

**Central Administrative Tribunal
Chandigarh Bench
(Circuit Bench at Srinagar)**

**OA No.062/00763/2018
SWP No. 247/2017**

**Pronounced on :09.04.2019
Reserved on :26.03.2019**

**Coram : Hon'ble Mr. Sanjeev Kaushik, Member (J)
Hon'ble Ms. P. Gopinath, Member (A)**

Ghulam Rasool Dar, age 67 years S/o Abdul Gani Dar R/o Nagri, Malpora, Tehsil and District Kupwara.

... Applicant
Versus

1. Union of India through Secretary, Communication and Information Technology Department, New Delhi.
2. Superintendent of Post Offices, Baramulla Division, Baramulla.
3. Assistant Superintendent, Post Office Sub-Division Kupwara.
4. Accountant General, Srinagar, Kashmir.

.....Respondents

Present: None for the applicant.

Sh. Satinder Singh, counsel for the respondents.

O R D E R
Mrs. P. Gopinath, Member (A) :

1. The applicant was appointed as Gramin Dak Sevak (GDS) Branch Post Master, Nagri Malpora Village in 1967. On 23.03.2000, the applicant was appointed as Postman under the 25% seniority-cum-finess quota for vacancies earmarked for GDS. Applicant retired from service on 30.04.2009. The

prayer of the applicant is for quashing impugned order dated 15.06.2015 and grant of pensionary benefits.

2. The respondents confirm the facts as stated by the applicant.

3. Heard the learned counsel for the respondents and perused the written submissions made.

4. The GDS were earlier going by the nomenclature Extra Departmental Agent (EDA). They are holders of civil posts and are not regular Government servants. They are not required to perform duty beyond the maximum period of five hours. They are also expected to give an undertaking that they have an alternate and adequate source of livelihood beside the job held by them as EDA. These employees work upto the age of 65 unlike regular Government servants who retire on attaining the age of 60 years.

5. The applicant, when he was engaged as EDA/GDS, was covered by separate service conditions known as Gramin Dak Sevak (Conduct and Service) Rules, which were earlier known as P&T Extra Departmental Agents (Conduct and Service) Rules, 1964. The applicant was promoted as Postman on 24.03.2000 and superannuated from service on 30.04.2009. The applicant has therefore nine years, one month and 8 days of service in the Postman cadre. Ten years of service is required to qualify for pension under the CCS

(Pension) Rules, 1972. The respondents submit that other admissible benefits such as service gratuity of Rs. 1,51,025, leave encashment for 220 days, CGEIS amount of Rs. 2992 and Ex-gratia Gratuity of Rs. 18000 for the service rendered as a GDS has been paid to the applicant.

6. The matter raised by the applicant has already been agitated before the Apex Court in Civil Appeal No. 90 of 2015 titled **Y. Najitha Mol & Ors. Vs. Soumya S.D.& Ors.** wherein the judgement was pronounced on 12.08.2016 and the status of GDS was finalized by the Apex Court. The Apex Court held that for promotion from GDS to Postman, two conditions should be satisfied, viz:-

- (i) That the new post is in the higher category of the same service or the class of service and
- (ii) The new post carries the higher grade in the same service or class.

Para 4 clearly distinguishes the EDA/GDS from the category of regular government servants. Hence, both GDS & Postman are not in the same class of service. Promotion to a post can happen when the promotional post and the post being promoted from, are part of same class of service. GDS is a civil post, but is not a part of regular service of the respondent Department.

7. The Apex Court in above Najitha Mol judgement recalled its orders in Union of India Vs. Kameshwar Prasad,

1962 AIR 1166, while deciding the status of GDS held as follows:-

“2. The Extra Departmental Agents system in the Department of Posts and Telegraphs is in vogue since 1854. The object underlying it is to cater to postal needs of the rural communities dispersed in remote areas. The system avails of the services of schoolmasters, shopkeepers, landlords and such other persons in a village who have the faculty of reasonable standard of literacy and adequate means of livelihood and who, therefore, in their leisure can assist the Department by way of gainful avocation and social service in ministering to the rural communities in their postal needs, through maintenance of simple accounts and adherence to minimum procedural formalities, as prescribed by the Department for the purpose. [See: Swamy's Compilation of Service Rules for Extra Departmental Staff in Postal Department p. 1.]” Further, a three-judge Bench of this Court in the case of The Superintendent of Post Offices & Ors. v. P.K. Rajamma[3] held as under: “It is thus clear that an extra departmental agent is not a casual worker but he holds a post under the administrative control of the State. It is apparent from the rules that the employment of an extra departmental agent is in a post which exists “apart from” the person who happens to fill it at any particular time. Though such a post is outside the regular civil services, there is no doubt it is a post under the State. The tests of a civil post laid down by Court in Kanak Chandra Dutta's case (supra) are clearly satisfied in the case of the extra departmental agents.” (emphasis laid by this Court) A perusal of the above judgments of this Court make it clear that Extra Departmental Agents are not in the regular service of the postal department, though they hold a civil post. Thus, by no stretch of imagination can the post of GDS be envisaged to be a feeder post to Group 'C' posts for promotion.”

The Apex Court also referred to a Full Bench judgement of Ernakulam Bench of this Tribunal in the case of **M.A. Mohanan Vs. The Senior Superintendent of Post Offices & Ors.** wherein similar question was considered and the majority opinion of the Tribunal held as under:-

“As the name itself indicates, EDAs are not departmental employees. They become departmental employees from the date of their regular absorption as such. And promotions are only for departmental employees. Therefore, EDAs cannot be treated as 'promoted' as Postmen. They can be treated as only appointed as Postmen. It is further seen from instructions

of Director General Posts under Rule 4 of Swamy's publication referred to earlier that EDAs service are terminated on appointment as Postman and hence they become eligible for ex gratia gratuity. If the recruitment of EDAs as Postman is treated as a promotion, the question of termination will not arise. This also leads one to conclude that the recruitment of EDAs Postman cannot be treated as one of promotion."

Apex Court also held that GDSs are holders of civil posts, but they are outside the regular civil service due to which their appointment to other posts in the respondent department will be by direct recruitment. The Apex Court concluded that the appointment of GDS to the post of Postman is only by way of direct recruitment and not by way of promotion. Hence, the appointment of GDS to the post of Postman because of the separate scheme of service and being governed by separate set of service rules leads to the conclusion that the appointment of GDS can only be treated as direct recruitment and not promotion.

8. The plea of the applicant in this matter for counting his earlier service which is not a full time Government service. Though the GDS are holders of civil posts, but due to the fact that GDS & Postman do not belong to the same class of service, makes them disentitled to count his GDS service as regular Government service.

9. The Apex Court in Civil Appeal No. 3151 of 2019 (Arising out of SLP (Civil) No. 7628 of 2019, had also discussed the service conditions and status of GDS while deciding the matter. Relevant paras thereof are reproduced as under:-

“6. The issues which arise for consideration are as follows:

6.1.Whether a Gramin Dak Sewak is an ‘employee’ as per Section 2(e) of the 1972 Act, and is entitled to payment of Gratuity under this Act?

6.2.Whether a Gramin Dak Sewak is eligible for payment of Gratuity under the 2011 Rules upon voluntary resignation?

7. The learned ASG appearing on behalf of the Department submitted that:

7.1. The Gramin Dak Sewaks constitute a unique Department of Posts. The persons working as Gramin Dak Sewaks are not regular departmental employees but “extra departmental agents”, who work on a part-time basis for a few hours every day; and, have an independent source of livelihood. They are permitted to work upto the age of 65 years.

7.2. The Gramin Dak Sewaks are governed by the 2011 Rules, which form a complete and separate code providing for the recruitment, gratuity, conduct, and disciplinary proceedings of Gramin Dak Sewaks. The terms and conditions of their engagement are governed by Rule 3 A of the 2011 Rules, which reads as under:

“3A Terms and Conditions of Engagement

- (i) A Sevak shall not be required to perform duty beyond a maximum Period of 5 hours in a day;
- (ii) A Sevak shall not be retained beyond 65 years of age;
- (iii) A Sevak shall have to give an undertaking that he has other sources of income besides the allowance paid or to be paid by the Government for adequate means of livelihood for himself and his family;
- (iv) A Sevak can be transferred from one post/unit to another post/unit in public interest;
- (v) A Sevak shall be outside the Civil Service of the Union;
- (vi) A Sevak shall not claim to be at par with the Central Government employees;
- (vii) Residence in post village/delivery jurisdiction of the Post Office within one month after selection but before engagement shall be mandatory for a Sevak; Failure to reside in place of duty for GDSBPM & within delivery jurisdiction of the Post Office for other categories of Gramin Dak Sewaks after engagement shall be treated as violative of conditions of engagement and liable for disciplinary action under Rule 10 of the Conduct rules, requiring removal/dismissal;
- (viii) Post Office shall be located in the accommodation to be provided by Gramin Dak Sevak Branch Postmaster suitable for use as Post Office premises;
- (ix) Combination of duties of a Sevak shall be permissible;”

(emphasis supplied)

A reading of Rule 3A(iii) of the 2011 Rules, makes it abundantly clear that a Gramin Dak Sewaks must have an independent means of livelihood. The Gramin Dak Sewaks are engaged on a parttime basis for a maximum of 3 to 5hours a day. Rule 3A(v) and (v i) stipulate that a Gramin Dak Sewak shall be outside the Civil Service of the Union, and shall not claim to be at par with the servants of the Government.

7.3. It was further submitted on behalf of the Appellant Department that the parttime employment of Gramin DakSewaks is governed by a separate scheme, since they do not form part of the regular cadre, and cannot be treated to be in the main service or class of service. Gratuity is payable to them in accordance with the Gramin Dak Sewak(Conduct & Engagement) Rules, 2011.”

10. The applicant’s service as EDA/GDS, being of different nature and governed by a different set of service rules and service conditions and being of a lesser duty duration than a full time Government servant, cannot be compared or combined with that of Postman or Group ‘D’ for grant of pensionary benefits, as held by the Supreme Court in M.A. Mohanan(supra), Kameshwar Prasad & Najitha Mol (supra) cases. For the service rendered as GDS, the applicant has already been paid Ex-Gratia gratuity. Since the CCS Pension Rules require ten full years of service and the applicant is short of such service, he has been granted all other benefits of Gratuity, Leave Encashment, CGEIS, but denied pension as he falls short of the qualifying service under the statutory CCS (Pension) Rules, 1972.

11. The applicant draws attention to CAT Principal Bench judgement in OA No. 749/2015 and two connected OAs pronounced on 17.11.2016 wherein the Bench had held as follows :-

- (i) That period spent by GDS prior to appointment as Group 'D' will be counted in toto for pensionary benefits and
- (ii) Those who retired as GDS will be eligible for pension @ 5/8 of the period spent as GDS.

The above order of the Tribunal has not considered the Apex Court judgement in Y. Najitha Mol (supra). This judgement of the Tribunal is being held as per incuriam as the Bench was not appraised of the Apex Court order in Y. Najitha Mol (supra) which was delivered on 12.08.2016. Hence, the applicant's reliance on OA No. 749/2015 is misplaced and cannot be considered for relief as sought in this OA.

12. For the foregoing discussion, the action of the respondents in view of the law laid down by the Apex Court in Najitha Mol (supra) is held to be in accordance with the law. OA, being devoid of merits, is dismissed. There shall be no order as to costs.

**(P. Gopinath)
Member (A)**

**(Sanjeev Kaushik)
Member(J)**

Dated:
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