
(2023) 01 CAT CK 0009

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00507 Of 2019

Akhila K.V.

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 04-01-2023

Acts Referred:

Citation : (2023) 01 CAT CK 0009

Hon'ble Judges : Sunil Thomas, Member (J); K.V. Eapen, Member (A)

Bench : Division Bench

Advocate : Shafik M. Abdul Khadir, V.A. Shaji

Final Decision : Partly Allowed

Judgement

Sunil Thomas, Member J

1. The applicant was selected as a GDSBPM, Thadikkadavu in a selection process conducted in the year 2012. She was issued Annexure A1 offer letter dated 20.9.2012 and was permitted to work with effect from 5.10.2012. Annexure A2 appointment order dated 21.11.2012 was issued appointing her with effect from 5.10.2012. While so, she conceived and on purported medical advice, did not attend duty thereafter. While so, she was issued with Annexure A3 communication dated 1.10.2013 informing her that her resignation letter dated 13.8.2013 was accepted with immediate effect. She approached this Tribunal by filing OA No. 14 of 2014 contending that she had only availed leave and had not submitted resignation. It was further alleged that resignation letter, if any, was either concocted or obtained from her by coercion. This Tribunal by Annexure A4 order dated 8.4.2016, held that the termination was invalid and directed the respondents to reinstate her within one month from the date of the order. Though she requested for immediate reinstatement, she was directed to join only on 2.4.2018, by Annexure A5 dated 20.3.2018. By Annexure A6 order dated 16.4.2018 she was taken back into service.

2. In the meanwhile, Annexure A7 notification inviting applications for the

Limited Competitive Examination (LCE) for promotion to the cadre of Postal Assistant was issued by the respondents. The minimum qualifying service prescribed was five years. Applicant submitted Annexure A8 application. It was reported that her application was rejected on the premise that she had not completed five years. Contending that though she was not issued with any rejection order, the action of the respondents in rejecting her application for LCE was wrong, she has approached this Tribunal. The reliefs sought in the Original Application are as follows:

- "i) To call for the records relating to Annexure A1 to A8 and to declare that the applicant is entitled to reckon her service as GDSBPM Thadikkadavu from 1.10.2013 till the date of her reinstatement, 3.4.2018, as regular service at least notionally;
- ii) To declare that the applicant is entitled to have her notional service as GDSBPM, Thadikkadavu with effect from the date of Annexure A1 reckoned in order to appear in the competitive examination for appointment to the post of Postal Assistants from among the Gramin Dak Sevak pursuant to Annexure A7 notification.
- iii) To direct the respondents to pay all monetary benefits of GDSBPM Thadikkadavu from 8.5.2016 to 3.4.2018;
- iv) To direct the respondents to permit the applicant to appear in the competitive examination for appointment to the post of Postal Assistants from among the Gramin Dak Sevak pursuant to Annexure A7 notification to be held on 14.7.2018 or on any other deferred date."

3. The respondents filed a detailed reply statement wherein it was asserted that she had joined the post on 5.10.2012. On receipt of her resignation letter dated 13.8.2013, it was accepted with effect from that date. However, by Annexure A4 this Tribunal directed her reinstatement and she was reinstated in the post of BPM, Thadikkadavu, with effect from 3.4.2018. In the order it was specifically directed that the applicant will not be entitled to get any monetary benefits for the period till she joined duty as such. Her date of entry was treated as 3.4.2018. As per Annexure A7 notification, for LCE from GDSs to the cadre of Postal Assistants, a candidate should have a minimum service of five years on 1st day of April of the year to which the vacancy pertain to. As the date of entry of the applicant on reinstatement was 3.4.2018, she had not completed five years of service for appearing in the examination. Hence, she was not admitted for the examination in the first instance. It was further stated that after Annexure A4 order of reinstatement of this Tribunal, the incumbent in that post one Smt. Praseena, who had joined the service on 13.5.2015, was directed to vacate the post to accommodate the applicant herein. Since Smt. Praseena was working in that post, reasonable time was given to her to opt another post. Vide letter dated 12.3.2018 Smt. Praseena intimated that she was living with her family and she sought time to continue in the post. This was not accepted and

thereafter the applicant was reinstated in the post. Hence, it was contended that the applicant was not entitled for any of the reliefs.

4. A rejoinder was also filed traversing the allegations and reiterating the claim of the applicant.

5. By an interim order of this Tribunal dated 11.7.2019 the applicant was provisionally permitted to attend the examination held on 15.9.2019. The result of the departmental examination was produced in a sealed cover. On opening, it was revealed that the applicant stood qualified in the examination.

6. The crucial question that arises in the present case is whether the applicant has completed five years of qualifying service. Annexure A7 at clause 3(iii) provides as under:

"Service eligibility – Must have put in a minimum service of five years as on the 1st date of April of the year to which the vacancy(ies) pertain to."

According to the learned counsel for the applicant she initially joined on 5.10.2012 and by virtue of Annexure A4 she was taken back in April, 2018. During the period from 1.10.2013 to 3.4.2018 she was kept out of service illegally as found by Annexure A4 and hence she was entitled to notional service for the purpose of clause 3(iii) of Annexure A7. In this regard, it is pertinent to note the observation of this Tribunal in Annexure A4. The contention of the respondents in Annexure A4 proceedings was that applicant had submitted the resignation voluntarily, which was accepted. In paragraph 13 of Annexure A4, this Tribunal had held that applicant had at one stage stated that her signed blanked papers were obtained by the respondents and such resignation letter might have been prepared on it. After holding that, such contention did not appear to be correct, it was held by this Tribunal that Annexure A6 letter therein which was acted upon by the respondents was not proved to be a resignation letter prepared voluntarily and consciously signed and handover by the applicant. The Tribunal concluded that the plea that applicant had voluntarily resigned from the post as per Annexure R6 was untenable and accordingly Annexure A1 therein, which was the order of termination was set aside. Applicant was directed to be reinstated within one month. However, it was clarified that she will not be entitled to any monetary benefits, for the period till she joined duty, pursuant to the order.

7. The question whether such termination and such services shall be considered as regular service for any purpose had been subject matter of consideration before the Supreme Court in various decisions relied on by the learned counsel for the applicant. In *Nirmal Chandra Bhattacharjee v. Union of India* [1991 Supp (2) SCC 363] it was held that the mistake or delay on the part of the Department should not be permitted to recoil on the employees. That proposition of law was reiterated by the Supreme Court in *State of Uttar Pradesh & Ors. v. Mahesh Narain & Ors.* [(2013) 4 SCC 169]. In *Union of India & Ors. v. K.B. Rajoria* [(2000) 3 SCC 562] it was held that the term service should include even

notional service as notional appointment amounts to set right the wrong done to an incumbent by denying him an appointment to which he was otherwise entitled to. The ratio was followed in *Sharma K.K. v. High Court of Delhi & Ors.* [(2014) 6 SCC 96] wherein it was held that the Court is duty bound to reconstitute the lost opportunity of an incumbent due to the mistakes and illegalities committed by the Department.

8. In Annexure A4, the resignation letter which was heavily relied on by the respondents was found to be not established. Hence, she was ordered to be reinstated. Evidently, though she was willing to work, she was not permitted to do work wrongly by the respondents herein. Analyzing the present case in the background of above settled proposition of law, we are satisfied that this is a fit case wherein the period during which the applicant was kept out of service from 1.10.2013 till 3.4.2018 can be treated as services limited for the purpose of reckoning five years period contemplated under clause 3(iii) of Annexure A7. To that extent the applicant is entitled for the relief.

9. Applicant had further claimed that she is entitled for back wages during the period during which she was kept out of service. By Annexure A4 this Tribunal had specifically held that applicant will not be entitled to count the period till she joined duty pursuant to Annexure A1. The clause that she will not be entitled to monetary benefits till she joins service was heavily relied on by the learned ACGSC to contend that she is not entitled to any monetary relief. It is true that in Annexure A4 this Tribunal while ordering reinstatement of the applicant, had directed that she will not be entitled to monetary benefits. However, that was subject to a rider that she shall be appointed within one month. Hence, the period during which she would not have been entitled for monetary benefits was the period during which she was kept out of service till her reinstatement pursuant to Annexure A4 which was one month. Appointment was not given to her within the prescribed time limit. She was appointed only after two years from Annexure A4. The question arises whether on the strength of the rider incorporated in Annexure A4 that the applicant will not be entitled for monetary benefits during the above period could be used against her after prolonging it beyond the time limit prescribed by this Tribunal. Evidently the only excuse given by the respondents was that one Smt. Praseena who was appointed after the alleged resignation of the applicant had to be removed and it took some time. It is pertinent to note that even in paragraph 8 of the reply statement it is mentioned that Smt. Praseena was asked to move out only by the communication dated 12.3.2018. Within one month thereafter, the applicant was given appointment. The order of this Tribunal was not implemented from 8.4.2016 till 12.3.2018. The delay for not implementing the order has not at all been explained. Hence it is only to be presumed that after delaying her reinstatement for such a long period, the clause in Annexure A4 cannot be set up to her prejudice. The rider in Annexure A4 was incorporated on condition that the order will be implemented within one month. Having considered this, we are inclined to hold that the applicant will be entitled to monetary benefits from

8.5.2016 to 3.4.2018, till she was reinstated.

10. In the result the OA is allowed in part. It is directed that the period from 1.10.2013 to 3.4.2018 will be deemed to be "service" for the purpose of clause 3(iii) of Annexure A7 and the applicant is held to be eligible to apply to the post of Postal Assistant under LCE. The result of LCE shall be dealt with accordingly and orders should be passed at the earliest. She will also be entitled for entire pay and allowances from 8.5.2016 to 3.4.2018. The entire amount due to her shall be calculated and paid within three months from the date of receipt of a copy of this order, failing which it will carry 6% interest after three months. No order as to costs.