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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00365/2015

Monday, this the 24th day of June, 2019

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

P.Janardhanan, aged 58 years
S/o.Late Sankaran
Working as Group 'D'
Chalisseri P.O,
Residing at Pantharikunnath House
Kavalappara P.O
Pin – 679 523

..... **Applicant**

(By Advocate Mr.P.C.Sebastian)

V e r s u s

1. Union of India represented by the Secretary
Government of India, Ministry of Communications
Department of Posts
New Delhi – 110 001
2. The Chief Postmaster General
Kerala circle, Thiruvananthapuram – 695 033
3. The Sr.Suptd. of Post Office
Ottapalam Division, Ottapalam-679 101

..... **Respondents**

(By Advocate – Mr.N.Anilkumar,SCGSC)

This Original Application having been heard on 12.6.2019, the Tribunal on 24.6.2019 delivered the following:

O R D E R

Per: Mr.E.K.Bharat Bhushan, Administrative Member

This Original Applications is filed by Mr.P.Janardhanan who is a retired Group D, aggrieved by the rejection of his claim for including in the old pension scheme. The reliefs sought in the Original Application are as

follows:

“I) To declare that applicant is entitled to be deemed to have been promoted as Group D from the date of vacancy arose against which he has actually been appointed notionally and thus the notional service be counted as qualifying service for pensionary benefits only under the old pension scheme i.e, CCS (Pension) Rules 1972.

II) To issue appropriate orders/directions directing the respondents to grant the applicant the benefit of CCS (Pension) Rules 1972 treating him to be deemed to have entered departmental cadre in the year 2002 against the vacancy against which he has actually been appointed for the purpose of pensionary benefits.

III) To direct the respondents to exclude the applicant from the new restructured defined contribution pension system and to stop further recoveries from him under the new pension scheme and to refund the amount already recovered under the same with interest due.

IV) To declare that the applicant's GDS service prior to his regular appointment as Group 'D' is eligible to be reckoned for the pensionary benefits and to direct the respondents accordingly with all consequential benefits.

V) Award costs of and incidental to this application.”

2. Applicant commenced his service as GDS Mail Deliverer at Irimbalasery Post Office in the year 1976. As per extant recruitment rules governing the promotion of Gramin Dak Sevaks to the cadre of Group D, the Departmental Selection Committee approved the applicant's appointment as Group D on a regular basis in the existing vacancy (Annexure A-1) and appointed him as LR Group D at Pattambi Sub Division (Annexure A-2) under the new contributory pension scheme on the ground that he was appointed on 19.1.2004. It is confirmed by the applicant through RTI Act that he has been appointed against the vacancy for the year 2002. Applicant contends that had the respondents followed the DG Post letter

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dated 31.3.1994 for appointment of ED Agents as Group D, the applicant would have got appointment as Group D in March 2002 or 2003 itself and he would have automatically come under the then existing CCS (Pension) Rules, 1972. Applicant is put to suffer avoidable loss due to the failure on the part of the respondents. Applicant submitted a representation on 23.4.2014 (Annexure A-6) to the 3rd respondent to include him under old pension scheme, but the same was rejected (Annexure A-7).

3. He calls to his assistance the order of Principal Bench of this Tribunal in **OA 749/2015** which held that the service rendered as GDS before being absorbed in a regular post is eligible to be reckoned for the purpose of pensionary benefits. If the service of the applicant prior to his appointment as Group D is reckoned for pensionary benefits, the applicant is entitled for statutory pension also. Hence, he approached this Tribunal for redressal of his grievances.

4. Respondents have filed a reply statement wherein the details of tenure of the applicant are admitted. It is stated that the delay in filling up the vacancies of Group D was on account of unavoidable procedural issues. Annexure A6 representation filed by the applicant was duly considered by the 3rd respondent but his prayer could not be allowed as the NPS scheme is mandatory for the employees appointed on or after 1.1.2004. Respondents submits that Rule 14(2) of CCS (Pension) Rules, 1972 provides that for the purposes of Sub rule (1), the expression 'service' means service under the Government and paid by that Government from consolidated fund of India

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or a local fund administrated by that Government, but does not include service in a non-pensionable established unless such service is treated as qualifying service by that Government. The respondents go on to quote the Hon'ble Supreme Court judgment in **State of Haryana v. Piara Singh** 1992(1) SCC 118 which held that "Courts should be cautious in issuing directions to the Government substituting its own conditions. Creation and abolition of posts and the discretion to fill up a regular post is the prerogative of the Government. " Hence the respondents pray for dismissal of the Original Application.

5. Heard Mr.Martin G Thottan, Learned counsel for the applicant and Mr.N.Anilkumar, SCGSC, learned counsel for the respondents. Perused the records.

6. Learned counsel for the applicant lays stress on the orders of the Madras Bench of this Tribunal in O.A 1264/2001. The Madras Bench of the CAT had ordered that weightage need to be given for ED service for reckoning the same as qualifying service for the purpose of pension. Same was confirmed by the Hon'ble High Court of Madras and the Hon'ble Supreme Court also. Learned counsel for the applicant also relied upon the orders of the Principal Bench of CAT in OA 749/16. Sri N.Anilkumar,SCGSC appeared for the respondents in the O.A and argued that both these judgments can be interpreted only as judgments *in persona*. The respondents' counsel further pointed out that the orders in both cases had not attained finality as in the case of OA No. 749/15, SLP filed is

currently pending before the Hon'ble Supreme Court, whereas the decision of the Madras Bench of this Tribunal was clearly *in persona*.

7. This Tribunal finds no merit in the argument. The issue involved is simple and unambiguous and the two judgments referred to relate to taking a part or whole of GDS service into account for including in the old pension scheme. Leaving aside the question whether his appointment as Group D is to be ante-dated to the date of occurrence of vacancy, the order, particularly of the Principal Bench of CAT, is unambiguous and categoric, ruling that “*for all GDS who have been absorbed as regular Group-D staff, the period spent as GDS would be counted in toto for the purpose of pensionary benefits.*” This Tribunal is of the view that if the service of the applicant prior to his appointment as Group D is reckoned for pensionary benefits, the applicant is entitled for statutory pension also. Hence it is seen that the applicant's plea is just and proper. OA succeeds. The prayers contained in the OA are allowed. This shall be done within two months from the date of receipt of a copy of this order. No order as to costs.

**(E.K BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

List of Annexures

Annexure A1 - True copy of Memo No.B2/4/Group D/Rectt dated 14/1/2004

Annexure A2 - True copy of the memo No.GL/4 dated 19.1.2004 issued by the Assistant Supdt. Of Post Offices, Pattambi Sub Division

Annexure A3 - True copy of letter No.RTI/386 dated 5.11.2014

Annexure A4 - True copy of the letter No.47-11/93-SPB I dated 31.3.1994

Annexure A5 - True copy of order in O.A No.724 of 2012 dated 28.6.2013

Annexure A6 - True copy of the representation dated 23.4.2014 to the 3rd respondent

Annexure A7 - True copy of the letter No.C1/NPS/dated 13.5.2014

Annexure R1(a) - True copy of the relevant charge report

Annexure R1(b) - True copy of the connected ruling on NPS

Annexure R1(c) True copy of the letter No.B2/4/Gr.D/Tect dated 16.12.2003.

Annexure R2 - True copy of judgment in Civil Appeal No.90 of 2015 (Najithamol's case of the Hon'ble Supreme Court of India

Annexure R3 - True copy of judgment dated 18.1.2017 of Hon'ble High Court in OP(CAT) 327/2016 (Indukala & others case) of the Hon'ble Supreme Court of India

Annexure R4 - True copy of judgment dated 9.8.2018 of Hon'ble CAT in OA 180/1128/2014 (P.Dorai) of the Hon'ble CAT EKM

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