

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00903/2017
Original Application No. 180/00906/2017
Original Application No. 180/00907/2017

Wednesday, this the 30th day of October, 2019

CORAM:

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

1. Original Application No. 180/00903/2017 -

M. Narayanan, S/o. The late Raman Nair, aged 61 years,
 Multi Tasking Staff (Retired), Kumaranelloor, residing at
 Maniyannur Annamkudath House, Mudur Post, via Vattamkulam,
 Malappuram District – 679 578. **Applicant**

(By Advocates : M/s. O.V. Radhakrishnan, Sr.
Mrs. K. Radhamani Amma
Mr. Antony Mukkath)

V e r s u s

1. Superintendent of Post Offices, Ottappalam Division,
 Ottappalam – 679 101.
2. Postmaster General, Northern Region, Kozhikode.
3. Chief Postmaster General, Kerala Circle,
 Thiruvananthapuram.
4. Director General of Posts, Dak Bhavan, New Delhi.
5. Union of India, represented by its Secretary,
 Ministry of Communications, New Delhi. **Respondents**

(By Advocate : Mr. K. Kesavankutty, ACGSC)

2. Original Application No. 180/00906/2017 -

K.C. Chathu, S/o. The late Thoomban, aged 61 years,
 Multi Tasking Staff (Retired), Office of the Superintendent of Post Offices,
 Ottappalam, residing at Kanattodi, Post Sreekrishnapuram,
 Palakkad District – 679 513. **Applicant**

**(By Advocates : M/s. O.V. Radhakrishnan, Sr.
Mrs. K. Radhamani Amma
Mr. Antony Mukkath)**

V e r s u s

1. Superintendent of Post Offices, Ottappalam Division,
Ottappalam – 679 101.
2. Postmaster General, Northern Region, Kozhikode.
3. Chief Postmaster General, Kerala Circle,
Thiruvananthapuram.
4. Director General of Posts, Dak Bhavan, New Delhi.
5. Union of India, represented by its Secretary,
Ministry of Communications, New Delhi. **Respondents**

(By Advocate : Mr. Thomas Mathew Nellimootttil, Sr. PCGC)

3. Original Application No. 180/00907/2017 -

M. Pariyani, S/o. The late Kunjan, aged 61 years,
Multi Tasking Staff (Retired), Mannarkkad Mukhya Dak Ghar,
residing at Kunjan Nivas, Kanjirappuzha Post,
Palakkad – 678 591. **Applicant**

**(By Advocates : M/s. O.V. Radhakrishnan, Sr.
Mrs. K. Radhamani Amma
Mr. Antony Mukkath)**

V e r s u s

1. Superintendent of Post Offices, Ottappalam Division,
Ottappalam – 679 101.
2. Postmaster General, Northern Region, Kozhikode.
3. Chief Postmaster General, Kerala Circle,
Thiruvananthapuram.
4. Director General of Posts, Dak Bhavan, New Delhi.
5. Union of India, represented by its Secretary,
Ministry of Communications, New Delhi. **Respondents**

(By Advocate : Mr. V.A. Shaji, ACGSC)

These applications having been heard on 26.09.2019, the Tribunal on 30.10.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

OAs Nos. 180-903, 906 and 907 of 2017 have common points of fact and law involved and hence are being disposed of through this common order. For the sake of convenience, the pleadings, documents and record in OA No. 180/903/2017 are referred to in this common order.

2. The reliefs claimed by the applicant in OA No. 180-903-2017 are as under:

- “i) to declare that the applicant is entitled to get his ad hoc service in the post of Group D with effect from 1.10.2002 to 11.7.2004 reckoned towards qualifying service for all purposes including pension and pensionary benefits and the rejection of his claim for counting his ad hoc service for qualifying service as per Annexure A11 is illegal, unreasonable and violative of the law declared by the Apex Court on the issue;
- ii) to declare that the entire period spent by the applicant as Gramin Dak Sevak Mail Deliverer with effect from 20.6.1977 shall be counted in toto for the purpose of pensionary benefits and to reckon the same for determining the qualifying service for pension under the CCS (Pension) Rules, 1972;
- iii) Issue appropriate direction or order directing the respondents to reckon the ad hoc service of the applicant in the post of Group D with effect from 1.10.2002 to 11.7.2004 as qualifying service for all purposes including pension and pensionary benefits and grant him all consequential benefits forthwith and at any rate, within a time frame that may be fixed by this Hon'ble Tribunal;
- iv) to issue appropriate direction or order directing the respondents to reckon the entire period spent by the applicant as Gramin Dak Sevak Mail Deliverer with effect from 20.6.1977 towards qualifying service for pension and pensionary benefits under the CCS (Pension) Rules, 1972;
- v) to grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case such other;

and

- vi) to award costs to the applicant.”

Exactly similar reliefs have been claimed by the applicants in OA No. 180-906-2017 and 180-907-2017 with changes in the dates.

3. The brief facts of the case in OA No. 180-903-2017 are that applicant while working as Multi Tasking Staff, Kumarnelloor Sub Office under the 1st respondent retired from service on attaining the age of superannuation on 29.2.2016. The applicant was initially engaged as Extra Departmental Delivery Agent, Peringode with effect from 20.6.1977. Subsequently, the applicant was appointed as EDDA, Peringode on regular basis w.e.f. 20.6.1977 as per Annexure A3 memo. Vide Annexure Annexure A9 the applicant was appointed as Group-D w.e.f. 30.4.2006 and in Annexure A9 it was stipulated that the period of notional service will count for the purpose of pension. However, vide Annexure A9(a) the date of 30.4.2006 was changed to 30.6.2009. The total service rendered by the applicant as Group-D is 11 years, 7 months and 11 days. Pointing out the fact that the applicant rendered 1 year, 9 months and 11 days ad hoc service, he submitted a representation dated 26.09.2016 requesting to count his ad hoc service as pensionable service to grant him pension and pensionary benefits treating him as a pensioner under the CCS (Pension) Rules, 1972. The respondents vide Annexure A11 rejected the claim of the applicant. The applicant has relied upon the order of the Principal Bench of the Tribunal in OA No. 749 of 2015 dated 17.11.2016 wherein it was held that though the GDS are outside the regular civil services, there is no doubt that it is a post under the State. Therefore, it was held that all Gramin Dak Sevaks who have been absorbed as regular Group-D staff, the period spent as GDS will be counted

in toto for the purpose of pensionary benefits. Further pension will be granted under the provisions of CCS (Pension) Rules, 1972 to all GDSs who retire as GDSs without absorption as regular Group-D staff, but the period to be counted for the purpose of pension will be 5/8th of the period spent as GDS. Since the claim of the applicants were rejected by the respondents, they have approached this Tribunal with the above OAs.

4. Notices were issued to the respondents. They entered appearance through Shri K. Kesavankutty, ACGSC in OA No. 180-903-2017, Shri Thomas Mathew Nellimoottil, Sr. PCGC in OA No. 180-906-2017 and Shri V.A. Shaji, ACGSC in OA No. 180-907-2017. Contesting the claim of the applicants, the respondents have filed reply statements in each case, more or less taking similar contentions. They submitted that the applicants were engaged in the vacant posts of Postman in various spells of time on extra cost basis. The applicants were appointed as Group D on regular basis w.e.f. 19.7.2010, 16.3.2011 and 19.7.2010 respectively. They retired on superannuation w.e.f. 29.2.2016, 31.12.2015 and 30.6.2016 respectively. Since the applicants were appointed after 1.1.2004 they were included in the New Pension Scheme. The applicants submitted representations requesting to count their adhoc service as Postman/Group-D as well as GDS service as pensionable service to grant them pension and pensionary benefits treating them under the CCS (Pension) Rules, 1972. The respondents rejected the representation stating that the engagement as Postman/Group-D on extra cost basis for various spells of time cannot be counted for pension and other terminal benefits. Pension is admissible to permanent employees who retire

or are retired with a qualifying service of not less than 10 years. Since the applicants were not having the qualifying service they requested for taking into account the ad hoc service rendered by them on different spells as well as their service as GDS for pension under CCS (Pension) Rules, 1972. The respondents have only adhered to the statutory provision and there can be no relaxation of provisions contained in Rule 49 of CCS (Pension) Rules, 1972 which provides for minimum of 10 years of service to become eligible for pension. Further there is no scope for counting the GDS service towards regular employment to enable to make up the short fall in the minimum required length of service. Moreover, the job profile, working hours, working conditions, applicability of rules for the regular departmental employees and that of the GDS are altogether different. While the regular departmental employee superannuates on completion of 60 years of age the GDS can enter the service on attaining the age of 18 years and remain in engagement up to 65 years. Therefore, the regular Government employees and GDS are two separate and distinct categories. The Hon'ble apex court in *Y. Najithamol & Ors. v. Soumya S.D. & Ors.* dated 12.8.2016 in CA No. 90 of 2015 held that the appointment of GDS as Postman/Group-D is direct recruitment and not promotion on the ground that GDS is a civil post but is not a part of the regular service of the Postal Department. Respondents pray for dismissing the OAs.

5. Heard Mr. O.V. Radhakrishnan, Sr. along with Mr. Antony Mukkath, learned counsel appearing for the applicants, Mr. K. Kesavankutty, ACGSC learned counsel appearing for the respondents in OA No. 180-903-2017, Mr.

Thomas Mathew Nellimootttil, Sr. PCGSC, learned counsel appearing for the respondents in OA No. 180/906/2017 and Mr. V.A. Shaji, ACGSC learned counsel appearing for the respondents in OA No. 180/907/2017.

Perused the records.

6. 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.”

7. 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 otherwords, 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 assumes 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 *Y. 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.”

8. 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."

9. The short point to be considered by this Tribunal in these cases are that whether the applicants are entitled for reckoning their adhoc service for the purpose of pension under the CCS (Pension) Rules, 1972 and whether the services rendered by the applicants as Extra Departmental Delivery Agents can be reckoned for counting the qualifying service for pension under the CCS (Pension) Rules, 1972 ?

10. 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/Group-D under the Recruitment Rules is only by way of direct recruitment and not by way of promotion.

11. Therefore, 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/Group-D. That after clearing the departmental examination from 25% quota with requisite service of 5 years, a GDS gets appointment to the post of Postman/Group-D. In other words for the first time it gets inducted into the regular civil post only as a Postman/Group-D.

Therefore, the career starts with Department of Posts from the date of appointment as Postman/Group-D 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/Group-D. In the present cases the applicants were appointed as Group D on regular basis w.e.f. 19.7.2010, 16.3.2011 and 19.7.2010 respectively. They retired on superannuation w.e.f. 29.2.2016, 31.12.2015 and 30.6.2016 respectively. Since the applicants were appointed after 1.1.2004 they were included in the New Pension Scheme. The engagement of the applicants as Postman/Group-D on extra cost basis for various spells of time cannot be counted for pension and other terminal benefits. Pension is admissible to permanent employees who retire or are retired with a qualifying service of not less than 10 years. However, the applicants were not having the minimum qualifying service for pension.

12. The Tribunal in *Anam Mallik & Ors. v. Union of India & Ors.* - (1995) 30 ATC 380 held that classification of ED agent as separate class of holders of civil post is a reasonable classification having nexus to the object sought to be achieved and it does not discriminate in terms of Articles 14 and 16 of the Constitution. Further in *Union of India v. Kameshwar Prasad* - (1997) 11 SCC 650 it was held that the Extra Departmental Agents system is in practice since ages to service the postal needs in 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 etc.

13. Further in *The Superintendent of Post Offices & Ors. v. P.K. Rajamma* - (1977) 3 SCC 94 it was held that extra departmental agent holds a post under the administrative control of the State but is outside the regular civil services. In *M.A. Mohanan v. The Senior Superintendent of Post Offices & Ors.* - OA No. 807 of 1999 decided on 3.11.1999 this Bench of the Tribunal held that Extra Departmental Agents are not departmental employees and becomes regular employees only after absorption. The apex court in *C.C. Padmanabhan & Ors. v. Director of Public Instructions & Ors.* - 1980 (Supp) SCC 668 held that GDS is not the feeder category for promotion to the post of Postman and both belongs to two different services viz. 'Regular Postal Service' and 'Extra Departmental Postal Service'. Similar view was taken by the apex court in Civil Appeal No. 3150 of 2019 – *Sr. Superintendent of Post Offices v. Gursewak Singh & Ors.*, dated 15.3.2019 that GDS post is outside the regular establishment.

14. In the entire gamut of facts, circumstances and legal position discussed above, we are of the view that there is nothing much left to be interpreted by this Tribunal. Though the Gramin Dak Sevaks are civil post holders, they are outside the regular civil establishment and therefore, cannot be equated being a different class altogether. Unequal cannot be equated with equals.

Therefore, the service rendered by the applicant as Extra Departmental Delivery Agent cannot be taken into account in order to make up the short fall in the minimum required length of service for pension. Further, the engagement of the applicants as Postman/Group-D on extra cost basis for various spells of time cannot be counted for pension and other terminal benefits. Moreover, since the applicants were regularized after 1.1.2004 they were included in the New Pension Scheme. Further, as there is no provision for pension for a Government servant retiring before completing ten years of regular service in the CCS (Pension) Rules, 1972, we hold that the applicants are not entitled for pension/family pension. The request of the applicants to reckon the service rendered by them as Extra Departmental Delivery Agents for pension under CCS (Pension) Rules, 1972 also cannot be considered in their favour in view of the law laid down by the apex court in *Y. Najithamol's* case (supra).

15. Hence, we hold that the present Original Applications are having no merit whatsoever and are liable to be rejected. Accordingly, the OAs are dismissed. Parties shall bear their own costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

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

“SA”

Original Application No. 180/00903/2017**APPLICANT'S ANNEXURES**

Annexure A1 – Photocopy of the memo dated 18.6.1977 of the Inspector of Posts, Pattambi.

Annexure A2 – Photocopy of the memo dated 11.1.1978 of the Inspector of Posts, Pattambi.

Annexure A3 – Photocopy of the memo dated 1.6.1978 of the Inspector of Posts, Pattambi.

Annexure A4 – Photocopy of the memo dated 16.9.2002 of the Sub Divisional Inspector, Posts, Pattambi.

Annexure A5 – Photocopy of the charge report dated 1.10.2002.

Annexure A6 – Photocopy of the charge report dated 17.7.2006.

Annexure A7 – Photocopy of the memo dated 30.6.2006 of the 1st respondent.

Annexure A8 – Photocopy of the memo dated 17.7.2010 of the Asst. Supdt. of Post Offices, Pattambi.

Annexure A9 – Photocopy of the memo dated 26.7.2010 of the Asst. Supdt of Post Offices, Pattambi.

Annexure A9(A) – Photocopy of the corrigendum dated 31.7.2010 of the Asst. Supdt of Post Offices, Pattambi.

Annexure A10 – Photocopy of the representation dated 26.9.2016 of the applicant to the 1st respondent.

Annexure A11 – Photocopy of the memo dated 24.11.2016 of the 1st respondent.

Annexure A12 – Photocopy of the order dated 17.11.2016 in OA No. 749 of 2015 and connected cases (excluding pages 2 to 320 which contains the name and address of applicants 4 to 106).

RESPONDENTS' ANNEXURES

Annexure R1 – True copy of judgment in Civil Appeal No. 90 of 2015, (Najithamol's case) of the Hon'ble Supreme Court of India.

Annexure R2 – True copy of judgment dated 18.1.2017 of Honourable in OP (CAT) 327/2016 (Indukala & Others' case) of the Hon'ble Supreme Court of India.

Annexure R3 – True copy of extract of Rule 13 of Swamy's Pension Compilation incorporating CCS Pension Rules.

Original Application No. 180/00906/2017

APPLICANT'S ANNEXURES

Annexure A1 – Photocopy of the details of officiating period of the applicant.

Annexure A2 – Photocopy of the memo dated 14.3.2011 of the 1st respondent.

Annexure A3 – Photocopy of the memo dated 15.3.2011 of the Postmaster, Head Post Office, Ottappalam.

Annexure A4 – Photocopy of the representation dated 19.7.2016 of the applicant to the 1st respondent.

Annexure A5 – Photocopy of the memo dated 24.11.2016 of the 1st respondent.

Annexure A6 – Photocopy of the order dated 17.11.2016 in OA No. 749 of 2015 and connected cases (excluding pages 2 to 320 which contains the name and address of applicants 4 to 106).

RESPONDENTS' ANNEXURES

Annexure R1 – True copy of judgment of the Hon'ble Supreme Court dated 12.8.2016 in Civil Appeal No. 90/2015, (Y. Najithamol v. Soumya S.D. & others).

Annexure R2 – True copy of judgment of the Hon'ble High Court of Kerala dated 18.1.2017 in OP (CAT) 327/2016 (Indukala C.S. & others v. UOI & Others).

Annexure R3 – True copy of the Central Govt. Extract of Rule 13 of Swamy's Pension Compilation incorporating CCS Pension Rules.

Original Application No. 180/00907/2017**APPLICANT'S ANNEXURES**

Annexure A1 – Photocopy of the charge report dated 17.8.1977.

Annexure A2 – Photocopy of the reply dated 2.8.2016 furnished under the Right to Information Act of the 1st respondent.

Annexure A3 – Photocopy of the memo dated 16.7.2010 of the 1st respondent.

Annexure A4 – Photocopy of the memo dated 17.7.2010 of the Inspector of Posts, Mannarkkad Sub Division.

Annexure A5 – Photocopy of the memo dated 17.7.2010 of the Postmaster, Pattambi MDG.

Annexure A6 – Photocopy of the memo dated 22.7.2010 of the Postmaster, Pattambi MDG.

Annexure A7 – Photocopy of the representation dated 2.8.2016 of the applicant to the 1st respondent.

Annexure A8 – Photocopy of the memo dated 24.11.2016 of the 1st respondent.

Annexure A9 – Photocopy of the order dated 17.11.2016 in OA no. 749 of 2015 and connected cases (excluding pages 2 to 320 which contains the name and address of applicants 4 to 106).

RESPONDENTS' ANNEXURES

Annexure R1 – True copy of the judgment in Civil Appeal No. 90/2015 of the Supreme Court of India in Najithamol & others case.

Annexure R2 – True copy of judgment in OP (CAT) 327/2016 by Hon'ble High Court of Kerala in Indukala & others case.

Annexure R3 – True copy of Rule 13 of Swamy's Pension Compilation incorporating CCS Pension Rules.