

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 180/00757/2018

&

O.A No. 180/00786/2018

Wednesday, this the 25th September, 2019.

CORAM:

HON'BLE Mr. ASHISH KALIA, JUDICIAL MEMBER

O.A No. 180/00757/2018

B. Sulochana, 61 years,
W/o. Sadasivan,
MTS, Thiruvananthapuram GPO (Retired),
Now residing at Vishnu Bhavan, Tribal Colony,
Mulayara (P.O.), Vellanadu,
Thiruvananthapuram. - Applicant

[By Advocate : Mr. B. Harish Kumar]

Versus

1. The Union of India
represented by its Secretary,
Ministry of Communications,
New Delhi – 110 011.
2. The Superintendent of Post Offices,
Thiruvananthapuram South Division,
Thiruvananthapuram – 695 001.
3. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram – 695 001. - Respondents

[By Advocate : Mr. V.A. Shaji, ACGSC]

O.A No. 180/00786/2018

K.O. Samuel, 62 years,
S/o. K. Oommen,
Kalayil Veedu, Karumamkulam,
Pantha (P.O.), Kattakada,
Thiruvananthapuram – 695 572. - Applicant

[By Advocate : Mr. B. Harish Kumar]

Versus

1. The Union of India
represented by its Secretary,
Ministry of Communications,
New Delhi – 110 011.
2. The Superintendent of Post Offices,
Thiruvananthapuram South Division,
Thiruvananthapuram – 695 014. - Respondents

[By Advocate : Mr. Anil Ravi, ACGSC]

The applications having been heard on 25.09.2019, the Tribunal on the same day delivered the following:

ORDER

Per: Ashish Kalia, Judicial Member

The applicant in O.A No. 757/18 retired from service on 31.12.2017. Initially the applicant was working as GDS in the Department of Posts for more than 15 years and she got appointed as MTS with effect from 18.07.2010 which was pre-poned by the respondents themselves vide order dated 16.07.2010. The applicant at Sl. No. 4 has been shown her date of appointment/promotion as 20.06.2004. According to the applicant, she has put more than 22 substantial years of service and still she has been denied the pensionary benefits to her. She has made a representation to the respondents reckoning her prior service as GDS for pensionary benefits on 30.07.2018. But the same has not been rectified. She approached this Tribunal by filing O.A 35/2011 and this Tribunal held that the case of the applicant should also consider in line with the direction contained in O.A No. 1264/01 and consider pre-ponement of the date and reckoning the pension from the date of initial appointment.

2. The applicant in O.A No. 786/18 was working as ED agent in the Department of Posts for more than 27 years. He has got appointment as MTS with effect from 30.09.2005 and was superannuated on 31.01.2016. He has served the respondents for 10 years, 4 months as Group D staff.

3. Notices were issued and the respondents put appearance through Mr. V.A. Shaji, learned ACGSC in O.A 757/18 and Mr. Anil Ravi, learned ACGSC in O.A No. 768/18.

4. The respondents submitted therein that the name of the applicant in O.A 757/18 was figured at Sl. No. 282, wherein she was classified as 'ST' category. The vacancies were filled on the basis of seniority as and when they arise, subject to the fulfillment of reservation policy. Annexure A-6 substantiate the fact that the applicant alone was considered for appointment against Group D vacancies under ST category, retrospectively from the date of occurrence of vacancies notionally with effect from 20.06.2004. As per the decision of the Government of India, Ministry of Communications, Department of Posts letter dated 17.12.2003, she is not eligible for statutory pension.

5. Heard both sides at length and records were appreciated at the legal position submitted.

6. Learned counsel for the applicants submitted that whether applicants are entitled for statutory pension by counting her GDS service or whether she is entitled to count her regular service as MTS with effect from 20.06.2004. The applicants initially appointed as GDS with the

respondents for around 15 years approximately and Hon'ble Apex Court has decided and laid down the dictum in *Y. Najithamol & Ors. v. Soumya S.D & Ors. in Civil Appeal No. 90 of 2015 on 12th August, 2016* 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."

7. The Apex Court has held on the basis of various judgments such as *C.C Padmanabhan & Ors. v. Director of Public Instructions & Ors., Union of India v. Kameshwar Prasad and the Superintendent of Post Office & Ors. v. P.K. Rajamma* and held that the appointment of GDS as postman is direct recruitment and not promotion on the ground that the GDS is a civil post but it is not a part of the regular service of the Postal Department. Taking shelter of this judgment, this Tribunal decide these cases against the applicants that the applicants are not entitled for counting statutory pension as held by this Tribunal in O.A Nos. 29, 39 and 155 of 2017. However, this Tribunal decide in favour of the applicants in the 2nd issue that the applicants, who have been given promotion/appointment as MTS with effect from 20.06.2004 and retired almost 13 years service under regular civil post. The applicant No. 2 has rendered 10 years, 4 months regular service with effect from 30.05.2005 to 31.01.2016. Thus, applicant No. 1 and 2 are entitled for pension under the NPS as ensured by the respondents. The applicants are required to pay a lumpsum contribution under the said scheme to the concerned authorities and respondents may also pay their contribution to the NPS Authority and issue order of pension under New Pension Scheme and contributions in favour of the applicants. The applicants are

directed to give their willingness in writing to obtain benefit under the NPS within four weeks and respondents may give a calculation and the amount is to be deposited to the applicants under the New Pension Scheme.

8. With the above direction, the O.As are disposed of. No order as to costs.

(Dated, 25th September, 2019.)

(ASHISH KALIA)
JUDICIAL MEMBER

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Applicant's Annexures in O.A No. 180/757/2018

Annexure A-1	-	A true copy of the appointment letter dated 31.12.1994 of the applicant.
Annexure A-2	-	A true copy of the certificate issued to the applicant dated 31.12.2017.
Annexure A-3	-	A true copy of the representation dated 25.03.2004 requesting appointment as Group D.
Annexure A-4	-	A true copy of the letter dated 29.06.2004 from the 2 nd respondent.
Annexure A-5	-	A true copy of the Circular from the 2 nd respondent dated 09.07.2010.
Annexure A-6	-	A true copy of the letter dated 17.07.2010 issued by the 2 nd respondent.
Annexure A-7	-	A true copy of the representation dated 30.07.2018 submitted before 2 nd respondent.
Annexure A-7(a)	-	English translation of Annexure A-7.
Annexure A-8	-	A true copy of the order of this Hon'ble Tribunal dated 30.05.2011.

Annexures of Respondents

Annexure R-1	-	True copy of the order of this Hon'ble Tribunal in O.A No. 1191/2012 dated 18.03.2014.
Annexure R-2	-	True copy of the order of this Hon'ble Tribunal in O.A No. 151/2013 dated 05.08.2014.
Annexure R-3	-	True copy of the order of this Hon'ble Tribunal in O.A No. 39/2017 dated 28.02.2019.
Annexure R-4	-	True copy of judgment of the Hon'ble Apex Court in SLP © No. 7627/2019 dated 15.03.2019.
Annexure R-5	-	True copy of the order of this Hon'ble Tribunal in O.A No. 179/2016 dated 28.01.2019.
Annexure R-6	-	True copy of the Notification No. SRO 609 dated 28.02.1957.
Annexure R-7	-	A true copy of judgment dated 08.03.2019 in W0 5305/2018.

Applicant's Annexures in O.A No. 180/786/2018

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| Annexure A-1 | - | A true copy of the certificate issued to the applicant dated 31.01.2016. |
| Annexure A-2 | - | A true copy of the circular dated 14.08.2002 with relevant list of eligible candidates. |
| Annexure A-3 | - | A true copy of the circular dated 01.04.2015 with scheduled list of eligible candidates. |

Annexures of Respondents

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|--------------|---|---|
| Annexure R-1 | - | A copy of the Ministry of Finance Notification No. 5/7/2003-ECB & PR dated 22.12.2003. |
| Annexure R-2 | - | True copy of the order dated 28.02.2019 |
| Annexure R-3 | - | True copy of the order dated 15.03.2019 |
| Annexure R-4 | - | True copy of the order of this Hon'ble Tribunal in O.A. No. 1191/2012. |
| Annexure R-5 | - | True copy of the order of this Hon'ble Tribunal in O.A No. 151/2013. |
| Annexure R-6 | - | A true copy of order dated 28.01.2019 in O.A 179/2016. |
| Annexure R-7 | - | A true copy of judgment dated 08.03.2019 in WP 5305/2018. |
| Annexure R-8 | - | MHA Notification No. SRO 609 dated 28.02.1957. |
| Annexure R-9 | - | True copy of the judgment in Y. Najithamol & Ors v. Soumya S.D & Ors dated 12.08.2016 in C.A. No. 90 of 2015. |
