

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

O.A.No.136/2019

Dated Friday, the 8th day of February, 2019

PRESENT

Hon'ble Mr.R.Ramanujam, Administrative Member

&

Hon'ble Mr.P.Madhavan, Judicial Member

T.S. Srinivasan

No. 46, Nagalinga Eswaran Koil Street

Periya Allapuram

Thorapadi Post

Vellore – 632 002.

... Applicant

By Advocate M/s R. Malaichamy

Vs

1. Union of India

Rep. by the Secretary

Ministry of Communications & IT

Department of Posts

Dak Bhavan, Sansad Marg

New Delhi – 110 001.

2. The Chief Postmaster General

Tamil Nadu Circle

Anna Salai, Chennai – 600 002.

3. The Postmaster General

Chennai City Region (TN)

Chennai – 600 002.

4. The Superintendent of Post Offices

Vellore Division

Vellore – 632 001.

... Respondents

By Advocate Mr.Su.Srinivasan

[Order: Pronounced by Hon'ble Mr.R.Ramanujam, Member(A)]

Heard. The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

““1. To call for the records of the 4th respondent pertaining to his order made in No. B2/Pension dlgs dated 04.12.2018 and set aside the same, consequent to

2. direct the respondents to count the period of year of vacancy 2002 against which he was appointed as Postman and/ or to count the entire service rendered in GDS cadre along with regular service and thereby to treat his service under old pension scheme and to open GPF Account after closing CPF Account; also to,

3. direct the respondents to refund the amount to the applicant which is being recovered from the applicant's pay and allowances towards new pension scheme; and,

4. To pass such further or other orders”.

2. It is submitted that the applicant made Annexure A-4 representation dated 08.09.2018 seeking to consider him eligible under the CCS Pension Rules in terms of the year of vacancy against which he was appointed as Postman, but after 01.01.2004. He had also sought the benefit of addition of services rendered as GDS. The respondents have disposed of the representation by Annexure A-5 letter dated 04.12.2018 wherein it is mentioned that with regard to considering his GDS service for grant of pension, there were 3 WPs pending before the Hon'ble Delhi High Court in WPs No.832, 834 & 835/2018 and the matter is sub judice. As for the request for counting the year of vacancy in which the applicant was appointed as Postman, it is informed that the applicant was not a

party in the court cases relied upon by him and accordingly his request could not be entertained.

3. Learned counsel for the applicant would argue that the respondents had not followed the law laid down by the Hon'ble Supreme Court in regard to the facts and circumstances in which orders would be treated as orders in rem or orders in personam. When the respondents have already accepted the ratio and implemented the order of the court in regard to certain similarly placed persons on the basis that they had been appointed against a vacancy that had arisen in the year 2002 or 2003 before the introduction of New Pension Scheme, such law had to be applied uniformly. No relief granted to similarly placed persons in such circumstances could be treated as a relief granted in personam.

4. Mr.Su.Srinivasan appears for the respondents and submits that the respondents wished to pass a more detailed and speaking order with regard to para 2 of the impugned order wherein it is stated that the applicant was not a party in the court cases relied upon.

5. We have considered the submissions of the rival parties. The Hon'ble Apex Court, after considering various judicial precedents in this regard, laid down the legal principles in ***State of U.P.& Ors vs. Arvind Kumar Srivastava & Ors – CA 9849/2014*** in their judgment dated 17.10.2014 as follows:-

“23) The legal principles which emerge from the reading of the aforesaid judgments, cited both by the applicants as well as the respondents, can be summed up as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach in the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fencesitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

(3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see ***K.C.Sharma & Ors. V. Union of India*** (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

6. Keeping in view the submission made by the learned standing counsel for the respondents, the respondents are directed to review para 2 of their impugned order dated 04.12.2018 and pass a reasoned and

speaking order in accordance with law within a period of three months from the date of receipt of a copy of this order.

(P.MADHAVAN)
MEMBER(J)
M.T.

08.02.2019

(R.RAMANUJAM)
MEMBER (A)