

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 8006 of 2018

1. Union of India, though its Secretary, Ministry of Communication, Department of Posts, Dak Bhawan New Delhi 110001.
2. The Director, Postal Services, Chhattisgarh Circle, CPMG Office, Malviy Road Raipur, 492001 (C.G.)
3. The Sr. Supdt. Of Post Offices, Durg Division, Civic Centre, Indira Place, Bhilai, District – Durg 490006

---- Petitioners

Versus

- Chhedu Singh Chauhasn, S/o Late Bisahu Singh Chauhan, aged about 65 years, retired Post-Packer (Group – D), Head Post Office, Durg, R/o Vill- Chhiraha, Post – Chhirda, Via : Nawagarh, District – Bemetara, Pincode : 491337 (C.G.)

---- Respondent

For Petitioners / Union of India : Shri B. Gopa Kumar, Assistant Solicitor General

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Per, Ajay Kumar Tripathi, Chief Justice

05.12.2018

1. The Department of Post have decided to assail the order dated 01.02.2018 passed by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting at Bilaspur (for short, the CAT') in OA No.203/00074/2016.
2. The private Respondent assailed the order dated 01.12.2015 passed by the Postal Department, a copy of which was Annexure-A/7 to the OA where his claim for payment or grant of pension was rejected. The relief was quashing of the said decision in the factual and legal matrix which covered such cases.
3. The private Respondent was appointed as an Extra Departmental Mail Career (EDMC) as far as back on 31.08.1972 and worked continuously for almost 28 years, when he got an opening under the Department by appointment on a Group-D post as a Post-Packer from 02.07.2000. He rendered service for about 7 years and superannuated on 30.06.2007. DCRG, Gratuity etc. was

paid, but when a claim for payment of pension was made, the same has been rejected and so the OA.

4. The CAT keeping the facts and the history of engagement of the private Respondent by the Postal Department repelled the argument that the policy decision dated 25.10.2013 justified refusal of payment of pension on the ground that the period of work as a regular employee under the Postal Department does not add up to minimum qualifying service of 10 years.
5. Reason and justification for allowing the OA with a direction in favour of private Respondent emerges from the following paragraphs :

“8. The main case of the applicant is based on various judicial pronouncements, which are as under:

“1. Hon'ble Supreme Court decision in the case of **General Manager N.W. Railway vs. Chanda Devi [2008 (2) SCC 108]**

2. Order passed by Cuttack Bench of the Tribunal in OA No.260/00793 of 2014 (**Rama Chandra Murmu vs. Union of India & Ors**) [2017 (2) (CAT) 41]

3. Order passed by Chandigarh Bench of the Tribunal in OA No.175-HP of 2008 (**Nanak Chand vs. Union of India & Ors.**)

4. Hon'ble Apex Court decision in the case of **G.P. Doval vs. Govt. of Uttar Pradesh [(1984) 4 SC 329]**”

9. We may note that the Cuttack Bench of the Tribunal had an occasion to deal with the identical issue in the case of Ram Chandra Murmu (supra), wherein the case of the applicant for grant of pension was rejected on the basis of policy decision dated 25.10.2013, as he had only completed 07 years, 10 months and 10 days of service as a Group D employee. While relying on a decision of Madras Bench of the Tribunal in OA No.1264/2001 (**M.R. Palaniswamy vs. Union of India & Ors.**), the Cuttack Bench has held as under:

“6. Admittedly, ten years qualifying service is a mandatory requirement for granting or getting the minimum pension and pensionary benefits after

retirement and as against this, the applicant has only 07 years, 10 months and 10 days as a Group D employee of the Department. Due to short fall of the qualifying period of ten years a Group D employee pension was denied to a retired employee namely Shri M.P. Palaniswamy, who challenged the said decision before the CAT, Madras Bench in OA No.1264 of 2001 in which the Madras Bench of the Tribunal directed to grant the applicant therein minimum pension by taking the shortfall service into consideration from the ED service of the applicant. The said decision was challenged by the postal departmental before the Hon'ble High Court of Madras in WP No.45465 of 2007 but the same was dismissed. Thereafter, the Postal Department carried the matter to the Hon'ble Apex Court which was also dismissed on 17.10.2008. The Postal Department asked for necessary order from the DoP&T and as per the order of the No. 99-3/08-Pen dated 9.10.2009 the applicant therein was granted the minimum pension which was counted by bringing the shortfall service from the ED employment of the applicant. Similar matter came up before this Tribunal in OA No.310 of 2010 filed by another similarly situated employee Shri Gouranga Ch. Sahoo. This Tribunal based on the decision of the Madras Bench of the Tribunal (supra), allowed the OA No.310/2010 on 21.3.2011. The Postal Department challenged the said order before the Hon'ble High Court of Orissa in WP (C) No.11665 of 2011 which was dismissed vide order dated 6.12.2011 and subsequently the SLP (Civil) No...../2012 (CC 14722/2012) filed by the Postal Department was also dismissed on 3.9.2012. Again a similar matter came up for consideration before the Tribunal in OA No.756 of 2012 filed by one such similarly situated employee namely Shri Narasingh Sahoo which was allowed on 29th January, 2013. The postal department carried the matter to the Hon'ble High Court of Orissa in WP (C) No.7993 of 2013 but the same was dismissed vide order dated 27.6.2013 and Special Leave to Appeal (Civil)...../2014 (CC No.5478/2014) filed by the postal department against the aforesaid order before the Hon'ble Apex Court, was also dismissed on 15.4.2014. The respondents have placed no new ground or material so as to deviate from the view already taken in the earlier cases, cited supra. We are reminded with a legal maxim *Lex prospicit, non respicit* (The law looks forward, not backward). It is trite law that as a benevolent employer, the authority cannot create a situation compelling each and every similarly situated employees have to approach the Court for the same relief as has been granted to other in same subject.

Once a judgment attained finality, it could not be termed as wrong, and its benefit ought to have been extended to other similarly situated persons [Ref: *Maharaj Krishan Bhatt and Another vs. State of Jammu and Kashmir & Ors.*, 2009 (1) SLJ 202 (SC) = (2008) 2 SCC (L&S) 783]. The above being the position of the fact and law, we find sufficient force on the stand taken by the applicant. Accordingly, the impugned order of rejection dated 30.9.2014, placed at Annexure-A/8, is hereby quashed. Resultantly, the respondents are hereby directed to bring such of the shortfall period of service from the ED employment to count the minimum period of ten years qualifying service of the applicant and accordingly sanction and pay the pension and pensionary benefits to the applicant from the date of his retirement forthwith preferably within a period of 60 (sixty) days from the date of receipt of the copy of this order; failing which, the applicant shall be entitled to 6% interest on the arrear pension and pensionary dues from the date of his retirement till actual payment is made and the respondents are free to recover the interest amount from the officer who would be found responsible for causing delay in payment.”

10. In the instant case, the applicant had worked in a Group 'D' post for 6 years, 11 months and 15 days only and the respondents have rejected his claim for grant of pension as he had not completed 10 years of regular service for entitlement of pension by placing reliance on policy decision taken by Government of India, Ministry of Communication & IT, Department of Posts dated 25.10.2013. Thus, we find that the case of the applicant is on similar footing and he is also entitled for the benefits as has been extended to the applicant before the Cuttack Bench in OA No. 260/00793/2014.”

6. Submission of learned Assistant Solicitor General representing Union of India is that some issues including a Special Leave Appeal No. 4005 of 2014 is under consideration of the Hon'ble Apex Court, therefore this matter may be kept pending.
7. We do not fail to notice that in series of cases, details of which emerges from previous reproduced paragraphs from the order of the CAT, the view so taken in the present OA have been also upheld by the Hon'ble Apex Court by

dismissal of SLPs. Therefore, there are judicial precedents to support a direction in favour of an employee to borrow from the service rendered by him even as EDMC to meet the shortfall of the minimum requirement of 10 years of service under the Postal Department.

8. We are of the view that the CAT has committed no error by allowing the OA by basing it on precedents. No purpose will be served by keeping the writ application pending. If any other view emerges from the Hon'ble Apex Court in relation to the policy decision dated 25.10.2013 then may be an occasion could arise to revisit the direction of the CAT.
9. Writ application is otherwise dismissed as we do not find infirmity in the view so taken by the CAT.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge