



W.P.Nos.13633 of 2020 and 1540, 188 & 289 of 2021
and W.M.P.Nos.16929 of 2020, 1743, 258 & 361 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.01.2023

DELIVERED ON : 24.01.2023

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.Nos.13633 of 2020 and 1540, 289 & 188 of 2021
and

W.M.P.Nos.16929 of 2020, 1743, 258 & 361 of 2021

W.P.No.13633 of 2020

1.Union of India rep. by,
The Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai, Chennai - 2.

2.The Postmaster General,
Western Region (TN),
Coimbatore - 641 002.

3.Senior Superintendent of Post Offices,
Salem East Division,
Salem - 636 001.

... Petitioners

Vs.

1.The Registrar,
Central Administrative Tribunal,



W.P.Nos.13633 of 2020 and 1540, 188 & 289 of 2021
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WEB COPY High Court Campus,
Chennai - 104.

2.J.Venugopal

... Respondents

W.P.No.1540 of 2021

- 1.Union of India rep. by,
Director General,
Department of Posts,
M/o.Communication & IT,
Sansad Marg, Dak Bhavan,
New Delhi - 110 001.
- 2.The Chief Postmaster General,
Tamilnadu Circle,
Anna Salai, Chennai - 2.
- 3.The Postmaster General,
Western Region (TN),
Coimbatore - 641 002.
- 4.The Senior Superintendent of Post Offices,
Coimbatore Division,
Coimbatore - 641 001.
- 5.The Superintendent of Post Offices,
Tirupur Division,
Tirupur - 641 601.

... Petitioners

Vs.

- 1.The Registrar,
Central Administrative Tribunal,
High Court Campus,



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- 2.C.Vanachinnappan
- 3.P.Balan
- 4.S.Tamilselvan
- 5.A.Mohan
- 6.A.Valarmathi
- 7.R.Chandravadani
- 8.T.Parimala
- 9.M.Arunachalam
- 10.R.Navamani
- 11.M.Rameshwari
- 12.T.Rajakur
- 13.R.Shenbagavalli
- 14.S.Shanthi - II
- 15.V.Palanisamy
- 16.M.Nachimuthu
- 17.A.Vajravelu
- 18.V.Thavamani
- 19.V.U.Pushpamary
- 20.R.Paramasivam
- 21.N.S.Gajalakshmi
- 22.S.Saroja
- 23.S.Susila
- 24.M.Indira
- 25.P.V.Neelamani
- 26.R.Shanthalakshmi
- 27.S.Shanthi -I
- 28.K.Vijayalakshmi
- 29.S.Bagyalakshmi
- 30.S.Kausalya
- 31.P.Mangayakarasi
- 32.M.Joseph Thatheu
- 33.N.Vidhya



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- 34.V.Girija Sankar
- 35.A.Nirmalkumar
- 36.K.Suhirtha Devi
- 37.R.Anusooya
- 38.R.Jegatha
- 39.N.Usha
- 40.Andal Srinivasan
- 41.S.Sagarani
- 42.D.Chandra
- 43.I.Joy Suganthi
- 44.M.Kamala
- 45.R.Rajini
- 46.G.Sumathy
- 47.S.Thembavani
- 48.N.Sagunthala
- 49.S.Pachainayaki
- 50.R.Jothimani
- 51.S.V.Mahalakshmi
- 52.V.Renuka Devi
- 53.G.Muralidharan
- 54.K.Jothimani
- 55.A.Pankajam
- 56.N.Sarasu

... Respondents

W.P.No.188 of 2021

- 1.Union of India rep. by,
The Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai, Chennai - 2.
- 2.The Postmaster General,
Western Region (TN),
Coimbatore - 641 002.



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3.Senior Superintendent of Post Offices,
Salem East Division,
Salem - 636 001.

... Petitioners

Vs.

1.The Registrar,
Central Administrative Tribunal,
High Court Campus,
Chennai - 104.

2.M.Duraisamy

... Respondents

W.P.No.289 of 2021

1.Union of India rep. by,
The Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai, Chennai - 2.

2.The Postmaster General,
Western Region (TN),
Coimbatore - 641 002.

3.Senior Superintendent of Post Offices,
Salem East Division,
Salem - 636 001.

... Petitioners

Vs.

1.The Registrar,
Central Administrative Tribunal,
High Court Campus,
Chennai - 104.



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2.R.S.Murugan

... Respondents

PRAYER IN W.P.NO.13633 OF 2020 :

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of 1st respondent in O.A.No.1149 of 2014 dated 27.06.2019 in disposing the O.A. filed by the 2nd respondent and quash the same.

PRAYER IN W.P.NO.1540 OF 2021 :

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of 1st respondent in O.A.No.1691 of 2016 dated 20.08.2019 in disposing the O.A. filed by the 2nd respondent and quash the same.

PRAYER IN W.P.NO.188 OF 2021 :

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of 1st respondent in O.A.No.1240 of 2014 dated 27.06.2019 in disposing the O.A. filed by the 2nd respondent and quash the same.

PRAYER IN W.P.NO.289 OF 2021 :

Writ Petition filed under Article 226 of the Constitution of India praying to



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issue a Writ of Certiorari to call for the records of 1st respondent in O.A.No.1148 of 2014 dated 12.07.2019 in disposing the O.A. filed by the 2nd respondent and quash the same.

In.W.P.Nos.13633/2020, 188 & 289/2021 :

For Petitioners : Mr.A.R.L.Sunderesan,
Additional Solicitor General of India
Asst. by Mr.C.Kulainthavel, SPC
R1 : Tribunal
For R2 : Mr.C.Premkumar for
M/s.R.Malaichamy

In.W.P.No.1540/2021 :

For Petitioners : Mr.A.R.L.Sunderesan,
Additional Solicitor General of India
Asst. by Mr.C.Kulainthavel, SPC
R1 : Tribunal
For R2 to R26, 28,
30 to 39, 41, 42,
44 to 52 & 54 : Mr.S.Ramaswamy Rajarajan

COMMON ORDER

(R.HEMALATHA, J.)

These Writ petitions are filed challenging the orders of the Central Administrative Tribunal, Chennai Bench, passed in O.A.No.1149



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of 2014 dated 27.06.2019, O.A.No.1691 of 2016 dated 20.08.2019,
O.A.No.1240 of 2014 dated 27.06.2019 and O.A.No.1148 of 2014 dated
12.07.2019.

2. The respondents were all recruited to the cadre of Postal Assistant in Salem Division in the first half of 1982 under Reserved Trained Pool (RTP) and also were given induction training and practical training. Since there was a ban on recruitment Pan India in the petitioners' department, the respondents could not be regularised from the date of the training. They were working only as short duty staff and they were well aware of the fact that they will not be conferred with any right either to claim seniority or continuation in service. In fact this Reserved Trained Pool (RTP) was set up in 1980 for constitution of a standing pool of trained candidates for post and RMS offices by the Director General, Indian Post and Telegraph Department.

2.1. Subsequently, these postal assistants working as short duty staff were appointed as postal assistants in the Salem East Division on



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15.03.1989 and 05.06.1989. There was relaxation of the recruitment ban in 1986 and that was one of the reasons the respondents were absorbed as postal assistants creating some Super Numeric Posts.

2.2. In such circumstances, they came to know that one Parvathi and others in Kerala, as per orders of Central Administrative Tribunal, Ernakulum Bench in O.A.No.79/2011 who were recruited in the second half of 1982 were regularised with effect from 03.01.1983 and were eligible to get all the benefits which any regular Postal Assistant is eligible for while the respondents were deprived of such benefits like MACP I, II & III increments, pension and pensionary benefits.

2.3. According to the respondents, similarly placed persons who were recruited in the second half of 1982 were allowed to get all the benefits with retrospective effect. However, these respondents were given promotion Time Bound One Promotion (TBOP) with effect from 06.04.2005 and also given financial upgradation with MACP 2 with effect from 07.04.2009. But these respondents demanded fixation of seniority and financial benefits entitled to them on the basis of their length of service



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which was not acceded to by the petitioners. The respondents had claimed the benefits from retrospective effect as similarly placed employees in Kerala who filed O.A.No.79 of 2011 in Central Administrative Tribunal, Ernakulam Bench and which was allowed. The same order was confirmed by the High Court of Kerala in O.P (CAT) No.89/2014 dated 17.03.2017 and the SLP.No.25442 of 2017 filed before the Hon'ble Apex Court by the petitioners against the High Court order was dismissed.

2.4. Written representations which were submitted to the petitioners by the respondents did not evoke much response due to which the respondents were constrained to approach the Central Administrative Tribunal, Chennai Bench in O.A.Nos.1148, 1149 & 1240 of 2014 individually. Initially, O.A.No.1149 of 2014 and 1240 of 2014 were disposed of directing the petitioners to consider the case on the basis of Central Administrative Tribunal, Ernakulam Bench order in O.A.No.79 of 2011 and batch cases and also the order passed by the Kerala High Court in O.P.(CAT) 89/2014 in *K.S.Beena Vs. Union of India & Others*.

2.5. The Central Administrative Tribunal, Chennai in its order held that



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when facts and circumstances are similar to the referred cases and therefore the benefits cannot be denied to the present respondents. This decision in this common order was repeated in O.A.No.1148 of 2014 also. In O.A.No.1691 of 2016 as many as 55 similarly placed candidates referred to the same decision of Central Administrative Tribunal, Ernakulam Bench in O.A.No.79/2014 and the Kerala High Court in O.P.(CAT) 89/2014 in *K.S.Beena Vs. Union of India & Others* (cited supra). This order was challenged in W.P.No.1540 of 2021. In the earlier O.As, writ petitions were filed in this Court in W.P.No.13633 of 2022, 188 of 2021 and 289 of 2021. Thus all the four writ petitions are against the decision of the Central Administrative Tribunal, Chennai in different O.As for different respondents.

3. The petitioners have adduced documentary evidence to show that why and how the post of trained reserved candidates was constituted and what was the terms and conditions of employment. The system called RTP (Reserved Trained Pool) was introduced vide order dated 30.08.1980



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and the salient feature of the system was that when Postal Assistants and Sorting Assistants were filled in each recruitment Unit for a certain number of vacancies to be filled up an additional list upto 50% of the vacancies would be prepared and imparted training and categorised as RTP and kept in reserve to meet the regular future vacancies and current emergent needs of man power in the Post and RMS offices. They were expected to function as short duty staff on hourly rate of wages (Rs.2/- per hour). These candidates would be given priority in absorption for example if 15 candidates are included in the reserve list and 5 of them are brought on to the main list against drop outs in the concerned recruitment, the balance of 10 who constitute the trained reserve will be adjusted against the subsequent recruitment. In the subsequent recruitment if 20 vacancies are ear marked there would be 10 from the main list and 10 from the reserved list of the previous recruitment. The scheme was also to be operated for a period of one year on an experimental basis. The twin objectives of RTP was to reduce the vacancies to a bare minimum at any point of time and also to avoid inordinate delay in absorbing the reserved candidates.



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4. Mr. A.R.L. Sundaresan, learned Additional Solicitor General would contend as follows:

- i. The Apex Court in Civil Appeal No. 5268/97 @ SLP[C] No. 17422/95}, Civil Appeal Nos. 126/96, 124-125/96, 127-130/96 & 131/96 (*Union of India vs. K.N.Sivadas and others*) ruled that any service which was rendered prior to the regular appointment to the cadre cannot count for this rule because it cannot be considered as service in eligible cadre. This ruling was in the context of awarding of financial benefits and TBOP scheme for which the eligibility was 16 years regular service in a cadre.
- ii. The ban on any recruitment was an administrative decision by the Government of India and was not challenged by the present respondents in any court of law. Furthermore, it was contended that many of the respondents were given the benefits of TBOP after the



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- iii. A bare perusal of the year of filing the O.As would show that the respondents have staked their claim after more than 25 years for which no reason has been assigned.
- iv. He also pointed out that the Supreme Court had made a clear differentiation between Casual Labourers and RTPs. According to the Apex Court decision in *Union of India vs. K.N.Sivadas and others* (cited supra) the scheme for RTPS provided for an assurance that they would be accommodated in future vacancies as regular employees while that was not the case with the Casual Labourers and therefore the RTPs cannot on the one hand avail the benefit of absorption in regular service because of their own scheme and at the same time on the other hand claim additional benefits.
- v. According to him, the order of Central Administrative Tribunal, Ernakulam Bench, cannot be replicated in Chennai due to various factors. The implementation of such an order would result in total chaos and confusion in searching and reconstructing the records.



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One such direction in the said O.A. in Central Administrative Tribunal, Ernakulam is to work out the vacancies that arose from 1984 onwards during the period when there was a ban on recruitment and thereafter filling it up yearwise on merits by accommodating notionally the RTP candidates. Such orders though confirmed by the High Court of Kerala, are likely to have serious repercussions in any organisation.

vi. Therefore the learned Additional Solicitor General contended that the order of O.As in Central Administrative Tribunal, Chennai Bench, relying upon the decision of Central Administrative Tribunal, Ernakulam Bench, was totally perverse and liable to be dismissed.

vii. In order to substantiate his contentions he relied on the decision in *Khoday Distilleries Limited and others vs. Sri Mahadeshwara Sahakara Sakkare Karkahane Limited, Kollegal* reported in 2019 4 SCC 376 and contended that the dismissal of the SLP at the admission stage by way of a non speaking order implies that the Apex Court was not inclined to exercise its discretion to allow the



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appeal being filed. In other words, the senior counsel opined that such an order refusing Special Leave to appeal does not stand substituted in place of the order under challenge. Therefore, according to him, the Apex Court had not confirmed the decision of the Kerala High Court.

viii.He had also relied on the decision in *Union of India and others vs.*

C. Girija and others (Civil Appeal No.1577 of 2019) decided on

13.02.2019 by Hon'ble Apex court in which it is held that

12. This Court had occasion to consider the question of cause of action in reference to grievances pertaining to service matters. This Court in C.Jacob Vs. Director of Geology and Mining and Another, (2008) 10 SCC 115 had occasion to consider the case where an employee was terminated and after decades, he filed a representation, which was decided. After decision of the representation, he filed an O.A. in the Tribunal, which was entertained and order was passed. In the above context, in paragraph No.9,



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following has been held:-

“9. The courts/Tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any “decision” on rights and obligations of parties. Little do they realise the consequences of such a direction to “consider”. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to “consider”. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The



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Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, "and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored."

13. This Court again in the case of Union of India and Others Vs. M.K. Sarkar, (2010) 2 SCC 59 on belated representation laid down following, which is extracted below:-

"15. When a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/Tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance



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with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches."

14. Again, this Court in State of Uttaranchal and Another Vs. Shiv Charan Singh Bhandari and Others, (2013) 12 SCC 179 had occasion to consider question of delay in challenging the promotion. The Court further held that representations relating to a stale claim or dead grievance does not give rise to a fresh following was laid down:-

"19. From the aforesaid authorities it is clear as crystal that even if the court or Tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix.



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Similarly, a mere submission of representation to the competent authority does not arrest time.

23. In State of T.N. v. Seshachalam, (2007) 10 SCC 137, this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus: (SCC p. 145, para

16) “16. ... filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.”

.....

16. On the preposition as noticed above, it is clear



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that the claim of the applicant for inclusion of her name in the panel, which was issued on 09.01.2001 and for the first time was raked up by her, by filing representation on 25.09.2007, i.e., after more than 06 and half years. The claim of inclusion in the panel had become stale by that time and filing of representation will not give any fresh cause of action. Thus, mere fact that representation was replied by Railways on 27.12.2007, a stale claim shall not become a live claim. Both Tribunal and High Court did not advert to this important aspect of the matter. It is further to be noted from the material on record that after declaration of panel on 09.01.2001, there were further selection under 30% promotion by LDCE quota, in which the applicant participated. In selection held in 2005 she participated and was declared unsuccessful. With regard to her non-inclusion in panel in 2005 selection, she also filed O.A. No. 629 of 2006 before the Tribunal, which was dismissed. After participating in subsequent selections under 30% quota and being declared unsuccessful, by mere



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filing representation on 27.09.2007 with regard to selection made in 2001, the delay and laches shall not be wiped out."

ix. Similarly reliance was also placed on SLP Civil (D) 18007/2019 (*Union of India and others vs. Gandiba Behera*) wherein it was held thus:

"The selection of an employee in regular post cannot also be predated because of delay on the part of the authorities in holding the selection process. We do not agree with the view of the High court on this count in judgments which form subject of appeal in Civil Appeal No.5008 of 2016, SLP (C) No.16767 of 2016, Civil Appeal No.8379 of 2016 and Civil Appeal No.10801 of 2016. Service tenure of an employee in a particular post cannot be artificially extended in that manner in the absence of any specific legal provision."

5. Therefore, it was argued by him that merely because Tribunal or the High Court has directed the officials to consider such cases which requires to predate the regularisation which was not possible due to a ban on recruitment the practicality has to be thought of. He further pointed out that the Tribunal relied on the Apex Court judgment in the case of Appeal (Civil) No.5739/2005 (*Union of India Vs. M.Mathivanan*) the facts of the



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case was totally different. The said Mathivanan had volunteered himself in Army Postal Services in 1983 and was appointed as a Regular Postal Assistant by the President of India with effect from 30.09.1983 and therefore, it was a unique case where he was regularised in 1983 itself and therefore, was eligible for the benefit of TBOP in 1999. This special case cannot be the norm, it was contended.

6. Per contra learned counsel for the respondents would contend as follows:

- i. The order of the Central Administrative Tribunal, Ernakulam Bench is directly applicable to the respondents because all the respondents were similarly placed. Those benefited by the decision of the Central Administrative Tribunal, Ernakulam Bench which was subsequently confirmed by the Kerala High Court, are all Postal Assistants recruited as RTPs (Reserved Trained Pool) and the respondents cannot be discriminated against as done by the petitioners.



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- ii. According to the counsel, the orders of Central Administrative Tribunal, Chennai Bench in O.A.No.1691 of 2016 was also based on the earlier order in O.A.Nos.1148, 1149 & 1240 of 2014 filed by three different similarly placed postal assistants.
- iii. It was also contended that all these orders in different O.As relied mainly on the order of Central Administrative Tribunal, Ernakulam Bench in O.A.No.79/2014 and batch cases and the orders passed by the Kerala High Court in O.P.(CAT) 89/2014 in the case of *K.S.Beena Vs. Union of India & Others*. The SLP filed by the Union of India in the Apex Court was also dismissed.
- iv. In such circumstances, the need to treat all the persons holding the same post and recruited under the same scheme of RTP are to be treated at par. Therefore, he pleaded that these writ petitions are liable to be dismissed.
- v. He also relied on the decision of the Apex Court in *K.C.Sharma & Others Vs. Union of India & Others* reported in 1998 SCC (L&S) 226 in which it was held that the benefit of the judgment to other



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similarly situated will not become time barred and delay or laches if any have to be condoned to enable the grant of relief on the same terms as given in the other judgments.

- vi. He also relied on the decision of Apex Court in Appeal (Civil) No.5739/2005 (*Union of India Vs. M.Mathivanan*) in which TBOP benefits were allowed to him by the Apex Court confirming the judgment of High Court in W.P.No.25452/2002 of this Court though he was recruited as Postal Assistant in 1981 and placed in RTP.

7. Having gone through all the related papers including the judgment and rulings adduced on both sides it is essential to go into the genesis of constitution of a standing pool trained reserved candidates for Post and RMS offices. It is a well known fact that our Post and RMS offices have a huge network and infrastructure covering nook and corner of our country and play a very important role. It was in this context that the Director General, Post & Telegraphs Department, New Delhi had circulated on 30.10.1980 the details of the scheme of RTP. The major



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objective as could be deciphered from the copy of the letter dated 30.10.1980 circulated by the Director General, Post & Telegraphs Department is to bridge the gap between the occurrence of vacancy and placement of approved and trained candidates to fill the vacancies and also to cut down on the overtime arrangements which were fraught with inherent limitations. It was decided that at the time of each recruitment an additional list of candidates equal in number to 50% of candidates in the main list would be drawn up and imparted training similar to the candidates in the main list. It was also decided that they will be used against vacancy due to absenteeism or to handle peak hour traffic. It was also decided that they would be absorbed in the regular vacancies in turns after the main list candidates are absorbed. They were paid wages on hourly basis and the mandatory reservation policy was also applied on them at the time of selection itself and it was initially on an experimental basis for a period of one year. With this back drop the entire facts of these petitions have to be considered.



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8. The ban on recruitment was Pan India and was not something on which the petitioners have any role to play. It was the policy of the Government for Administrative reasons. It is also pertinent to refer at this juncture to the relevant portions of the judgment in *Union of India & Another Vs. K.N.Sivadas & Others* in Civil Appeal No. 5268/97 @ SLP[C] No. 17422/95}, Civil Appeal Nos. 126/96, 124-125/96, 127-130/96 & 131/96

"The position of RTPs is quite different. In the first place, the very scheme which constituted RTPs provided for their absorption as regular employees. With this in mind, they were also given the same training as regular employees. They were required in the meantime, to carry out short-term duties or to handle peak hour traffic on an hourly wage basis. However, there was clear assurance in the scheme that they would be accommodated in future vacancies as regular employees in the manner set out in the scheme. We are informed that there was backlog in absorption because of a ban on recruitment during certain years. All the RTP employees have been absorbed as regular employees by 1990. Some of the respondents who are before us have been absorbed much earlier, in the year



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1988. Therefore, they are in a much better position than casual labourers and are now enjoying all the benefits of regular employment. Their claim relates to the period prior to their absorption. The entire period in effect, is either prior to 1988, or in the case of some of the respondents, prior to January 1990. The benefits which they claim are the benefits which have been conferred on casual labourers only after 29.11.1989. The respondents, however, are claiming these benefits for earlier periods (In respect of those respondents who were absorbed in January 1990, their continuation as RTPs after 29.11.1989 is only of two months duration). In other words, RTPs are claiming benefits for a period for which a similar benefit has not been conferred on casual labourers under the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme.

The Tribunal, in our view, has erred in equating RTPs with casual labourers. The position of these two categories of employees is very different as we have already set out. The Tribunal has also erred in assuming that casual labourers are getting these benefits during the period for which the RTPs are claiming these benefits. RTPs have already



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WEB COPY *obtained the benefit of absorption in regular service because of their own scheme. They, therefore, cannot, on the one hand, avail of their own special scheme and at the same time, claim additional benefits on the basis of what has been given to the casual labourers. This is unwarranted, especially as the period for which they claim these benefits is the period during which such benefits were not available to casual labourers.*

In C.A. Nos. 124-125 of 1996 the respondents originally worked as Telegraph Assistants in various Central Telegraph Offices in their reserved trained pool and were absorbed in regular service in 1992. In their department, the scheme of temporary status and regularisation for casual labours has come into effect from 1.10.1989. Their case is no different from the case of other RTPs although undoubtedly, they have been regularised a little later. As stated above, the position of RTPs is very different from the position of casual labourer and the Tribunal could not have equated the two.

In C.A. Nos. 127-130 of 1996 the RTPs who have been regularly absorbed in the year 1988 have been given the



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WEB COPY *benefit of counting their service as RTPs for the purpose of think eligibility to appear for the departmental examination. The relevant rule provides that the candidates "must have put in at least 5 years continuous satisfactory service in one or more eligible cadres" before they can appear for the examination. The eligibility is related to five years service in the cadre. Any service which was rendered prior to regular appointment in the cadre, cannot count for the purpose of this rule because it cannot be considered as service in any eligible cadre. The Tribunal was, therefore, wrong in granting to RTPs the benefit of service rendered by them prior to their regular appointment, for the purpose of their eligibility to appear for the departmental promotion examination."*

Though this case pertains to one K.N.Sivadas and few other Postal Assistants, who were in the RTP of Post and Telegraph offices and were the first to seek the legal remedy for getting all the benefits by pre-dating their regularisation from the date of their respective appointments, the comparison they made was with the casual labourers who were bestowed with certain benefits under Casual Labourers (grant of temporary status



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and regularisation) Scheme, 1989. There were also other rulings such as *Union of India vs. Gandiba Behera* in Civil Appeal No.8497/2009 which had clearly spelt out that predating regularisation is not acceptable. This was also highlighted by the learned counsel for the petitioner during the course of arguments.

9. Another issue which was raised by the learned counsel for the petitioners was regarding the inordinate delay on the part of the respondents who have approached the Tribunal only because some other employees of their own cadre in Kerala had raised the issue and got a favourable order from the Central Administrative Tribunal, Ernakulam Bench. In this regard, the learned counsel for the petitioner relied on 2006 (11) SCC 464 in the case of *U.P.Jal Nigam and Another vs. Jaswant Singh and Another* wherein it was held that

"16. Therefore, in case at this belated stage if similar relief is to be given to the persons who have not approached the court that will unnecessarily overburden the Nigam and the Nigam



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WEB COPY *will completely collapse with the liability of payment to these persons in terms of two years' salary and increased benefit of pension and other consequential benefits."*

10. As rightly pointed out by the learned counsel for the petitioners, the financial burden of implementing such a decision which has no element of legal justification. The Tribunal entirely relied on the decision *Union of India Vs. M.Mathivanan* case interpreting that the said Mathivanan was also a RTP candidate and just because he was absorbed in Army Postal Service he was considered favourably for grant of TBOP. The Tribunal had concluded RTPs whether in APS are regular postal services are equal and should be considered at par. It can be easily comprehended that this was one rare such case and can be only an exception and cannot be a rule. In fact in the said judgment the Apex Court took cognizance of the regularisation made consequent upon the appointment of the said Mathivanan in the Army Postal Service on regular basis which according to the Apex Court was clearly the date of regularisation. If the arguments of the respondents is to be taken into consideration the 16 year period (for TBOP) in the case of Mathivanan



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should have been 1997 and not 1999 as approved by the Apex Court.

Thus, it is clear that 16 year period for TBOP was calculated only from the date of regularisation and not from the date of initial appointment in RTP.

The decision of Central Administrative Tribunal, Ernakulam Bench, was definitely based on a wrong interpretaions of the two Apex Court decisions in the cases of K.N.Sivadas and Mathivanan.

11. Now coming to the aspect of delay in claiming the benefit with retrospective effect, it is to be noted that though there is no specified time limit stipulated under any Act, the delay cannot be unexplained and unreasonable. In the present cases, it is seen that the respondents have neither challenged the ban on recruitment which according to them was the main cause of their belated regularisation nor given any representation to the petitioners seeking such relief immediately after their regularisation. It was only in the year 1996 that one of their colleagues had approached the appropriate legal forum to settle his issue of seeking similar benefits as provided for the casual labourers. The present respondents did not



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approach the employers with any representation even till 2013. It was only thereafter, they followed it up with OAs in Central Administrative Tribunal, Chennai Bench in 2014. This aspect of delay and laches is very important. In fact the Apex Court in the case of *Union of India & Others vs. C.Girija & Others, Meena Baskar vs. C.Girija & Others, C.Girija vs. Union of India & Others* in Civil Appeal Nos.1577, 1578 of 2019 and *Writ Petition (Civil) No.653 of 2015*, observed that

"13. This Court again in the case of Union of India and Others Vs. M.K. Sarkar, (2010) 2 SCC 59 on belated representation laid down following, which is extracted below:-

"15. When a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/Tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on



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which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches."

14. Again, this Court in State of Uttaranchal and Another Vs. Shiv Charan Singh Bhandari and Others, (2013) 12 SCC 179 had occasion to consider question of delay in challenging the promotion. The Court further held that representations relating to a stale claim or dead grievance does not give rise to a fresh following was laid down:-

"19. From the aforesaid authorities it is clear as crystal that even if the court or Tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix.

Similarly, a mere submission of representation to the competent authority does not arrest time."

This phrase that a dead cause of action cannot "rise like a phoenix " is very much applicable to the present facts of the case. In fact, as pointed out by the counsel for the petitioners such decisions without giving thought



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to the financial implications and practicality would only put the entire machinery of the petitioners under huge stress. There is also a possibility of such decisions being taken up by other departments and even by casual labourers and it would just be an endless stream of representations and litigations. The financial implications could be very stressful for an organisation like the petitioners' and merely because it is wholly owned by the Government of India does not entail implementations of such huge avoidable expenditure merely to comply with the directions of the Tribunal. The direction of the Tribunal to work out backwards from 1984 and implement such an exercise that when number of RTP was practically only a reserved list consisting of 50% of the main vacancies defies any logic. The primary object of the RTP was intended only to reduce the expenditure on overtime and also ensure smooth flow of work even in the exigency of absenteeism. But the impugned decisions of Central Administrative Tribunal, Chennai Bench would defeat the very purpose and concept of RTP. The respondents were not recruited as regular Postal Assistants and their appointment dates cannot be taken for calculating



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their service for any benefit. The only difference between the candidates under RTP and casual labourers was the assurance of regularisation. Having got an advantageous start in the beginning of their career, it appears that their demand for considering their service for all purposes including TBOP from the date of their initial appointment shows only the greed in them. As already elaborated the ban on recruitment was not the decision of the petitioners and the demands of the respondents smacks of unreasonableness. Again as rightly pointed out by the learned Additional Solicitor General, the Government of India's exchequer cannot be allowed to bleed to meet out such illogical demands and therefore, the orders of the Central Administrative Tribunal, Chennai Bench, are unacceptable and without any rationale. In this context, it is also pertinent to point out that the orders of the Central Administrative Tribunal, Ernakulam Bench in O.A.No.1410/1995 was set aside by Hon'ble Supreme Court in C.A.No.80-123/1996 wherein it was held that

"Any service which was rendered prior to regular appointment in the cadre, cannot count for the purpose of this rule because it cannot be considered as service in any eligible cadre. The



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12. In view of the forgoing decision, it could be easily concluded that the decisions in all the OAs have been arrived at by the decision of Central Administrative Tribunal, Ernakulam Bench which was confirmed later by Kerala High Court. All the orders of Central Administrative Tribunal, Chennai, suffer from lack of application of mind on their part as they have not gone into merits and demerits of such an unprecedented decision. The delay of more than 3 decades would have resulted in many retirements on superannuation amongst the respondents and such a massive exercise of searching the records and arriving at even the minute details like break in service etc. is just next to impossible that too when the demands of the respondents are totally unethical and unreasonable.

13. In the result, all the Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed. The orders of the Central Administrative Tribunal, Chennai Bench, passed in O.A.No.1149 of 2014 dated 27.06.2019, O.A.No.1691 of 2016 dated



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20.08.2019, O.A.No.1240 of 2014 dated 27.06.2019 and O.A.No.1148
of 2014 dated 12.07.2019, are set aside.

(V.M.V.,J.) (R.H.,J.)
24.01.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga/mtl

V.M.VELUMANI, J.
and
R. HEMALATHA, J.
bga/mtl

To,
The Registrar,
Central Administrative Tribunal,
High Court Campus, Chennai - 104.

Pre-delivery Order in
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24.01.2023