



IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

W.P(C) No.4045/2019

1. UNION OF INDIA

REP. BY SECRETARY AND DIRECTOR
GENERAL DEPTT. OF POSTS, DAK BHAWAN,
SANSAD MARG, NEW DELHI-110001

2. THE CHIEF POST MASTER GENERAL
POSTAL CIRCLE NORTH EASTERN CIRCLE
SHILLONG-793001

3. THE CHIEF POST MASTER GENERAL
ASSAM POSTAL CIRCLE MEGHDOOT
BHAWAN GUWAHATI-78001 ASSAM

4. THE DIRECTOR OF POSTAL SERVICE
ASSAM POSTAL SERVICE MEGHDOOT
BHAWAN GUWAHATI-7810001 ASSAM

5. THE DIRECTOR OF POSTAL ACCOUNTS
SILPUKHURI NEAR GUWAHATI CLUB
GUWAHATI-781003 ASSAM

6. THE ASSISTANT CHIEF ACCOUNTS
OFFICER (PENSION) O/O DIRECTOR OF
ACCOUNTS (POSTAL) NORTH EAST POSTAL
CIRCLE SHILLONG-793001

7. THE SUPERINTENDENT OF POSTAL
OFFICES SIVSAGAR DIVISION DEPTT OF
POST JORHAT-785001

8. THE SENIOR/HEAD POST MASTER
GOLAGHAT HEAD POST OFFICE
GOLAGHAT-785621

.....Petitioners

-Versus-

1. ON THE DEATH OF KIRTI CHANDRA
GOGOI, HIS LEGAL HEIRS S/O LT. LILARAM
GOGOI, R/O VILL. KORDOIGURI, P.O.
KORDOIGURI, MOUZA-BARPATHAR, P.S.
BARPATHAR, PIN-785602, DIST.-
GOLAGHAT, ASSAM

1.1. SMT. LABANYA GOGOI KORDOIGURI
P.O. KORDOIGURI MOUZA- BARPATHAR P.S.
KORDOIGURI BARPATHAR PIN- 785602
DISTRICT- GOLAGHAT ASSAM

1.2. SMT. RUMI GOGOI SANGMAI
KORDOIGURI P.O. KORDOIGURI MOUZA-
BARPATHAR P.S. KORDOIGURI BARPATHAR
PIN- 785602 DISTRICT- GOLAGHAT ASSAM

1.3. SMT. JUN GOGOI SAIKIA KORDOIGURI
P.O. KORDOIGURI MOUZA- BARPATHAR P.S.
KORDOIGURI BARPATHAR PIN- 785602
DISTRICT- GOLAGHAT ASSAM

1.4. SMT. SARUJ KUMARI GOGOI HAZARIKA
KORDOIGURI P.O. KORDOIGURI MOUZA-
BARPATHAR

P.S. KORDOIGURI BARPATHAR PIN- 785602
DISTRICT- GOLAGHAT ASSAM

1.5. SMT. JINTI GOGOI KORDOIGURI P.O.
KORDOIGURI MOUZA- BARPATHAR P.S.
KORDOIGURI BARPATHAR PIN- 785602
DISTRICT- GOLAGHAT ASSAM

.....Respondents

2. WP(C) No 3159 of 2019

HIRENDRANATH NATH SON OF MADHA
RAM NATH VILLAGE- GOSAI SOLMARI P.O.
BORDOL DISTRICT- KAMRUP ASSAM.

-Versus-

1. THE UNION OF INDIA AND 4 ORS.
REPRESENTED BY THE SECRETARY TO THE
GOVT. OF INDIA DEPARTMENT OF POSTS
MINISTRY OF COMMUNICATION AND
INFORMATION TECHNOLOGY NEW DELHI-1.

2. THE CHIEF POSTMASTER GENERAL
ASSAM CIRCLE MEGHDOOT BHAWAN
PANBAZAR GUWAHATI- 781001 DISTRICT-
KAMRUP(METRO) ASSAM

3. THE DIRECTOR OF POSTAL SERVICES
(HQ AND MARKETING) ASSAM CIRCLE
MEGHDOOT BHAWAN PANBAZAR
GUWAHATI- 781001 DISTRICT-
KAMRUP(METRO) ASSAM.

4. THE SENIOR SUPERINTENDENT OF POST
OFFICES GUWAHATI DIVISION MEGHDOOT
BHAWAN PANBAZAR GUWAHATI- 781001
ASSAM.

5. THE CENTRAL ADMINISTRATIVE
TRIBUNAL REPRESENTED BY THE
REGISTRAR RAJGARH ROAD BHANGAGARH
GUWAHATI- 781005 DISTRICT-
KAMRUP(METRO) ASSAM.

- B E F O R E -

**HON'BLE THE CHIEF JUSTICE (ACTING) MR. N. KOTISWAR SINGH
HON'BLE MR. JUSTICE SOUMITRA SAIKIA**

<u>Advocate for the appellants</u>	: R.K.D. Choudhury, Deputy Solicitor General in W.P(C) No. 4045/2019 and Mr. M. Kataki, Advocate in W.P(C) No. 3159/2019
<u>Advocate for the respondents</u>	: S.R.A. Naser, Advocate in W.P.(C) No. 4045/2019; Mr. R.K.D. Choudhury, Deputy Solicitor General of India in W.P(C) No. 3159/2019
Date of Judgment & Order	: 06.02.2023

JUDGMENT AND ORDER

[Soumitra Saikia (J)]

06.02.2023

Heard Mr. R.K.D. Choudhury, learned Deputy Solicitor General of India for the petitioner in W.P.(C) No. 4045/2019 and Mr. M. Kataki, learned counsel for the petitioner in W.P(C) No. 3159/2019. Also heard Mr. S.R.A. Naser, learned counsel for the sole respondent in W.P.(C) No. 4045/2019 and Mr. R.K.D. Choudhury, learned Deputy Solicitor General of India for the respondents in W.P(C) No. 3159/2019.

2. Both these writ petitions relate to a common issue namely, shortage of qualifying service for grant of pension after their absorptions in Group-D Posts.

3. In W.P(C) No. 4045/2019, the respondent joined as EDDA-cum-EDMC at Kordoiguri BO on 03.02.1971. He was posted on promotion in the Group-D cadre and he served in the said capacity till his retirement on superannuation on 30.10.2010 after completing nearly 40 years of service which includes the service as ED official in Group-D Post. However, notwithstanding the service for forty (40) years, The respondent was denied his pensionary benefits as he had completed 9 years and 8 months in the Department of Posts, India in the Group-D cadre. Since he did not complete the mandatory 10 years of service in Group-D post, he was not given the pensionary benefits. The grievance of the petitioner is that had he been appointed in the Group-D cadre in a clear vacancy by the authority, instead of keeping him in the waiting list, he would have completed full ten years of the mandatory service required to be eligible to get the pensionary benefits. The respondent served for about five months in sitting capacity as a Male Peon at Naojan EDSO against a clear vacant post. It is the grievance of the petitioner that had he been appointed against this clear vacancy, he would have completed the mandatory 10 years required for being eligible for to get the pensionary benefits. After his superannuation, he had received service gratuity amounting to Rs. 1,05,935.00 (Rupees One Lakh Five Thousand Nine Hundred Thirty Five only) and further some of Rs. 52,968.00 (Rupees Fifty Two Thousand Nine Hundred Sixty Eight only) and Rs. 48,647.00 (Rupees Forty Eight Thousand Six Hundred Forty Seven only) as retirement gratuity and GPF respectively. But his pensionary benefits were denied as he did not

complete the mandatory 10 years as required under the Rules for being eligible to get the pensionary benefits. Being aggrieved, the respondent approached the CAT, Guwahati.

4. The CAT, Guwahati vide order dated 12.10.2018 passed in OA No. 040/00309/2018 by referring to Rule 49(3) of the CCS (Pension) Rules and allowed the OA. The CAT, Guwahati by referring the Rule 49(3) of the CCS(Pension) Rules held that the said Rule will come to the aid of the respondent/applicant as his service for 9 years 8 months can be reckoned as qualifying service by applying Rule 49(3) of the CCS(Pension) Rules. The CAT, Guwahati directed the petitioner to calculate the pension of the respondent after including the services rendered by the respondent/applicant as a stop gap arrangements against Group 'D' post after selection by DPC on 20.10.2000 and to release the consequential payments of pension along with arrears. Being aggrieved, the Union of India represented by the Secretary and Director General, Department of Posts, Dak Bhawan has filed this instant writ petition assailing the impugned order dated 12.10.2018 passed in OA No. 040/00309/2018 by the CAT, Guwahati.

5. In W.P.(C) No. 3159/2019, the petitioner before this Court was engaged as an Extra Departmental Agent (EDA) on 17.11.1971 and subsequently, by order dated 16.10.2002, the petitioner was appointed in Group-D against the vacant post at Hajo SO as Night Chowkidar, in the pay scale of Rs. 5200-20200/- with Grade Pay of Rs. 1800/-. The petitioner continued his service and ultimately

superannuated from his service on 31.03.2012. Although the petitioner was granted retirement gratuity but he was not granted pension because of not having completed the qualifying service of 10 years for being eligible to get the pension. According to the petitioner, he had completed 9 years 7 months and 5 days and thus the authorities rejected his prayer for pension on the ground that he did not complete the qualifying service. It is the grievance of the petitioner that although he had completed 31 years of service from 1971-2002, yet his prayer for grant of pension was rejected by the Authorities. Being aggrieved, he approached the CAT, Guwahati praying for appropriate orders for release of pension. The CAT, Guwahati upon consideration of the matter relying on the order of the Supreme Court passed in Civil Appeal No. 13675-13676 of 2015 (Union of India & Ors. Vs. The Registrar & Anr) dated 24.11.2015 dismissed the Original Application filed by the petitioner. The CAT, Guwahati held that although the applicant/petitioner had relied on a Judgment of the CAT, Madras Bench rendered in ***M.R. Palanisamy Vs. Union of India (O.A. No. 1264 of 2001)*** and in view of the order passed by the Apex Court, the prayer made by the petitioner was rejected.

6. Since both these writ petitions raise the same issue regarding eligibility for grant of pension. In W.P(C) No. 4045/2019, the CAT, Guwahati allowed the prayer of the applicant/respondent for grant of pensionary benefits and therefore, the Union of India is the petitioner before this Court. Whereas in W.P(C) No. 3159/2019, the

CAT, Guwahati, dismissed the OA and the prayers of the applicant and therefore the said applicant is the writ petitioner before this Court. As such both these writ petitions are taken up together for disposal today.

7. The learned counsels for the parties have been heard. The pleadings available are also perused. The relevant Rule for the purposes Rule 49 of the Central Civil Services (Pension) Rules, 1972 has also been perused.

8. Rule 49 relates to the amount of pension. Under Rule 49(3), it is provided as under:

"(3) In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service."

9. It is not in dispute that the respondent in W.P(C) No. 4045/2019 and petitioner in W.P(C) No. 3159/2019, although initially they were appointed on officiating basis, they were subsequently appointed against the clear substantive vacancies in the Group-D Cadre. Upon reading of the Rule 49(3) of CCS(Pension) Rule 1972, it is clear that in calculating the length of qualifying service, any fraction of a year equal to three months and above shall be treated as completed one-half year and reckoned as qualifying service.

10. If that be so then in the case of the respondent in W.P(C) No. 4045/2019, the respondent having completed 9 years and 8 months of service, he would certainly be entitled to the benefit of Rule 49(3) as his short of 4 months for completing the qualifying service of 10 years.

11. Accordingly, we do not find any infirmity in the order dated 12.10.2018 passed by the CAT, Guwahati in OA No. 040/00309/2018. We agree with the conclusion arrived at by the CAT, Guwahati. The W.P.(C). No. 4045/2019 filed by the petitioner/Union of India is, accordingly, dismissed. The petitioner in W.P(C) No. 4045/2019 is directed to forthwith release the pensionary benefits of the respondent as directed by CAT, Guwahati.

12. In so far as W.P(C) No. 3159/2019 is concerned, we find that the petitioner has completed 9 years 7 months and 5 days of service. It is seen that the petitioner would also be entitled to get the pensionary benefits as he would be completing the qualifying service of 10 years if the benefit of Rule 49(3) is found to be applicable. The Judgment of the Apex Court which was relied upon by the CAT, Guwahati and thereby dismissing the petition O.A. filed by the petitioner, clearly is not applicable to the facts of the present case. Before the Apex Court, the question was applicability of the DoPT Circular of 1991 on the basis of which directions were issued by the learned Single Bench of Madras High Court and which was confirmed by the Division Bench of the Madras High Court. The said circular as is evident from a perusal of the Apex Court order, is

applicable to full time casual employees and not to regularize employees. In that context, the Apex Court rejected the findings of the Madras High Court that the respondent therein cannot be granted the benefit of the DoPT Circular of 1991 but will instead be governed by the CCS (Pension) Rules.

13. In the present proceedings, there is no dispute that the petitioner after his initial service on temporary basis was regularized and brought into Group-D Cadre against clear vacancies. It is also not in dispute that he has completed 9 years 7 months and 5 days of service as a regular employee in a Group-D Cadre. Accordingly there can be no reason as to why the benefit of Rule 49(3) of CCS (Pension) Rule, 1972 cannot be extended to the petitioner.

14. We find that the CAT, Guwahati had incorrectly applied the Judgment of the Apex Court rendered in Union of India & Ors. Vs. The Registrar & Anr. (Civil Appeal No. 13675-13676 of 2015).

15. Accordingly, we allow the writ petition in W.P(C) No. 3159/2019 and set aside the impugned order dated 14.09.2018 passed by the CAT, Guwahati in O.A. No.040/00274/2017.

16. We direct the respondent to forthwith process the pension papers pertaining to the petitioner and ensure that the petitioner receives his pensionary benefits as provided under the CCS Pension Rules, 1972.

17. Accordingly, the writ petitions stand disposed of in terms of the above. No orders as to costs.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant