

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.02.2016

Coram

The Honourable Ms.Justice R.SUDHAKAR
and
The Honourable Mr.Justice S.VAIDYANATHAN

W.P.Nos.23638, 23639 and 34966 of 2015
and connected miscellaneous petitions

- 1 Union of India
Rep. by Chief Post Master General
Tamil Nadu Circle
Anna Salai Chennai-600 002.
 - 2 The Post Master General
Western Region (TN)
Coimbatore-641 002.
 - 3 The Superintendent of Post Offices
Krishnagiri Division
Krishnagiri- 635 001.
- [Petitioners in W.P.No.23638/15]
- 1 Union of India
Rep. by Secretary
Ministry of Communication and IT
Department of Posts Dak Bhavan
Sansad Marg New Delhi-110 116.
 - 2 The Chief Post Master General
Department of Posts
Tamil Nadu Circle
Chennai-600 002.
 - 3 The Post Master General
Department of Posts
Central Region
Tamil Nadu
Tiruchirappalli-620 001.
 - 4 The Senior Superintendent
of Post Offices Department of Posts
Tiruchirappalli-620 001.
- [Petitioners in
W.P.No.23639/15]

1 Union of India

Rep. by Chief Post Master General
Tamil Nadu Circle Anna Salai Chennai-2.

2 The Superintendent of Post
Offices Dindugal Division Dindugal-624 001.

3 The Inspector of Police
Palani Sub Division Palani-624 601.

[Petitioners in W.P.No.34966/15]

..vs...

M.Arokiadass [1st respondent in W.P.No.23638/15]
R.Arokiasamy [1st respondent in W.P.No.23639/15]
K.Dhandapani [1st respondent in W.P.No.34966/15]

2 The Central Administrative Tribunal
Rep. by its Registrar Madras Bench
Chennai-600 104.

[2nd respondent in all WPs]

Prayer: Writ Petition No.23638/15 filed under Article 226 of the Constitution of India for the issuance of a writ of certiorari Calling for the records of 2nd respondent and quash the order dt.03.06.2014 in OA.No.1172/2012 as the same is unsustainable.

Prayer: Writ Petition No.23639/15 filed under Article 226 of the Constitution of India for the issuance of a writ of certiorari Calling for the records of 2nd respondent and quash the order dt.19.02.2015 in OA.No.1361/2013 as the same is unsustainable.

Prayer: Writ Petition No.34966/15 filed under Article 226 of the Constitution of India for the issuance of a writ of certiorari Calling for the records of 2nd respondent and quash the Order dated 29.4.2015 in O.A. No.977/2013 as the same is unsustainable.

For Petitioners : Mr.V.P.Sengottuvel
in all WPs

For Respondents: Mr.R.Malaichamy
(R1-W.P.23638/15 and 34966/15)
Mrs.A.V.Bharathi (R1-W.P.23639/15)

C O M M O N O R D E R
(Order of the Court was made by S.VAIDYANATHAN,J)

Since the issue involved in all these writ petitions is one and the same, all the three writ petitions are taken up together for final disposal.

2. These writ petitions are filed challenging the orders dated 03.06.2014, 19.02.2015, 29.04.2015 passed by the Central Administrative Tribunal/2nd respondent herein in OA.Nos.1172/2012, 1361/2013 and 977/2013 respectively, as the same are unsustainable.

3. Heard the learned counsel on either side and perused the materials available on record.

4. For the sake of convenience, the parties are referred to as mentioned before the Central Administrative Tribunal (hereinafter referred to as "the Tribunal").

5. The applicants filed original application Nos.1172 of 2012, 1361 of 2013 and 977 of 2013 before the Tribunal seeking for a direction to the Postal Department to grant pension, taking note of the qualifying service as 10 years and extend other benefits, as they have completed only 9 years 7 months and 6 days, 9 years 7 months and 28 days and 9 years 8 months and 29 days, respectively in Group D, since in terms of Rule 88 of the CCS Pension Rules, the shortage can be cured. The Tribunal, after considering the submissions made by the learned counsel on either side, allowed the said original applications. Aggrieved over the same, the Postal Department is before this Court.

6. The applicant M.Arokiadass (W.P.No.23638 of 2015) joined the service of the Postal Department as Gramin Dak Sevak (GDS) on 14.07.1972 at Denkanikotta, SO and served for more than 30 years. In the year 2001, he appeared for Group D examination and was selected for the post and accordingly appointed and joined at Hosur SO on 25.11.2002. After rendering 5 years of service in Group D, he appeared and qualified in the examination for promotion to the cadre of Postman and joined the said post on 30.06.2007 and continued in the said post till 30.06.2012, viz., the date of his superannuation. He rendered service in Group D and Postman cadre for a period of 9 years 7 months and 6 days (Group D Post - 4 years 7 months and 6 days & Postman -5 years). It is his claim that since he had put in 7 months and 6 days in the last spell (year), the said period should be taken as one full year and thus he is entitled for pension.

7. The applicant R.Arokiasamy (W.P.No.23639 of 2015) was working as Extra Department Mail Carrier (EDMC) in the Postal Department during the years 1969 and 1970 on various periods

with frequent intervals. Thereafter, he was provisionally appointed as EDDA, Thirumanmedu BO with effect from 05.11.1973. Then, he was promoted as Group D during 1995. Later, considering his length of 23 years of service in the department and under the 25% quota for the year 1996 in the supplementary DSC held on 18.03.1997, he was selected for appointment to the cadre of Postman by Memo dated 20.03.1997 and he joined the said post on 17.04.1997 and he retired on 31.12.2006. According to him, he had put in 9 years 8 months and 15 days service as Postman in the Trichy Division and since he was lacking 3 months and 15 days of the minimum 10 years of qualifying service for grant of pension, his earlier service in the cadre of EDDA for more than 23 years should be taken into account.

8. The applicant K.Dhandapani (W.P.No.34966/15) was originally recruited and posted as Extra Departmental (ED) Messenger-I (now re-designated as Gramin Dak Sevak-GDS), Oddanchatram, with effect from 01.11.1971 and subsequently he was promoted as Group-D with effect from 03.11.1999 and he retired from service on attaining superannuation on 31.07.2009 as Group D. According to him, he had put in 9 years, 8 months and 29 days of service on 31.07.2009 as group D (just one day short fall of 9 years and 9 months) and he had put in 28 years of service as GDS and hence he is eligible for pension.

9. The case of the writ petitioners/Postal Department is that the orders of the Tribunal in extending the benefit of pension is contrary to Rule 49(3) of CCS Pension Rules, 1972, which is extracted below.

"in calculating length of qualifying service, a fraction of a year equal to 3 months and above shall be treated as completed one half year and reckoned as qualifying service".

10. According to the learned counsel for the writ petitioners, the period of service rendered as GDS or as Extra Departmental Agents cannot be taken into account for the purpose of pension and that the Tribunal has not considered Rule 49 of CCS Pension Rules, 1972 and this Court had not discussed about Rule 49(3), which is extracted above. He would submit that a fraction of a year shall be reckoned as full completed year if the fraction of service rendered is more than 9 months, if the fraction rendered is more than 6 months, it would be reckoned one half year and if the fraction is more than 9 months, it would be treated as two half years. The qualifying service of less than 10 years but more than 9 years and 9 months will be rounded off to 10 years for the purpose of grant of pension under Rule 49(2)(b) of CCS Pension Rules, 1972.

11. As far as the present cases are concerned, it is the contention of the counsel for the writ petitioners that as per Rule 6 of the Gramin Dak Sevaks (Conduct and Employment) Rules 2001 or Rule 4 of the Extra Departmental Agents (Conduct and Service) Rules, 1964, Sevaks are not entitled to any pension. As Extra Departmental Agents, they served only for five hours a day and not 8 hours a day. The payment of pension to Central Government Employees is governed by the Central Civil Service (Pension) Rules 1972 and the applicants are governed by these rules from the date of their appointment as Group D in the Department and since their qualifying service after deducting the dies non periods is less than 10 years, they are not entitled to pension. The learned counsel also submitted that the services rendered as Extra Departmental Agents cannot be taken into account for the purpose of pension. He further contended that Rule 88 of the CCS Pension Rules, which is extracted below:-

"88. Power to relax

Where any Ministry or Department of the Government is satisfied that the operation of any of these rules, causes undue hardship in any particular case, that Ministry or Department, as the case may be, may, by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner :"

can be invoked in case of undue hardship and Rule 49 is not applicable to the applicants. Further, there is no provision for counting the earlier service for grant of pension and as such, the same cannot be given weightage for the purpose of pension. Further, since the High Court in its earlier orders, has not considered Rule 49(3), the applicants are not entitled to pension. That apart, the Tribunal ought not to have granted the favourable relief to the applicants, more particularly, none of the decisions of this Court has referred to Rule 49(3) and the Tribunal erred in granting the relief to the applicants. Since a policy decision has been taken, the applicants are not entitled for the relief and hence, this Court may interfere and quash the orders of the Tribunal, which are impugned in these writ petitions.

12. According to the learned counsel for the applicants, in terms of the various orders of the Tribunal, which have been confirmed by the High Court and as per Rule 49(3) of CCS Pension Rules, which supports the case of the applicants, they should be deemed to have completed 10 years of service for grant of minimum pension. Further, according to them, they have completed 30 years, 23 years and 28 years of service as Gramin Dak Sevak (GDS) and the shortage could be cured by invoking Rule 88 of the CCS Pension Rules, 1972 to grant retirement benefits.

13. Further, according to the learned counsels for the applicants, as similarly placed employees like the applicants viz. M.R.Palanisamy and T.Jayaraman have been extended the said benefit, if such benefit is not extended to the applicants, it would amount to discrimination. He would further contend that there are instances and precedents, where this Court has granted the relief to the persons, who are similarly placed like that of the applicants who have completed more than 9 years and 6 months, and granted the relief of pension, holding that they have rendered pensionable service.

14. This Court considered the submissions made by the learned counsel on either side.

15. The Tribunal, following the earlier orders, allowed the original applications filed by the applicants by passing the impugned orders. In the case of one K.Krishnamoorthy vs. Superintendent of Post Offices, Dharmapuri Division, the Original application filed by him in O.A.No.381 of 2008 was dismissed by the Tribunal, however, before this Court, in W.P.No.26135 of 2009, the said Krishnamoorthy was granted the relief by order dated 12.10.2011 and the SLP filed by the Department was dismissed before the Hon'ble Supreme Court.

16. At this juncture, it is worth referring to an Apex Court judgment in the case of Som Prakash Rekhi vs. Union of India (1981 (1) SCC 449), which deals about pensionary benefits to a poor superannuated employee. Pension is the only means for a superannuated employee to support himself, his spouse and his dependants. Pension is not a gratis or bounty, but, is paid out of regard for past meritorious services.

17. Further, in the Division Bench Judgment dated 06.12.2013 rendered by this Court in W.P.No.29896 of 2013, which was filed by the department as against the order passed in O.A.No.505 of 2012, the Division Bench has observed as follows:-

"8. The learned counsel for the first respondent also relied on the judgment of the Division Bench of this Court made in Writ Petition No.45465 of 2002 dated 4.10.2007 (Union of India rep. by the Secretary, Dept. of Posts, Dak Bhawan, New Delhi 110 001 vs M.R.Palanisamy), wherein a similar issue was raised by an E.D.Staff, who served for 29 years before his permanent absorption as Group "D" staff and he was ordered to be granted pension treating the person as completed 10 years of qualifying service, though he was having a regular service of 9 years, 3 months and 29 days, with reference to the E.D. Staff service. The said Judgment was challenged

before the Hon'ble Supreme Court in SLP No.13829 of 2008 and the Hon'ble Supreme Court also dismissed the Special Leave Petition on 17.10.2008. Thereafter, the very same Department sanctioned pension to the said person, viz., M.R.Palanisamy by order dated 09.10.2009.

9. Even though the order of the Division Bench in Writ Petition No.45465 of 2002 dated 4.10.2007 restricted the relief only to the first respondent in the said writ petition, another Division Bench of this Court in Writ Petition No.22833 of 2010 (T.Jayaraman v. The Post Master General, Central Region, T.N.Circle, Trichy and others) noticing the similar set of facts allowed the Writ Petition by order dated 10.11.2010 noticing the earlier order, which was confirmed by the Supreme Court and which was also implemented by the Department.

10. Again, in the order dated 14.2.2013 passed by this Court in Writ Petition No.22496 of 2009 (Union of India, rep. by the Secretary, Department of Posts, Dak Bhavan, New Delhi 110 001 and others vs. G.Thulasidasan), similarly placed person was ordered to be granted pension, considering the long number of years of service as E.D.Staff, though the person was not having ten years of completed pensionable service.

11. A Division Bench of Karnataka High Court by order dated 25.3.2013, in Writ Petition No.72872 of 2012 (S-CAT) (Union of India, rep. by the Secretary, Department of Posts, Dak Bhavan, New Delhi 110 001 and others v. B.V.Dambal) also passed similar order".

Further, in paragraph 12, the Division Bench has categorically stated that, it is not proper for the postal department to repeatedly challenge the same issue before this Court which has attained finality. The cases on hand fall under the same parameters, as in the cases, we find that the period of pensionable service admittedly is more than 9 years and 7 months.

18. As far as the ground taken by the learned counsel for the petitioners that it is the policy decision taken as regards pension, a perusal of the policy decision dated 25.10.2015 reveals that it is nothing but clarification of the Rule position. However, since a decision has already been taken by this court on this issue and in view of the judgment of the Division Bench, which is extracted supra, we do not find any reason to differ from the same, more particularly, the benefits of rounding the part of 6 months over and above 9

years has been finally accepted by the Apex Court in the decision referred to supra. Hence, the policy decision taken by the Department cannot defeat the orders of this Court.

19. In view of the above, when the benefits are extended to similarly placed persons, on the basis of equity, the applicants are entitled to the relief sought for and rightly, the Tribunal has granted the relief. Besides, when a consistent view has been taken on this aspect and the matter has attained its finality, it is not proper for the Postal Department to agitate the same issue before this Court again and again. Hence, the writ petitions are dismissed. No costs. Connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Registrar,
Central Administrative Tribunal
Chennai 600 104.

+3ccs to Mr.V.P.Sengottuvel, Advocate, S.R.No.9568 to 9570
+2ccs to Mr.R. Malaichamy, Advocate, S.R.No.9489
+1cc to the Government Pleader, S.R.No.9447

KRA(CO)
EU(03/03/2016)

W.P.Nos.23638, 23639 &
34966 of 2015

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