

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

O.A. No.020/00705/2013

Date of CAV:06.01.2017.

Date of Order :13.01.2017.

Between :

Kosuri Veera Siva Gandhi, s/o late Venkateswarlu,
aged about 60 yrs, Retd. Postman, Avanigadda HO,
Krishna District, r/o 3rd Ward, near State Bank of India,
Avanigadda, Krishna District-521 121. ... Applicant

And

1. The Government of India, M/o Communications & Information Technology, Dept. Of Posts,
represented by its Secretary, Central Secretariat,
New Delhi.
2. The Chief Post Master General, A.P.Circle,
Dak Sadan, Abids, Hyderabad.
3. The Superintendent of Post Offices,
Machilipatnam Division, Machilipatnam,
Krishna District-521 001. ... Respondents

Counsel for the Applicant ... Mr.K.Ravi

Counsel for the Respondents ... Mr.T.Hanumantha Reddy,
Sr.PC for CG rep., by Mr.Jose Kollanoor

CORAM:

THE HON'BLE MR.K.N.SHRIVASTAVA, MEMBER (A)

ORDER

{ As per Hon'ble Mr.K.N.Shrivastava, Member (A) }

The applicant through the medium of this OA, filed under Section 19 of the Administrative Tribunals Act, 1985, has prayed for the following relief:

“To declare order of the Superintendent of Post Offices, Machilipatnam Division, Machilipatnam, bearing No.AC/KVS/2010, dated 26.11.2010, informing the applicant that he is not entitled for pension on the ground that his qualifying service is below ten years as illegal, arbitrary, violative of Articles 14 and 16 of the Constitution of India apart from violative of Central Civil Services (Pension) Rules and consequently declare that the applicant is entitled for pension and other retirement benefits and pass such other order or orders as this Tribunal deems fit and proper in the circumstances of the case.”

2. The brief facts of this case are as under:

The applicant was initially appointed as Extra Departmental Delivery Agent/Mail Carrier (EDDA/MC) on 14.01.1980 in the Postal Department. The said post is now rechristened as Gramin Dak Sevaks (GDS). When the Postal Department conducted the examination for promoting GDS to the post of Postman in the year 2001, the applicant participated in the said selection process and was selected. However, he was given appointment as Postman in the year 2004, vide respondent no.3 memo No.B1/PM/Exam/2000, dated 10.02.2004 (Annexure.A-III). The applicant retired from the said post of Postman on 31.07.2010. He applied for sanction of pension, but his application, vide impugned Annexure.A-I letter dated 26.11.2010, was rejected on the ground that the applicant had not put in a minimum of 10 years of qualifying service

for becoming eligible for pension. Aggrieved by the impugned Annexure A-I communication, the applicant has filed the instant OA.

3. Pursuant to the notice issued, the respondents entered appearance and filed their reply.

4. With the completion of pleadings, the case was taken up for final hearing on 06.01.2017. Shri K.Ravi, learned Counsel for the Applicant and Shri Jose Kollanoor, learned proxy counsel representing Mr.T.Hanumantha Reddy, learned standing counsel for the Respondents, argued the case.

5. The learned counsel for the Applicant, giving reference to the averments made in the OA and relying on certain judicial pronouncements, broadly submitted as under:

(i) As per Section 13 of the CCS (Pension) Rules, 1972, for the computation of qualifying years of service for the purpose of pension, the officiating or temporary service is also to be taken into account, if such officiating/temporary service is followed without interruption by substantive appointment in the same or another service or post. The applicant was appointed as GDS (erstwhile EDDA/MC) on 14.01.1980 and has continued in the same post continuously till he was appointed to the post of Postman in the year 2004. He finally retired from the post of Postman on 31.07.2010. This aspect has been further reinforced by the judgment of the Hon'ble AP High Court in the case of ***Devarakonda Sreelakshmi Vs. Government of AP & Another (2010 (2) ALD 165).***

(ii) Although, as per Rule 6 of the GDS (Conduct & Employment) Rules 2001, a GDS is not entitled for pension or gratuity and other benefits, but then the GDS rules are not rules in the strict sense of the term. They are basically in the nature of executive instructions. This position has also been admitted by the Central Government in the Rajya Sabha as could be seen from Annexure A-VII Press Note issued by the Press Information Bureau of the Central Government. Since the GDS Rules are not framed under Article 309 of the Constitution, and as such they are non-statutory in nature.

(iii) The Hon'ble Apex Court in the case of the ***Superintendent of Post Offices & Others Vs. P.Narayana Rao & Others (1977 (3) SCC 94)*** has held that GDS is a civil post. Hence, the service rendered by the applicant as GDS is to be considered for the purpose of grant of pension to him.

(iv) The executive instructions cannot over ride the statutory rules as has been held by the Hon'ble AP High Court in the case of ***Devarakonda Sreelakshmi Vs. Government of AP & Another (2010 (2) ALD 165)*** as well as by the Hon'ble Apex Court in the case of ***P.Ramkrishnaiah & Others Vs. Union of India & Another (1989 (2) SCC 541)***.

(v) The Principal Bench of this Tribunal in its order dated 17.11.2016 in O.A.No.749/2015 together with other OAs had declined the request of the applicants therein to consider the service as GDS for the purpose of pension. Since the legal positions were not brought to the notice of the Division Bench on the issue and hence the Tribunal had declined to grant the relief, vide its order dated 17.11.2016.

(vi) The Hon'ble Apex Court in the case of **D.S.Nakara & Others Vs. Union of India (1983 (1) SCC 305)** has observed as under:

“29.....

.....Thus, the pension payable to a Government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence, one can say that the most practical *raison d'être* for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

30. The discernible purpose thus underlying pension scheme or a statute introducing the pension scheme must inform interpretative process and accordingly it should receive a liberal construction and the Courts may not so interpret such statute as to render them inane.

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36. Having set out clearly the society which we propose to set up, the direction in which the State action must move, the welfare State which we propose to build up, the constitutional goal of setting up a socialist State and the assurance in the Directive Principles of State Policy especially of security in old age at least to those who have rendered useful service during their active years, it is indisputable, nor was it questioned, that pension as a retirement benefit is in consonance with and in furtherance of the goals of the Constitution. The goals for which pension is paid themselves give a fillip and push to the policy of setting up a welfare State because by pension the socialist goal of security of cradle to grave is assured at least when it is mostly needed and least available, namely, in the fall of life.”

(vii) Further, the Hon'ble AP High Court in the case of ***R.Rama Rao Vs Railway Board, New Delhi & Others (2015 (6) ALD 131 (FB))*** has observed as under:

“20. Thus, a cumulative reading of these provisions would make it clear that a temporary servant, even without being appointed permanently, is entitled to get all the benefits payable to a permanent servant and the temporary service rendered outside the Railway service also counts towards qualifying service.

21. In the above background, the provisions of Rule 20 need to be analyzed. According to this Rule, qualifying service of a Railway servant commences from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. The only requirement is such a temporary appointment should be continuous and without interruption followed by substantive appointment.

..... *Thus, the temporary service rendered by a temporary Railway servant, if it is followed by permanent appointment, and if there was no interruption between the temporary service and the permanent appointment, the entire temporary service qualifies as service for computation of pensionary benefits. The various provisions of the Rules discussed above make this very clear.*

27. *It is settled principle of law that executive instructions cannot supplant Rules framed under provisio to Article 309 of the Constitution, but can only supplement them (Public Service Commission, Uttarakhand v. Jagdish Chandra Singh Bora, (2014) 8 SCC 644, (Para 28). Instructions issued by Railways to govern service conditions of employees are nullity when the field is occupied by Rules notified in exercise of the power under the*

*proviso to Article 309 of the Constitution (**State of Punjab v. Anita (2015) 2 SCC 170 (Para 18**). Concerning the subject-matter, the 1993 Rules deal with all aspects and leave no ambiguity.*

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33. It is also settled principle of law that when a provision is beneficial to a large section of employees of the Railways, it would have to be interpreted liberally. As noted above, if temporary and casual service is not taken into account for computation of qualifying service, such employees would lose greater portion of their service for the purpose of getting retirement benefits though they have rendered long and uninterrupted service to the Railways without blemish and for no fault of them. Retirement benefit is not a bounty. It is paid in recognition of the hard and dedicated service rendered by the Railway servant. Thus, the relevant provisions have to be given a liberal interpretation, even if there is ambiguity.

34. As on the date of his retirement, he was a permanent employee and was a 'Railway Servant'. In accordance with the various provisions analysed above, he is entitled to count his full temporary service and 50% of his casual service towards determination of qualifying service. Thus, Rule 31 also applies to him."

6. Concluding his arguments, the learned counsel prayed for allowing the relief claimed by the applicant.

7. Per contra, Sri Jose Kollanoor, learned proxy counsel representing learned counsel for the respondents, broadly argued as under:

(i) The Scheme of EDDA now called GDS came to be implemented in the year 1854. At present, there are 2,69,000 GDS employees. They do not work for full 8 hours unlike a regular Government service. They are assigned duties for 5 hours a day.

(ii) Unlike for the regular post in the Government for the post of GDS, even a person of 18 years age can be considered for the post of GDS. The retirement age of GDS, unlike the regular Government servant, is 65 years and not 60. (Section 4 of the GDS Rules).

(iii) As per Section 14 (2) of the CCS (Pension) Rules, the service rendered in a non-pensionable establishment cannot be considered for the purpose of computation of qualifying years of service for pension.

(iv) Rule 6 and Rule 3 (a) of the GDS Rules make it clear that the GDS service is non-pensionable.

(v) The Hon'ble Apex Court in ***Union of India Vs. Registrar and & Another, vide its order dated 24.11.2015*** in Civil Appeal Nos.13675-13676 of 2015, has also confirmed that the GDS service is not pensionable.

(vi) The GDS may be a civil post, but it is not a civil service.

(vii) As per Appendix-VII of the Central Administrative Tribunal Rules of Practice, 1993, all service matters relating to GDS is required to be adjudicated by the Division Bench of the Tribunal but not by a Single Bench.

8. Concluding his arguments, the learned counsel prayed for dismissal of the OA.
9. Briefing reply to the arguments of the learned counsel for the respondents, Sri K.Ravi, learned counsel for the Applicant, stated that the applicant is before this Bench for pension, which falls entirely within the purview of the Single Bench and as such, this OA can be adjudicated by this Bench.
10. I have given my thoughtful consideration to the pleadings and arguments of learned counsel for the parties. A Division Bench of the Principal Bench of this Tribunal in O.A.No.749/2015 together with other OAs, vide order dated 17.11.2016, has held that the period of service rendered as GDS is not to be considered for the purpose of pension.
11. The main point argued by the learned counsel for the Applicant was that the GDS (Conduct & Employment) Rules, 2001 (for short “GDS Rules”) are not statutory rules and they are in the nature of executive instructions. Although this point has been mentioned in the grounds column of the OA, but the applicant has not specifically challenged the GDS Rules. As such, the case of the applicant for grant of pension has to be considered keeping in view the GDS Rules. Rule 6 of the GDS Rules clearly states that the service as a GDS is not pensionable. Hence, the applicant is embargoed from pleading for reckoning the GDS period of service for calculating his qualifying service for pension.
12. The Hon'ble Apex Court in **Superintendent of Post Offices & Others Vs P.Narayana Rao & Others** (supra) has held that the GDS is a civil post but has not held that the period of service as GDS can be considered for the purpose of computation of qualifying service for pension.

13. The Hon'ble Apex Court in **Union of India & Others Vs Kameshwar Prasad (1998 SCC (L&S) 447**, dealing with the issue of wages of GDS (EDDA) for the period when such GDS was under suspension has held that the principle of 'no work no pay' would apply to GDS. The relevant extract from the said judgment is reproduced below:

"The Tribunal was in error in directing payment of wages to the respondents for the period during which they were put off duty. The Rules lay down a complete code governing the service and conduct of Extra Departmental Agents including proceedings for taking disciplinary action against them for misconduct. The enabling provision in Rule 9 for putting an employee out off duty may be akin to the power of suspension in the sense that during the period he is put off duty, no work is assigned to the employee. But it does not mean that dehors the provisions in the Rules, an employee who is kept off duty would be entitled to allowances for the period he was kept off duty. Even in a case where government servant is placed under suspension during the pendency of departmental proceedings initiated against him, the payment of salary and allowances for the period of suspension after termination of the departmental proceedings is governed by the relevant rules. Here the matter is governed by Rule 9 (3) of the Rules which prescribes in express terms that an employee shall not be entitled to any allowance for the period for which he is kept off duty. The said provision does not envisage an exception in the matter of payment of allowances for the period the employee was kept off duty if the employee is exonerated in the departmental proceedings. The Government may however consider grant of ex gratia payment to the respondents if admissible under the departmental instructions."

14. From **Kameshwar Prasad (Supra)**, it is quite clear that the Hon'ble Apex Court has refrained from recognizing the GDS period of service as a regular employment.

15. The contention of the learned counsel for the Applicant that the GDS Rules are not statutory rules and they are in the nature of executive instructions is not the issue for consideration in the instant OA as the applicant had not challenged the GDS Rules in the OA.

16. The principles laid down by the Hon'ble Apex Court in the case of **P.Narayana Rao** (supra) are not applicable to the instant case as the facts and circumstances are entirely different. The Central Government has framed specific GDS Rules to govern the services of the GDS, which was not the case in **P.Narayana Rao**.

17. In the conspectus of discussions in the foregoing paras, I am of the view that the applicant has miserably failed in presenting his case for pension. Accordingly, the OA is dismissed. No order as to costs.

Sd/-

(K.N.SHRIVASTAVA)
MEMBER (A)

DSN/evr