

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/00206/2014 and OA/310/01403/2015

PRESENT

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

G.Somasundaram, S/o. S.P.Gnanavel,
P-60/5, SOL, Army Quarters,
(Behind Park Town HPO),
Park Town, Chennai- 600 003.

....Applicant in both OAs.

By Advocate M/s R.Malaichamy

versus

1. Union of India rep., by the Postmaster General,
Tamil Nadu Circle, Anna Salai, Chennai – 600 002.
2. The Postmaster General,
Southern Region(TN), Madurai – 625 002.
3. The Superintendent of Post Offices,
Karaikudi Division, Karaikudi 630 003.
4. The Postmaster, Karaikudi HO, Pin 630 001. .Respondents in OA.206/2014

and

1. Union of India rep. by the Postmaster General,
Tamilnadu Circle, Anna Salai, Chennai – 600 002.
2. The Superintendent of Post Offices,
Karaikudi Division, Karaikudi 630 003.Respondents in OA.,1403/2015

By Advocate Mr. S. Padmanabhan

O R D E R

(Pronounced by Hon'ble Mr.T.Jacob, Member(A))

The applicant has filed these OAs under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

1. OA.206/2014

- "i. To call for the records of the 2nd respondent pertaining to his order which is made in No.REP/83-3/2008/MA dated 04/06.05.2013 and set aside the same, consequent to,
- ii. Direct the respondents to sanction pay and allowance for the period intervening between the date of reporting to BRO Tiruchirapalli and date of appointment after having been found medically/physically fit i.e., from 21.01.1997 to 28.04.1999."

OA.1403/2015

- 1. To call for the records of the 2nd Respondent pertaining to his order which is made in memo No.B 2/46 dated 18.05.2015 and set aside the same."
- 2. The brief facts of the case as submitted by the applicant are as follows:

The applicant was selected for Army Postal Service on deputation and was permitted to work for one day as PA Karaikudi HO, on 20.01.1997 by 4th respondent vide order dated 20.01.1997. He was relieved on the same day to appear before BRO for medical examination. The applicant had appeared for medical/physical fitness before the BRO, Tiruchirapalli on 21.01.1997 at the appointed time, but medical examination was not conducted on his part by BRO, Tiruchirapalli on the ground that the applicant was treated like civil employee as Postal Assistant, Karaikudi HO, but not exclusively selected for APS by the 2nd and 3rd respondents. The applicant was

finally directed by the 3rd respondent to appear before the medical examination at BRO, Tiruchirapalli vide letter dated 16.04.1999 in continuation of letter No.CAT/01/98 dated 09.03.1999. Therefore, the applicant is entitled for pay and allowance for the period intervening between the date of reporting to BRO Tiruchirapalli and date of appointment after having been found medically/physically fit i.e., from 21.01.1997 to 28.04.1999. After filing of OA.206/2014, the second respondent without prior notice issued corrigendum dated 18.05.2015 modifying the date of appointment of the applicant as 28.04.1999 by cancelling the earlier date of appointment dated 16.01.1997. Aggrieved by the above, the applicant has filed these OAs seeking the above reliefs inter-alia on the following grounds:-

- i. The applicant had joined as P.A Karaikudi HO on 20.01.1997 F/N vide 3rd respondent order dated 16.01.1997 and later on he was relieved from duty as P.A Karaikudi HO on 20.01.1997 A/N for deputation to APS by 4th respondent in letter dated 20.01.1997. Therefore, the delay in joining duty is only a technical fault and therefore, the respondents are liable to pay the salary for the intervening period.
- ii. The applicant had appeared for medical/physical fitness before the BRO, Tiruchirapalli on 20.01.1997 at the appointed time, but medical examination was not conducted on his part at BRO, Tiruchirapalli on the ground that the applicant was treated like civil employee as Postal Assistant, Karaikudi HO. Therefore, the applicant is not at fault.
- iii. The applicant was finally directed by the 3rd respondent to appear before medical examination at BRO, Tiruchirapalli vide letter, dated 16.04.1999 in continuation of letter No.CAT/01/98 dated 09.03.1999. Hence, denying the pay benefit for the intervening period by the 2nd respondent is not correct.

iv. The applicant was selected for APS but he was permitted to work as PA Karaikudi HO, on 20.01.1997 by 4th respondent vide letter, dated 20.01.1997 and therefore, the applicant was not medically examined by BRO, Tiruchirapalli on 21.01.1997 and thus the applicant is not at fault.

v. The applicant was declared as passed in confirmation examination which was held on 14.11.1999 as field APS Kamptee, Nagpur vide Memo dated 15.02.2000 and the applicant was also allowed to repatriate to his parent division at his request by 2nd Respondent in Memo dated 23.02.2006.

3. The respondents have filed reply. It is submitted that the applicant was selected for the post of Postal Assistant exclusively for serving in the Army Postal Services by Postmaster General, Southern Region (TN), Madurai vide letter no. REP/2-3/95 dated 11.12.96. The appointment was offered to him subject to the conditions of physical fitness made by Branch Recruiting Unit, Tiruchirapalli and his willingness to serve in Army Postal Services. He was also directed to appear before Superintendent of Post Offices, Karaikudi Division only if he was willing to abide by the said conditions. The Postmaster, Karaikudi HO was directed by Superintendent of Post Offices, Karaikudi Division, Karaikudi to relieve the applicant on the afternoon of 20.01.1997 to report before the Branch Recruiting Officer, Tiruchirapalli. Accordingly, the applicant was relieved with a direction to report before Branch Recruiting Officer, Tiruchirapalli on 21.01.1997. The applicant appeared before the Branch Recruiting Officer as per the schedule. The Branch Recruiting Officer did not take up the Physical/medical examination of the applicant but informed him that he was appointed for only one day in the department. Hence, the applicant was said to be ineligible for recruitment in APS. The applicant subsequently requested SPOS,

Karaikudi Dn., Postmaster General, Madurai and Chief Postmaster General, Chennai to accommodate him in civil side as Postal Assistant. Accordingly, instructions were issued by Additional Directorate General of Rtg 5(OR) (A)/Adjutant General's Branch, Army Headquarters, New Delhi to all subordinate offices to consider the candidates who were appointed by Department of Posts for one day only for recruitment in APS vide letter No. 62540/Rtg 5 (OR) (A) dated 04.01.1999. As per the said instructions, the Postmaster General, Chennai vide letter No.REP/2-502/98 dated 19.01.1999 directed all the SSPOs/SPOs in Tamil Nadu Circle to send all the remaining candidates who were selected exclusively for the post of Postal Assistant in Army Postal Service to Branch Recruiting Office for physical fitness. The applicant appeared before the BRO on 27.02.1999 and was found medically fit on 03.03.1999 vide letter No.D/457/APS dated 03.03.1999. He was dispatched to APS Training Centre, Kamptee on 29.04.1999 and was repatriated to the parent department at his request vide order dated 23.02.2006. Hence the respondents pray for dismissal of the OA.

4. The applicant has filed rejoinder and the respondents have filed reply to the rejoinder almost reiterating the averments made in the OA and reply respectively.

5. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

6. Admittedly, this is the second round of litigation before this Tribunal. The applicant had earlier filed OA.643/1998 but however, the said OA was dismissed as withdrawn by order dated 21.06.1999,

7. The facts not being in dispute, the same obviates debate. The grievance of the applicant is that had the 3rd respondent (Superintendent of Post Offices, Karaikudi Division) directed him to appear directly before the BRO, Tiruchirappalli on 21.01.1997 after getting his willingness to serve in APS at Karaikudi Divisional office on 20.01.1997 instead of directing him to report before the 4th Respondent (Postmaster, Karaikudi HO) the delay would not have occurred and he would have been entitled for the pay and allowance for the period intervening between the date of reporting to BRO, Tiruchirappalli and the date of appointment after having been found medically/physically fit ie., 21.01.1997 to 28.04.1999.

8. It is clear on perusal of the records that for appointment of the applicant in the Army Postal Service on deputation, the applicant has to work for at least one day as Postal Assistant (civil) at Karaikudi HO. The conditions of appointment have been explicitly made clear in the appointment order itself. Based on the above, the applicant was appointed on 20.01.1997 and relieved on the same day for reporting before the Branch Recruitment Officer, Tiruchirappalli on 21.01.1997. But the BRO did not take the Physical/Medical examination of the applicant on the ground that he applicant was treated like a civil employee as Postal Assistant at Karaikudi HO.. Only after the matter was taken up before the Circle level, instructions were issued by the Additional Directorate General of Rtg 5 (OR) (A)/Adjutant General's Branch, Army Headquarters, New Delhi to all sub ordinate offices to consider the candidates who were appointed by the Department of Posts for one day only for recruitment in APS vide letter dated 04.01.1999. Accordingly, the applicant was directed by the 3rd

Respondent to appear before the BRO, Tiruchirappalli vide letter dated 19.01.1999. The Branch Recruiting Unit directed the applicant to appear before them on 27.02.1999 and thereafter declared him medically fit vide letter dated 03.03.1999. The applicant reported to BRO, Tiruchirappalli on 28.04.1999 and selected after observing all formalities. As such, the applicant's appointment in Postal Department on 20.01.1997 is a technical formality and only after production of medical fitness certificate, he was appointed as PA/Warrant Officer, Army Postal Service on 29.04.1999. The applicant has never worked in any capacity during the alleged period in any Government service for which no pay and allowances is eligible on the principle of 'no work no pay', The applicant is eligible for appointment in Government service only after production of Medical Fitness Certificate. The applicant is seeking pay and allowances for the period from 21.01.1997 to 28.04.1999 during which period he has not worked. The philosophy of 'no work no pay' shall have to be kept in view while considering his claim for pay and allowance The normal rule is 'no work no pay'. (see Karnataka Housing Board vs. C. Muddaiah (2007) 7 SCC 689). As such, we see no reason to interfere with the order of the respondents dated 06.05.2013 rejecting the claim of the applicant for pay and allowances for the intervening period 21.01.1997 to 28.04.1999. The contention of the applicant is that respondents have erred in issuing corrigendum after 18 years on 18.05.2015 cancelling the date of initial appointment of the applicant on 16.01.1997 and postponing the same to 28.04.1999 on the ground that he was found medically/physically fit only w.e.f. 29.04.1999 which is against the principles of

natural justice. The fact remains that the applicant's actual appointment in the APS is only from 29.04.1999. His appointment in 1997 was purely technical. Yet, since the same have remained there without any cancellation or modification, and his services in the APS being again regular, the date of seniority could be reckoned from that date. Therefore, we are of the view that the applicant is entitled for fixation of notional seniority from the date of joining in the Department of Posts ie., on 20.01.1997.

9. In view of the above facts and circumstances of the case and the discussions hereinabove, the impugned corrigendum order dated 18.05.2015 fixing the date of appointment w.e.f. 28.04.1999 is hereby set aside the quashed. The respondents are directed to fix the notional seniority of the applicant from the date of joining in the Department of Posts on 20.01.1997. Thus the OAs are partly allowed No costs.

(T. JACOB)
MEMBER(A)

-11-2019

(P. (MADHAVAN)
MEMBER (J)

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