

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15295 OF 2022

Shri. Amar Atmaram Sagale ... Petitioner.

V/S.

Union of India & Ors ... Respondents.

.....

Mr. Anand Kumar Singh for the Petitioner.

Mr.R.R.Shetty a/w. Ms.Sangeeta Yadav for the Respondents.

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**CORAM : NITIN JAMDAR, AND
MANJUSHA DESHPANDE, JJ.**

DATE : 5 October 2023.

P.C. :

The Petitioner challenges the Order passed by the Central Administrative Tribunal, Mumbai(CAT) dated 28 September 2022 in OA No.627 of 2015.

2 The Petitioner who was employed with the Department of Posts and Telegraph had approached the CAT, Mumbai with prayer to hold that, he being a recruitee/ Appointee of 2002, Recruitment process, he is entitled to be covered by Provisions of Central Civil Services (Pension) Rules, 1972. Also that he is entitled to be regularised as Postal Assistant from date of his entry in service

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from 29 July 2002, therefore, based on the same he may be granted all the service benefits, and also seeking to quash & set aside the orders dated 5 August 2015, and 22 September 2014, denying him the benefits which he had prayed for.

3 It was the case of the Petitioner that, he was selected & appointed to the post of Postal Assistant by direct recruitment by the R.No.1 vide order dated 8 May 2002. He was sent for training vide order dated 23 July 2002. On completion of training he worked as Short duty Postal Assistant and abruptly on fine day on 12 December 2002, he was relieved after termination of his deputation. The said termination was revoked vide order dtd. 25 October 2005. He was again sent for induction training for 6 months vide office order dated 16 March 2006. The Petitioner was thereafter posted as Postal Assistant, at Shreevardhan.

4 The Petitioner approached the higher authorities by preferring detailed representation on 29 July 2013, requesting to count his 1st Training period as qualifying service, similarly he also submitted detailed representation dated 13 June 2015, regarding grant of Pension as per general conditions of service laid down in Recruitment Rules of 2002. But the same was rejected by order dated 5 August 2015.

5 Being aggrieved by non-consideration of his grievance,

the Petitioner approached CAT by filing the O.A.No.627 of 2015. The OA was resisted by Respondents on the ground that the first order of the appointment was of short duty period. The same was discontinued & he was again appointed afresh on 25 October 2005. His initial appointment was kept in abeyance, which was revoked and he was given fresh appointment. On completion of his training, he was appointed as Postal Assistant at Shreevardhan with effect from 11 April 2006. Therefore, he is not covered by CCS(Pension) Rules 1972, but he is covered by New Pension Scheme which came into effect from 1 January 2004.

6 The learned member of the CAT Mumbai, after taking into consideration the facts and prevailing position of law has been pleased to dismiss the O.A. on the ground that, order dated 25 October 2005 shows that, the said order is fresh appointment therefore, Petitioners past service cannot be considered as qualifying service. The office memorandum dated 17 February 2020 applies to those Central Government Employees whose selection for appointment was finalised before 1 January 2004 but joined service after 1 January 2004. On account of administrative lapses.

7 Therefore, the said office Memorandum is not applicable to applicant before it. On the said ground the OA has been dismissed by the CAT.

8 On notice being issued in the present Writ Petition the counsel for the Respondent has caused his appearance, and also placed on record the Office Memorandum at 3 March 2023 issued by the Ministry of Personal, Public Grievances and Pensions, Department of Pension and Pensioners Welfare, which referred to its earlier OM dated 17 February 2020. The said OM declared that in all the cases where Central Government Employee has been appointed against a post or vacancy which was advertised/notified for recruitment prior to date of notification of National Pension Scheme i.e. 11 December 2003 and is covered Under National Pension System on joining service on or after 1 January 2004 may be given one time option to be covered under the CCS (Pension) Rules 1972. This option may be exercised by the concerned Government Servant latest by 31 August 2023.

9 The counsel for Respondent has also placed on record a communication addressed to him issued by the Superintendent of Post office Raigad Division, Alibaug, informing him that the Petitioner has submitted his application for coverage under CCS (Pension) Rules in place of National Pension System, according to the said OM. The applicant has accordingly submitted option on 28 August 2023, i.e. before the cut of date of 31 August 2023.

10 Hence considering the subsequent developments in the matter and change in the policy of the Government as reflected in

OM dated 3 March 2023, we deem it proper to direct the Respondent Authorities to take appropriate decision in the case of the Petitioner as per the policy of the Government. As a result, the impugned order of CAT dated 28 September 2022 is quashed and set aside and the Respondents are directed to take fresh decision in case of the Petitioner in the light of the OM dated 3 March 2023, issued by the Government of India.

11 With these directions, the Writ Petition is disposed of.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)