

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00796/2015

Thursday, this the 26th day of September, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

V.C. Mathai, S/o. Cyriac, aged 60 years, retired Postman,
 Kumarakom Post Office, Kottayam District, residing at Vaithara House,
 Kumarakom, Kottayam – 686 563. **Applicant**

(By Advocate : Mr. P.A. Kumaran)

V e r s u s

1. Union of India, represented by the Secretary, Department of Posts,
 Ministry of Communication, New Delhi.
2. Chief Postmaster General, Kerala Circle, Thiruvananthapuram-
 695 033.
3. Senior Superintendent of Posts, Kottayam Division,
 Kottayam – 686 001. **Respondents**

(By Advocate : Mr. C.P. Ravikumar, ACGSC)

This application having been heard on 23.09.2019 the Tribunal on
 26.09.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant are as under:

- “i. To quash Annexure A14 and to declare that the applicant is entitled to have his appointment as Postman antedated to the date of occurrence of vacancies of the year 2002 and 2003 for the purpose of fixation of and determination of his pension and pensionary benefits in accordance with the Central Civil Services (Pension) Rules, 1972;
- ii. To direct the respondents to antedate the appointment of the applicant as Postman to the date of occurrence of vacancies of the year 2002 and 2003 for the purpose of fixation and determination of his pension and pensionary

benefits in accordance with the Central Civil Services (Pension) Rules, 1972 and to fix his pension accordingly after reckoning the increments in pay due to the applicant with effect from the date of notional appointment as Postman in the available vacancies of the year 2002 and 2003 and to draw and disburse the pension and arrears in pension and pensionary benefits with interest at 12% per annum with effect from the date of superannuation till the date of actual payment;

iii. To direct the respondents to permit the applicant to refund the retirement benefits availed under the New Pension Scheme after adjusting the amount due to the applicant towards the General Provident Fund contribution in accordance with the CCS (Pension) Rules, 1972;

iv. To direct the respondents to re-fix the pay and allowances of the applicant in the cadre of Postman after reckoning the increments due to the applicant with effect from the date of notional appointment as Postman in the available vacancies of the year 2002 and 2003 and to draw and disburse the arrears in pay and allowances due to the applicant with effect from the actual date of joining duty as Postman, i.e. 24.4.2011;

v. To quash Annexure A8 and to direct the respondents to refund the amount recovered in lieu of excess payment of severance amount with interest @ 12% per annum from the date the amount fell due till the date of actual payment;

v.a to declare that Rule 6 of Gramin Dak Sevaks rule is ultra-vires and void and direct to respondents not implement the same against the applicants;

v.b to declare that the applicants are entitled to have their pension and pensionary benefits fixed, drawn and disbursed reckoning their service as GDS as qualifying and that they are entitled to have their pension fixed as per the provisions of CCS (Pension) Rules, 1965 and to direct the respondents to fix, draw and disburse the pension and pensionary benefits due to the applicants accordingly, with all consequential benefits including payment of arrears of pension and pensionary benefits with interest at the rate of 12% per annum and to refund to applicants any pension contribution recovered from them with interest of @ 12% per annum;

vi. To grant such other reliefs as may be prayed for and the court may deem fit to grant and

vii. Grant the costs of this Original Application.”

2. The applicant is a retired Postman. He has approached this Tribunal being aggrieved by rejection of his request to grant him notional appointment in the available vacancy of Postman with effect from 2002 i.e. the date of occurrence of vacancies, for the sole purpose of availing of pension and pensionary benefits in terms of CCS (Pension) Rules, 1972.

3. The brief facts of the case are that the applicant started his service in the Postal Department as an ED agent from 3.2.1976. According to the applicant for many years no appointments to the post of Postman and Group-D were being made by the respondents despite the availability of vacancies. He states that while so, although he was at serial No. 188 in Annexure A1 gradation list of ED agents, his junior Shri V.S. Sajeewan who is figuring at serial No. 196 in that list was given promotion to the post of Postman, overlooking the applicant's claim. Although the applicant was appointed as Group D notionally with effect from 17.6.2004, he was not granted the benefit of increments while fixing his pay in the pay scale applicable to Group-D posts. The applicant's pay was fixed at the minimum of the pay scale with effect from the date of joining the post i.e. 25.7.2010. The applicant retired from service on superannuation on 30.11.2014. The applicant submitted a representation dated 10.1.2015 requesting for determination of his pension and pensionary benefits in accordance with the CCS (Pension) Rules, 1972. However, the same was rejected by order dated 30.3.2015 on the ground that as the applicant was appointed only w.e.f. 17.6.2004 he is covered by the New Pension Scheme. Aggrieved the applicant has filed the present OA.

4. This OA was heard by this Tribunal and final order was passed on 2.9.2016 wherein the OA was disposed of directing the respondents to consider the applicant for inclusion in the statutory pension scheme of CCS (Pension) Rules, 1972.

5. Aggrieved, the respondents filed OP (CAT) Nos. 190 of 2016 and connected cases before the Hon'ble High Court of Kerala. The Hon'ble High Court of Kerala vide judgment dated 1st February, 2018 passed the following:

“16. In O.P.(CAT) 173 of 2017 and also in O.P.(CAT) 270 of 2017, the direction given by the Tribunal is to have appointment with effect from the date of occurrence of the vacancies, which was prior to 01.01.2004, in turn to cause reckoning the said service for the purpose of granting the pensionary benefits, as per the CCS(Pension) Rules. There is no direction to grant the benefit of any increment in the said case; nor has the benefit of increment been claimed by the respondents/applicants, as submitted by the learned counsel appearing for the respondent/applicant in OP.(CAT)173 of 2017. However, the specific case projected by the learned Central Government Counsel is that by virtue of the law declared by the supreme Court in Y.Najithamol and others vs. Soumya S.D and ors (cited supra), no notional appointment could be effected w.e.f. the date as claimed by the applicant but for the date reckoned by the Department and as such, the persons may not be eligible to get the benefit of CCS (Pension) Rules. Whether Y.Najithamol's case could be made applicable with reference to the facts pleaded and if any relief could be given and if so, to what extent, are also matters which could be decided by the Tribunal with reference to the law declared by the Supreme Court in Y.Najithamol's case, as jurisdiction of this Court is to examine the correctness of the decision rendered by the Tribunal at the first instance, to be subjected for scrutiny under Article 227. We find it appropriate to cause the matter to be reconsidered by the Tribunal in the light of the above observations, after hearing the parties. So as to facilitate such an exercise, the orders under challenge are set aside and the matters are remanded for fresh consideration. It is open for the parties to supplement the pleadings and prayers and also produce additional documents, if any.”

6. Notices were issued to the respondents. Mr. C.P. Ravikumar, ACGSC entered appearance on behalf of the respondents and contended that revised orders were prepared and lists of eligible persons were identified in each division and given appointment as Group-D from the date of occurrence of each vacancy strictly according to seniority as a one time measure in compliance with the order of the Tribunal. Accordingly, the applicant was appointed as Group-D w.e.f. 29.7.2010 notionally w.e.f. 17.6.2004. The

applicant is not entitled for appointment as Group-D before 2004 so as to get the benefit of the old pension scheme as the applicant entered the Department only w.e.f. 29.7.2010 and he is covered by New Pension Scheme. Moreover, in view of the judgment of the apex court dated 12.8.2016 in Civil Appeal No. 90 of 2015 – *Y. Najithamol & Ors. v. Soumya S.D. & Ors.*, the present OA is not maintainable and is liable to be dismissed.

7. Rejoinder, additional reply statements and additional rejoinder were filed by the respective parties reiterating their stand taken in the OA as well as reply statement.

8. Heard Mr. P.A. Kumaran, learned counsel appearing for the applicant and Mr. C.P. Ravikumar, ACGSC, learned counsel appearing for respondents. Perused the records.

9. This Tribunal in a similar matter in OA No. 180-555-2016 and connected cases on 22.11.2016 passed the following order:

“27. The learned counsel for the applicants would submit that the aforesaid decision cannot be made applicable since the earlier decisions which were referred to by the Hon'ble Supreme Court in Suraj Parksah Gupta was with respect to the claim of seniority. That argument is too fallacious to be countenanced. Though seniority was also a point in issue in some of the decisions, the ratio enunciated in all these decisions is that direct recruits cannot get their appointment ante-dated from the date of occurrence of vacancy in the direct recruitment quota. Therefore, the argument vehemently advanced by all the counsel appearing for the applicants that the appointment of the applicants who are Postman should be ante-dated to the date of occurrence of vacancy cannot be sustained at all. The further argument that had their appointment been done as and when vacancy arose they would have satisfied the eligibility condition/required regular service of three years and so there was negation of justice is found to be totally untenable. As has been stated earlier it is not a case where the applicants do

not get any opportunity to write the examination at all. They have eight chances ahead of them to write the examination. In other words, it is not a case where the applicants are simply thrown out from the arena of the LGO examination. Their chances are not at all affected.

28. It is not disputed that the authorities concerned had absolutely no bias or prejudice or ill-will towards any of the applicants or to see that such persons should not be allowed to write the examination but the applicants contend that there was lethargy in the conduct of the Postman examination in 2011-2012. As has been pointed out earlier the delay occurred because of plausible and explainable reasons. It is pointed out that in OA 320/2012 filed by one Riyas TM it was held by this Tribunal that in the event, examination could not be conducted in the vacancy year due to a conscious decision taken uniformly throughout the country due to revision of recruitment rules, no claim can be raised by the applicants. It is settled law that a promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of posts. Since the applicants are direct recruits they cannot claim deemed dates of appointment or get their dates of appointment ante-dated even for counting the regular service since so far as direct recruits are concerned the date of service commences only from the date they actually join the service and not on a date prior to the same. Since the applicants have not acquired the regular service of three years as Postman their contention that they should be held to have occupied the post from the date of occurrence of vacancy or at any rate before 1.4.2012 must fall to the ground.

29. Strenuous argument has been addressed by the learned counsel for the applicants (who are MTS) that the decision in Najithamol cannot be made applicable to MTS. Though in Najithamol the appointment of GDS as Postman was the core issue the principle laid down is equally applicable to the appointment of GDS to Group D/MTS. There is one more aspect. If the appointment of GDS to Group D/MTS is taken as an exception then it will lead to a situation where the persons who got appointment as Postman from GDS will be denied the right to write the examination whereas GDS who were appointed as Group D/MTS will be stepping ahead of or jumping the queue even pushing down the Postman and will write the examination and become Postal Assistant. That is not thought of or contemplated by the authorities concerned. Not only that, the principle laid down in Najithamol that GDS are not in the regular service of the Postal Department and so they are not the feeder category of Postman would certainly be made applicable to the case of the applicants who are Group-D/MTS. It has been held that promotion to a post can only happen when the promotional post and the post being promoted from are part of the same class of service. When GDS is not part of the same service and is not a feeder category the contentions vehemently advanced on behalf of the applicants/MTS that the decision in Najithamol is not applicable to them cannot be countenanced.

30. Therefore, we find no merit in the contention that the appointment of the applicants should be antedated to the date of occurrence of vacancy. Similarly the contention that they must be deemed to have been in service from the date of arising of vacancy and so the qualifying service/regular service should be counted from the date of occurrence of vacancy so as to enable them to write the examination is found to be devoid of any merit. As such all these applications, except OA 575/2016 to the extent herein below mentioned are found to be devoid of merit and hence all these applications are dismissed.”

10. The applicants therein challenged the above order before the Hon'ble High Court of Kerala in OP (CAT) No. 317 of 2016 and connected cases.

The Hon'ble High Court passed the following judgment on 18.1.2017:

“9. Now, we will deal with the common contention as to whether the petitioners could contend that they are entitled to get reckoned the service in the respective post of Postman/MTS with effect from the date of occurrence of vacancies against which they were so appointed on direct recruitment. The question is whether a candidate eligible to get appointment by way of direct recruitment against a post could claim that he got a vested right to get appointed with effect from the date of occurrence of vacancy against which he was appointed on his selection because of his eligibility to be considered for direct recruitment on the date of occurrence of vacancy and that the selection got delayed due to administrative reasons. We have already found that all the petitioners were appointed as Postman/MTS based on LDC Examination. In other words, it is evident that it is not purely on their seniority that they were given such appointment and that all of them were directly recruited to their present posts. While considering the tenability of the said contention, the following decisions assume relevance. In the decision in *T.N. Administrative Service Officers Assn. Union of India* (2000) 5 SCC 728, the Apex Court considered such a question in a different context. The Apex Court held that even if vacancies exist, it is open to the authority concerned to decide how many appointments should be made. Simply because a candidate is eligible for selection, it did not confer on him any vested right for getting appointment. Virtually the said position was restated by the Apex Court in *Vinodan T. v. University of Calicut* (2002) 4 SCC 726. It is a well settled position in service jurisprudence that even if there is vacancy, the State is not bound to fill up vacancy and there is no corresponding right vested in an eligible employee to demand that such posts be filled up. This is because the decision to fill up a vacancy or not vests with an employer and for good reasons he could decide not to fill up such posts. In the contextual situation, a decision of the Apex Court in *Suraj Parkash Gupta and others v. State of Jammu and Kashmir* (2000) 7 SCC 561 also assumes relevance. In the said case, a contention was raised by the direct recruits, respondents therein that they are entitled to get the date of appointment of direct recruitment antedated from the date of occurrence of vacancy in the direct recruitment quota though on that date they were not actually directly recruited. In fact, such contention was raised to canvass the position that promotees who were occupying the quota for direct recruitment should be pushed down. The said contention was repelled by the Apex Court in paragraph 80. The Apex Court held thus:-

"80. This contention, in our view, cannot be accepted. The reason as to why this argument is wrong is that in Service Jurisprudence, a direct recruit can claim seniority only from the date of his regular appointment. He cannot claim seniority from a date when he was not born in the service. This principle is well settled. In *N.K. Chauhan v. State of Gujarat*, [1977] 1 SCC 308 (at p.321) Krishna Iyer, J. stated:

"later direct recruit cannot claim deemed dates of appointment for seniority with effect from the time when direct recruitment vacancy arose. Seniority will depend upon length of service."

Again, in *A. Janardhana v. Union of India* [1983] 2 SCR 936, it was held that a later direct recruit cannot claim seniority from a date before his birth in the service or when he was in school or college. Similarly it was pointed out in *A.N.Pathak v. Secretary to the Government*, [1987] Suppl. SCC 763 (at p.767) that slots cannot be kept reserved for the direct recruits for retrospective appointments".

The learned counsel for the petitioners, then attempted to distinguish the decisions contending that such a view was taken by the Apex Court as they claimed seniority. Be it for the purpose of seniority or the purpose of reckoning the prescription of length of service, the question is whether a direct recruit could claim any such relief in respect of a period when he was not actually born in service. In the light of the ratio of the aforesaid, the answer must be in the negative. In other words, a direct recruit could not claim for antedating of his appointment to any date on which he was not born in service for any such purposes. There is no case for the petitioners that they were in the regular service of the Postal Department in 2010 and admittedly, they became postmen or MTS only in the year 2013. In the light of the dictum laid down by the Apex Court in *N.K.Chauhan's* case which was reiterated in *Suraj Parkash Gupta's* case, there can be no doubt with respect to the position that a direct recruit could not claim ante dating the year of appointment to a date on which he was not borne in that service. There is yet another reason to dispel the contentions of the petitioners. Though they were given appointments as Postman/MTS only in the year 2013, they had not chosen to challenge the orders of appointment to the extent they were given such appointment only from 2013 and not from 2010, the year in which vacancies occur. None of them had approached any forum raising grievance regarding the delay in conducting LDC Examination. When the appointment as Postman/MTS of GDS is based on a competitive examination, in such circumstances, the delay in conducting the examination cannot be a reason to hold that the appointees ought to have been treated to have been appointed on the date of occurrence of vacancies as who could say with precision that they would have passed the competitive examination had it been conducted earlier. The position that in the case of promotion if administrative reasons alone caused the delay, it could not be permitted to be recoiled on the promotees cannot be applied in the case of direct recruits in the circumstances mentioned hereinbefore. It is to be noted that the petitioners in the said original petitions had not challenged their orders of appointments at any time after their appointments to the post of Postman/MTS. With open eyes they accepted the order of appointment and joined the post of Postman/MTS. Evidently, after joining the said post, they continued to function in that post for years together. In this context, it is to be noted that even now, no direct challenge has been made against the order of appointments to the aforesaid extent. Having failed to raise any challenge against the orders of appointment to the said extent at any point of time and accepted the appointment either as Postman or MTS, the petitioner cannot be permitted to raise any challenge against the orders of appointment indirectly to any extent, whatever be the purpose. What cannot be done directly cannot be permitted to be done indirectly. At this distance of time, the petitioners cannot raise any grievance relating their appointment as Postman/MTS even if it is only for the limited purpose of

getting antedated the appointment for acquiring the prescribed length of regular service for appearing for the examination for promotion. In such circumstances, on appreciating the contentions raised by the petitioners at any angle, we do not find any reason to hold that they are entitled to get their order of appointment antedated for the purpose of satisfying the eligibility criteria regarding the length of regular service for earning eligibility to appear in the examination for promotion to the post of Postal Assistant. We have already found that the Tribunal has rightly understood and applied the dictum of the Apex Court in *Najithamol's* case and in such circumstances, there is absolutely no merit in these original petitions carrying challenge against the impugned order passed by the Central Administrative Tribunal. Therefore, these original petitions have to fail and accordingly, they are dismissed.”

11. The Hon'ble apex court in *Y. Najithamol's* case (supra) held as under:

“3. Aggrieved of the order of the Tribunal, the appellants challenged the correctness of the same by way of filing a Writ Petition before the High Court of Kerala at Ernakulam. The Division Bench of the High Court came to the conclusion that a reading of Columns 11(1) and (2) of the Recruitment Rules does not support the claim that appointments to the said posts are being made by way of direct recruitment instead of promotion. The Division Bench of the High Court held as under:

“We are only concerned with Col.11 (1), 11(2)(i) and 11(2)(ii). The entire vacancies as of now is divided into two portions, i.e. 50% could not be made by promotion from Group D on the basis of their merit in the departmental examination, then the unfulfilled vacancies would go to Extra Departmental Agents on the basis of the rank list in the departmental examination. Then among the other 50%, 25% would go to persons based on the seniority who need not take any departmental examination and for that 25%, if candidates are not sufficient for consideration to the post of Postman based on the seniority, the rest will again go to Extra Departmental Agents based on the merit in the rank list in the departmental examination, then the other 25% from among the Extra Departmental Agents based on the merit in the departmental examination. If still any vacancies are available, from one recruiting division to another postal division is also contemplated and after exhausting that process, if the posts are still remain unfilled again from one postal division located in the same station to another postal division located in the circle. After exhausting the exercise contemplated under Col.11 (1) to (4), if any posts are vacant, then the question of direct recruitment from the nominees of Employment Exchange comes into play. Reading of Column 11(2) to (4), nowhere it refers to any direct recruitment as such. It only says by promotion so far as Group D and if candidates are not sufficient for promotion in Group D, then it goes to Extra Departmental Agents on the basis of merit in the examination. If the intention were to be by promotion only from Group D candidates, then the unfilled from the category under Column 11(1) ought not to have been earmarked for Extra Departmental Agents based on their merit in the Departmental examination.”

The High Court accordingly dismissed the Writ Petitions filed by the

appellants herein questioning the correctness of the order passed by the Tribunal. Hence the present appeals.

4. We have heard Mr. V. Giri, the learned senior counsel appearing on behalf of the appellants in the Civil Appeal 90 of 2015 and Mr. N.K. Kaul, learned Additional Solicitor General appearing on behalf of Union of India and Dr. K.P. Kylashnath Pillay, learned senior advocate appearing on behalf of some of the respondents.

5. The essential question of law which arises for our consideration in the instant case is whether the appointment of the appellants to the post of Postman is by way of direct recruitment or by promotion.

6. We first turn our attention to the relevant rules at play in the instant case, which are the Recruitment Rules. The Schedule to the said Recruitment Rules specifies the method of recruitment, age limit, qualifications etc. relating to appointments to the said posts. Column 1 specifies the name of the post as Postman/Village Postman, and Column 3 specifies it to be a Group 'C' post.

7. Column 11 of the Recruitment Rules which is at the heart of the controversy in the present case, reads as under:

“Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer and percentage of the vacancies to be filled by various methods :-

1. 50% by promotion, failing which by Extra Departmental Agents on the basis of their merit in the Departmental Examination.
2. 50% by Extra Departmental Agents of the recruiting division of Unit, in the following manner, namely:
 - (i) 25% of vacancies of postman shall be filled up from amongst Extra Departmental Agents with a minimum of 5 years of service on the basis of their seniority, failing which by the Extra Departmental Agents on the basis of Departmental examination.
 - (ii) 25% from amongst Extra Departmental Agents on the basis of their merit in the departmental examination.
3. If the vacancies remained unfilled by EDAs of the recruiting division, such vacancies may be so filled by EDAs of the postal division failing in the Zone of Regional Director.
4. If the vacancies remained unfilled by EDAs of the recruiting units such vacancies may be filled by EDAs of the postal divisions located at the same station. Vacancies remaining unfilled will be thrown upon to Extra Departmental Agents in the region.
5. Any vacancy remaining unfilled shall be filled up by direct recruitment through the nominees of the Employment Exchange."

A careful reading of the above Column makes it clear that essentially two 'pools' are envisaged from which appointments to the post of Postman can

be made. One is the pool of those candidates who are being promoted, and the other is the pool of the Extra Departmental Agents who are appointed to the said post after passing a departmental examination. 50% of the candidates being appointed to the post of Postman are selected by way of promotion. The remaining 50% of the candidates are selected in two ways. 25% of the candidates are selected from amongst the Extra Departmental Agents on the basis of their seniority in service, and the other 25% candidates are selected from the Extra Departmental Agents based on their merit in the Departmental Examination.

8. Further, Column 12 of the Recruitment Rules reads as under:

“In case of recruitment by promotion/deputation/transfer grade from which promotion/deputation/transfer to be made:

1. Promotion from Group 'D' officials who have put in three years of regular and satisfactory service as on the closing date for receipt of applications through a Departmental examination.
2. Extra Departmental Agents through a Departmental Examination.
3. Direct recruitment through a Departmental Examination."

The post in the instant case, that of Postman is a Group 'C' post. Thus, it is quite natural that 'promotion' to the said post can happen only from the feeder post, which in the instant case, are the Group 'D' posts. Admittedly, GDS is not a Group 'D' post, and members of GDS are merely Extra Departmental Agents.

9. At this stage, it is also useful to refer to the decision of this Court in the case of C.C. Padmanabhan & Ors. v. Director of Public Instructions & Ors.- 1980 (Supp) SCC 668, wherein it was held as under:

“This definition fully conforms to the meaning of 'promotion' as understood in ordinary parlance and also as a term frequently used in cases involving service laws. According to it a person already holding a post would have a promotion if he is appointed to another post which satisfies either of the following two conditions, namely-

- (i) that the new post is in a higher category of the same service or class of service;
- (ii) the new post carries a higher grade in the same service or class.”

Promotion to a post, thus, can only happen when the promotional post and the post being promoted from are a part of the same class of service. Gramin Dak Sevak is a civil post, but is not a part of the regular service of the postal department. In the case of Union of India v. Kameshwar Prasad – (1997) 11 SCC 650 this Court held as under:

“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* - (1977) 3 SCC 94 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.

10. A Full Bench of the Ernakulam Bench of the Central Administrative Tribunal in the case of *M.A. Mohanan v. The Senior Superintendent of Post Offices & Ors.* - OA No. 807 of 1999 decided on 3.11.1999 had the occasion to consider a similar question. 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.

Further, Hon'ble Supreme Court in *C.C. Padmanabhan and Ors. v. Director of Public Instructions and Ors.*, 1980 (Suppl.) SCC 668=1981(1) SLJ 165 (SC), observed that 'Promotion' as understood in ordinary parlance and also as a term frequently used in cases involving service laws means that a person already holding a position would have a promotion if he is appointed to another post which satisfies either of the two conditions namely that the new post is in higher category of the same service or class.

Applying the above criteria appointment as Postman from EDA cannot be termed as promotion as the posts of Postman and EDA belong to two different services viz. regular Postal Service' and 'Extra Departmental Postal Service'."

(emphasis laid by this Court)

11. The Tribunal in the instant case sought to distinguish the aforementioned case with the case in hand, by placing reliance on another decision of the Tribunal and holding that the Full Bench was concerned with the cases of those candidates covered under Column 11(2)(i), whereas the case of the candidates in the instant case was covered under Column 11(2)(ii), and thus, the decision of the Full Bench has no bearing on the facts of the case on hand. This reasoning of the Tribunal cannot be sustained, as the Full Bench of the Tribunal was clearly adjudicating the broader question of whether the appointment of Extra Departmental Agents to the post of Postman is by way of direct recruitment or by way of promotion. The attempt to distinguish the ratio of the Full Bench of the Tribunal on such a superficial ground is akin to reading the decision of the Full Bench like a Statute, which cannot be sustained.

12. The Division Bench of the High Court placed reliance on the wording of Column 11(1) to conclude that since the Extra Departmental Agents being appointed as provided under Column 11(1) can be called as promotees, then the Extra Departmental Agents under Column 11(2)(i) and (ii) also must be treated at par. The said reasoning of the High Court also cannot be sustained. It is nobody's case that the Extra Departmental Agents being appointed under Column 11(1) be called promotees. The language of Column 11(1) itself makes this crystal clear. The use of the words 'failing which' makes it obvious that there is a distinction between those candidates who are being selected by way of promotion, and the candidates who are Extra Departmental Agents and have cleared the departmental examination, and that the latter will be considered for appointment only if there are no eligible candidates under the former category. Thus, the appointment of GDS to the post of Postman can only be said to be by way of direct recruitment and not promotion."

12. The short point to be considered by this Tribunal is whether the applicant is entitled for antedating his posting with effect from the date of arising of the vacancy in 2002 so as to induct him under the GPF scheme governed by the CCS (Pension) Rules, 1972. The Hon'ble apex court in *Y. Najithamol's* case (supra) had held that the selection of extra departmental agents or Gramin Dak Sevaks to the post of Postman under Column 11(2) (ii) of the Recruitment Rules is only by way of direct recruitment and not by way of promotion.

13. The legal position in this matter is crystal clear and there is no scope to interpret this any further. The GDS post being a civil post is however outside the regular civil services and it is also not the feeder post to the post of Postman. That after clearing the departmental examination from 25% quota with requisite service of 5 years, a GDS gets appointment to the post of Postman. In other words for the first time it gets inducted into the regular civil post only as a Postman. Therefore, the career start with Department of Posts from the date of appointment as Postman and he/she is entitled for salary, increments, upgradation after requisite service, further chances of promotion to higher post only from the date of appointment as Postman.

14. Accordingly, we hold that the applicant is not entitled for posting with effect from the date of arising of the vacancy in 2002 in view of the law laid down by the apex court in *Y. Najithamol's* case (supra).

15. Hence, the Original Application fails and it is dismissed. There shall be no order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/00796/2015**APPLICANT'S ANNEXURES**

- Annexure A1-** True copy of the relevant portion of the seniority list of the ED agents in Kottayam Division as on 1.1.1995.
- Annexure A2-** True copy of memo No. B2/Postman/Rectt/Seniority dated 28.6.2005 issued by the 3rd respondent.
- Annexure A3-** True copy of the memo No. B2/G1 dated 11.6.2010 issued by the 3rd respondent.
- Annexure A4-** True copy of memo No. B2/Rectt/Gr.D dated 23.7.2010 issued by the 3rd respondent.
- Annexure A5-** True copy of order No. H/Gr.D Recruitment/Dlg/KTM dated 30.7.2010 issued by the Senior Postmaster, Kottayam.
- Annexure A6-** True copy of memo No. B2/Rectt/P'man/2011 dated 5.4.2011 issued by the 3rd respondent.
- Annexure A7-** True copy of memo No. B2/19/Rectt/2011 dated 12.4.2011 issued by the 3rd respondent.
- Annexure A8-** True copy of memo No. B7/Severance dated 22.4.2013 issued by the 3rd respondent.
- Annexure A9-** True copy of memo No. B2/GI/Cqn dated 19.2.2014 issued by the 3rd respondent.
- Annexure A10-** True copy of the charge report on superannuation of the applicant.
- Annexure A11-** True copy of the final order dated 10.3.2010 in OA No. 699/2009 on the files of this Honourable Tribunal.
- Annexure A12-** True copy of the final order dated 20.8.2013 in OA 203/2012 on the files of this Honourable Tribunal.
- Annexure A13-** True copy of the representation dated 10.1.2015. submitted by the applicant.

- Annexure A14-** True copy of the order No. C2/Misc dated 30.3.2015 issued by the 3rd respondent.
- Annexure A15-** True copy of the request under the RTI Act dated 25.6.2015 submitted by the applicant along with the English translation.
- Annexure A16-** True copy of the letter No. CPT/RTI/31-2015 dated 26.6.2015 issued by the 3rd respondent in her capacity as the Public Information Officer.
- Annexure A17-** True copy of the final order dated 8.3.2016 in OA No. 180/000216/2015 on the files of this Honourable Tribunal obtained from indiankanoon.org.
- Annexure A18-** True copy of the judgment dated 23.12.2009 in WP(C) 32491/2009 and connected cases.

RESPONDENTS' ANNEXURES

- Annexure R1-** True copy of Department of Post (postman/Village Postman and Mail Guard) Recruitment Rules, 1989.
- Annexure R2-** True copy of DOPT OM dated 16.5.2001.
- Annexure R3-** True copy of order dated 31.5.2011 in OA No. 889/2009.
- Annexure R4-** True copy of order dated 28.9.2011 in OA No. 145/2010.
- Annexure R5-** True copy of judgment dated 7.9.2018 in OP (CAT) No. 85/2016.

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