

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00183/2018

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

M. Vikraman Nair, S/o. P. Mohanan Nair, aged 59 years,
 Postman, Nedumangad – 695 541, Trivandrum, residing at
 Padmavilasam, Poovathoor PO, Pazhakutty, Pin-695 561,
 Trivandrum District. **Applicant**

(By Advocate : Mr. M.R. Hariraj)

V e r s u s

1. Union of India, represented by the Secretary to Government of India, Department of Posts, Ministry of Communications, New Delhi-110 011.
2. Chief Postmaster General, Kerala Postal Circle, Thiruvananthapuram – 33.
3. Superintendent of Post Offices, Thiruvananthapuram Postal Division, Thiruvananthapuram-695 561. **Respondents**

(By Advocate : Mr. T.C. Krishna, Sr. PCGC)

This application having been heard on 25.09.2019 the Tribunal on 30.10.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant are as under:

“iv. to declare that Rule 6 of Gramin Dak Sevaks (Conduct and Employment) rule is ultra-vires and void and direct to respondents not implement the same against the applicants;

v. to declare that the applicant is entitled to have his pension and pensionary benefits fixed, drawn and disbursed reckoning their service as GDS and service in APS 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. Direct the respondents to regularise the applicant as per Annexure A6 with effect from 27.3.1991 and reckon his service under the Army Postal Service as qualifying for pension and grant the applicant pension under CCS (Pension) Rules and refund any amount collected from applicant as pension contribution with interest @ 12% per annum.

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

viii. Grant the costs of this Original Application.”

2. The applicant is aggrieved by the refusal of the respondents to grant him the benefits of pension under CCS (Pension) Rules, 1972. He is being treated as fresh entrant in service after 1.1.2004 and for that reason he is refused the benefits of the pension rules. He is being treated by the respondents as covered under the New Pension Scheme without reckoning his GDS service and APS service as qualifying. The applicant commenced service as ED agent on 21.1.1980. He was appointed as Group-D in 1991 for deputation to APS. The applicant was enrolled in Army Postal Service on 27.3.1991 and continued his deputation till 31.1.2005. Therefore, he became a holder of civil post and also in a civil pensionable service from 1991. During this period GPF of the applicant was also deducted. Later after qualifying in the competitive examination for appointment as Postman applicant was appointed as Postman w.e.f. 12.6.2004. The respondents treated the applicant as personnel who entered service after 1.1.2004 and were kept under the New Pension Scheme applicable to such employees.

The contributions were deducted from the applicant's pay. The applicant requested the respondents to fix his pension under the CCS (Pension) Rules, 1972 and grant him pensionary benefits accordingly. However, the respondents have not yet decided the matter. Hence, this OA.

3. Notices were issued to the respondents. They entered appearance through Shri T.C. Krishna, Sr. PCGC who filed a reply statement refuting the contentions made by the applicant in the OA. They submitted that in view of the apex court judgment dated 12.8.2016 in Civil Appeal No. 90 of 2015 – ***Y. Najithamol & Ors. v. Soumya S.D. & Ors.***, the selection of extra departmental agents or Gramin Dak Sevaks to the post of Postman under the Recruitment Rules is only by way of direct recruitment and not by way of promotion. Respondents prayed for dismissing the OA.

4. Heard Shri M.R. Hariraj, learned counsel appearing for the applicant and Mr. T.C. Krishna, Sr. PCGC, learned counsel appearing for the respondents. Perused the record.

5. In view of the apex court judgment in ***Y. Najithamol's*** case (supra) that the selection of extra departmental agents or Gramin Dak Sevaks to the post of Postman under the Recruitment Rules is only by way of direct recruitment and not by way of promotion, we find that the relief Nos. (iv) and (v) prayed by the applicant cannot be granted and hence it is rejected.

6. However, as regards the relief No. (vi), when the matter was taken up for hearing on 25.09.2019 learned counsel appearing for the respondents filed a counsel statement on behalf of the respondents. Paragraph 2 of the same reads as under:

“2. The respondents have filed a reply statement and an additional reply statement in the above case. During the pendency of the above Original Application, the competent authority has approved for regularisation of service of applicant and other similarly situated persons who were sent for Army Postal Service (APS) on deputation after giving them one day technical appointment as Group D. In pursuance of the Directorate's order, the Circle office directed the Divisional heads to issue orders regularising the appointments of officials under their control. In continuation of the said order, the Superintendent of Post Offices, Thiruvananthapuram South Division on 27.8.2019 has issued orders regularising the service of the applicant with effect from 27.3.1991. A true copy of the said order is attached herewith and marked as Annexure R9.”

7. Therefore, in view of Annexure R9 order No. B1E/APS, dated 27.8.2019, we find that the respondents have taken a decision to regularise the applicant in the cadre w.e.f. 27.3.1991. Accordingly, we direct the respondents to calculate the pension and pensionary benefits of the applicant under CCS (Pension) Rules, 1972 reckoning his service w.e.f. 27.3.1991. The respondents are further directed to adjust the NPS contribution made by the applicant, if any, towards his GPF subscription and to pay interest on all retirement benefits including pension and contribution made to NPS at the rate prevailing in General Provident Fund. The aforesaid exercise shall be completed by the respondents within a period of four months from the date of receipt of a copy of this order.

8. The Original Application is disposed of as above. There shall be no order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/00183/2018**APPLICANT'S ANNEXURES**

Annexure A1- True copy of service particulars of the applicant in the Department of Posts.

Annexure A2- True copy of half yearly statement of accounts of applicant issued from the Accounts Section of APS.

Annexure A3- True copy of the final order dated 7.3.2014 in OA No. 156/2014 of this Honourable Tribunal.

Annexure A4- True copy of the representation dated March, 2014 submitted by the applicant to the 2nd respondent.

Annexure A5- True copy of the memo No. Rectt./12-2/2002/OA dated 30.5.2014 issued by the 2nd respondent.

Annexure A6- True copy of the letter No. AP/PEN/GEN/2014 dated 20.8.2014 issued by the Accounts Officer office of the 2nd respondent.

Annexure A7- True copy of the letter F. No. 47-01/2003-SPB-I dated 12.6.2017.

Annexure A8- True copy of the final order dated 24.8.2017 in OA No. 281/2014 of this Honourable Tribunal.

RESPONDENTS' ANNEXURES

Annexure R1- True copy of judgment of Supreme Court in SLP No. 17035-36 of 2013.

Annexure R2- True copy of the order of Central Administrative Tribunal dated 18.3.2014 in OA No. 1192/2012.

Annexure R3- True copy of the order of Central Administrative Tribunal dated 5.8.2014 in OA No. 151/2013.

Annexure R4- True copy of notification of Ministry of Home Affairs SRO 609 dated 28.2.1957.

Annexure R5- True copy of judgment dated 8.3.2019 in WP 5305/2018.

Annexure R6- True copy of order dated 28.1.2019 in OA 179/2016.

Annexure R7- True copy of common order dated 28.2.2019 in OA 29/2017 & connected cases.

Annexure R8- True copy of judgment dated 15.3.2019 of the Hon'ble Apex Court in CA No. 3150/2019.

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