

**Central Administrative Tribunal
Madras Bench**

OA/310/01149/2014 & OA/310/01240/2014

Dated the 27th day of June Two Thousand Nineteen

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

OA 1149/2014

J.Venugopal,
S/o K.Jaganathan,
No.4/1189, Indira Nagar,
5th Cross, Dharmapuri 636 701. .. Applicant
By Advocate **M/s.R.Malaichamy**

Vs.

1. Union of India, rep by the
Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai, Chennai 600 002.
2. The Postmaster General,
Western Region (TN),
Coimbatore 641 002.
3. Senior Superintendent of Post Offices,
Salem East Division,
Salem 636 001. .. Respondents

By Advocate **Ms.Shakila Anand**

OA 1240/2014

M.Duraisamy,
S/o Marappan Gounder,
No.339, West Street,
Velupillai Thottam,
Dadagapatti Gate,
Salem 600 006.
By Advocate **M/s.R.Malaichamy**

Vs.

1. Union of India, rep by the Chief Postmaster General, Tamil Nadu Circle, Annasalai, Chennai 600 002.
2. The Postmaster General, Western Region (TN), Coimbatore 641 002.
3. Senior Superintendent of Post Offices, Salem East Division, Salem 636 001.

By Advocate **Ms.Shakila Anand**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The above OAs are filed seeking the following relief:-

OA 1149/2014:

“1. To call for the records of the 1st respondent pertaining to his order made in memo No.STA/29/OA-182/2014 dated 23.4.2014 and set aside the same; consequently to

2. direct the respondents to treat the applicant as if he was deemed to have been appointed on regular basis from 14.8.1982 on the basis of year of recruitment and also deemed to have been granted TBOP, BCR and MACP benefits on completion of 16/26 years of service from the date of his appointment i.e. dated 14.8.1982 and pay him higher pay scale at par with Kum. S.Parvathi and others who were recruited and appointed later than the applicant, consequent to

3. direct the respondents to pay the arrears of back wages to the applicant, and

4. To pass such further or other orders as this Tribunal may deem fit and proper in the circumstances of the case.”

OA 1240/2014:

“1. To call for the records of the 1st respondent pertaining to his order made in memo No.STA/29/OA-185/2014 dated 23.4.2014 and set aside the same; consequent to

2. direct the respondents to treat the applicant as if he deemed to have been appointed on regular basis from 14.8.1982 on the basis of year of recruitment and also deemed to have been granted TBOP, BCR and MACP benefits on completion of 16/26 years of service from the date of his appointment i.e. dated 14.8.1982 and to revise and re-fix his pay at par with Kum. S.Parvathi and others who were recruited and appointed later than the applicant and thereby,

3. direct the respondents to pay the arrears of pay and allowances to the applicant, and

4. To pass such further or other orders as this Tribunal may deem fit and proper in the circumstances of the case."

2. Since the relief sought and the issues raised therein are of a similar nature, these OAs are taken up together and disposed of by this common order.

3. The applicants in these cases had applied for the post of Postal Assistant in Salem Division in the year 1982 (first half year recruitment) and it was considered by the competent authority and after conducting an interview the selection list was prepared and the applicants were also selected in the said list. They were sent for 15 days practical training and after completion of the said training, they were put on duty as 'Short duty staff' from 14.8.1982 onwards. Subsequently, while they were working as Short duty staff, they were appointed as Postal Assistants in the Salem East Division on 15.3.89 and 05.6.89 respectively. The applicants were discharging the work from 14.8.82 onwards as Short duty staff in various Post Offices and hence the applicants are entitled to get their services counted from 14.8.82 onwards. They are also entitled to fix their seniority and other service benefits from the date of initial appointment. The applicants recently came to know that one Parvathy and others who were recruited in the second half year in 1982 were appointed w.e.f. 03.1.1983 and they have joined duty. The authorities are also going to grant 3rd MACP to those officials. Though the applicants were appointed earlier, their service is not being counted for seniority. The applicants are also entitled to get same benefits as enjoyed by the appointees who are appointed in the 2nd half of 1982.

4. The applicants had made several representations but the respondents have not acceded to it. The applicants filed OA Nos. 182/2014 and 185/2014 and the Tribunal had directed the respondents to consider the representation of the applicants and pass a speaking order. But the respondents have not considered the representation properly and passed the impugned order marked as Annexure A6. So, the applicants prays for the relief sought in the OA.

The respondents entered appearance and filed a detailed reply admitting the selection of the applicants in the Salem Division in the year 1982 for the 1st half year recruitment. But according to them, the applicants were selected under RTP scheme under Part-B selection list. They also admitted that the applicants were sent for 15 days practical training and they were appointed as Short duty staff on completion of the training. According to them, RTP was set up in October 1980 as per circular No.60/36/80-SPB I dated 30.10.1980 for the smooth functioning of work in various Post Offices. The scheme were made applicable to the cadre of Postal Assistants and Sorting Assistants. When a selection is made, after the first selection list drawn up for appointment, an additional list of candidates known as Part-II list will be prepared from the panel by each recruiting unit for the purpose of keeping a reserved pool. They will be absorbed in the regular vacancies in their turn after the candidates in the main list are absorbed. Till such time they will be used as short duty staff. Absorption of the RTP staff will be in the order of their merits. The scheme was in operation till 1986 when it was abolished. According to the respondents, the appointment of the applicants as short duty staff will not confer any right on the

applicants for seniority or for continuation in the cadre. According to the respondents one Parvathy, mentioned in the OA was appointed as Postal Assistant and she was not a candidate in the RTP.

6. The applicants were also given regular appointment as Postal Assistant from the year 1989 onwards. The applicants were given promotion under TBOP w.e.f. 06.4.2005. The applicants were also given financial upgradation under MACP-II with Grade Pay of Rs.4200/- w.e.f. 07.4.09. So, the applicants prayer for fixation of seniority and financial benefits entitled to them on the basis of their length of service etc. cannot be granted. Their claim cannot be acceded to as the applicants are not appointed to any service and they are only short duty staff till they were appointed as Postal Assistant.

7. Heard both sides. *At the time of hearing, Advocate Mr.R.Malaichamy appearing on behalf of the applicants submitted that he is not pressing the first relief i.e. setting aside the order of recruitment dated 23.4.14. He limits his claim to financial benefits given to the applicants who were similarly placed in OA 79/11 which was confirmed in appeal by the Hon'ble High Court of Kerala in OP (CAT) No.89/2014 (z) dated 17.3.2017 and the order passed in SLP filed by the respondents against them.* The Counsel for the applicant would contend that they are not seeking seniority as claimed in the OA but they are entitled to the financial benefits of TBOP and MACP w.e.f. their initial appointment on a notional basis as per the judgment of Ernakulam Bench in OA 79/11 and confirmed in OP (CAT) No.89/2014 and confirmed by the Hon'ble Supreme Court in SLP No.25442/17. The applicants in OA

79/11 were granted the benefits of TBOP and MACP on the basis of vacancies that arose from 1994 onwards and also the subsequent financial benefits given under TBOP and MACP schemes.

8. The counsel for the respondents would contend that the applicants in these cases are not entitled to get any financial benefit as claimed as they are not having any regular appointment from 1982 onwards. They were appointed as short duty staff who has no claim for seniority or other service benefits. According to them, in ***Union of India vs. K.N.Sivadas & Ors.*** The Hon'ble Apex court has held that "***any service which was rendered prior to regular appointment in the cadre cannot count for the purpose of these rules, because it cannot be considered as service in any eligible cadre.***" According to them, on the basis of the above decision the applicants are not entitled to get any seniority as claimed by them and are not entitled to get any financial benefits. This Tribunal in OA 1335/10 had dismissed the claim of similar applicants who had rendered RTP service. Hence the applicants are not entitled to get any benefit.

9. On a perusal of the pleadings and judgments produced by the applicants, it can be seen that the Ernakulam Bench of this Tribunal has granted financial relief to the applicants in OA 79/11 as follows:-

"26. In view of the above, the only benefit that could be available to the applicants is that in so far as the TBOP is concerned, if the respondents have taken into account only the regular service and not before regularization they should take into account such service as well. Since vacancies of 1984 could not be filled up due to ban on recruitment and the applicants were serving as RTPs during the services rendered by them from 1984 to 1990 or thereafter till the date of regularization considered as service that could be reckoned for working out the eligibility for benefits of TBOP Scheme.

27. *In view of the above, all these Original Applications are disposed of with direction to the respondents as under:-*

(a) *Respondents shall work out the vacancies that arose from 1984 onwards, which could not be on account of the ban on recruitment.*

(b) *RTP candidates on the basis of their year of recruitment, coupled with the order of merit accommodated notionally against such vacancies that were lying unfilled from 1984 onwards.*

(c) *It is from the date on which these applicants could be deemed to have been placed against vacancies that the period of 16 years of service for grant of TBOP benefits shall be worked out.*

(d) *On completion of 16 years of such service, they would be deemed to have been granted TBOP and the pay in the higher scale shall be fixed.*

(e) *Arrears shall be worked out in respect of these cases and the same shall be payable to the applicants concerned.*

(f) *In so far as MACP is concerned the period of 20 years for 2nd MACP shall be reckoned only from date of regular appointment and those who are entitled to 2nd MACP financial benefits accordingly afforded the same, if not already done.*

(28) *The above order shall be complied with within a period of six months from the date of commencement of this order. No order as to costs.*

10. When the matter was taken up in appeal before the Hon'ble Kerala High Court by the respondents in OP (CAT) 89/14, the High Court had considered all the facts and circumstances in a detailed manner and has confirmed the findings of the Administrative Tribunal and confirmed the order passed by as follows:-

"12. We have heard the respective counsel, at length. We have also considered the contentions advanced before us, anxiously. We notice that the RTP Scheme that was introduced as per a Circular dated 30.10.1980 was in force only till 4.3.1986, on which date it was abolished. Initially (O.P. (CAT).89/2014 & con.cases), when the Reserve Trained Pool was created, an additional list of 50% of the notified vacancies used to be created. In 1982, the percentage of RTP was reduced to 15% of the notified vacancies. The Scheme itself has been abolished thereafter, as noticed above. The respondents are persons who were recruited as RTPs. They have been absorbed as regular employees in 1990. The dispute in these cases therefore is limited to the manner

in which the service put in by them from the date of their recruitment as RTPs to the date of their absorption should be treated. According to them, the period of their service as RTPs has to be reckoned for the purpose of extending the benefit of the TBOP Scheme as well as the MACP Scheme. Though the Tribunal has found that the respondents were not entitled to the benefits of the MACP Scheme, they have not questioned the said order. In view of the above, the said question does not arise for consideration in these cases. (O.P.(CAT).89/2014 & con.cases).

13. It is not in dispute that, the respondents were all working regularly as Postal Assistants or Sorting Assistants from the time they were recruited till the date of their absorption as regular employees. They were being paid for their service only on hourly basis. Later on, they were paid the salary of regular employees following the decision of the Jabalpur Bench of the CAT in T.A.No.82 of 1986 dated 16.12.1980. However, the claim of similar employees for regularization and seniority from the date of initial appointment as RTP was rejected by the Ernakulam Bench of the CAT in OA No.1178 of 1996. O.P.No.21249 of 2000 filed against the said order before this Court was also dismissed as per Annexure A12 judgment dated 16.9.2003 following the decision of the Apex Court in Union of India v. K.N.Sivadas (supra). Therefore, the claim of the respondents for regularization and grant of seniority from the date of their initial recruitment as RTP has become concluded. However, (O.P.(CAT).89/2014 & con.cases) the fact remains that they were absorbed into regular service during 1990. Their regularization would have taken place much earlier, had there not been a ban on appointments, is the contention. It is not in dispute that, such a ban on appointments was in force during the relevant period. At the same time, the fact remains that, the respondents were also working as RTPs for the only reason that the vacancies that had arisen could not be filled up by absorbing them. The said situation has no doubt, worked prejudice to them. Their only claim is that their regular service should relate back to the date on which they would normally have been regularized had there not been a ban on appointments, for the purpose of grant of TBOP benefits.

14. While considering the entitlement of Mathivanan to the benefits of the TBOP Scheme, the Apex Court has in Union of India v. Mathivanan (supra) (Annexure A14) held that, the period of 16 years service stipulated by (O.P. (CAT).89/2014 & con.cases), the said Scheme was not qualified by the word 'regular'. Therefore, the entire 16 years period of service need not be regular service. The said reasoning applies to the claim for the benefits of the TBOP Scheme made by the respondents in these cases also. The CAT has therefore rightly found that such portion of the RTP Service of the respondents computed from dates on which their entitlement for regularization had arisen would have to be taken into account for computing the benefits of the TBOP Scheme. We find no infirmity in the said reasoning. The difficulty of the appellants in working out the eligible periods of service of the respondents cannot be a ground for denying to them the legitimate service benefits to which they are entitled. They ought to have been given the benefits of such service considering the fact that their regularization had been delayed only because of the ban order that was in force. The petitioners had extracted their labour, keeping them outside the regular stream of service, for a (O.P.(CAT).89/2014 & con.cases), substantial

period of time. They had waited in the hope that they would be regularized and had worked on as RTPs, all long. Therefore, there is no justification for denying to them the said benefits.

15. We find from an examination of the order of the CAT that, the Tribunal has been very careful and circumspect in formulating the reliefs that are granted. The CAT has addressed the issues in the proper perspective and has considered all the relevant aspects of the case. Therefore, we find no grounds to interfere with the said order. All the Original Petitions are accordingly dismissed. No costs."

We have gone through the OA 1117, 1128/14 and OA 1235/10. It can be seen that they were disposed off on the basis of the Hon'ble Supreme Court decision in ***Union of India vs. K.N.Sivadas & Ors.*** In this case it has clearly come up before the court that the regularization of the applicants were delayed and they could not get regularization in time and it was the main reason for delayed absorption to the applicants. The applicants cannot be blamed for this delay and they should not be made to suffer for the delay occurred on the part of the department. It is true that the applicants are not entitled to get any seniority or other service benefits which was denied by the Hon'ble Supreme Court in ***Union of India vs. K.N.Sivadas & Ors.*** But they can be granted financial benefits which they are entitled to from the date of their deemed appointment to the post by working out the dates on which vacancy arose for them. We are also of the opinion that the decision of the Ernakulam Bench in OA 79/11 will do justice to the applicants also. The facts and circumstances are similar and there is no reason to deny the benefits to the applicants herein. Accordingly, we direct the respondents to consider the case of the applicants on the basis of the CAT, Ernakulam Bench order in OA 79/11 & Batch cases and the order passed by the Hon'ble Kerala High Court in OP (CAT).89/14 in ***K.S.Beena vs. UOI & Ors.*** The

applicants are entitled to get the same benefit which are given to the applicants therein.

11. With the above observation the OAs are disposed off. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

27.06.2019

/G/