

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

OP (CAT).No. 147 of 2015 (Z)

AGAINST THE ORDER IN OA 1001/2013 of CENTRAL ADMINISTRATIVE
TRIBUNAL,ERNAKULAM BENCH DATED 02-01-2015

PETITIONERS/RESPONDENTS:

1. UNION OF INDIA
REPRESENTED BY THE SECRETARY TO DEPARTMENT OF POSTS,
NEW DELHI-110 011.
2. THE DIRECTOR GENERAL (POSTS)
DAK BHAVAN, NEW DELHI-110 001.
3. THE CHIEF POST MASTER GENERAL
KERALA CIRCLE, THIRUVANANTHAPURAM-695 033.
4. POSTMASTER GENERAL
KERALA CIRCLE, NORTHERN REGION, KOZHIKODE-673 011.
5. THE SUPERINTENDENT OF POST OFFICES
KANNUR DIVISION, KANNUR-670 001.

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

RESPONDENTS:

P.K.RAJAN
S/O.C.K.ACHUTHAN, GROUP D (MTS) KODALI POST OFFICE,
RESIDING AT PUTHIYAKANDY HOUSE,
IRIVERI P.O., MOWANCHERRY-670 613.

R1 BY ADV. SRI.MARTIN G.THOTTAN

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 25-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (CAT).No. 147 of 2015 (Z)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1. TRUE COPY OF THE OA NO.1001/2013 DATED
11/10/2013 FILED BY THE RESPONDENT

EXT.P2. TRUE COPY OF THE MA NO.1245/2013 FILED BY THE
RESPONDENT FOR CONDONING DELAY.

EXT.P3. TRUE COPY OF THE REPLY STATEMENT DATED 6/1/2014
FILED BY THE PETITIONERS

EXT.P4. TRUE COPY OF THE REJOINDER FILED BY THE
RESPONDENT

EXT.P5. TRUE COPY OF THE ADDITIONAL REPLY STATEMENT
DATED 23/6/2014 FILED BY THE PETITIONERS

EXT.P6. TRUE COPY OF THE ADDL.REJOINDER DATED 19/7/2014
FILED BY THE APPLICANT

EXT.P7. TRUE COPY OF THE ADDITIONAL REPLY STATEMENT
DATED 16/9/2014 FILED BY THE PETITIONERS

EXT.P8. TRUE COPY OF THE ORDER IN OA NO.1001/2013 DATED
2/1/2015 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

smv

**K. SURENDRA MOHAN
&
SHAJI P. CHALY, JJ.**

O.P (CAT) No.147 of 2015

Dated this the 25th day of November, 2015

JUDGMENT

Surendra Mohan,J.

This Original Petition is filed by the respondent before the Central Administrative Tribunal ("CAT" for short) in O.A. No.1001/2013, challenging Ext.P8 order of the Tribunal. The respondent herein was the applicant before the CAT. The respondent was appointed as an Extra Departmental Mail Carrier, Iriveri Post Office on 27.11.1978. While so, he had officiated in a Group D post at Kannur Head Post Office from 18.08.2003. The respondent had earlier filed O.A No.901/2003 claiming that he was entitled to be appointed to a Group D post on regular basis. His claim was considered by the CAT and was allowed by Annexure A9 order. The order of the CAT declared that he was eligible for promotion to a Group D post against a substantive vacancy of the year 2000. He was also directed to be given notional seniority with effect from the date on which his

immediate junior Extra Departmental (ED) Agent had been appointed to the Group D. Though Annexure A9 was challenged by the petitioners before this Court in W.P.(C) No.7555 of 2006, the same was dismissed by Annexure A10 judgment. The respondent was actually promoted as Group D with effect from 14.11.2005 as per Annexure A12. However, the respondent was denied the benefits of CCS (Pension) Rules, 1972. Therefore, the respondent approached the CAT by filing O.A. No.1001/2003 contending that, he was due to retire on 01.12.2013 and he was entitled to be included in the CCS (Pension) Rules. According to him, he was a similarly situated person as the applicant in O.A No.514/2010 and therefore, as in the case of said person he was also entitled to the benefits of CCS (Pension) Rules.

2. The petitioners contested the claim of the respondent. According to the petitioners, the respondent had been selected for appointment as Postman against vacancies in the year 2000 and 2001. He had also joined duty as a Postman in the Departmental Cadre on 06.03.2003. Thereafter, he requested to be relieved from the post and to be permitted to re-join duty as Gramin Dak Sevak (GDS). The request was accepted and he was made a GDS on 31.03.2003. He was appointed as GDS Mail

Deliverer on 01.04.2003. Therefore, it is contended that the respondent had come out of the purview of the CCS (Pension) Rules, 1972 on his own accord. In Kannur Division, all Group D vacancies that arose from 2000 to 2003 were filled up by Senior GDS. To a vacancy that arose in the year 2004, a GDS, junior to the respondent was appointed for the reason that he had crossed the age of 50 by that time. However, pursuant to Ext.P9 order the respondent was appointed as Group D with effect from 13.11.2005, the date with effect to which, his junior had been appointed.

3. For the above reasons, it is contended that the claim of the respondent in O.A. was liable to be rejected. However, in spite of the above, CAT has allowed the O.A. and has ordered that, he was entitled to get notional appointment for the purpose of considering benefits from the year 2000 onwards. The petitioners are aggrieved by the said order.

4. According to the learned Assistant Solicitor General of India (ASGI) Sri. N. Nagaresh, the claim of the respondent is unsustainable and liable to be rejected. This is for the reason that, he was working only as an Extra Departmental Staff. Such persons are outside the regular establishment and they are not

permitted to be posted in an officiating capacity to any other posts. Therefore, the officiating service of the respondent from 18.08.2003 to 13.11.2005 cannot be treated as officiating service in accordance with the law. The posting orders, according to the learned ASGI, were issued without any authority by the respective Postmasters. Such illegal proceedings cannot confer any advantage on the respondents. Postmasters or other like officials do not have the authority to engage a person as Group D. Therefore, according to the learned ASGI, Ext.P8 order of the CAT requires to be interfered with and set aside.

5. The contentions of the learned ASGI are refuted by Adv. Sri. Martin G. Thottan who appears for the respondent. Our attention has been drawn to Annexures A3 to A8 proceedings, to point out that the respondent had officiated in a regular Group D post during the period from 18.08.2003 to 14.11.2005. Though it is contended by the learned ASGI that the said postings were without any authority, according to the counsel, it is a fact that cannot be denied that ED staff are, as a matter of practice, being posted to officiate in Group D posts. The benefit of such officiating service is necessary to be taken into account for the purpose of pension. The counsel also places reliance on

Annexure A15, an order of the CAT in O.A. No.514 of 2010. According to the counsel, in the said case, another employee in similar circumstances had been granted the benefit of the CCS (Pension) Rules. Therefore, according to the learned counsel, there is absolutely no justification for the contentions raised against the claim of the respondent.

6. Heard. The fact that the respondent had officiated in a Group D post continuously for the period from 18.08.2003 to 14.11.2005 is evident from Annexures A3 to A8. Though the ASGI has put forward a contention that, the official who had posted the respondent to officiate in the said post, had done so in violation of the law and that the said person had no authority to post the respondent, we are not prepared to accept the said contention. This is for the reason that, admittedly the respondent has worked for the said period in a Group D post and has discharged the duties attached thereto, without causing any complaint from any quarter. The petitioners have taken the benefits of his work. Therefore, even if the said posting was irregular due to violation of some provisions of law, we are of the view that the respondent is entitled to claim the benefits of such service for the purpose of computing his retirement benefits. We

also take note of the earlier direction of the CAT in Annexure A9 order. The direction contained in paragraph 12 of the said order, reads as under:

“From what is stated above, we are of the view that the applicant succeeds in bringing out a case. In the result, we declare that the applicant is entitled to be considered for promotion to Group D post against the earliest substantive vacancy arose in the year 2000 on the basis of seniority, irrespective of the fact that he has crossed the age of 50 years and to give him appointment as Group D if he is found suitable by the Departmental Promotion Committee. In that event, the applicant should be given notional seniority with effect from the date on which a person below him in the seniority list of ED Agents has been appointed in the vacancies of the year 2000 or of subsequent years. The applicant shall not be entitled to arrears of pay and allowances on the basis of his notional appointment but it will be counted for pensionary benefits. The above orders shall be complied with within a period of three months from the date of receipt of a copy of this order. No order as to costs.”

7. Though the above direction had been the subject matter of the challenge before this Court in W.P.(C) No.7555 of 2006 at the instance of the petitioners, the same was dismissed by Annexure A10 judgment which reads as follows:

“We do not find any reason to upset the appointments already effected on the basis of the direction of the

Tribunal. We make it clear that the principle laid down by the Tribunal will be confined to the parties to O.A. Nos.901 of 2003 and 537 of 2004. Further we notice that statutory rules have already been framed and further recruitments will be governed by the statutory rules.”

8. The combined effect of Annexures A9 and A10 is that the respondent was entitled to be appointed to one of the vacancies that arose in the year 2000. His seniority was to be reckoned with effect from the date on which his immediate junior was appointed to the post. It has been made clear in Annexure A10 that, the principle laid down would be confined to the parties to the said Original Application. Therefore, the resultant position is that the effect of the directions in Annexures A9 and A10 would confer the benefit only on the respondent herein and the applicant in O.A. No.537/2004. It is admitted that, the respondent has retired from service from 01.12.2013. Therefore, the only question that remains is regarding the computation of his retirement benefits. We notice that he had been working from the year 1978. There is no justification for denial of the rightful pensionary benefits that are due to him on the basis of the service that he had put in.

9. In the above view of the matter, we are supported by the

judgment of another Division Bench of this Court in an unreported judgment dated 02.11.2012 in O.P.(CAT) No.3932 of 2011. Paragraph 5 of the said judgment reads as under:

“It is not in dispute that Rule 13 of CCS (Pension) Rules 1972 stipulates, what would constitute qualifying service of a Government servant rather from what date such qualifying service could be computed. There is categorical benefit extended to employees like the applicants herein that even if they were discharging duties on a temporary capacity, if said duty is continued without any interruption by substantive appointment in the same or in another service or post, the entire service even if it is on temporary basis including being in charge on a temporary basis, it would be taken as qualifying service.”

10. In the present case also, it is undisputed that, the respondent had officiated temporarily in a Group D post from 18.08.2003 to 14.11.2005. The said service was followed by a substantive appointment. It is not in dispute that, he was appointed as a regular Group D employee with effect from 14.11.2005, as evidenced by Annexure A5. Therefore, this is a case in which, Rule 13(a) of the CCS (Pension) Rules, 1972 applies. Consequently the respondent is entitled to the benefits of the said provision and the consequential benefits. Since the time stipulated by the CAT in Ext.P5 has expired, petitioners are

permitted to comply with the directions therein within a period of six weeks from the date of receipt of a copy of this judgment. The respondent shall also be at liberty to make available to the petitioners, a certified copy of this judgment, for compliance.

This Original Petition is accordingly dismissed.

Sd/-
K. SURENDRA MOHAN
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.A. To Judge

smv
28.11.2015