

(2023) 05 CAT CK 0058

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00781 Of 2015

P. K. Anilkumar

APPELLANT

Vs

Union Of India Represented By The Chief Post Master
General, Kerala Circle, Trivandrum ? 695033 And Ors

RESPONDENT

Date of Decision : 18-05-2023

Acts Referred:

Citation : (2023) 05 CAT CK 0058

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

Bench : Division Bench

Advocate : Shafik M Abdul Khadir, Sinu G. Nath

Final Decision : Disposed Of

Judgement

K Haripal, Member J

1. The applicant is presently working as a Multi Tasking Staff, MTS in Head Records Office, RMS, Thiruvananthapuram Division. He started his official career as Gramin Dak Sewak, GDS. It is the common case that while so challenging the refusal on the part of the respondents in filling up the posts of MTS, he moved this Tribunal with O.A 353/2008. While that OA was pending, applications were invited for filling up the posts of Mail Guard in RMS. He applied for the post, the examination was held on 08.11.2009 and was qualified. He was sent for training on 15.12.2009 and was appointed as Mail Guard on 23.12.2009. While working as Mail Guard, after about 2 ½ years, on 02.05.2012, he was served with a show cause notice as to why his service shall not be terminated. Immediately he moved this Tribunal with O.A 387/2012 challenging the cancellation of appointment as Mail Guard. The Tribunal after hearing both sides held that the posting as Mail Guard was cancelled as irregularities were noticed in filling up of vacancies of 2008. Due to some error occurred, one departmental candidate and one GDS candidate were happened to be appointed without advertizing to the fact that both the vacancies had to be filled up by departmental candidates. It may be remembered that at the time when the applicant had applied, he was an extra

departmental candidate, being a GDS. Thus, the appointment was found irregular and he was terminated with effect from 19.12.2014. Challenging the order of cancellation of appointment he moved O.A 387/2012 before this Tribunal. By Annexure A4 order dated 15.09.2014 the O.A was dismissed. As said earlier, he had applied for the post of Mail Guard while O.A No.353/2008 was pending. That O.A was allowed by this Tribunal but by the time the applicant was posted as Mail Guard so that it had lost its relevance. After the appointment as Mail Guard was cancelled, when O.A 387/2012 was contested the respondents had offered to appoint the applicant as MTS notionally placing him above his immediate junior in the GDS who had become a 'Group D' employee. Thus, while dismissing O.A 387/2012, the Tribunal observed that the promise given by the respondents to post the applicant as a 'Group D' employee notionally above his junior who had already become 'Group D' staff would be fulfilled.

2. On that basis, by Annexure A6 the applicant was posted as MTS and he assumed charges on 20.12.2014. Thereafter Annexure A7 salary slip was given, fixing his basic pay at Rs.8,380/- from January 2015 onwards. However, the applicant complains that, thereafter in April 2015 a fresh salary slip was issued reducing his basic pay to Rs.7,000/- only. Thus, he gave Annexure A9 representation which was rejected by Annexure A2. Similarly, during the pendency of the O.A Annexure A11 notification was issued calling for applications for filling up the vacancies of Mail Guard, etc. The applicant also applied for the post but his application was rejected stating that he did not satisfy eligibility condition No.6(iii) since he did not have three years regular service as MTS and thus his application was rejected by Annexure A3. In this setting the applicant approached this Tribunal on 02.10.2015 raising three-fold reliefs as below: -

" (I) To call for the records relating to Annexure A-1 to A-11 and to quash A-1, A-2 & A-3 to the extent it rejects the candidature of the applicant for taking part in the examination scheduled on 11.10.2015 as per A-11;

(II) To declare that the applicant is entitled for the pay as shown in A-8 reckoning his increments from 01.06.2008 on notional appointment and to direct the respondents to correctly fix the pay of the applicant and pay all amounts recovered from with 18% penal interest;

(III) To declare that the service of the applicant from 01.06.2008 as MTS shall be reckoned as regular service for all purposes like eligibility to take part in the examination for the promotion etc;"

3. According to the respondents when complaints were received regarding the appointment of Mail Guards, the posting of the applicant was also reviewed and it was found that the appointment was irregular due to inadvertent mistakes happened, the applicant was appointed against vacancy earmarked for departmental quota under 'unreserved' category overlooking one J. Balachandran Nair, Mailman who was also qualified. Thus, his appointment was cancelled against which he moved O.A 387/2012. By Annexure A4 order that O.A was

dismissed. OP(CAT) No.78/2014 filed against that finding was also dismissed by the Hon'ble High Court. However the applicant on termination from the post of Mail Guard was appointed as MTS notionally from 01.06.2008, the date which his immediate junior in the GDS seniority one K.P Sivaprasad was promoted as MTS. The applicant assumed charge as MTS on 20.12.2014.

4. According to the respondents though the pay of the applicant was initially fixed at Rs.6,580/- plus GP of Rs.1,800/- taking into account the notional increments with effect from 01.06.2008, as this Tribunal had not mentioned about the consequential benefits in Annexure A4 order, the pay of the applicant was re-fixed at Rs.5,200/-plus 1,800/- as Grade Pay with effect from 20.12.2014 and the excess pay and allowances for the period from 20.12.2014 to 30.03.2015 was ordered to be recovered. Then the applicant gave Annexure A9 representation which was duly considered by the 1st respondent and it was decided that the pay of the applicant be fixed notionally above his junior in the 'Group D' cadre without any arrears and leave earned by the applicant during the irregular promotion be forfeited. Such an order has been produced as Annexure R1. But the O.A was filed before a decision could be taken on Annexure A10 representation. As the issue has already become sub judice, the said representation has been kept pending by the respondents.

5. Regarding the third prayer, it is submitted that the application given by the applicant, pursuant to Annexure A11 notification was rejected since he did not have three years regular service as MTS on 01.01.2015. By an interim order passed by this Tribunal, he was provisionally and subject to the outcome of the O.A, permitted to appear for the examination. Later the result was produced before the Tribunal in a sealed cover. The cover was opened before this Tribunal and he was found not qualified. By virtue of Annexure R1 order the mistake crept in Annexure A8 has been rectified and therefore the applicant is not entitled to get any relief.

6. The applicant filed a rejoinder. According to him, the argument that there is no reference in Annexure A4 regarding scale of pay or arrears cannot be accepted. O.A 387/2012 was for quashing the show cause notice issued to the applicant who had secured highest mark in the Limited Departmental Competitive Examination, LDCE to the post of Mail Guard. Fixation of pay scale or arrears was never an issue before the Tribunal in O.A 387/2012 and hence it is quite natural that there is no comment about any pay scale in the judgment. But lack of any comment about the pay scale cannot be treated as a blanket excuse for arbitrary reduction of the pay scale and recovery of salary without even notice which is malicious, illegal and requires intervention by this Tribunal. Regarding paragraph 6 in the reply statement, it is submitted that the applicant was appointed in 'Group D' notionally from 01.06.2008, that he cannot be treated as a fresh entrant. The 2nd respondent has exceeded his authority in revising the pay scale fixed considering the notional appointment date subsequent to the order passed by this Tribunal after considering all the relevant aspects.

7. We heard Counsel on both sides. This is an unfortunate case in which the applicant could not go in higher ladders of promotion owing to unfortunate and unforeseen turn of events. As has come out, while working as GDS, the applicant had applied for the post of Mail Guard in the RMS. He appeared for the test in his capacity as the GDS and selected with highest mark from among the Departmental candidates and was appointed as such on 23.12.2009. But following some complaints alleging discrepancies in the selection of Mail Guards, the process of selection was reviewed and it came out that two posts were earmarked in the category of Mail Guards from Departmental candidates and the applicant was appointed in one such post. Evidently, at that time he was not a Departmental candidate but only a GDS, so that he could not have been considered for filling up the post of Departmental candidates. Thus, on 02.05.2012 show cause notice was issued as to why his appointment should not be cancelled. Challenging the same, he approached the Tribunal and by Annexure A4 order dated 15.09.2014, this Tribunal upheld the order cancelling the appointment which was confirmed by the High Court. Thereafter Annexure A5 was issued terminating his appointment as Mail Guard and then Annexure A6 order was passed appointing him as MTS, as undertaken before the Tribunal and he was given notional posting as MTS from 01.06.2008 with effect from the date of his immediate junior Sri. K. P. Sivaprasad who had already become MTS. This order was passed on 19.12.2014. Thus, the applicant joined as MTS on 20.12.2014. Then he was paid salary as shown in Annexure A7 salary slip fixing his basic pay at Rs.8,380/-. Later abruptly the basic pay was slashed to Rs.7,000/-. Aggrieved by Annexure A8 he filed a representation which was rejected by Annexure A1 order.

8. In Annexure A1 order the 2nd respondent has stated that in the Annexure A4 order of this Tribunal, there is no mention about the consequential benefits, there was only direction to post him as MTS notionally above the junior which has been done. As there is no provision for drawing pay and allowance for the notional period, his representation for granting him arrears of pay and allowances was rejected. That is one of the grievances of the applicant.

9. As pointed out by the learned Standing Counsel, posting of the applicant as MTS though made on 19.12.2014, notional posting was given with effect from 01.06.2008, the date of appointment of his junior Sri K. P. Sivaprasad. As a matter of fact, for the period from 01.06.2008 to 19.12.2014 the applicant has not worked as MTS. During the period from 01.06.2008 to 22.12.2009, apparently he was working as GDS. From 23.12.2009 upto termination of his service, he was working as Mail Guard which is a 'Group C' post and he was enjoying the benefits of the same, though it was not a regular appointment. Therefore he could only be posted notionally with an ante-date, despite the fact that he had started working as MTS only from 20.12.2014. For the period from 01.06.2008 to 19.12.2014 the posting was on notional basis so that, during that period he cannot claim arrears of salary and allowances. As said earlier, during the first spell, he was working as GDS and 2nd spell was working on a higher post as Mail Guard, during that period he cannot claim back-wages, salary and

allowances. Therefore, there is no reason to interfere with the Annexure A1 order.

10. Annexure A2 order dated 22.04.2015 was issued in reply to his demand for confirming him from the date of confirmation of his juniors in the post of MTS. That also cannot legitimately be accepted as he had started working as MTS only from 20.12.2014 and had to be on probation as a matter of statutory requirement. He had started working as a probationer only from 20.12.2014 so that he could not have been confirmed with effect from 01.06.2008 at par with his juniors. Therefore Annexure A2 also does not call for interference.

11. Annexure A3 is a communication dated 17.09.2015 rejecting his application to the post of PM/MG submitted by him pursuant to Annexure A11 notification. In Annexure A11, it is specifically pointed out that MTS having three years of regular service alone could apply for the post through Limited Departmental Competitive Examination. The last date for submitting the application was 01.09.2015. The applicant had commenced service as MTS only on 20.12.2014, that means, on 01.09.2015, he did not have sufficient length of service in the cadre of MTS. However, having regard to the submissions made before this Tribunal, by order dated 06.10.2015, he was provisionally permitted to appear for the test and the result was produced before this Tribunal in a sealed cover. The sealed cover was opened in open Court and on 09.12.2015 it was found that he had not qualified. Therefore, in the light of the subsequent development that he did not qualify, dehors the eligibility criteria, the Annexure A3 also has lost its significance. On these considerations, it can legitimately be stated that the first prayer in the O.A is not allowable.

12. Turning to the second prayer, it has come out that the applicant approves Annexure A7 pay slip but later the basic pay was abruptly slashed to Rs.7,000/- from Rs.8,310/-. According to him, he should have been granted increments reckoning notional appointment on 01.06.2008. No doubt Annexure A8 was issued disregarding this aspect but on the basis of representation, Annexure R1 order was passed even prior to the institution of the O.A, considering his representation holding that the pay of the applicant should be fixed notionally above his junior in the 'Group D' category without any arrears and leave earned by the officials during the regular promotions stood forfeited. That means, by virtue of Annexure R1 status quo ante has been restored so that the second prayer based on Annexure A8 also has lost its significance.

13. The third relief is sought on the premise that his application to the post of Mail Guard pursuant to Annexure A11 was rejected illegally. According to him, his posting is from 01.06.2008, if the unfortunate events had not taken place, he would have been able to apply for the vacancies of earlier years, even prior to Annexure A11 and he would have gone to higher levels. Such a contention is highly hypothetical. Despite the fact that there is a stipulation that only person having three years regular service in MTS can apply for the post of Mail Guard, this Tribunal had permitted the applicant to attend the examination provisionally. Accordingly he attended the test but the result was not favourable. It came out

that he did not qualify in that examination and therefore this prayer also has become redundant.

14. When heard, the learned Counsel for the applicant submitted that the applicant is still working as MTS, that he would soon retire, the second relief has to be considered and allowed. But in the light of the subsequent developments, in our view, the second relief has also become infructuous. The second relief was sought on the basis of Annexure A9 representation. The respondents have a clear case that immediately after the representation he filed this O.A on 02.10.2015 but by Annexure R1 order dated 23.09.2015 that grievance of the applicant was redressed so that the second relief also cannot be allowed. We have already considered this aspect. Annexure R1 indicates that he should be given pay and allowances on par with his immediate junior Sivaprasad who had become MTS on 01.06.2008. Thus, after Annexure A8, Annexure R1 has been passed. It is submitted that following Annexure R1, the pay of the applicant has been fixed at Rs.6,090/- with Grade Pay of Rs.1,800/- with effect from 20.12.2014, i.e., the same pay drawn by P. K. Sivaprasad, the immediate junior to the applicant. According to the learned Standing Counsel the said Sivaprasad had actually joined as MTS on 19.07.2010. Whatever it may be, the pay of the applicant has been fixed on par with his immediate junior so that the second relief has lost its significance.

15. On these considerations, the applicant is not entitled to succeed. In the circumstances and having regard to the subsequent developments, the O.A has become redundant and is closed. No costs.

(Dated this the 18th day of May, 2023)