

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

OP (CAT).No. 111 of 2015 (Z)

AGAINST THE ORDER IN OA 180/2014 of CENTRAL ADMINISTRATIVE
TRIBUNAL,ERNAKULAM BENCH DATED 05-03-2015

PETITIONERS/RESPONDENTS:

1. THE SUPERINTENDENT OF POST OFFICES AGED 51 YEARS
THIRUVANANTHAPURAM SOUTH DIVISION
THIRUVANANTHAPURAM 695 036.
2. THE CHIEF POSTMASTER GENERAL
KERALA CIRCLE, THIRUVANANTHAPURAM 695 033.
3. UNION OF INDIA, REPRESENTED BY THE SECRETARY
DEPARTMENT OF POSTS, NEW DELHI 110 001.
4. THE COMMANDANT,
P & T ADMINISTRATION CELL
ARMY POSTAL SERVICE CENTRE, PIN 900 746, C/O.56APO
5. THE ADDITIONAL DIRECTOR GENERAL
ARMY POSTAL SERVICE CENTRE
QUARTERMASTER GENERALS BRANCH, ARMY HEAD QUARTERS
WEST BLOCK, III R.K.PURAM, NEW DELHI -110 Q66.

BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

RESPONDENT/APPLICANT:

S.KANNAPPAN
POSTMAN, THIRUMALA POST OFFICE, RESIDING AT T.C.25/867
THERIVILA VEEDU THYCAUD PO
THIRUVANANTHAPURAM- 695 014.

BY ADV.SRI.S.VISHNU

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 09-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

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- P1- TRUECOPY OF OA NO.180/00363/2014 DATED 5.3.2015 FILED BY THE RESPONDENT BEFORE THE HONOURABLE CAT, ERNAKULAM BENCH
 - P2- TRUE COPY OF REPLY STATEMENT FILED BY THE PETITIONERS
 - P3- TRUE COPY OF THE REJOINDER DATED 26.11.2014 FILED BY THE RESPONDENT
 - P4- A TRUE COPY OF THE MA NO.180/001353/2014 DATED 7.12.2014 FILED BY THE RESPONDENT
 - P5- TRUE COPY OF THE ORDER IN OA NO.180/001353/2014 AND DATED 5.3.2015 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

RESPONDENT(S)' EXHIBITS

NIL

TRUE COPY

P.A.TO JUDGE

P.R.RAMACHANDRA MENON &
ANU SIVARAMAN, JJ.

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O.P.(CAT).No.111 of 2015

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Dated this the 9th day of July, 2015

JUDGMENT

Ramachandra Menon, J.

The correctness and sustainability of Ext.P5 order dated 05.03.2015 passed by the Central Administrative Tribunal, Ernakulam in O.A.No.180/00363/2014, setting aside Annexure A11 order issued by the first petitioner herein to the effect that the respondent herein would be placed under the new Pension Scheme which came into effect from the year 2004, is under challenge in this Original Petition.

2. The sequence of events as described in the Original Petition shows that the respondent herein joined the service of the Postal Department and subsequently was deputed to the Army Postal Service vide Annexure A1 dated 19.03.1991. So as to facilitate such deputation, it was necessary that the respondent herein, who was working as a 'GDS' (Gramin Dak

Sewak, formerly, EDDA) had to be categorised as a Group D staff. It was accordingly that the respondent was given 'ad hoc' promotion as Group D just for one day and he was deputed to the Army Postal Service as per Annexure A1.

3. The respondent was continuing in the Army Postal Service as above and while so, he participated in the examination for appointment of Postman by way of direct recruitment on 30.09.2009. While serving the Army Post Office, he was promoted to the cadre of Group D in the Army Postal Service by virtue of his credentials with effect from 04.02.2009. Subsequently, by virtue of the proven eligibility of the petitioner to be posted as a Postman in the parent Department, he came to be certified as officiating in the post of Post man as per order dated 10.11.2009. About twenty two years after serving the Army, the petitioner was discharged on 30.04.2013 on medical grounds. Thereafter he was accommodated as a Postman with effect from 22.05.2013 as per Annexure A6 order of the same date. The respondent approached the first petitioner herein by submitting Annexure A7 representation dated 23.05.2013

pointing out that he would be retiring from the service within 'six years' and that the pensionable service might be counted from '27.03.1991' and not from the date on which he joined the civil post. Annexure A6 dated 22.05.2013 which was to be effective from 10.11.2009 was sought to be modified accordingly. On receipt of the said representation, the matter was referred to the 5th respondent for clarification by the 2nd respondent as per Annexure A8 dated 05.11.2013. The position was clarified by the 5th respondent as per Annexure A9 dated 18.11.2013, which virtually stands in favour of the respondent herein. It was without any regard to the facts and figures as above, that Annexure A11 order was passed to the effect that the respondent will continue only under the new pension scheme which came into effect in the year 2004, which was sought to be challenged by filing the O.A before the Tribunal. Reply statement was filed from the part of the Department seeking to defend their stand. Ext.P3 rejoinder was filed from part of the respondent and after hearing both the sides, the Tribunal found, as per Ext.P5 order dated 05.03.2015, that there was absolutely no merit or bona

fides in the stand taken by the Department and that the applicant was very much entitled to have the reliefs sought for, placing reliance on the documents which were referred to therein. This in turn is sought to be challenged by the petitioners who were the respondents before the Tribunal.

4. Heard the learned Assistant Solicitor General in detail.

5. It is seen that, under normal circumstance no interference could have been warranted by virtue of the terms of the deputation and the rights and liberties of the parties concerned in connection with the Army Postal Service. This is obviously for the reason that deputation could never be a matter of right and further the fortuitous promotion, if at all any obtained by the applicant in the Army Postal Service, could not have resulted in any undue advantage to him over and above the senior persons who were serving in the parent Department occupying a lower post. It is in the said circumstances, that specific stipulations have been prescribed as to the seniority and such other aspects to govern the field. It is also true that the respondent herein passed the Postman's examination and came

to be appointed as a Postman in the regular service of the parent Department only in the year 2009. But the instant case stands on a different footing for the reasons noted below.

6. It is revealed from the proceedings that, way back in the year 2007, the Government of India, who is the third petitioner herein, thought it fit to give some benefits to the persons who were serving in the Army Post Office as a 'onetime measure', providing regularisation in service, after inviting option from the persons concerned as to whether they wanted to go back to the parent Department or to continue in the Army service. This was of course subject to some specific conditions as stipulated therein. A copy of the said order dated 13.06.2007 has been produced as Annexure A10. It was based on Annexure A10, issued by the third petitioner Government, that the first petitioner herein issued Annexure A3 order dated 04.02.2009, whereby the service of the respondent herein was regularised with effect from 27.03.1991 as clearly mentioned therein. This was subject to various conditions specified therein, which are extracted below, for convenience and the reference:-

"1. They will not seek repatriation to the civil before their appointment to Group D cadre on their turn. However, the officials are hereby offered an option to return to the civil side and accept GDS Posts. if the officials are prepared to revert, they should forward their option to the concerned authorities.

2. GDS officials now proposed to be regularised as Group D from their date of entry in APS/Technical promotion given earlier will not be reverted to civil till they are discharged from APS on retirement as applicable to APS. However AP Dte will make efforts to retain officials in APS itself till the civil date of superannuation. In case of reversion from APS, to civil side after attaining the retirement age in APS or thereafter, these officials will be deployed to the extend Group D vacancies available in civil. In case there are no civil Group D posts available to accommodate these personnel, then there will be no option but to proceed on retirement direct from the APS.

3. In case the GDS now proposed to be regularised as Group D reverted to civil for some reason or other such personnel will rank junior most in seniority in civil gradation list. The date of assumption of charge in civil post will be deemed to be the date of entry in the grade in the civil gradation list for the purpose of seniority. However the service rendered in APS as Group D will, for all purpose be counted as regular service except claiming seniority in civil side.

4. All the consequential benefits including TBOP/BCR will accrue since the date of regularisation of these personnel in APS.

Statutory deductions such as GPF etc. will have to be made in accordance with the rules on the subject.

5. An undertaking to the effect agreeing the above conditions should be given to the competent authorities for entry and posting the same in the service book under proper attestation."

It was based on the above proceedings, particularly, Annexures A10 and A3, that the respondent was certified as working as a Postman, by the Department.

7. With the above facts in mind, it has to be seen whether the respondent has violated any of the conditions specified in Annexures A10 or A3 and if so how? It is to be noted that, even according to the Department, the respondent was repatriated from the Army Postal Service only on 30.04.2013, that is, after a service of more than twenty two years. The tenure for deputation to the Army Postal service was for a period of 'ten' years. Undisputedly, there is more than double, to the credit of the respondent herein. There is no insinuation against the respondent, as to which condition of Annexure A3, has been violated by the respondent. Having decided to extend the

benefit of regularisation under the special circumstances intended to be given to a group as a whole, based on Annexure A10 issued by the Government and after granting such regularisation with effect from 27.03.1991, vide Annexure A3, it is seen that the third respondent before the Tribunal, who himself had issued the basic order of Annexure A10, joining hands with the first respondent/Superintendent of Post Offices, who has issued Annexure A3, has taken a contention before the Tribunal seeking to justify Annexure A11. It was after considering the facts and figures as above, that the Tribunal set aside the impugned order. It is a matter of surprise as to how the concerned respondents, particularly, the Union of India and the Superintendent of Post Offices who have issued Annexures A10 and A3 respectively, could take a U turn and approach this Court by filing the present Original Petition, challenging the correctness and validity of the order passed by the Tribunal based on their own orders. There is no case for the petitioners that Annexure A10 was changed at any point of time. The reason that some seniors are still continuing in the parent department

occupying a lower post is not at all a ground to interfere with the decision, to have the service of the respondent herein to be regularised, based on Annexure A10 order followed by Annexure A3. This Court finds that there is absolutely no ground to call for interference. The original petition stands dismissed. We reluctantly refrain from awarding any costs.

Considering the persuasive request made by the learned Assistant Solicitor General to grant some breathing time to give effect to the verdict passed by the Tribunal, we grant a further period of 'one month' to implement the order passed by the Tribunal.

**P.R. RAMACHANDRA MENON,
JUDGE**

**ANU SIVARAMAN,
JUDGE**

sj