f 8.9.2005 as Postman. The Ministry's clarification dated 13.6.2007 clearly envisaged that Statutory deductions such as GPF etc will be made applicable in accordance with the rules prevailing. Meaning thereby, as on 8.9.2005 applicant was an employee of the Postal Department where he held the post of a regular Central Civil Servant and New Pension Scheme was prevalent in the Postal Department from the crucial date i.e, from 1.1.2004.

9. In a nut shell, the applicant does not fulfilled the criteria for regularisation his service as GDS as envisaged in letter dated 12 June 2017 where the services of 847 GDSs were regularised and Statutory Pension

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Scheme was made applicable.

10. There is no merit in the present Original Application. Hence the O.A is liable to be dismissed. Ordered Accordingly. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures

Annexure A1 - True copy of the order No.D/GL-4 dated 22.10.1997 issued by the Sub Divisional Inspector of Post Offices, Cherthala Sub Division

Annexure A2 - True copy of the order No.D/GL-4 dated 24.10.1997 issued by the Sub Divisional Inspector of Post Offices, Cherthala Sub Division

Annexure A3 - Notification No.ST/90-4/2005 dated 21.2.2005 issued by the 3rd respondent

Annexure A4 - True copy of the order No.BB/27/Exam/2005 dated 21.11.2005 issued by the 4th respondent

Annexure A5 - True copy of the order No.Rect/10-3/2010 dated 15-1-2011 issued by the 2nd respondent along with its enclosure.

Annexure A6 - True copy of the officiating certificate dated 29-03-2011 issued by the 4th respondent.

Annexure A7 - True copy of the memo No.B/GL-4/Posting dated 12-12-2011 issued by the Inspector of Post Offices Cherthala Sub Division.

Annexure A8 - True copy of the relevant pages of the Service book of the applicant (pages 1 to 10)

Annexure A9 - True copy of the representation dated 19-1-2015 submitted by the applicant to the 4th respondent.

Annexure A10 - True copy of the appeal representation dated 7-9-2015 submitted by the applicant to the 3rd respondent.

Annexure A11 - True copy of the order dated 9-12-2014 of this Hon'ble Tribunal in O.A.No.158/13.

Annexure A12 - True copy of the clarificatory order No.31-12/62-Planning-I dated 1st May 1962 issued by the Director General of P&T New Delhi.

Annexure A13 - True copy of extract of the gradation list of Postal Assistants of Alappuzha Division as on 1-7-2014.

Annexure A14 - True copy of the representation dated 7-9-2015 submitted by the applicant to the 4th respondent.

Annexure A15 - True copy of the representation dated 1-3-2016 submitted by the applicant to the 3rd respondent.

Annexure R1 - True copy of Memo No.BB/27/Exam/2005 dated 21-11-2005.

Annexure R2(a) - True copy of page 11 of service book.

Annexure R2(b) - True copy of page 12 of service book.

Annexure R2(c) - True copy of page 13 of service book.

Annexure R3 - True copy of Discharge cum Move order No.5018/A-4/Depot dated 30.11.2011.

Annexure A16 - True copy of the order dated 15-2-2016 of this Hon'ble Tribunal in O.A. No.180/00020/2015.

Annexure R4 - A True copy of the order dated 31-5-2011 in OA No.889/09.

Annexure R5 - A True copy of the order dated 28-09-2011 in OA No. 145/2010.

Annexure A17 - True Copy of the Order No.47-01/2003-SPB-1 Dated 12-06-2017 issued by the Government of India, Ministry of Communications.

Annexure A18 - True copy of the order dated 19-01-2017 of this Hon'ble Tribunal in O.A. No.18/2015.

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