

**Central Administrative Tribunal
Madras Bench**

OA/310/00032/2016

Dated the 30th day of August Two Thousand Nineteen

P R E S E N T

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

G.Rajarathinam,
S/o S.Gnanakkannu,
No.6/3, Vada Agaram,
1st Street, Choolaimedu,
Chennai 600 094. .. 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. Deputy Director,
Foreign Post,
Chennai 600 001. .. Respondents

By Advocate **Ms.Shakila Anand**

ORDER

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

The applicant has filed this OA seeking the following relief:-

“To call for the records of the 2nd respondent pertaining to his order which is made in No.FP/AD/D/STA/B-11/15 dated 12.11.2015 and set aside the same, consequent to,

direct the respondents to extend the benefits of judgment made in OA No.79 of 2011 and batch cases of the Ernakulam Bench of this Tribunal dated 01.10.2013; and

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

2. Learned counsel for the applicant submits that the applicant was recruited to the cadre of Postal Assistant (PA) in the 2nd half year of 1982 and employed as Reserve Trained Pool (RTP) from 21.7.1983. Thereafter he was appointed as Postal Assistant w.e.f. 25.4.1988. He worked as such continuously and retired from service on attainment of superannuation on 31.5.2015. It is submitted that the applicant is entitled for regularization from the date of employment as RTP with all consequential benefits of seniority, pay fixation in the light of the judgments in OA 719 to 727 of 1996 of the Bombay Bench of this Tribunal. Similarly placed persons filed OA 79/2011 and Batch before the Ernakulam of this Tribunal which were disposed off by order dated 01.10.2013 with a direction to accommodate the applicants therein against the vacancies lying unfilled from 1984 onwards and to grant the eligible benefits. On the basis of the said order, the applicant made representations dated 09.11.2011 and 06.4.2015 to count his service rendered as RTP for the purpose of

seniority and consequential benefits. But the 2nd respondent rejected the claim of the applicant by impugned order dated 12.11.2015. Aggrieved, he has filed this OA seeking the above mentioned relief.

3. The respondents have filed their reply contesting the claim of the applicant.
4. When the matter is taken up for hearing, counsel for the applicant would submit that the relief sought in this OA is covered by the order of this Tribunal in OAs 1149/2014 and 1240/14 dated 27.6.2019. Therefore, this OA could be disposed of accordingly. The operative portion of the order in OA 1149/2014 and 1240/14 reads as follows:-

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.

5. On perusal of the said order, it is seen that the applicant in this OA is similarly placed person as that of the applicants in OA 1149/2014 and 1240/14 and since the issue in this OA is covered by the aforesaid order, the applicant cannot be deprived the similar benefit that was extended to the applicants in the above cited order. Accordingly, we direct the respondents to consider the case of the applicant 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.***

6. With the above observation the OA is disposed off. No costs.

(T.Jacob)
Member(A)

30.08.2019

(P.Madhavan)
Member(J)

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