

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00179/2016

Monday, this the 28th day of January, 2019

CORAM:

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

Surendran Nair S., S/o. late Sivasankara Pillai, aged 60 years,
 Retired MTS, Kattakkada PO, residing at Lakshmi Vilasam,
 Kallikkadu, Mylakkara PO – 695 572, Trivandrum. **Applicant**

(By Advocate : Mr. M.R. Hariraj)

V e r s u s

1. Union of India, represented by the Secretary, Department of Posts, Ministry of Communication, New Delhi – 110 001.
2. Chief Post Master General, Kerala Circle, Thiruvananthapuram- 695 033.
3. Superintendent of Posts, Thiruvananthapuram South Division, Thiruvananthapuam – 695 036.
4. The Additional Director, Central Government Health Scheme, Mosque Lane, Kesavadasa Puram, Trivandrum – 695 004.
5. Chief Medical Officer, CGHS Dispensary, Sasthamangalam, Thiruvananthapuram – 695 010. **Respondents**

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

This application having been heard on 10.01.2019 the Tribunal on 28.01.2019 delivered the following:

O R D E R

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant are as under:

“i. To declare Rule 6 of the Department of Posts, GDS (C&E) Rules, 2011 is ultravires article 14, 16, 21 of the Constitution of India and CCS Pension Rules, 1972 and to direct the respondents not to implement the same against the applicant.

ii. To declare that the service of the applicant with effect from 31.3.1979 as EDA/GDS is liable to be reckoned as qualifying service and to direct the respondents to fix the pension and pensionary benefits due to the applicant reckoning the service as EDA/GDS from 31.3.1979 as qualifying service under CCS Pension Rules, 1972 and to draw and disburse the pension and pensionary benefits due to the applicant accordingly with all consequential benefits including arrears of pension and pensionary benefits with interest at the rate of 12% per annum on delayed payment and to direct the respondents to refund the amounts recovered towards contributory pension fund to the applicant.

iii. Alternatively to direct the respondents to draw and disburse the pension and pensionary benefits due to the applicant under the new pension scheme, 2004, forthwith along with arrears of pension and pensionary benefits with interest at the rate of 12% per annum on delayed payment.

iv. To direct the 4th and 5th respondent to extend the benefit of Central Government Health Scheme to the applicant and his family members.

v. To grant such other reliefs as may be prayed for and the court may deem fit to grant, and

vi. Grant the costs of this Original Application.”

2. The applicant is aggrieved by the refusal of the respondents to grant him pension and pensionary benefits. He is also aggrieved by the refusal of the 4th respondent to grant him benefits under the Central Government Health Scheme.

3. The applicant commended service as an Extra Departmental Agent with effect from 1.4.1979. He was later re-designated as Gramin Dak Sevak Mail Deliverer. Based on the rules applied to GDS his service as GDS is not reckoned as qualifying for pension. The applicant was promoted to the post of Group D with effect from 1.7.2007. Applicant approached this Tribunal in OA No. 540 of 2013 claiming antedating of promotion. The OA was

disposed of directing the respondents to grant the benefits as granted to similarly placed applicants in OA No. 649 of 2011 and connected cases. Accordingly, the date of promotion of the application was revised as 19.1.2006. The applicant submitted that deductions for contributory pension fund and Central Government Health Scheme were being made from the salary of the applicant. The applicant retired on superannuation on 30.11.2015. He had a total service of over 9 years and 10 months. Till date he is not paid any monthly pension or other pensionary benefits. The applicant was getting free medicine from the CGHS dispensary. From December, 2015 the benefit of free medicine is abruptly stopped as the 5th respondent refused to give any free medicine to the applicant. Pensioners of Central Government except pensioners belonging to the Railways and Armed Forces are entitled for CGHS facility. Therefore, refusing the facility to the applicant alone is illegal and discriminatory. Further the service of a casual labourer paid out of contingency is reckoned as qualifying for pension to the extent of 50% of such casual service. Refusing the same benefits to Gramin Dak Sevaks who are holders of civil posts is illegal and discriminatory. The service of a GDS is treated as non-qualifying based on the provisions of Gramin Dak Sevaks (Employment and Conduct) Rules. Under Rule 2 of the CCS (Pension) Rules the GDS are entitled to be granted pension under the said rules. If the ED/GDS service of the applicant is reckoned as qualified he would have more than 30 years of service to his credit. Appointment to Group-D from GDS is treated as promotion. Therefore, he cannot be treated as a new entrant in Government service after 1.1.2004. The refusal to grant the above benefits to the applicant and pay

him the pension and pensionary benefits is illegal, arbitrary and discriminatory. Hence, this OA.

4. Notices were issued to the respondents. They entered appearance through Shri S.R.K. Prathap, ACGSC who filed a reply statement contending that the applicant was initially engaged under the 3rd respondent as EDDA, Neyyar Dam BO with effect from 1.4.1979. While holding this post he was engaged notionally to the post of Group-D w.e.f. 1.10.2007. In compliance of the direction of this Tribunal the applicant was notionally promoted to the cadre of Group-D in Central Government service with effect from 19.1.2006. He retired on superannuation on 30.11.2015. During his tenure as GDS he was governed by the Gramin Dak Sevaks (Conduct & Employment) Rules, 2001 which were framed in supersession of the Post and Telegraphs Extra Departmental Agents (Conduct & Service) Rules, 1964 and later amended as the Gramin Dak Sevaks Conduct & Engagement [GDS (C&E)] Rules, 2011. These rules were not framed under the strength of Article 309 of the Constitution so the GDS do not come under the roof of civil servants. During his tenure he had not made an iota of objection against the non-entitlement of pension but has raised the objection after stepping down from the department and has filed this OA with a prayer to declare Rule 6 of Department of Posts, GDS (C&E) Rules, 2011 as ultravires of Article 14,16 and 21 of the Constitution of India and the CCS (Pension) Rules, 1972. Moreover, in *Anam Malik v. Union of India* – (1995) 30 ATC 380 the Full of this Tribunal considered the claim for parity in service condition of the GDS and rejected the same.

5. Further the applicant was a beneficiary of the CGHS while he was in service and deductions for CGHS were made from the salary of the applicant. Upon retirement the applicant had surrendered the CGHS card to the office of the 3rd respondent and a certificate to this effect was granted to him by the office of the 3rd respondent. Moreover, pensioners are granted fresh card subject to the fulfillment of the following conditions:

- i) The pensioner should produce the Pension Payment Order issued by the concerned department for determining the rate of contribution and ward entitlement.
- ii) Payment of contribution based on the pension fixed by the concerned department.

The 4th and 5th respondents have no objection to extend CGHS facilities to the applicant provided the applicant fulfills the conditions stipulated in the rules.

6. The respondents also contend that the applicant's notional date of appointment to the cadre of Group-D is 19.1.2006 and as such the applicant is 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. Mere drawing of wages from the Consolidated Fund of India will not cast status of a civil servant to the GDS. Only a person who is appointed under the Acts of the appropriate legislature which regulate the recruitment and conditions of service comes under the had of Civil servants. Any act or rules which are passed by the legislature shall get the status of a statute only when it is published in the official gazette. The GDS (C&E) Rules, which

governs the service condition of a GDS is not published in the official gazette. So it has not come under the status of a statute which attracts Article 309 of the Constitution. The Hon'ble apex court in ***Union of India & Ors. v. Kameshwar Prasad*** – 1998 SCC (L&S) 447 held that P&T Extra Department Agent (C&S) Rules, 1964 are a complete code governing service, conduct and disciplinary proceedings against Extra Departmental Agents. Further in SLP No. 17035-36/2013 (Civil Appeal No. 13675-676/2015) – ***Union of India & Ors. v. The Registrar & Anr.*** it was held by the apex court that GDS are governed by a separate set of rules and the provisions of the rules governing the GDS stipulates that GDS are not entitled to pension. The question of reckoning part of the GDS service towards qualifying service for pension similar to the provision regarding considering 50% of the casual service as qualifying service for pension in respect of the casual labourers has also been considered in detail by the Hon'ble Apex Court in the above SLP. The applicant has no locus stand to challenge Rule 6 of the GDS (C&E) Rules as he has enjoyed all the fruits of the service and has come out of service on superannuation. Respondents pray for dismissing the OA.

7. Heard Shri M.R. Hariraj, learned counsel appearing for the applicant and Shri S.R.K. Prathap, learned ACGSC appearing for the respondents. Perused the records.

8. It is an admitted fact that the applicant was appointed as EDDA, Neyyar Dam BO with effect from 1.4.1979 and was later engaged notionally

to the post of Group-D w.e.f. 1.10.2007. However, respondents in compliance of the direction of this Tribunal in OA No. 540 of 2013 promoted the applicant notionally to the cadre of Group-D in Central Government service with effect from 19.1.2006. Applicant retired on superannuation on 30.11.2015. While applicant was working as GDS he was governed by the Gramin Dak Sevaks (Conduct & Employment) Rules, 2001 which were framed in supersession of the Post and Telegraphs Extra Departmental Agents (Conduct & Service) Rules, 1964 and later amended as the Gramin Dak Sevaks Conduct & Engagement [GDS (C&E)] Rules, 2011. The claim of the applicant is to reckon 50% of his service as EDDA in order to qualify for pension. In this regard we find that the Hon'ble apex court in SLP No. 17035-36/2013 (Civil Appeal No. 13675-676/2015) – ***Union of India & Ors. v. The Registrar & Anr.*** had dealt with the issue and held as under:

“6. Reading the order(s) of the learned Tribunal and the High Court, we find that the direction in question has been issued on the basis of a Circular of the 3 DOP&T issued in the year 1991 which provides service rendered by an Extra Departmental Agent to the extent of 50% of the period thereof to be added to the period of regular service for the purpose of entitlement to pension.

7.

8. Considering the fact that the DOP&T Circular, 1991, which form the basis of the impugned direction of the learned Tribunal as affirmed by the High Court, pertained to full time causal employees to which category the second respondent does not belong and the provisions of the Rules governing the conditions of service of the respondent as noted above, we are of the view that the impugned directions ought not to have been passed by the learned Tribunal and approved by the High Court. The matter pertains to policy and involves financial implications. That apart, in view of the facts placed before us, as noted above, we deem it proper to interfere with the impugned directions and allow these appeals filed by the Union of India. We, however, make it clear that the pension granted to the second respondent will not be affected by this order and the said respondent will continue to enjoy the benefit of pension in accordance with the provisions of law.”

Moreover Gramin Dak Sevaks (Conduct & Employment) Rules, 2001 were framed in supersession of the Post and Telegraphs Extra Departmental Agents (Conduct & Service) Rules, 1964 and later amended as the Gramin Dak Sevaks Conduct & Engagement [GDS (C&E)] Rules, 2011. These rules are not framed under Article 309 of the Constitution and therefore, GDSs do not come under the term of 'civil servants'. The applicant had not made any objection against the non-entitlement of pension during his service period from 19.1.2006 to 30.11.2015. It is only after his retirement he raised this contention with a prayer to declare Rule 6 of Department of Posts, GDS (C&E) Rules, 2011 as ultravires of Article 14,16 and 21 of the Constitution of India and the CCS (Pension) Rules, 1972. The applicant has no locus stand to challenge Rule 6 of the GDS (C&E) Rules as he has enjoyed all the fruits of the service during his service period as Group-D and EDDA. The Hon'ble apex court in ***Kameshwar Prasad***'s case (supra) held that P&T Extra Department Agent (C&S) Rules, 1964 is the complete code governing service, conduct and disciplinary proceedings against Extra Departmental Agents. Moreover, in ***Anam Malik***'s case (supra) the Full of this Tribunal after considering the claim for parity in service condition of the GDS with that of Central Government service had rejected the claim.

9. With regard to the claim of the applicant for CGHS card the it is submitted by the respondents in the reply statement that the 4th and 5th respondents have no objection to extend CGHS facilities to the applicant provided the applicant fulfills the conditions stipulated in the rules.

10. In view of the above, we do not find any merit in this Original Application. Accordingly, it is dismissed. There shall be no order as to costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

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

“SA”

Original Application No. 180/00179/2016**APPLICANT'S ANNEXURES**

Annexure A1 - True copy of the order No. B4/Rectt./GL/TV(S) dated 16.7.2010.

Annexure A2 - True copy of the final order dated 23.5.2013 in OA 540/13 of this Honourable Tribunal.

Annexure A3 - True copy of order No. B4/Rectt./GL/TV(S) dated 1.10.2014.

Annexure A4 - True copy of the pay slip for July 2015 of the applicant.

Annexure A5 - True copy of index card No. 1907 issued by the 3rd respondent.

Annexure A6 - True copy of the final order dated 12.7.2005 in OA No. 563/2004 and 590/2004 of this Honourable Tribunal.

RESPONDENTS' ANNEXURES

Nil

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