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Convert NPS to Old Pension Scheme - O.A. allowed - applicant deemed to have been appointed from the date of vacancy arose

Written By Admin on Oct 12, 2016 | October 12, 2016

CONVERT NPS TO OLD PENSION SCHEME - O.A. ALLOWED - APPLICANT DEEMED TO HAVE BEEN APPOINTED FROM THE DATE OF VACANCY AROSE



In the OA No. 180/00020/2015 filed before hon. CAT Ernakulam Bench (Kerala Circle) , Applicants are directly recruited Postal Assistants, appointed in the year 2005 against the vacancies arose in the year 2002. They are aggrieved by not including them in the statutory pension scheme under the CCS (Pension)

Hon. CAT, Ernakulam Bench (Kerala Circle) in OA No. 180/00020/2015 dated 15.02.2016, allowed the O.A as no other third party interest is put in jeopardy and as the applicants will not be eligible for other benefits like pay for the aforesaid period. Hence it is declared that the applicants are deemed to have been appointed from the date the vacancy arose and that they shall be included in the CCS (Pension) Rules 1972. Respondents are directed to collect necessary subscription under the Provident Fund Rules and the contributions collected from the applicants under the new pension scheme shall be credited to their general provident fund account. It is made clear that no other financial benefits including increments and backwages have been granted to the applicants for the aforesaid period.

In this connection RTI has been made for seeking status of the case. The reply received from the Regional office is attached herewith for information.

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Office of the Postmaster General, Northern Region, Kerala Circle, Calicut 673011
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To Shri Dhavan Sangani, Regd
OADO, O/o SSPO, Rajkot Division,
Rajkot-360001..

PG/RTIA/46/2016 dated at Calicut the 27-09-2016

Sub: Information sought under RTI Act 2005.vide Reg No. POSTS/R/2016/53446/1

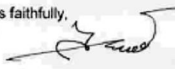
Ref: Your application received at this office dated 23-09-2016.

In response to the above referred RTI request the following information is supplied herewith.

SL No.	Information Reply
1	Circle Office has directed to file OP(CAT) in this case before the Hon'ble High Court of Kerala. The filing is under process.

You may submit appeal, if any, against the above decision, if you desire so, to the Postmaster General, Northern Region, Calicut-673011, the First Appellate Authority within 30 days from receipt of this letter.

Yours faithfully,


Mini Rajan M
Asst. Director (TGY)&CPIO

Information Shard by
Shri. Dhavan Sangani,
OADO, Rajkot Division, Rajkot - 360 001

=====

O.A.No. 180/00020/2015

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH, ERNAKULAM

O.A.No. 180/00020/2015

Monday this the 15th day of February, 2016

CORAM:

HONBLE MR. U. SARATHCHANDRAN, JUDICIAL MEMBER

1. Sheeba B., Aged 32 years,
W/o Praveen K,
Postal Assistant, Karivallur P.O. 670 521
Residing at Parvathiq Karivellur,
Kannur District

2. Shinoy P. Aged 34 years,
S/o Mukundan N.P.,
Postal Assistant,
Thalassery Head Post Office 670 691
Residing at Neelamparambil House,

Vellayil, Pathayakkunnu,
Thalassery, Kannur District. õ . Applicant

(Applicant Mr. U. Balagangadharan, Advocate)

vs.

1. Union of India, represented by
the Secretary to the Government,
Ministry of Communication,
Department of Posts,
New Delhi 110 011.

2. The Chief Postmaster General,
Kerala Circle,
Thiruvananthapuram . 695033.

3. The Superintendent of Post Office,
Department of Posts,
Kannur 670 001,
Kannur District. . . . Respondents

(Respondents by Mr. N. Anil Kumar, Sr.PCGC)

This Application having been finally heard and reserved for orders on 27.01.2016, the Tribunal on 15.02.2016 delivered the following:
ORDER

Applicants are directly recruited Postal Assistants, appointed in the year 2005 against the vacancies arose in the year 2002. They are aggrieved by not including them in the statutory pension scheme under the CCS (Pension) Scheme by notionally pre-dating their appointment from the date of occurrence of a vacancy. According to them, the delay occurred in finalising the recruitment process for the said posts was due to the fault of the respondents though the vacancies had arisen in the year 2002. Hence they pray for the relief as under:

Æ.i) Call for records leading to Annexure A6 and A7 and set aside the same as legally and factually unsustainable.

b+ Direct the 3rd respondent to induct the applicants into statutory pension scheme under CCS pension Rules notionally treating them to have been appointed as Postal Assistants from the date of occurrence of vacancies in the year 2002 for the limited purpose of grant of pension under CCS (Pension) Rules only.

lii) Direct the respondent Nos. 3 & 4 to stop all recoveries from the pay and allowances of the applicants towards New Pension Scheme and refund the entire amounts so far recovered from the applicants with immediate effect.

. Declare that applicants are deemed to have been appointed as Postal Assistant notionally and they are regulated by CCS pension Rules.

. Grant such other relief that the Court may feel fit in the facts and circumstances of the case.q

2. Respondents in their reply statement contend that the posts of Postal Assistants were notified vide Annexure R.3(a) (collectively) in March 2004, by publishing in news papers by fixing the last date for receiving application as 31.3.2004. The Applicants responded to the aforesaid notification and took part in the recruitment process. They were selected to the cadre of Postal Assistants and were appointed in the Vadakara Division with effect from 15.2.2005. As the new pension scheme came into force with effect from 1.1.2004, the applicants are to be considered only under the new pension scheme and they are not eligible for to be included in the statutory pension scheme under the CCS (Pension) Rules 1972. It is further submitted by the respondents that the O.A. is barred by limitation because the cause of action has arisen way back in 2005. It is further contended by the respondents that as the applicants took part in the recruitment process as outsiders their claim for inclusion in

the statutory pension existed prior to their selection and appointment in the department is not permissible. Respondents pray for rejecting the O.A.

3. Heard learned counsel appearing on both sides. Perused record.

4. Applicants place reliance on Annexure A/8 order dated 28.06.2013 of this Tribunal in O.A. No.724/2012. According to the learned counsel for the applicant, the case of the applicant in Annexure A/8 case is akin to the case of the applicants in the O.A. on hand. The learned counsel relied on paras 7 and 9 of Annexure A/8 order. The aforesaid paragraphs are extracted below:

¶. Admittedly the vacancies belong to 2002. Invariably examinations for promotion to Postman or Postal Assistants etc. Take place in the very same year and appointment made immediately. This is with a view to avoid any problems relating to seniority etc. Especially when there is more than one source of recruitment. The applicants belong to GDS quota while some other quotas are also available for promotion to the post of Postman (as for example promotion from group -D). In the instant case there has been a delay of two years in conducting the examination though the respondents have stated that the applicants on their own volition had taken up the examination in 2004, since that was the only examination conducted after the vacancies of 2002 have arisen they cannot be blamed for taking up the examination only in 2004. Had there been an examination in the year 2002 or 2003 for the said vacancies, the applicants would have certainly participated in that examination itself. The contention of the respondents hold good only if such an examination took place in 2002 and/or 2003 and the applicants did not participate therein. That is not the case here. As such, on account of the failure on the part of the Department in holding the examination the applicants should not be made to suffer. The Government cannot be permitted to take advantage of its own mistake. In this regard the following decision of the Apex Court are relevant:-

(a) A.K. Lakshmi pathy v. Rai Saheb Pannalal H. Lahoti Charitable Trust, (2010) 1 SCC 287

¶ they cannot be allowed to take advantage of their own mistake and conveniently pass on the blame to the respondents.

(b) Rekha Mukherjee v. Ashis Kumar Das, (2005) 3 SCC 427

36, The respondents herein cannot take advantage of their own mistake.

8.

9. In view of the above the O.A. is allowed. It is declared that the applicants are deemed to have been promoted from the date the vacancy arose and thus notional date of promotions is only for the purpose of reckoning the qualifying service for pension under the CCS (Pension) Rules 1972. The respondents are directed to pass suitable orders in this regard and make necessary entry in the service book of the applicants indicating clearly the date of notional promotion and the purposes of reckoning the same.

10. Further, the respondents shall collect necessary subscription under the provident fund rules during the rest of their services and stop any recovery to the contributory provident fund.

11. There shall be no orders as to costs.

5. This Tribunal is of the view that though the post to which the applicants in Annexure A/8 order were different from the post for which the applicants in the present O.A. have applied, the reasonings stated in the afore-quoted paragraphs in Annexure A/8 are squarely applicable to the facts in this case also. It was submitted by the learned counsel for applicants that Annexure A/8 order has attained finality without interference from any other superior forum.

6. The learned counsel for the Central Government attempted to distinguish the case in Annexure A/8 order from the present case by contending that applicants in the former case were departmental candidates who were seeking promotion to their higher post whereas in the present case, applicants are totally outsiders who had

taken part in an open competitive examination process knowing fully well that they will be appointed only after 2004.

7. After hearing both sides this Tribunal is of the view since the limited prayer of the applicant is to treat the date of arising of the vacancy of the posts retrospectively as their date of posting for the purpose of pension, it appears to this Tribunal that the O.A. can be allowed as no other third party interest is put in jeopardy and as the applicants will not be eligible for other benefits like pay for the aforesaid period. Hence it is declared that the applicants are deemed to have been appointed from the date the vacancy arose and that they shall be included in the CCS (Pension) Rules 1972. Respondents are directed to collect necessary subscription under the Provident Fund Rules and the contributions collected from the applicants under the new pension scheme shall be credited to their general provident fund account. It is made clear that no other financial benefits including increments and backwages have been granted to the applicants for the aforesaid period.

8. The O.A. is disposed of on the above terms. Parties are directed to suffer their own cost.

(U SARATHCHANDRAN)
JUDICIAL MEMBER

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