
(2017) 03 MAD CK 0154
In the Madras High Court
Case No : 21193 of 2015

K.Kannan

APPELLANT

Vs

Union of India & otrs.

RESPONDENT

Date of Decision : 01-03-2017

Acts Referred:

Citation : (2017) 03 MAD CK 0154

Hon'ble Judges : K.K.Sasidharan And V.Parthiban

Bench : DIVISION BENCH

Advocate : K.K.Sasidharan And V.Parthiban

Judgement

1. This Writ Petition has been filed against the order passed by the Central Administrative Tribunal (in short, "the Tribunal") in O.A.No.1165 of 2014, dated 13.4.2015, dismissing the application filed by the petitioner herein.

2. The petitioner herein approached the Tribunal, seeking the following prayer: "
i) To call for the records of the 2nd respondent pertaining to his order made in No.B2/PM/MTS/Digs dated 19.06.2014 and set aside the same; consequent to

" ii) direct the respondents to treat the service of the applicant under old pension scheme and to grant pension and all other retirement service benefits with arrears of pension to the applicant."

3. According to the petitioner, he was initially appointed in the respondent department as Extra Departmental Packer (EDP), which was subsequently known as GDS Packer on 01.11.1974. After being employed as Extra Departmental Packer, the petitioner was selected for promotion/appointment to the cadre of Group D post on regular basis vide selection order dated 30.12.2003. Thereafter, an allotment order was issued on 1.1.2004 and finally, the appointment order was issued on 2.1.2004 with effect from 1.1.2004 A.N. After serving as Group D regular employee, the petitioner retired from service on attaining the age of superannuation on 30.4.2014, on which date, the petitioner has completed 10 years and 4 months service and therefore, he claims that he is entitled to

pensionary benefits.

4. It is admitted position that the selection for appointment/promotion of the petitioner to the post of Group D post was initiated in 2002 and the process of filling up of the said vacancy completed only on 30.12.2003 and finally, appointment order was issued on 2.1.2004 with effect from 1.1.2004. On his retirement, the petitioner was informed that he would get the pensionary benefits under new Pension Scheme (NPS) vide communication dated 19.6.2014. This communication was issued in response to the representation of the petitioner on 7.5.2014 requesting for grant of pensionary benefits under CCS (Pension) Rules, 1972, since he was admittedly selected and appointed against the vacancy which arose prior to 1.1.2004, on which date, New Pension Scheme came to be implemented. However, the Department, by the rejection order dated 19.6.2014 categorically held that the petitioner was governed by new restructured defined contribution pension system as having been appointed through the Central Government service from 01.01.2004 and he cannot claim any benefit with reference to the order of vacancy for which selection/recruitment was made. The said rejection order was impugned in the original application.

5. The learned Tribunal, after appreciating the rival contentions of the parties, dismissed the Original Application on the ground that the date of appointment was relevant factor for application of New Pension Scheme and not the year in which, the vacancy occurred. The Tribunal, further held that the GDS cadre is governed by different set of Rules, as per which, they are not entitled to the pension for being only a part time service and they are governed by different set of service conditions and the petitioner became eligible for pension only from the date of actually joining in Group D service and therefore, his previous service rendered as GDS worker would not qualify for pension. In such view of the matter, O.A. came to be dismissed. As against the order, the present Writ Petition has been filed.

6. Shri R.Malaichamy, learned counsel appearing for the petitioner strenuously contended that it is admitted position that vacancy had arisen much earlier to 1.1.2004 and if only, the department had taken prompt action for completing the selection process, the petitioner would have been brought the then existing Pension Scheme under CCS (Pension) Rules, 1972. He further contended that the Tribunal and various other High Courts have held in several matters that the previous service rendered as GDS worker ought to be counted for the purpose of calculation of pension or atleast for making the employees eligible for pension. The orders rendered by the Tribunal were confirmed by the High Court. In a compilation of the decisions submitted before this Court, it could be seen that the High Court of Karnataka in W.P.No.81669 of 2011, by its order dated 17.6.2011, confirmed the order passed by the Central Administrative Tribunal, Bangalore Bench, granting pensionary benefits by counting the service rendered by GDS workers before they were brought on regular establishment as Group D staff.

One other application was also allowed by the Central Administrative Tribunal, Bengaluru Bench in O.A.No.221 of 2010 by order dated 17.6.2011 and the same was also confirmed by the Karnataka High Court and consequently, by the Hon"ble Supreme Court. Therefore, Shri R.Malaichamy, learned counsel for the petitioner contended that atleast for the purpose of bringing the petitioner under the old pension scheme, his past service ought to have been considered, if not the year of vacancy.

7. Per contra, the learned counsel appearing for the Department refuted the contention of the learned counsel for the petitioner that the most relevant factor for appreciating or adjudicating the dispute between the parties is the date of appointment and admittedly, in the instant case, the date of appointment being 1.1.2004 by then, the New Pension Scheme had come into effect, the petitioner was rightly brought under the Contributory Pension Scheme (NPS) and the petitioner cannot claim any other benefit on the basis of the date of vacancy occurred or count his past service for the purpose of grant of pension.

8. In order to appreciate the rival contentions of the parties more effectively, it is relevant to extract the conclusion found in the judgment of the Karnataka High Court in W.P.No.81669 of 2011(S-CAT) rendered on 17.6.2011 as found in paragraphs 6 to 10 as under: "6. The first contention advanced by the learned counsel for the petitioner before this Court was, that respondent No.1 was not entitled to the benefit of his entire service from 1971 to 2003 for determining his eligibility for pensionary benefits. It was contended that he was entitled to benefit for the period from 1995 to 2003 only. In so far as the submission of the learned counsel for the petitioners is concerned, he desires this Court to hold, that the petitioner was entitled for consideration for pensionary benefits, only with effect from the date when he came to be appointed to the Group-D cadre i.e., with effect from 4.2.95. It is the contention of the learned counsel for the petitioner that service rendered by the respondent from 4.2.1995 to 31.7.2003 only, can be considered as qualifying service. Based on the aforesaid service rendered by the respondent in Group-D cadre, the learned counsel for the petitioners submits, that the respondent who had not completed 10 years of qualifying service, was not entitled to pensionary benefits.

7. We have heard the submissions advanced at hands of the learned counsel for the petitioner-Union of India. We find no justification, whatsoever, in the same to dissect the services rendered by the respondent into two components i.e., from 22.11.1971 upto 15.1.1995, and thereafter, from 16.1.1995 to 31.7.2003. The first part of service referred to herein above was rendered as an Extra Departmental Mail Carrier (subsequently re-designated as Gram Dak Sevak Mail Carrier). The subsequent service which was rendered as member of the Group-D cadre we were given the impression that the appointment of the respondent to the Group-D cadre was a fresh appointment which had no nexus to the earlier service. We find no merit in this impression. On 16.1.95, the respondent came to be appointed by a process of selection to the Group-D cadre. Perusal of the

memorandum dated 16.1.95, appointing the respondent by selection to the Group-D cadre, is available in the record as Annexure A2. A relevant extract of the aforesaid order is reproduced hereunder.

DEPARTMENT OF POSTS (OFFICE OF THE SR.SUPDT.OF POST OFFICES,
GULBARGA DISTRICT) (Memo No.B2/C1.IV/Dlgx.Dated at Gulbarga-1 the,
16.01.1995 - - - - -

The following allotment of approved candidates for appointment to group "D" and request transfers as noted against each are hereby ordered to have with immediate effect.

Sl.No. Name & Designation of the Office Allotted to

1. Sri Anand Rao,(OC), BPM, Kawalga, BO a/w Alund SO (Approved Candidate) To the SPM, Alund. SO, Vice Sri.Sidramappa (Approved Candidate), CI IV Alund Transferred to GB, HO Unit.
2. Sri Dattappa (SC) EDMC, Kadni BO a/w Farhatabad SO (Approved candidate) To Postmaster, Shahabad HO Unit against vacant post.
3. Sri Siddappa (S) ED Pkr. Chandapur SO (Approved Candidate) To SDI (P) Shahabad Unit vice Sri Shakar CI.IV shahabad ACC Transferred to GBBahamanipure SO
4. Sri Shakar CI.IV Shahabvad ACC SO To ASP I/c, GB-II, Sub Dn.Unit against vacant post (at request, no TA/TP).
5. Sri Sidramappa, C.IV Alund So To Gulbarga HO unit against vacant post (at request No TA/IP).

The appointing Units concerned may issue appointments/transfers orders of the above approved candidates after observing all the usual formalities including the verification of case of SC/ST candidate in particular within a fortnight. The copy of appointment/Transfer order along with charge reports may please so enclosed to this office."

The above said selected EDAS should not be promoted if any vigilance/ Disc.Action is either pending or contemplated against them and report sent to this office forthwith."

8. From perusal of the aforesaid extract, it emerges that the respondent was "promoted" from the cadre of Extra Departmental Mail Carrier to the Group-D cadre. For all intents and purposes, the employment was continuous in nature and not as if it was from one service to another, as suggested. Since the appointment of the respondent was continuous under the employer, we find no justification whatsoever for the petitioners herein to bifurcate the services rendered by the respondent into two separate components. If the service of the respondent is treated as continuous, he would definitely be found to have rendered the qualifying service prescribed for entitlement to pensionary benefits,

under Rule 49 extracted hereinabove.

9. The action of the petitioner in assailing the order passed by the Central Administrative Tribunal, Bangalore Bench, Bangalore astonishes us, inasmuch as, the impugned order passed by the Central Administrative Tribunal, dated 23.3.2011 reveals, that on identical controversy pertaining to another employee of the postal organisation, the Central Administrative Tribunal, Madras Bench accepted the same plea, while disposing of OA 1246/01 by an order dated 18.4.2002. The aforesaid order passed by the Central Administrative Tribunal, Madras Bench, was assailed by the postal authorities before the Madras High Court in W.P.No.45465/02. However, the order of the Central Administrative Tribunal Madras Bench, was affirmed by the High Court. Dis-satisfied with the orders passed by the Central Administrative Tribunal, Madras Bench, as also Division Bench of the High Court of Madras, the postal authorities approached the Supreme Court by preferring Petition for Special Leave to Appeal (Civil) No.138/09. The aforesaid special leave petition came to be dismissed on 17.10.08."

"10. We are astonished because despite the fact that similar efforts made by the petitioner herein, on the similar controversy, had failed upto the Supreme Court, the petitioners have chosen to contest to impugned order, in spite of the fact that the petitioners have not been able to point out single distinguishable feature as in the present controversy, from the one adjudicated by the Central Administrative Tribunal, Madras in O.A.No.1264 of 2001. In the circumstances, we are satisfied that exemplary costs deserve to be imposed on the postal authorities. We are satisfied, that such an attitude at the hands of the Union of India, especially the postal authorities, should be curbed with a strong hand, since the intent attitude which requires a Court to decide the same issue repeatedly, even after the same submissions failed earlier. We accordingly, impose Rs.1,00,000/- as cost on the petitioner. The aforesaid costs shall be deposited with Gulbarga, Bar Association, High Court Unit, Gulbarga within three months from today for raising library for the Bar Association. In case the aforesaid costs are not deposited within the time indicated above, the Registry of this Court is directed to re-list this case for recovery, of costs. Disposed of in the aforesaid terms."

9. Similar decisions have also been cited by Shri R.Malaichamy, learned counsel appearing for the petitioner, however, some of them are slightly different and may not applicable to the facts of the present case. However, the above decision of the Karnataka High Court authoritatively held that the past service of the employee have to be counted for the purpose of pensionary benefits as there was no justification in bifurcating the services rendered by the employee into two separate components, namely, GDS and Group D employees.

10. It emerges from the above decision and other circumstances of the case that the petitioner is entitled to be brought under the CCS (Pension) Rules as existed before 1.2.2004 since admittedly, the selection was initiated much before

1.1.2004 for the vacancy of the year 2002-03 and selection was made by proceedings dated 30.12.2003. Moreover, admittedly, the petitioner joined as Extra Departmental Packer on 1.1.1974, i.e. nearly 30 years before coming into force of new pension scheme. Therefore, in all fairness, the request of the applicant for treating him as a pensioner under the old scheme ought to have been entertained favourably. Nevertheless, the learned Tribunal, without appreciating the claim of the petitioner in proper perspective with reference to various orders passed by the Tribunal itself as confirmed by the Karnataka High Court and the Hon''ble Supreme Court, has merely dismissed the case only on the ground that the date of the appointment of the petitioner was on 1.1.2004, by which date, the new Pension Scheme came into effect. Such a rigid approach by the learned Tribunal, has taken away valuable right of the petitioner being pensioner of the old the pension scheme which existed prior to 1.1.2004. It is not in dispute that the petitioner was already in service as GDS worker for nearly 30 years prior to new pension scheme and he was admittedly selected and appointed in Group D vacancy, which admittedly arose much earlier to 1.1.2004. In such view of the matter, the Tribunal ought to have allowed the Original Application. Therefore, we deem it fit to allow the application in O.A.No.310 of 2014 and grant the relief as sought for by the petitioner.

11. Accordingly, the Writ Petition is allowed and the order dated 13.4.2015 passed by the Tribunal in O.A.No. 310 of 2014 is hereby set aside and consequently, O.A.310 of 2014 is allowed. No costs.