

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH: HYDERABAD**

**Original Application No.21/896/2015**

**Date of Order: 30.08.2019**

Between:

1. S. Ramu Naik,  
S/o S. Somala Naik  
Aged about 39 years,  
Occ: Postal Assistant  
O/o General Post Office,  
Hyderabad-500 001.
2. M. Chandranna,  
S/o M. Munaiah  
Aged about 51 years,  
Occ: Postal Assistant  
O/o Kurnool Head Post Office,  
Kurnool.
3. D. Satyanarayana Sharma  
S/o D.V.Narayana Sharma  
Aged about 50 Years,  
Occ: Postman  
O/o Kurnool Head Post Office,  
Kurnool.
4. B. Ranga Swamy,  
S/o B. Peravalaiah  
Aged about 62 years,  
Occ: Postman (Retired)  
O/o Yemmiganur Sub Post Office,  
Kurnool  
R/o Yemmiganur,  
Kurnool District.

.... Applicants

AND

1. The Union of India rep by its Secretary  
Department of Posts, Dak Bhavan  
Sansad Marg, New Delhi-1.
2. The Chief Postmaster General  
A.P.Circle, Dak Sadan, Hyderabad-1
3. The Postmaster General  
Hyderabad Region, Hyderabad-1
4. The Postmaster General  
Kurnool Region, Kurnool.
5. The Superintendent of Post Offices  
Kurnool Division, Kurnool. ... Respondents

Counsel for the Applicant ... Dr. A. Raghu Kumar  
Counsel for the Respondents ... Mr. A. Surender Reddy, Addl. CGSC

**CORAM:**

**Hon'ble Mr. B.V. Sudhakar, Member (Admn.)**

**ORDER**

2. The OA is filed challenging the inaction of the respondents in bringing the applicants under Old Pension Scheme (OPS).
3. Brief facts of the case are that the applicants joined the respondents organization as Gramin Dak Sewaks. Thereafter, applicants appeared for the examination held for the post of Postman. They were all selected as Postman vide order dated 19.05.2006 of the respondents. Later, 1<sup>st</sup> and 2<sup>nd</sup> applicants have further promoted as Postal Assistants. The 3<sup>rd</sup> applicant is

working as postman and 4<sup>th</sup> applicant was retired on 31.07.2013 while working as Mail Overseer. Applicants were selected against the Postman vacancies available as on 30.6.2002, however, their results were declared after 4 years. The New Pension Scheme has come into effect from 01.01.2004. The respondents have brought the applicants under the ambit of New Pension Scheme. Applicants represented on 07.04.2015, 03.04.2015 requesting to bring them under Old Pension Scheme since they were selected against the vacancies of 2002. However, since there is no relief granted, OA has been filed.

4. The contentions of the applicants are that they were selected against the postman vacancies of 2002. Respondents have delayed issuing appointment orders only in 2006, i.e., after a delay of 4 years. The New Pension Scheme came into effect in 2004. Had the appointment orders been issued in 2002 itself, applicants would have been covered under Old Pension Scheme. The delay was on account of the respondents and, therefore, applicants should not be penalized. Applicants cited the Judgement of the Hon'ble Ernakulam Bench of this Tribunal and certain judgments of the Hon'ble Apex Court in support of their assertions.

5. Respondents in the reply statement have stated that respondent No.4 has directed respondent No.5 to announce the results of the Postman and

Mail Guard examination held on 30.06.2002 vide letter dated 17.03.2006. Accordingly, they were announced on 29.3.2006 and the posting orders were issued on 19.05.2006. The New Pension Scheme was brought into effect from 01.01.2004 and, therefore, the applicants had to be covered by the New Pension Scheme since they were selected in the year 2006. Respondents confirmed that the applicants appeared for the Postmen examination for the vacancies of the year 2002 vide Notification dated 08.04.2002. Later, the 1<sup>st</sup> and 2<sup>nd</sup> applicants were promoted as Postal Assistants, while the 3<sup>rd</sup> applicant working as Postman and 4<sup>th</sup> applicant retired on 31.07.2013 while working as Mail Overseer on attaining the age of superannuation. Respondents intimate vide letter dated 23.07.2002 (Annexure A2 of the additional reply), as under:

“The Govt. of India has announced the optimization policy in direct recruitment in OM No.2/8/2001/PIC Dt. 16-5-01 according to which only one third of the vacancies are to be filled up and that too after clearance by the screening committee at Directorate. The Postal Directorate has called for annual direct recruitment plan for all cadres inclusive of postmen and Gr.D. The matter has been examined and the filling up of Gr. D posts from GDS officials and 50% postman vacancies through GDS cannot be treated promotional avenue and has to be taken as direct recruitment only and not to fill up these vacancies until and unless the annual direct recruitment plan for the year 2002 is approved by the screening committee.”

(Emphasis added)

The respondents were thus under orders as to not to fill up the Group D post and 50% Postman vacancies for the year 2002. Only in 2006, orders were issued to announce the results of the Postmen and Mail Guard examination held in 2002. Consequently, delay in issuing the appointment orders was due to compelling administrative reasons.

6. (I) Before the matter is adjudicated upon, it is to be adduced that this Tribunal, vide docket order dated 6.3.2017 in the instant OA, has directed that the case may be listed before Division Bench as the matter pertains to the Recruitment of the applicants. The matter was heard after being mentioned by the learned counsel for the applicants and argued by the respondents and both of them concurred that as the matter pertains to pension it can be heard by the Single Bench. Accordingly, the matter was heard and perused the pleadings on record.

(II) In addition, before proceeding with the merits of the case, it would be appropriate to respond to the preliminary objection of the respondents that there is a delay in filing the OA and hence, it is time barred. However, since the issue pertains to pension, which is a continuous cause of action, the question of delay does not arise. Hence, contention of the respondents, as regards delay, is untenable.

7. (I) Applicants appeared for the examination of Postman in 2002 and were issued appointment orders in 2006 though vacancies were available in 2002. Respondents state that due to some internal communication, there was a delay in issuing the appointment orders. In the meanwhile, New Pension Scheme, was brought into effect from 01.01.2004. Hence, applicants were brought under the New Pension Scheme. Applicants contend that if appointments orders were issued in 2002, they would have been covered by the Old Pension Scheme. The grievance of the applicants is genuine since it was the mistake of the respondents which cannot recoil on the applicants. Applicants should not suffer for the delay caused by the respondents in issuing the appointment orders. Thus, for the mistake of the respondents, applicants should not be penalized as observed by Hon'ble Apex Court in catena of the Judgements referred to hereunder:

(a) **A.K. Lakshmipathy v. Rai Saheb Pannalal H. Lahoti Charitable Trust**, (2010) 1 SCC 287

“they cannot be allowed to take advantage of their own mistake and conveniently pass on the blame to the respondents.”

(b) **Rekha Mukherjee v. Ashis Kumar Das**, (2005) 3 SCC 427 :

“36. The respondents herein cannot take advantage of their own mistake.”

(c) The Apex Court in a recent case decided on 14.12.2007 (**Union of India vs. Sadhana Khanna** (C.A. No. 8208/01) held that the mistake of the department cannot recoil on employees. In yet another recent case of **M.V. Thimmaiah vs. UPSC** (C.A. No. 5883-5991 of 2007 decided on 13.12.2007), it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer.

(d) It has been held in the case of **Nirmal Chandra Bhattacharjee v. Union of India**, 1991 Supp (2) SCC 363 wherein the Apex Court has held “The mistake or delay on the part of the department should not be permitted to recoil on the appellants.”

(IV) Thus, as per the above judgements of the Hon'ble Apex Court, applicants should not be penalized by bringing them under National Pension Scheme instead of Old Pension Scheme.

(V) Besides, a similar matter fell for consideration before the Hon'ble Ernakulam Bench of this Tribunal in OA 20 of 2015, dated 15.2.2016, wherein reliance has been placed on a similar OA No.724/2012, decided on 28.06.2013 by the Ernakulam Bench of this Tribunal, and observed as under:

“4. ....”7. .... As such, on account of the failure on the part of the Department in holding the examination the applicants should not be made to suffer. ....

9. In view of the above the O.A. is allowed. It is declared that the applicants are deemed to have been promoted from the date the vacancy arose and thus notional date of promotions is only for the purpose of reckoning the qualifying service for pension under the CCS (Pension) Rules, 1972. The respondents are directed to pass suitable orders in this regard and make necessary entry in the service book of the applicants indicating clearly the date of notional promotion and the purposes of reckoning the same.”

(VI) Besides, Hon’ble Kerala High Court has upheld the similar decision of the Hon’ble Ernakulam Bench of this Tribunal in OA 560 of 2012 by dismissing the Writ Petition No.OP(CAT) No.3084 of 2013 challenging the said order of the Tribunal in Writ Petition No. OP (CAT) of 3084 of 2013 (Z), observed as under:

“7. For the aforesaid reasons, we do not find any merit in this original petition. In the result, this original petition is dismissed.”

The respondents have confirmed in the Additional Reply, that the Writ Petition No.6555/2007 filed by the respondents on the issue was dismissed by the Hon’ble High Court of Kerala. Thus, the matter has attained finality, as neither of the counsel has brought to notice of the Tribunal that the matter is challenged in the higher forum and obtained any stay. Consequently, applicants are eligible for the relief sought for.



(VII) To sum up, the applicants have made out a case which succeeds. Action of the respondents is against the legal principle laid, cited supra. Consequently, the respondents are directed to consider as under:

- i) The applicants, who retired have to refund the benefits received under the New Pension Scheme on retirement with prevailing GPF rate of interest within one month of the receipt of a copy of this order, in order to enable the respondents to process the request of the applicants to be brought under Old Pension Scheme.
- ii) On refunding the amount as at (a), applicants shall be brought under Old Pension Scheme with all consequential benefits as per the extant rules and regulations of the respondents and in accordance with law.
- iii) Time allowed is 3 months, to implement the aforesaid directions, from the respective date of refund of the amount by the applicants under New Pension Scheme to the respondents.
- iv) There shall be no order as to costs.

With the above directions, the OA is allowed.

**(B.V. SUDHAKAR)**  
**MEMBER (ADMN.)**

Dated, the 30<sup>th</sup> day of August, 2019

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