

**21.09.
2022**

Ct. No. 04

Ab

WP.CT 78 of 2022

**Union of India and others
Vs.**

Jadab Chandra Mahato.

**Mr. Kumar Jyoti Tiwari,
Ms. Sarda Shaw.**

... for the petitioners.

**Mr. Lal Ratan Mondal,
Mr. Dilip Kumar Sadhu.**

... for the respondent.

The instant writ petition has been filed by the Union of India assailing an order dated 3rd February 2022 passed by the Central Administrative Tribunal, Kolkata Bench, in OA 350/01479/2018.

Admittedly, the respondent was posted as Postman and served the department for a period of 9 years 9 months. However, it was claimed that the said respondent has rendered more than 25 years of service in the postal department out of which, 16 years as ED employee and rest of the period as Postman.

It was the stand of the writ petitioners before the Tribunal that the respondent rendered his services as Gramin Dak Sevak (erstwhile EDAs) with effect from 23rd March 1983 to 25th August 1999 and thereafter on being qualified for the post of Departmental Postman, he was posted in such position in Kharagpur Sub-Post Office with effect from 26th August 1999 till his retirement i.e. on 31st January 2009.

On the basis of the aforesaid fact, a stand was taken by the writ petitioners that the Gramin Dak Sevak (erstwhile EDAs) is outside the Civil Service of the Union and, therefore, the respondent cannot claim at par with the Government Servant. In view of the aforesaid facts, the claim was denied by the authorities taking into

account Rule 49 of the CCS (Pension) Rules, 1972, which requires 10 years of qualifying service for being eligible to pension.

The further clarificatory memo issued by the Directorate, New Delhi on 11th November 2005 postulates that for grant of pension, the authority must ensure that the qualifying service of 9 years 9 months instead of 10 years as contemplated in Rule 49 of the CCS (Pension) Rules, 1972. The application came to be rejected solely on the ground that there was a shortfall of 3 months 24 days, which is much below the period of 9 years 9 months in terms of such clarificatory memo dated 11th November 2005 and, therefore, the respondent is not entitled to pension.

The Tribunal set aside the order of the authority solely on the ground that there is no provision contained in the Rule to count his past service as Extra-Departmental Agent, which was termed as Gramin Dak Sevak, to be kept outside the civil post and directed the pensionary benefits to be extended to the respondent.

Our attention is drawn to Rule 88 of the CCS (Pension) Rules, 1972, which runs thus:

“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, the 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:

Provided that no such order shall be made except with the concurrence of the Department of Personal and Administrative Reforms.”

On meaningful reading of the aforesaid provision it appears that though the period for qualifying service has been provided in Rule 49 thereof, yet the power is

bestowed upon the Ministry or Department of the Government to dispense with or relax the requirement of the aforesaid Rule to such extent as may be necessary for dealing with the case in just and equitable manner.

Despite the existence of Rule 49, the claricatory memo was issued where the relaxation was extended till 9 years 9 months and there appears to be a shortfall therefrom. Had there been a case that outer cap has been provided under the statutory Rules beyond which the power to relax could not be exercised, the position would have been different. Rule 88 does not imbibe any such outer cap and the power is reserved up the Ministry or Department to relax the provision contained in any Rules, if it is just and equitable and causes undue hardship to the employee.

It further appears that similarly circumstanced person has been extended such benefits by relaxing the period enshrined in Rule 49 of the said Rules and, therefore, we cannot conceive that the authority would discriminate the respondent with the other, if they stand on the same footing. The equality amongst the equal is the hallmark of the Constitution and any decision tainted with discrimination without any compelling circumstances distinguishing one case to another, the authority has to take uniform decision and extend the identical and similar benefits.

The Tribunal has remitted the matter to the authority to treat the present respondent as similarly circumstanced to the other applicants and take a decision on the claim of the identical benefits i.e. the postal pension.

In view of the findings made herein above, we do not think such direction needs any interference. The writ petition is, thus, disposed of.

However, we find that the time limit set forth in the impugned order has elapsed because of the pendency of the writ petition, we, therefore, extend the period by

three months from the date of communication of this order.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)