

**CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH, CHENNAI**

Original Application No. 310/00458 of 2015

Today, this the 6th day of July, 2016

CORAM:

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

K. Ragothaman,
Group 'D'(Retired),
Villupuram Head Post Office,
Villupuram 605 602
Residing at : 43/16, Masilamanipet,
Kamala Nagar, Villupuram 605 602.Applicant

[by Advocate: Mr. P.R. Satyanarayanan]

Vs

1. Union of India, represented by
The Director General
Department of Posts,
Dak Bhavan, New Delhi- 110 001;

2. The Postmaster General,
Chennai City Region,
Chennai- 600 002;

3. Senior Superintendent of Post Offices,
Pondicherry Division,
Pondicherry 605 001.Respondents

[by Advocate: Ms. Shakila Anand]

ORDER

Per: R. Ramanujam, M(A):-

The facts of the case according to the applicant are that the applicant had been initially appointed as ED Packer (presently known as GDS (Gram Dak Sevak)) at Villupuram PO on 16.10.1971. By order dated 23.5.2000 issued by the third respondent, the applicant was promoted as 'Group D' on ad hoc basis towards 'vacancies for the year 2000'. The applicant joined as 'Group D' on 26.06.2000. However, subsequently, the applicant was issued with letter dated 31.12.2001 intimating him of intention to terminate his services at the end of the prescribed notice period without assigning any reason and on 'technical' grounds relating to 'ban on recruitment'. The applicant was accordingly relieved from the post on 21.03.2002. The applicant was promoted on a regular basis as Group- D thereafter towards the vacancy of the same vacancy year i.e. the year 2000 with the approval of the first respondent and competent authority by order dated 27.06.2002. He continued to work as Group D since 02.07.2002 till his date of retirement on superannuation on 31.07.2010. The applicant claims that he has accordingly rendered a total service of 9 years, 9 months and 28 days as 'Group D' in a regular vacancy and, therefore, qualifies for grant of pension as per provisions of Rule 49 of CCS (Pension) Rules 1972. Aggrieved by the denial of pension by the respondents, the applicant is before this Tribunal.

2. Respondents contest the O.A. on the ground that the applicant's services as GDS were outside the government and did not qualify for pension. Regarding his appointment to Group -D in the year 2000 and subsequent termination of the appointment in 2002, it is stated that the applicant being the senior GDS was considered for Group-D for the

vacancy year 2000 based on his length of service. However, as there was a ban on recruitment, he was offered adhoc appointment. As per the ban orders of the Government of India, all vacant posts were to be filled up only after review and with the approval of the competent authority. It is submitted that during review, only 25% of direct recruitment quota of vacancies that arose from 1.1.2000 to 31.12.2000 was approved for filling up. Since the applicant did not come under 25%, he could not be regularized. Accordingly, all adhoc appointments including that of the applicant were terminated. Subsequently, when clearance for filling up of Group D posts was received, the applicant was again appointed on regular basis with effect from 2.07.2002. His total qualifying service from 2.07.2002 till his retirement on 31.07.2010 worked out to 8 years and 23 days only after deducting a non-qualifying service of 7 days which was treated as dies non. Under the provisions of CCS (Pension) Rules, only the regular service qualified for pension and there was no provision to grant weightage for services rendered as ED (DA) /GDS for counting as qualifying service for pension. Respondents accordingly pray for dismissal of the O.A.

3. Heard learned counsel for the applicant and respondents.
4. Learned counsel for the applicant drew attention to the memo dated 27.06.2002 of the third respondent by which the applicant was appointed to Group -D on regular basis. The memo clearly refers to the name of the applicant as one who was selected for Group D cadre for the vacancy year 2000 on seniority basis and had been terminated as adhoc appointee earlier. This would establish beyond a shadow of doubt that even when the applicant was appointed on regular basis it was against the vacancy of the year 2000. The applicant was appointed initially on adhoc basis in the year 2000 itself and terminated in March 2002 for no fault of his before

being appointed on regular basis in June 2002. As the vacancy had arisen in the year 2000, the applicant was entitled to a regular appointment in the year 2000 itself. He referred to a host of judicial pronouncements in which it has been held that the ban on recruitment imposed by the central government by DOP & T O.M. dated 16.05.2001 was applicable only to direct recruitment posts. Indeed, the subject matter of the O.M. itself was "optimization" of direct recruitment to the civilian posts. Appointment of Group- D employee from the cadre of GDS has been repeatedly held to be in the nature of promotion and not direct recruitment and, therefore, the action of the respondents in granting the applicant only on adhoc appointment in the year 2000 followed by his termination in March 2002 was wholly unjust, unwarranted and cannot be held against the applicant. Even the ban on direct recruitment posts could only be said to have come into effect prospectively from the date of issue of the relevant O.M. and could not apply to a vacancy that had arisen in the year 2000 and which ought to have been filled up before the issue of the ban orders. Accordingly, he prays for O.A. to be allowed.

5. Learned counsel for the respondent on the other hand, citing certain judicial pronouncements contended that service rendered as Extra Departmental (D.A.)/GDS could not be counted for the purpose of pension and only the regular service rendered by the applicant would be counted as qualifying service. The applicant has put in service of only 8 years 23 days and, therefore, he is not eligible for pension under Rule 49 of the CCS (Pension) Rules 1972.

6. I have carefully considered the matter in terms of the relevant rules and judicial pronouncements and the facts on record.

7. It is not in dispute that the applicant had been appointed as ED Packer (presently known as GDS (Gram Dak Sevak) at Villupuram PO on

16.10.1971. He was promoted as 'Group D' on ad hoc basis towards the vacancy that had arisen in the year 2000' which he joined on 26.06.2000. Evidently, the adhoc appointment was on account of the inability on the part of the authorities to complete the procedural formalities required for a regular appointment. In the meantime, the ban on recruitment came to be imposed in May 2001. The respondents, taking advantage of the fact that the appointment of the applicant was only on adhoc basis, counted his post for the purpose of 'optimization'. After some correspondence with the authorities concerned, they decided to terminate his adhoc appointment.

8. I am in agreement with the learned counsel for the applicant that but for the inaction/ lack of timely action on the part of the respondents, the applicant would have been appointed to Group D on regular basis in the year 2000 itself in which case he would have completed the requisite qualifying service of 10 years in Group D by the time of his superannuation. The applicant has not claimed that his services as EDDA/GDS should be given some weightage towards qualifying service and, therefore, the contention of the respondents that such service cannot be counted as qualifying service has no relevance. The Tribunal as well as higher judicial fora have, in a number of cases held that the screening committee constituted in pursuance of O.M. dated 16.05.2001 had no authority to impose the ban on the posts meant to be filled up through promotion. Accordingly, it does not appear correct on the part of the respondents to have terminated the adhoc appointment of the applicant in March 2002 in the first place.

9. Be that as it may, the fact that the applicant was appointed on adhoc basis as Group D on 26.6.2000 against the 'vacancies for the year 2000' and continued as Group D employee on adhoc basis till 21.03.2002

cannot be disputed as it is a matter of record. It is admitted that in terms of Rule 49 of the CCS (Pension) Rules, the period of 10 years of qualifying service will entitle a government servant to pension on his retirement. It is also admitted that relevant executive instructions exist to the effect that in view of Rule 49 (3) of CCS (Pension) Rules, a period of three months and above and less than six months is counted as one half year and reckoned as qualifying service for determination of pension. A period of 9 months would, therefore, be two half years. Accordingly, a service of over 9 years 9 months should be counted as 10 years for the purpose of determining the qualifying service.

10. In the backdrop of the aforesaid rule position, it appears that the validity of the respondents' contention that only a regular service would qualify for pension would need to be tested. The term 'qualifying service' is defined in Rule 3(1)(q) of the CCS (Pension) Rules as follows:-

" 'Qualifying service' means service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules"

A plain reading of the above definition indicates that qualifying service must include services rendered while on duty or otherwise. By no stretch of imagination can it be argued that adhoc service rendered on a regular post i.e. Group D is not a 'service rendered while on duty or otherwise'. Nor is there a requirement in this rule or Rule 49 ibid that the service rendered should be continuous and broken periods could not be added together to arrive at qualifying service. As such, there is no distinction between adhoc service and regular service for the purpose of counting the qualifying service for pension as long as it is a service under the government. There is no merit either in the argument that only continuous service rendered from 2.7.2002 could be counted for pension.

11. In the facts and circumstances of the case, I, therefore, deem it appropriate to direct the respondents to count the adhoc service rendered by the applicant from 26.06.2000 to 21.3. 2002 as qualifying service and process his pension case accordingly. Necessary orders in this regard shall be issued within a period of two months from the date of receipt of a copy of this order.

12. O.A. is allowed accordingly. There shall be no order as to costs.
