IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

OP (CAT).No. 165 of 2015 (Z)

(AGAINST THE ORDER IN O.A.180/615/2015 OF CAT, ERNAKULAM BENCH)

PETITIONER/APPLICANT:

P.R.THAMPI, AGED 62 YEARS
S/O.A.RAMAN, KUMBAZHA THEKKETHIL VEEDU, ATTUVASSERY
MAVADY.P.O, PUTHOOR, KOLLAM
PIN-691507.

BY ADVS.SRI.SHABU SREEDHARAN
SRI.K.P.UNNIKRISHNAN (ELOOR)
SRI.T.S.PRASANNAKUMAR
SRI.K.V.PREMSANKAR
SRI.P.R.VIBHU
SMT.RESHMA ABDUL RASHEED

RESPONDENTS/RESPONDENTS:
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1. UNION OF INDIA,
REPRESENTED BY THE SECRETARY/DIRECTOR GENERAL OF POSTS
MINISTRY OF COMMUNICATIONS, NEW DELHI-110001.

2. THE CHIEF POST MASTER GENERAL,
KERALA REGION, THIRUVANANTHAPURAM-695001.

3. SENIOR SUPERINTENDENT OF POST OFFICES,
KOLLAM DIVISION, KOLLAM-691001.

R1-R3 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 19-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (CAT).No. 165 of 2015 (Z)

APPENDIX

PETITIONER(S)' EXHIBITS

P1 THE TRUE COPY OF THE O.A.180/615/2014 ALONG WITH THE ANEXURES-A1 TO A15 THEREIN DATED 27.1.2014

P2 THE TRUE COPY OF THE REPLY STATEMENT WITH THE ANNEXURES R1 TO R3 THEREIN DATED 21.10.2014

P3 THE TRUE COPY OF THE REJOINDER DATED 5.1.2015

P4 THE TRUE COPY OF THE ADDITIONAL REPLY STATEMENT DATED 27.3.2015

P5 THE FREE COPY OF THE ORDER IN O.A.180/615/2014 DATED 17.9.2015.

RESPONDENT(S)' EXHIBITS NIL

JJ /TRUE COPY/

P.S.TO JUDGE

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

O.P(CAT) NO.165 OF 2015

Dated this the 19th October, 2015.

JUDGMENT

Surendra Mohan, J.

The petitioner, a retired Postman has filed this original petition challenging the order of the Central Administrative Tribunal, Ernakulam Bench ('CAT' for short) in O.A 180/615/2014, dismissing his application. The contention of the petitioner is that, the order of the CAT is unsustainable and liable to be set aside.

2. The petitioner is a retired Postman. He started his career in the Department of Posts as an Extra Departmental Mail Carrier ('EDMC' for short) in Iverkala East Post Office under the Kollam division on 25.6.1977. Later on, he was selected to the post of Group 'D' on the basis of his seniority. According to the petitioner, he was included in the waiting list

of candidates for selection to the Group 'D' posts in the seniority quota. Thereafter, on 31.3.2000 he was posted as Group 'D' on “extra cost” basis. Though the DPC that was convened by the department on 27.9.2002 had recommended him for appointment to the post of postman in Kollam division, he was issued with a posting order only on 21.3.2003. After training as Postman he was posted in the Kollam Sub Division. He continued to work there till his retirement on superannuation on 30.11.2012. His complaint is that, he has not been paid the pension that is legitimately due to him for the reason that he did not have the minimum service of ten years required for pension.

3. He had preferred Annexures A7 & A8 representations to the respondents praying for counting his service as “Extra Cost Postman in Group D” from 1.4.2000 for the purpose of eligibility for pension. However, no action was taken thereon. Therefore he approached the CAT with O.A.

834/2012. As per order dated 26.11.2013 the CAT directed the petitioner to submit a representation setting out his grievances and also directed the first respondent to take a decision in the matter. Accordingly, the petitioner submitted a representation on 31.12.2013 along with all relevant documents. However, the representation was rejected. It was in the above circumstances that the petitioner had approached the CAT by filing the present O.A.

4. The claim of the petitioner was contested by the respondents. According to them, the petitioner was rank No:4 in the waiting list of candidates in the seniority quota for promotion to the post of Goup 'D'. There were three candidates ahead of him in the waiting list. Since the candidates who were selected had not joined, the persons above the petitioner in the waiting list were offered appointments. The petitioner was appointed only after they declined to accept the appointment. Therefore, even though

the DPC was held on 31.3.2002 the petitioner could be considered for promotion only after the other candidates in the waiting list had decided not to join. The said process took time. That was why his appointment was delayed. According to respondents, since the petitioner was included only in the waiting list he had been permitted to work as Postman on 'Extra Cost basis'. The same was only on an ad hoc arrangement which cannot be counted as regular service for pension. Though the petitioner contended that, another person Smt. G.Omana who was similarly situated as the petitioner had been granted a similar benefit, according to the respondents she was a person who was ranked in the select list whereas the petitioner was only in the waiting list.

5. The CAT considered the respective contentions and found that, the petitioner had been included only in the waiting list. There were three candidates above him. On the contrary, in the case of Smt. G.Omana, she had been included

in the select list itself. Therefore, her case could not be treated as similar to that of the petitioner herein. Though he had not been selected, he had been permitted to work as a Postman on 'Extra Cost basis', which itself was a concession extended to him. Such service, being purely on ad hoc basis, could not be counted as regular service for pension. In view of the above, the claim of the petitioner has been rejected.

6. According to Adv.Shabu Sreedharan who appears for the petitioner, the Ministry has ample powers to relax the requirements wherever it is found that the operation of a particular rule causes undue hardship in a particular case. Therefore, it is contended that, the petitioner whose service falls short of pensionable service by a very small period of three months and twenty days should be granted pension, in relaxation of the rules.

7. Heard. The facts in this case are not in dispute. The petitioner admittedly does not have the qualifying service

for pension. It is true that, his service falls short by a small period of three months and twenty days in fulfilling the qualifying service of ten years. It is also true that he had been working as a Postman on 'Extra Cost basis' from 2000 onwards. However, such service being on ad hoc basis is not liable to be counted as regular service for pension. According to the respondents, he had been permitted to work as such on 'Extra Cost basis', only as a concession. No further concession is called for, by treating the short fall in his service also as regular service. It is also not permissible according to respondents.

8. The counsel for the petitioner has not been able to point out any provision of law that entitles the petitioner to make up the shortfall for the purpose of computing his total service for the grant of pension. Since the petitioner does not have the qualifying services necessary for the grant of pension, his name has been rightly rejected by the CAT.

For the foregoing reasons we find no grounds to admit this original petition or to grant any of the reliefs sought for. The same is therefore dismissed.

Sd/-
K. SURENDRA MOHAN
Judge

Sd/-
SHAJI P.CHALY
Judge

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