

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00734/2018

Monday, this the 4th day of November, 2019

CORAM:

Hon'ble Mr. Ashish Kalia, Judicial Member

1. Venugopalan Nair, Aged 67 years, S/o. Krishna Pillai, RR Nivas, Palavila, Pangode, Venganoor PO, Thiruvananthapuam – 695 523. Applicants
2. B. Janardhanan Nair, S/o. M. Bhargavan, Aged 66 years, Lekshmi Bhavan, Peyad, Peyad PO, Vilappil, Thiruvananthapuram – 695 523.
3. M. Vijayakumar, aged 66 years, S/o. Madhavan Pillai, Anjali Bhavan, Chowallur, Vilappil, Thiruvananthapuram.

(By Advocate : Mr. B. Harish Kumar)

V e r s u s

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. Thomas Mathew Nellimoottil, Sr. PCGC)

This application having been heard on 30.10.2019 the Tribunal on 04.11.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicants are as under:

“(i) Call for the records leading to Annexures A4 to A6 and quash the same.

(ii) Declare that the inaction of the respondents to sanction pension to the applicants is illegal and that the applicants are entitled to pension in the light of the law espoused in Annexure A7 order in OA No. 35/2011.

(iii) Direct the respondents to pay pension to the applicants and also to release the arrears of pension.

(iv) Issue such other further reliefs as are necessary in the interest of justice.”

2. The applicants are aggrieved by the refusal of the respondents to deny them pension on the ground that Rule 6 of of GDS (Conduct & Engagement) Rules, 2011 interdicts grant of pension to them. The first applicant worked from 4.7.1978 as GDS in Thiruvananthapuram South Post Office, Trivandrum and he was discharged from service on attaining the age of 65 years on 22.5.2016. He had served for 37 years and 11 months. The second applicant served as GDS from 1.10.1982 and he was discharged from service on 1.8.2017. 2nd applicant served for 34 years and 10 months. The 3rd applicant served as a Gramin Dak Sevak, Mail Deliverer from 1.7.1984 and was discharged from service on 1.5.2017. He worked for 32 years and 10 months. They preferred representations for pension but there was no response from the respondents. In a similar case in OA No. 35 of 2011 similar relief of the applicant therein was considered by this Tribunal and the OA was disposed of. However, since the applicants have been denied the benefits that was granted to the applicant in OA No. 35 of 2011, the present Original Application has been filed.

3. Notices were issued to the respondents. They entered appearance through Shri Thomas Mathew Nellimoottil, Sr. PCGC who filed a reply statement refuting the contentions made by the applicants in the OA. They submitted that the first applicant rendered service as GDSMD for 37 years and 11 months, second applicant as GDSMD for 34 years and 10 months and the third applicant as GDSMD for 32 years and 10 months. Applicants were discharged from engagement on attaining the age of 65 years. Rule 6 of GDS (Conduct and Engagement) Rules, 2011 clearly stipulates that GDS are not entitled for any pension. Moreover, the apex court in SLP No. 17035-36 of 2013 (Civil Appeal No. 13675-76 of 2015) held that the GDS are governed by a separate set of rules and the provisions of the rules governing the GDS stipulate that GDS are not entitled to pension. Further with regard to the contention of the applicants regarding a similar case in OA No. 35 of 2011 the respondents submitted that the said contention is misleading and not correct. OA No. 35 of 2011 is no way connected with the present OA as the applicant therein was aggrieved, over the rejection of his claim for pension under the CCS (Pension) Rules, 1972 on the ground that he has not completed full 10 years of service which is the minimum qualifying service for pension, though he had rendered 23 years of service as EDA followed by regular service of 9 years 7 months and 22 days of service as Group-D employee. The facts of the present case are not similar to the facts in OA No. 35 of 2011. Therefore, the applicants cannot claim the benefits so granted in OA No. 35 of 2011 as they are not similarly situated. The applicants have no regular service as Group-D. Further the apex court in SLP No. 17035-36 of 2013 (Civil Appeal No. 13675-76 of

2015) upheld the stand of the respondents that the GDS are not governed by the provisions pertaining to casual labourers and are not entitled to pension but would be entitled to ex-gratia gratuity and such of the payments as may be decided by the Government from time to time. The respondents also submitted that the decisions relied on by the applicants are not applicable to the facts and circumstances of the present case. Hence, they pray for dismissing the OA.

4. Heard Shri B. Harish Kumar, learned counsel appearing for the applicant and Mr. Thomas Mathew Nellimoottil, Sr. PCGC learned counsel appearing for the respondents. Perused the record.

5. The short point to be considered in the present case is whether the applicants are entitled for pension under CCS (Pension) Rules, 1972 ?

6. The admitted position of the case are that the first applicant worked from 4.7.1978 as GDS and was discharged from service on attaining the age of 65 years on 22.5.2016. He had served for 37 years and 11 months with the Department. The second applicant also served as GDS from 1.10.1982. He was discharged from service on attaining the age of 65 years on 1.8.2017 and served for 34 years and 10 months. Third applicant served as GDS from 1.7.1984 and discharged from service on 1.5.2017 on attaining the age of 65 years. He had served for 32 years and 10 months. The rule applicable to the applicants are Department of Posts, Gramin Dak Sevaks (Conduct & Engagement) Rules, 2011. Rule 6 of the above Rules clearly stipulates as

under:

“6. Pension

The Sevaks shall not be entitled to any pension. However, they shall be entitled to ex-gratia gratuity or any other payment as may be decided by the Government from time to time.”

Thus, Rule 6 clearly bars the GDS from any pension and they are only entitled to ex-gratia gratuity or any other payment as may be decided by the Government from time to time. We find that the apex court in SLP No. 17035-36 of 2013 (Civil Appeal No. 13675-76 of 2015) held that the GDS are governed by a separate set of rules and the provisions of the rules governing the GDS stipulate that GDS are not entitled to pension. Further in the same judgment the stand of the respondents was upheld that the GDS are not governed by the provisions pertaining to casual labourers. Hence, we do not find any reason to interfere in the matter.

7. As regards the similar matters relied upon by the applicants in OA No. 35 of 2011 we find that OA No. 35 of 2011 is no way connected with the present case of the applicants, as the applicant therein was aggrieved over the rejection of his claim for pension under the CCS (Pension) Rules, 1972 on the ground that he has not completed full 10 years of service which is the minimum qualifying service for pension, though he had rendered 23 years of service as EDA followed by regular service of 9 years 7 months and 22 days of service as Group-D employee. In the present case the applicants have no regular service as Group D. Therefore, the facts of the present case are not similar to the facts in OA No. 35 of 2011. Further in OA No. 1264/2001 decided by the Madras Bench of the Tribunal, the issue was

regarding the inaction on the part of the respondents to release the applicant therein the minimum pension by granting notional service in the cadre of Postman with effect from the date of occurrence of vacancy or in the alternative by granting weightage to the GDS service as he is short of 10 years service by 9 months for claiming minimum pension. The applicants in the present case are only GDS who rendered their entire service as GDS and were discharged from engagement on attaining the age of 65 years as GDS itself. Therefore, this case is also not applicable to the applicants' case.

8. The Hon'ble apex court 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."

9. In view of the above, this Tribunal do not find any merit in the OA.

Accordingly, the OA is dismissed. No order as to costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

“SA”

Original Application No. 180/00734/2018**APPLICANTS' ANNEXURES**

Annexure A1 – True copy of certificate issued to the 1st applicant dated 22.5.2016.

Annexure A2 – True copy of certificate issued by the 2nd respondent dated 1.8.2017.

Annexure A3 – True copy of the certificate issued to the 3rd respondent by the 2nd respondent dated 1.5.2017.

Annexure A4 – True copy of the certificate issued by the 2nd respondent to the 1st applicant dated 25.7.2018.

Annexure A5 – True copy of the certificate issued by the 2nd respondent to the 2nd applicant dated 25.7.2018.

Annexure A6 – True copy of the certificate issued to the 3rd applicant by the 2nd respondent dated 25.9.2017.

Annexure A7 – True copy of judgment in OA No. 35/2011 of this Hon'ble Tribunal dated 30.5.2011.

RESPONDENTS' ANNEXURES

Annexure R1 – True copy of the judgment of Hon'ble Apex Court in SLP No. 17035-36 of 2013 (Civil Appeal No. 13675-76 of 2015).

Annexure R2 – True copy of the order of the Hon'ble Tribunal in OA No. 1191/2012.

Annexure R3 – True copy of the order of this Hon'ble Tribunal in OA No. 151/2013.

Annexure R4 – True copy of MHA notification No. SRO 609 dated 28.2.1957.

Annexure R5 – True copy of the judgment in SLP © No. 7627/2019.

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

Annexure R7 – True copy of judgment dated 8.3.2019 in WP 5305/2018.

Annexure R8 – True copy of common order dated 28.2.2019 in OA 29/2017 & connected cases.

Annexure R9— True copy of judgment dated 15.3.2019 of the Hon'ble Apex Court in CA No. 3150/2019.

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