

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated the Thursday 7th day of February Two Thousand And Ninteen

PRESENT:
THE HON'BLE MR. R. RAMANUJAM, MEMBER (A)

O.A. 310/1426/2014

S. Venkatraman,
S/o. Santhappan,
144, Ulagaudaiyar Palayam,
Nathakkadaiyur (PO),
Kangeyam (TK),
Tirupur-DT.

...Applicant

(By Advocate: Mr. R. Malaichamy)

Versus

1. The Postmaster General,
Western Region, TN,
Coimbatore- 641 002;
2. The Superintendent of Post Offices,
Tirupur Division,
Tirupur- 641 601.

...Respondents

(By Advocate: Dr. G. Krishnamurthy)

ORAL ORDER

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

Heard. Applicant has filed this O.A. seeking the following reliefs:-

- i) To call for the 2nd respondent pertaining to his order which is made in No. E/NPS/SV dated 05.06.2014 and set aside the same, consequent to;
- ii) Direct the respondents to grant retirement service benefits including pension under old pension scheme and to pay the arrears of pension and connected benefits to the applicant and
- iii) To pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

2. The case of the applicant is that he joined office of the respondent as Branch Post Master of Komarapalayam B.O. Account with Nathakkadaiyur on 26.07.1975. From the date of appointment till 13.09.2004, he discharged his service as GDS BPM. Applicant had been allotted to Tirupur HO Unit appointed as Group D Tirupur HO with effect from 14.09.2004. He was confirmed as Group D from 15.09.2006. The applicant attained the age of superannuation on 31.05.2014.

3. The applicant made a representation to the respondent on 26.05.2004 for retirement benefits but the respondents by order No. E/NPS/SV dated 05.06.2014 rejected his claim on the ground that his initial appointment in Government service was with effect from 14.09.2004 only after the cut off date of 01.01.2004 and, therefore, the New Pension Scheme (NPS) would be

applicable to him. Hence, he has filed the instant OA seeking the aforesaid relief.

4. The respondents contest the relief sought in the OA stating that the applicant's date of entry in service in the department as MTS was 14.09.2004 i.e. after 01.01.2004. Accordingly, the applicant came under the New Pension Scheme and, therefore, the benefits of the CCS (Pension) Rules, 1972 would not be available to him.

5. Learned counsel for the applicant would submit that the applicants were similarly placed as those in OA 749/2015 disposed of by the Principal Bench by an order dated 17.11.2016. As the Principal Bench had held that persons appointed as GDS were entitled to count their service as qualifying for pension, the applicant should also be granted the benefit as it was a judgement in rem.

6. Learned counsel for the applicant further submits that in a similar case in W.P. No. 26212 of 2011, Hon'ble Madras High Court, by an order dated 06.09.2012 directed payment of pension in respect of the applicant therein and, therefore, the applicant was also entitled to pension, being a similarly placed person. It is further submitted that the matter of eligibility of GDS to count the GDS service for the purpose of Pension under the CCS(Pension)Rules 1972 is pending before the Hon'ble Apex Court in SLPs No. 16767/2016 and 18460/2015. Accordingly, the applicant would be satisfied if the respondents are directed to review the impugned order in

accordance with the law to be laid down by the Hon'ble Apex Court in the pending cases.

7. Learned Senior Standing Counsel for the Central Government appearing for the respondents, however, opposes the prayer submitting that a similar claim had been considered by this Bench earlier in OA 785/2011 which was dismissed. The matter was taken up further before the Hon'ble Madras High Court in WP No. 13500/2016 and the Hon'ble High Court in their order dated 17.10.2016 rejected the prayer of the applicants therein and held that though GDS were holders of a Civil Post, they were not entitled to pension as they were outside the Civil Service of the Union. The Principal Bench passed the order in the said OA without being aware of the order passed by the Hon'ble Madras High Court and, therefore, the applicant could not claim benefit thereunder. In any case, the order of the Principal Bench has been challenged in a Writ Petition before the Hon'ble Delhi High Court and as such, it has not attained finality.

8. Learned counsel for respondents, Dr. G. Krishnamurthy supplements the contention of the learned Senior Standing Counsel for the Central Government stating that the demand for pension by GDS was considered by the 7th Pay Commission which had also noted that in terms of the judgement of the Hon'ble Supreme Court in the relevant case, GDS were only holders of a Civil Post and did not belong to a Civil Service of the Union.

9. I have considered the matter. At this stage, since a similar claim had been rejected earlier by this Bench and the Hon'ble Madras High Court had

upheld the order, it would not be possible to de novo go into the merits of the claim of the applicants. It is also evident that the matter is before the Hon'ble Delhi High Court and it is for the affected parties to bring it to the notice of the Hon'ble Delhi High Court the judicial precedents in this regard including the order passed by the Hon'ble Madras High Court. The law on the subject is expected to attain finality only after the matter is disposed of by the Hon'ble Delhi High Court and in the event of the matter being taken up further in the Hon'ble Supreme Court by either side, after the decision of the Hon'ble Apex Court.

10. In the aforesaid background, facts and circumstances, I am of the view that this OA could be disposed of with a direction to the respondents to reconsider the claim of the applicant for pension under CCS (Pension) Rules 1972 in the event of the law being finally settled in favour of persons similarly placed as the applicant herein with regard to their claim for counting service rendered as GDS as qualifying service for pension under the CCS (Pension) Rules 1972, within a period of three months thereafter. Respondents directed accordingly. No costs.

(R. RAMANUJAM)
MEMBER (A)

07.02.2019

Asvs.