

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00044/2018
Original Application No. 180/00209/2018

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

1. Original Application No. 180/00044/2018 -

A. Janardhanan, aged 62 years, S/o. Late V.M. Gopalan Nambiar, retired Multi-tasking Staff, SRO, RMS, Kanur, residing at Jyothis, Kara-Peravoor (PO), Mattannur, Kannur – 670 702. **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, New Delhi – 110 011.
2. The Chief Post Master General, Kerala Circle, Thiruvananthapuram – 695 001.
3. The Post Master General, Northern Region, Kerala Circle, Calicut – 673 032.
4. The Superintendent, RMS, CT Division, Calicut – 673 032.
5. The Sub Record Officer, RMS, CT Division, Calicut – 673 032. **Respondents**

(By Advocate : Mr. Sinu G. Nath, ACGSC)

2. Original Application No. 180/00209/2018 -

E. Valsala, W/o. Thankappan M., aged 59 years, working as Postman Neyyattinkara, residing at Punnavila, Pappanam, Ambalathinkala PO, Kattakkada-695 572, Thiruvananthapuram. **Applicant**

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

V e r s u s

1. Union of India, represented by the Secretary,
Department of Posts, Ministry of Communication,
New Delhi – 110 011.
2. Chief Post Master General, Kerala Circle,
Thiruvananthapuram – 695 033.
3. Superintendent of Posts, Thiruvananthapuram South Division,
Thiruvananthapuram – 695 036. **Respondents**

(By Advocate : Mr. N. Anilkumar, SCGSC)

These applications having been heard on 25.09.2019 the Tribunal on 30.10.2019 delivered the following:

O R D E R

Hon'ble Mr. Ashish Kalia, Judicial Member –

OAs Nos. 180-44 and 209 of 2018 have common points of fact and law involved and hence are being disposed of through this common order.

2. The relief claimed by the applicant in OA No. 180-44-2018 are as under:

- “i. 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 applicant;
- ii. to call for the records leading to Annexure A3 and A6 and quash the same;
- iii. to declare that the applicant is entitled to be granted appointment as Group-D with effect from 2002 with all consequential benefits and to direct the respondents to grant such appointment to applicant with effect from 2002 with all consequential benefits.
- iv. to declare that the applicant is entitled to have his pay, pension and pensionary benefits fixed, drawn and disbursed reckoning his service as Extra Departmental Agent/GDS as qualifying service with all constitutional benefits, and direct the respondents to fix, draw and disburse pension and pensionary benefits of the applicant reckoning the ED/GDS service as qualifying with all consequential benefits.

v. to declare that the applicant is entitled to have his pension and pensionary benefits fixed, drawn and disburse reckoning his service from the date of notional appointment as Group-D with all consequential benefits and to direct the respondents to fix, draw and disburse the pay, pension and pensionary benefits of the applicant from his notional date of appointment as Group-D with all consequential benefits.

vi. to direct the respondents to draw and disburse monetary benefits due to the applicant based on the declarations and direction granted by this Honourable Tribunal with interest at the rate of 12% per annum.

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

viii. To grant the costs of this Original Application.”

3. The relief claimed by the applicant in OA No. 180-209-2018 are as under:

“i. to call for the records leading to Annexure A3 and quash the same to the extent it refuses the benefits of notional appointment as Postman from 2006 to the applicant;

ii. To direct respondents to grant fixation of pay in Postman cadre for applicant with effect from date of her notional appointment in that cadre with all consequential benefits including areas of pay and allowances with interest @12% per annum.

iii. to declare that the applicant is entitled to have her pension and pensionary benefits fixed, drawn and disbursed reckoning her service as GDS as qualifying and that she is entitled to have her 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 applicant 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 applicant any pension contribution recovered from her with interest of 12% per annum.

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

vi. To grant the costs of this Original Application.”

4. For the sake of convenience, the pleadings, documents and records in OA No. 180/44/2018 are referred to in this common order. The applicant is

aggrieved by the refusal of the respondents to fix his pay notionally reckoning his service as Group-D from the date of his notional appointment. He is also aggrieved by the refusal of the respondents to fix, draw and disburse monthly pension due to him reckoning his service from notional appointment as qualifying for pension under CCS (Pension) Rules and that Rule 6 of GDS (Conduct & Engagement) Rules, 1972 is ultra vires.

5. The applicant in OA No. 180-44-2018 commenced service as Gramin Dak Sevak on 15.4.1985. He was appointed as Group D with effect from 1.1.2006. Though originally severance amount was granted reckoning Gramin Dak Sevak service up to 2010, the severance amount from 2006 to 2010 was later recovered. The bonus paid as Gramin Dak Sevaks for 2006-2007 and 2007-2008 were also recovered. However, the pay in the Group-D cadre from 2006 was not paid to the applicant. The pay of the applicant was fixed as if he entered service on 31.7.2010 without considering notional service from 2006. The applicant submitted a representation dated 21.8.2012. The said representation was rejected by the respondents stating that since the promotion was notional appointment he is not entitled for any monetary benefits. The applicant retired from service on superannuation w.e.f. 31.10.2015. Reckoning his service from 1.1.2006 the applicant has 9 years, 9 months and 30 days qualifying service on the date of his retirement. 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 as qualifying. The applicants have relied on the

order passed by the Principal Bench of the Tribunal in OA No. 749 of 2017 and connected wherein it was directed that the service of Gramin Dak Sevak on absorption as regular staff will be taken in to consideration for pension. However, the applicant was not granted the benefits of OA No. 749 of 2017. Hence, this OA.

6. Notices were issued to the respondents. They entered appearance through Shri Sinu G. Nath, ACGSC in OA No. 180-44-2018 and Shri N. Anilkumar, SCGSC in OA No. 180-209-2018 who filed reply statements refuting the contentions made by the applicant in the OA. They submitted that in compliance of the common order in OA No. 312 of 2008 and connected cases applicant in OA No. 180-44-2018 was given retrospective appointment w.e.f. the date of occurrence of vacancy arising out of the voluntary retirement of Sri N. Unnikrishnan on 1.1.2006 vide Annexure A1. He was informed that his pay and allowances will be drawn and paid only from the date of actual date of his joining the post. Since the applicants were appointed as Group-D after 1.1.2004 they were included in New Pension Scheme. The respondents further 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 Group-D/MTS under the Recruitment Rules is only by way of direct recruitment and not by way of promotion. GDS does not form part of the regular service of the Postal Department. The applicant in OA No. 180-44-2018 was sanctioned an amount of Rs. 48,964/- as retirement gratuity for the net qualifying service. The Respondents

prayed for dismissing the OAs.

7. Heard Shri M.R. Hariraj, learned counsel appearing for the applicant, Mr. Sinu G. Nath, ACGSC, learned counsel appearing for the respondents in OA No. 180-44-2018 and Mr. N. Anilkumar, SCGSC, learned counsel for the respondents in OA No. 180-209-2018. Perused the record.

8. In the present case we find that the respondents in compliance of the common order in OA No. 312 of 2008 and connected cases appointed the applicant in OA No. 180-44-2018 with retrospective effect from the date of occurrence of vacancy arising out of the voluntary retirement of Sri N. Unnikrishnan on 1.1.2006 vide Annexure A1. The applicant in OA No. 180-209-2018 was appointed as Postman in the shortfall vacancy of 2006 under seniority quota. In the appointment orders as Postman it was informed to the applicants that their pay and allowances will be drawn and paid only from the date of actual date of joining the posts. We further find that since the applicants were appointed as Group-D only after 1.1.2004 they were included in New Pension Scheme. The applicant in OA No. 180-44-2018 was sanctioned retirement gratuity of Rs. 48,964/- for the net qualifying service. Moreover, in view of the apex court judgment in *Y. Najithamol's* case (supra) 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. Further 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. Also in a similar case in OA No. 180-29-2017 and connected cases we have already held that the prayer of the applicants for placing them in the category of Postman/Group-D/MTS notionally with effect from the date of occurrence of vacancy so as to include them in the statutory pension scheme cannot be allowed as the applicants therein would be granted all the benefits of the posts of Group-D/Postman/MTS only from the date of joining the post. The applicants are inducted for the first time in regular civil posts from the date of joining the posts. They are born in the cadre only from the date of joining the post. Therefore, we do not find any illegality in the action of the respondents. As the applicants were appointed after 1.1.2004 in the regular cadre they are governed by the New Pension Scheme. Therefore, we direct the respondents to grant the applicants all benefits that flow under the New Pension Scheme.

9. With the above direction, the Original Applications are disposed of. No order as to costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

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

“SA”

Original Application No. 180/00044/2018

APPLICANT'S ANNEXURES

Annexure A1 – True copy of memo No. BII/Rectt/MM/02 dated 30.7.2010.

Annexure A2 – True copy of the representation dated 21.8.2012.

Annexure A3 – True copy of the order No. B/ED/GEN/XII dated 6.12.2012.

Annexure A4 – True copy of the representation dated 25.7.2015.

Annexure A5 – True copy of the representation dated 26.7.2016.

Annexure A6 – True copy of the order No. B11/MTS/GNL/15 dated 5.7.2017.

RESPONDENTS' ANNEXURES

Annexure R2(a) – True copy of letter dated 5.12.2011 issued by respondent No. 2.

Annexure R2(b) – True copy of office letter No. B/GDS/Sev. Amount dated 11.1.2012 to recover the excess paid severance amount.

Annexure R2(c) – True copy of letter No. EST/31-4/10-11 dated 13.10.2011.

Annexure R2(d) – True copy order No. 25014/14/2001-AIS(II) dated 8.9.2009.

Annexure R2(e) – True copy of the judgment SLP (Civil) No. 9558/2015 in OP (CAT) No. 4709/2013 dated 3.7.2015.

Annexure R2(f) – Ministry of Communications & IT letter No. F 66-24/2014-SPB-I dated 28.12.2016.

Annexure R2(g) – True copy of order in OA No. 249/17 dated 16.3.2018.

Annexure R2(h) – True copy of order in OA No. 993/15 dated 22.12.2017.

Annexure R2(i) – True copy of Rule 13 of Swamy Pension Compilation incorporating CCS Pension Rules.

Annexure R2(j) – True copy of the recruitment rules for appointment of MTS.

Annexure R2(k)— True copy of scheme vide GI DOP Lr. No. 45-95/87-SPB-I dated 12.4.1991.

Annexure R2(l)—True copy of Directorate letter Directorate letter No. 1.7/2016-SPB-5 dated 22.7.2016.

Annexure R2(m)—True extract of Rule 3-A of GDS (Conduct and Engagement) Rules.

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APPLICANT'S ANNEXURES

Annexure A1— True copy of the memo No. B3/Rectt/P'man/2010 dated 3.11.2010.

Annexure A2— True copy of final order dated 23.3.2016 in 593/2013.

Annexure A3— True copy of order No. B3/Rectt/Postman/2010 dated 27.10.2016.

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. 1191/2012.

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.