COURT MATTER
PRIORITY

No.99-24/2012-Pen.
Government of India
Ministry of Communications
Department of Posts
(Pension Section)
****

Dak Bhawan, Sansad Marg,
New Delhi-110 001
15th November, 2019

To

1. CPMG of all Postal Circles
2. Chief General Manager (BD&M), Dak Bhawan
3. Chief General Manager (PLI), Chanakya Puri, New Delhi
4. Director, Rafi Ahmad Kidwai National Postal Academy, Ghaziabad
5. All Directors/ Dy. Directors of Accounts (Postal)
5. Principal Director of Audit (Postal), Delhi-54
7. Addl. Director General, Army Postal Service Corps, Sena Dak Bhawan, Rao Tula Ram Marg, Delhi Cantt.-10

Subject: Order dated 08.11.2019 of Hon'ble Supreme Court passed in Special Leave to Appeal (C) No.13042/2014 in the matter of UOI & Ors. (Petitioner) Vs. Gandiba Behera (Respondent) on the issue of counting of service rendered as Gramin Dak Sevak (GDS) to make good the shortfall in minimum qualifying service of Group-D/MTS employees for grant of pension – reg.

Madam/Sir,

This is regarding petition for Special Leave to Appeal (C) No.13042/2014 arising out of impugned final judgement and order dated 03.01.2014 in WPC No.28905/2011 passed by the Hon'ble High Court of Orissa at Cuttack in the matter of UOI & Ors. (Petitioner) Vs. Gandiba Behera (Respondent) with several other tagged cases on the issue of counting of service rendered as Gramin Dak Sevak (GDS) to make good the shortfall in minimum qualifying service of Group-D/MTS employees for grant of pension.

2. These Appeals were called on for pronouncement of Judgement on 08.11.2019. A copy of order dated 08.11.2019 along with Reportable Judgement is enclosed for ready reference and appropriate action. For details, the enclosed order/judgement may please be perused. However, in brief, the Hon'ble Apex Court while deciding the question of Law has held as under:

> ***".....we are of the opinion that the judgments under appeal cannot be sustained. There is no provision under the law on the basis of which any period of the service rendered by the respondents in the capacity of GDS could be added to their regular tenure in the postal department for the purpose of fulfilling the period of qualifying service on the question of grant of pension"***

Contd...2/-

3. This Order/judgement may also be brought to the notice of concerned Courts in which similar such cases are pending for adjudication in consultation with CGSC to ensure early disposal/settlement of cases with request to issue necessary orders/instructions to all concerned authorities for strict compliance.

4. Further, pursuant to above-said Order dated 08.11.2019, appropriate necessary action may be taken in cases which are detagged from this batch of appeals before appropriate Bench after completion of service.

This has the approval of Competent Authority.

Yours faithfully,

Encl: a.a.

(Tarun Mittal)
Asstt. Dir. Gen. (Pension)
Tel.No.2304 4768

Copy to:

1. PS to Hon'ble MOS(IC)
2. PPS to Secretary(Posts)/DG(Posts)
3. PPS to Member(Banking&RB)/Plg./Tech./Plg./Pers./Ops./PLI
4. Addl. DG(Postal Services)/ AS&FA/ all DDsG
5. Director(SPN)/(ADG(SPN)/ADG(GDS)
5. All Regional Postmasters General
6. All Postal Training Centres
7. Director, CEPT Mysore-for uploading on the official website of the Deptt. of Posts
8. Guard File

Copy for information to:

1. Shri G.S. Makker, Deputy Govt. Advocate, Ministry of Law & Justice, Central Agency Section, Supreme Court Compound, New Delhi-01
2. Shri S. Chakborty, Under Secretary, Department of Pension & PW, Lok Nayak Bhawan, Khan Market, New Delhi.

ITEM NO.1502 COURT NO.16 SECTION XI-A
(For judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).13042/2014

(Arising out of impugned final judgment and order dated 03-01-2014 in WPC No.28905/2011 passed by the High Court Of Orissa At Cuttack)

UOI & ORS. Petitioner(s)

VERSUS

GANDIBA BEHERA Respondent(s)

WITH

C.A. No.8979/2014 (XII)

SLP(C) No.979/2015 (XII)

C.A. No.9886/2014 (XII)

C.A. No.8674/2015 (XII)

S.L.P.(C)...CC Nos.20557-20558/2015 (XII)

C.A. No.2825/2016 (XII)

C.A. No.5008/2016 (XVI)

SLP(C) No.16767/2016 (XVI)

C.A. No.8379/2016 (XVI)

C.A. Nos.1580-1581/2017 (XIV-A)

C.A. Nos.109-110/2017 (XIV-A)

C.A. No.10355/2016 (IV-A)

C.A. No.10801/2016 (XVI)

C.A. Nos.9518-9520/2017 (XII)

Signature Not Verified
Digitally signed by SARITA KUMARI
Date: 2018.12.03 12:58:28 IST
Reason:

Diary No(s).13464/2018 (XII)

SLP(C) No.16615/2018 (XVI)

SLP(C) No.3392/2019 (XI)

SLP(C) No.32881/2018 (XI)

SLP(C) No.6544/2019 (XVI)

Diary No(s).18007/2019 (XII)

Date : 08-11-2019 These appeals were called on for pronouncement of judgment today.

For Petitioner(s) Mr. Merusagar Samantray,Adv.
Mr. Gurmeet Singh Makker,AOR
Mrs. Anil Katiyar,AOR
Mr. Arvind Kumar Sharma,AOR

For Respondent(s) Mr. B.K. Barera,Adv.
Mr. K.K. Mishra,Adv.
Mr. James P. Thomas,AOR

Mr. K.V. Jagdishvaran,Adv.
Ms. G. Indira,AOR

Mr. V.N. Raghupathy,AOR
Mr. Manendra Pal Gupta,Adv.

Mr. P.R. Kovilan,Adv.
Mrs. Geetha Kovilan,AOR

Mr. Mukesh K. Giri,Adv.
Mr. Kedar Nath Tripathy,AOR

Mr. Mukesh K. Verma,Adv.
Mr. Sudhanshu Tomar,Adv.
Mr. Anis Ahmed Khan,AOR

Mrs. K. Sarada Devi,AOR
Mr. Sanjay Kumar Visen,AOR
Dr. Sushil Balwada,AOR
Mr. S.K. Sinha,AOR
Mr. Abid Ali Beeran P.,AOR
Mr. Rameshwar Prasad Goyal,AOR
Mr. S.R. Setia,AOR
Mr. Nikilesh Ramachandran,AOR
Mr. Parijat Kishore,AOR

Hon'ble Mr. Justice Aniruddha Bose pronounced the Reportable judgment of the Bench comprising the Hon'ble the Chief Justice of India, Hon'ble Mr. Justice Deepak Gupta

and His Lordship.

Records reveal that service is not complete in SLP(C)No.D.13464/2018, SLP(C)No.16615/2018, SLP(C)No. 3392/ 2019 and SLP(C)No.D.18007/2019. Hence these matters are detagged from this batch of appeals in terms of the signed reportable judgment and are directed to be placed before the appropriate Bench after completion of service.

Delay condoned.

Leave granted.

The appeals are allowed with no order as to costs in terms of the signed Reportable Judgment.

Pending applications shall stand disposed of.

(Deepak Sharma)
Branch Officer

(Sarita Purohit)
AR-cum-PS

(Signed Reportable judgment is placed on the file)

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8497/2019)
(Arising out of SLP(C) No. 13042 OF 2014)

UNION OF INDIA & ORS. ..... APPELLANTS

VERSUS

GANDIBA BEHERA .....RESPONDENT

WITH

CIVIL APPEAL NO. 8979/2014

CIVIL APPEAL NO.8498/2019
(Arising out of SLP(C)No.979/2015)

CIVIL APPEAL NO. 9886/2014

CIVIL APPEAL NO. 8674/2015

CIVIL APPEAL NO...../2019
(Arising out of SLP(C) CC. Nos. 20557-20558/2015)

CIVIL APPEAL NO. 2825/2016

CIVIL APPEAL NO. 5008/2016

CIVIL APPEAL NO.8499/2019
(Arising out of SLP(C)No. 16767/2016)

CIVIL APPEAL NO. 8379/2016

CIVIL APPEAL NO. 1580-1581/2017

CIVIL APPEAL NO. 109-110/2017

CIVIL APPEAL NO. 10355/2016

CIVIL APPEAL NO. 10801/2016

CIVIL APPEAL NO. 9518-9520/2017

Special Leave Petition (C) (D) No. 13464/2018

Special Leave Petition (C)No. 16615/2018

Special Leave Petition (C) No. 3392/2019

CIVIL APPEAL NO.8500/2019
(arising out of SLP(C) No.32881/2018)

CIVIL APPEAL NO.8501/2019
(arising out of SLP(C) No.6544/2019)

Special Leave Petition (C) (D) 18007/2019

J U D G M E N T

ANIRUDDHA BOSE, J.

Records reveal that service is not complete in S.L.P. (C) Diary No.13464/2018, S.L.P.(C) No.16615/2018,

S.L.P.(C)No.3392/2019 and S.L.P.(C) Diary No.18007/2019. Hence these maters are directed to be de-tagged from this batch of appeals. Let these matters be placed before the appropriate Bench after completion of service.

2. Delay condoned and leave is granted in SLP (C) CC Nos. 20557-20558 of 2015 and SLP (C) No.32881 of 2018.

Leave is also granted in rest of the petitions for Special Leave to Appeal.

3. All these appeals have reached this Court from decisions of different Benches of the Central Administrative Tribunal and thereafter judgments of the High Courts on a common question of law. The dispute in these appeals is as to whether services rendered by the employees in the postal department in the capacity of Gramin Dak Sevaks (GDS) ought to be computed or not for the purpose of calculation of the qualifying service of

their pension after they got selected in regular posts in the said department. The respective High Courts, whose judgments are under appeal before us, have uniformly held in favour of the GDSs who subsequently were selected as regular employees of the postal department. The original applicants were not found eligible for pension as their services fell short of the qualifying period. The minimum service period in regular employment in the said Department for being entitled to pension is contained in Central Civil Services (Pension) Rules, 1972 and it is 10 years. We shall refer to these Rules henceforth as the 1972 Rules. In all these appeals, service tenure of the respondents in regular posts fell marginally short of the said period of 10 years. Clause 49 (1) of the 1972 Rules stipulates :-

> "In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's

emoluments for every completed six monthly period of qualifying service."

4. There have been separate Rules guiding the services of Gramin Dak Sevaks who are also referred to as extra-departmental agents in the postal department. The present Rules which has been cited before us is titled **Gramin Dak Sevaks (Conduct and Engagement) Rules, 2011** (the 2011 Rules). There was **P&T Extra Departmental Agents (Conduct & Service) Rules, 1964** which prevailed earlier covering the same field before replaced by **Gramin Dak Sevaks (Conduct and Employment) Rules, 2001**. These Rules ultimately gave way to the 2011 Rules. The GDSs have been identified in different abbreviated designations over the period of time, possibly depending on the nature of work they were engaged in. These are EDMC, ED-Packer, Departmental runner, EDDA and GDS. The last of these designations

being the short form of Gramin Dak Sevaks is what they are known as at present.

5. The lead case which has been argued before us arises from an application instituted by one Gandiba Behera registered as O.A. No. 609/2010 before the Central Administrative Tribunal, Cuttack Bench. The said applicant was selected through regular process as a GDS in Balasore division of the State of Orissa on 1st April, 1968. He continued to work in that capacity until 25th May, 1999, from which date, he was engaged in a Group 'D' post in regular employment through the proper selection process. This status as a Group "D" employee was conferred on him retrospectively, by way of a memorandum issued by the authorities on 30th December 1999. He attained the age of superannuation on 30th June, 2008. His claim for pension was, however, denied on the ground of not having completed 10 years of

minimum qualifying service in the Group 'D' post. The Tribunal, by an order passed on 6th July, 2011, upheld the applicant's plea for having part of his service rendered in the capacity of GDS computed for meeting the requirement of qualifying service, relying on an earlier decision of the Tribunal delivered in O.A. No. 310 of 2010 **(Sri Gouranga Ch. Sahoo Vs. Union of India and Others**). The Tribunal held and directed in the case of Gandiba Behera:-

> "It is not the case of the Respondents that the above order of this Tribunal has meanwhile been reviewed or reversed by any higher court. In view of the above, I find no justifiable reason to deviate from the view already taken by this Tribunal in the case of Gouranga Ch. Sahoo (supra). Hence the respondents are hereby directed to bring such of the shortfall period of service from the ED employment of the applicant to count for the purpose of minimum period of ten years qualifying service and accordingly sanction and pay the pension and pensionary benefits to the applicant from the date of his retirement forthwith preferably within a period of 60 (sixty) days from the date of receipt copy of this order; failing which, the applicant shall be entitled to 6% on the arrear pension and

> pensionary dues from the date of his retirement till actual payment is made and the Respondents are free to recover the interest amount from the officer who would be found responsible for causing delay in payment."

6. The Orissa High Court by a judgment delivered on 3rd January, 2014 in the writ petition brought by the Union of India and the postal authorities found no reason to interfere with the Tribunal's order. The High Court directed compliance of the said order of the Tribunal, mainly relying on an earlier judgment of the Court delivered on 6th December, 2011 in W.P. (C) No. 11665 of 2011.

7. In rest of the appeals, the factual disputes are similar in nature. Points of law involved are also near-identical. For these reasons, we do not consider it necessary to individually deal with each of these cases. We, however, give below the key factual features of the individual appeals in a tabular form :-

S. No.	Case Number	Service Details of Original Applicants
1.	**Civil Appeal No. 8979 of 2014**	**08.08.1970–**Joined as GDS. (Worked for 28 years) **31.12.1998 –** Appointed to Group D post. **30.06.2008—** Superannuated Qualifying Service Period: **9 years, 6 months, 1 day**.
2.	**SLP (C) No. 979 of 2015**	**11.08.1967** – Joined as GDS. (Worked for 29 years) **18.10.1996** – Appointed to Group D post. **31.07.2006** – Superannuated Qualifying Service Period: **9 years, 8 months, 27 days**.
3.	**Civil Appeal No. 9886 of 2014**	**14.08.1972** – Joined as GDS. (Worked for 27 years) **06.09.1999** – Promoted as Postman (Group 'C' post). **28.02.2009** – Superannuated. Qualifying Service Period: **9 years, 5 months, 11 days**.
4.	**Civil Appeal No. 8674 of 2015**	**14.09.1971** – Joined as GDS. (Worked for 28 years) **04.09.1999** – Appointed to Group D post. **30.11.2006** – Superannuated. Qualifying Service Period: **7 years, 2 months, 13 days**.
5.	**CC No. 20557-20558 of 2015 in SLP (C) ..... of 2015**	**29.08.1981** – Joined as EDDA; (Worked for 16 years) **24.12.1997** – Appointed to Group D post. **31.05.2007** – Superannuated. Qualifying Service Period: **9 years, 5**

		months, 23 days.
6.	**Civil Appeal No. 2825 of 2016**	**25.02.1972** – Joined as GDS. (Worked for 31 years) **08.03.2003** – Selected as Postman. **31.10.2012** – Superannuated. Qualifying Service Period: **9 years, 7 months, 23 days**.
7.	**Civil Appeal No. 5008 of 2016**	**21.02.1979**—Joined as GDS. (Worked for 29 years) **13.06.2001**—Joined as Postman. **31.10.2010**—Superannuated. Qualifying Service Period: **9 years, 4 months, 18 days**.
8.	**SLP (C) No. 16767 of 2016**	**01.02.1963**—Joined as GDS. (Worked for 29 years) **30.06.1992**—Joined as Mail Peon. **31.01.2002**—Superannuated. Qualifying Service Period: **9 years, 7 months**.
9.	**Civil Appeal No. 8379 of 2016**	**09.06.1967**—Joined as EDMC. (Worked for 34 years) **12.09.1997**—Assumed charge as Postman. **31.03.2007**—Superannuated. Qualifying Service Period: **9 years, 6 months, 20 days**.
10.	**Civil Appeal Nos. 1580-1581 of 2017**	**10.01.1963**—Joined as Extra Departmental Runner. (Worked for 29 years) **27.02.1992**—Joined Group D post. **31.12.2000**—Superannuated. Qualifying service period: **8 years, 10 months, 3 days**.

11.	**Civil Appeal Nos. 109-110 of 2017**	**22.06.1962**—Joined as EDA. (Worked for 31 years) **15.11.1993**—Joined Group D post. **31.03.1997**—Superannuated. Qualifying Service Period: **5 years, 4 months, 15 days**.
12.	**Civil Appeal No. 10355 of 2016**	Worked for 25 years as EDDA **09.11.2001**—Selected and appointed as Postman. **30.06.2011**—Superannuated. Qualifying Service Period: **9 years, 7 months, 21 days.**
13.	**Civil Appeal No. 10801 of 2016**	**July 1972**—Joined as EDMC. (Worked for 27 years) **15.09.1999—**Joined Group D post. **31.05.2009**—Superannuated. Qualifying Service Period: **9 years, 8 months, 16 days.**
14.	**14(i) Civil Appeal Nos. 9518-20 of 2017**	**14.07.1972—**Joined as GDS. (Worked for 30 years) **25.11.2002—**Joined Group D post. **30.06.2012**—Superannuated. Qualifying Service Period: **9 years, 7 months, 6 days**.
	14(ii)	**05.11.1973—**Joined as EDMCA. (Worked for 23 years) **17.04.1997—**Joined as Postman. **31.12.2006—**Superannuated. Qualifying Service Period: **9 years, 8 months, 15 days**.
	14(iii)	**01.11.1971—**Became EDM-I. (Worked for 28 years) **03.11.1999**—Joined in Group D post.

		31.07.2009—Superannuated. Qualifying Service Period: **9 years**, **8 months, 29 days**.
15.	**SLP (C) No. 32881 of 2018**	**25.01.1971**—Joined as EDMP. (Worked for 28 years) **27.11.1999**—Joined Group D post. **31.08.2009**—Superannuated. Qualifying Service Period: **9 years, 8 months, 19 days**.
16.	**SLP (C) No. 6544 of 2019**	**21.07.1972**—Joined as EDDA. (Worked for 31 years) **06.08.2003**—Joined Group D post. **30.06.2011**—superannuated. Qualifying Service Period: **7 years, 10 months, 9 days.**

8. Learned counsel for the appellants has assailed the decision of the Orissa High Court in the case of **Gandiba Behera** (supra) affirming the Tribunal's order mainly on the ground that service undertaken as GDS could not be equated with regular service. Service of a GDS carries lower working hours (between 3-5 hours). An incumbent engaged as Gramin Dak Sevak (GDS) is also entitled to pursue any other vocation simultaneously. It has also

been highlighted on behalf of the appellants that services of Gramin Dak Sevaks are regulated by a different set of rules and Court ought not to direct the administration or executive authorities in the capacity of employer to create an altogether new service Rule for a particular set of employees.

9. In the case of **Superintendent of Post Offices and Others v. P.K. Rajamma [(1977) 3 SCC 94]**, it was laid down that Extra-Departmental Agents connected with the postal departments held civil posts. That finding was given while dealing with applicability of Article 311 of the Constitution in relation to dismissal orders passed against the Extra-Departmental Agents. In the case of **Chet Ram vs. Jit Singh [(2008) 14 SCC 427]**, this Court examined the question as to whether a GDS is a government servant or not. This issue came up for consideration before this Court in a dispute concerning

eligibility of a GDS to become a member of Nagar Panchayat in terms of the Punjab State Election Commission Act, 1994. The opinion of the Court was that such agents were government servants holding civil posts. The Constitution Bench judgment in the case of **D.S. Nakara & Ors. vs. Union of India [(1983) 1 SCC 305]** was also cited on behalf of the respondents in support of their stand that there could be no discrimination between two sets of pensioners.

10. A set of GDSs who stood absorbed as Group 'D' employees had approached this Court invoking the jurisdiction of the Court under Article 32 of the Constitution of India seeking benefits akin to the ones which form the subject-matter of these appeals. That petition was registered as Writ Petition (Civil) No. 17/2009. The Rule involved in that writ petition was **Department of Posts, (Multi-Tasking Staff)**

Recruitment Rules, 2010. There was specific provision in the said Rules for declaring GDSs as holders of civil posts but they were outside regular civil service. The said writ petition was disposed of by an order passed on 9th December, 2014 giving the writ petitioners liberty to approach the Central Administrative Tribunal, Principal Bench, New Delhi. Subsequently, three applications were instituted before the Principal Bench of the Tribunal. These were registered as O.A. Nos. 749/2015, 3540/2015 and O.A. No. 613/2015. The applications of the individual GDSs were allowed by the Tribunal. The decision in that regard was delivered on 17th November 2016 (**Vinod Kumar Saxena & Ors. Vs. Union of India & Ors**.) and the Tribunal directed :-

> "(a) For all Gramin Dak Sevaks, who have been absorbed as regular Group 'D' staff, the period spent as Gramin Dak Sevak will be counted in toto for the purpose of pensionary benefits.
>
> (b) Pension will be granted under the provisions of CCS (Pension) Rules, 1972 to all Gramin Dak

> Sevaks, who retire as Gramin Dak Sevak without absorption as regular Group 'D' staff, but the period to be counted for the purpose of pension will be 5/8th of the period spent as Gramin Dak Sevak. Rule 6 will accordingly be amended.
>
> (c) The Gramin Dak Sevaks (Conduct and Engagement) Rules, 2011 are held to be valid except Rule 6, as stated above.
>
> (d) The claim of Gramin Dak Sevaks for parity with regular employees regarding pay and allowances and other benefits available to regular employees, stands rejected."

11. A Bench of this Court presided over by one of us (Hon'ble Justice Ranjan Gogoi) has examined a similar question in Civil Appeal Nos. 13675-13676 of 2015 **(Union of India & Ors. Vs. The Registrar & Anr.)** decided on 24th November, 2015. The scope of the dispute of that appeal would appear from the following passage of the judgment:-

> "The respondent no. 2 viz. N.S. Poonusamy worked as an Extra Departmental Agent in the Postal Department from the year 1968 to 1993. He was regularized on 01.04.1993 and retired on 31.05.2002. The second respondent had completed nine years and two months of service but he was not granted any pension. Therefore, he approached the learned Tribunal which

> directed that a scheme be framed to give some benefit of service rendered by such employees as Extra Departmental Agents so as to enable them to earn the requisite period of qualifying service for pension i.e. 10 years. Aggrieved, the Union of India moved the High Court by way of a writ petition out of which these appeals have arisen."

12. Such direction was issued by the Tribunal, inter-alia, on the basis of a circular of DoPT issued in the year 1991. The said circular provided that service rendered by an Extra Departmental Agent to the extent of 50% of the period thereof was to be added to the period of regular service for the purpose of entitlement to pension. During pendency of the appeal, however, the Central Government had issued order granting regular pension to the Respondent No.2 in that appeal.

13. Allowing the appeal of the Union of India, it was held by this Court in that case:-

> "The appellant-Union of India has filed an additional affidavit on 26.10.2015 stating inter alia that the Extra Departmental Agents covered by the DOP&T Circular, 1991, are full time casual

employees, whereas the second respondent is a part time casual employee and under the Rules governing his service framed in the year 1964 and amended in the years 2001 and 2011, employees like the respondent no. 2 are required to render between three to five hours of service every day. At the time of their appointment they are required to give an undertaking to the effect that they have alternative source of income to support their families. The need for appointment of such employees, according to the Union of India, is to reach out to the addresses in far flung villages in the country where establishment and maintenance of a regular post office is not a viable proposition. Attention is also drawn to the provisions of the aforesaid Rules to the effect that such employees are not entitled to pension but would be entitled to ex-gratia gratuity and such of the payments as may be decided by the Government from time to time.

Considering the fact that the DOP&T Circular, 1991, which form the basis of the impugned direction of the learned Tribunal as affirmed by the High Court, pertained to full time casual employees to which category the second respondent does not belong and the provisions of the Rules governing the conditions of service of the respondent as noted above, we are of the view that the impugned directions ought not to have been passed by the learned Tribunal and approved by the High Court. The matter pertains to policy and involved financial implications. That apart, in view of the facts placed before us, as noted above, we deem it proper to interfere with the impugned directions and allow these appeals filed by the Union of India. We, however, make it clear that the pension granted to the second respondent will not be affected by this order and the said respondent will continue to enjoy the benefit of pension in accordance with the provisions of law."

14. The respondents have also referred to clause 6 of the 2011 Rules which stipulates:-

> "The Sevaks shall not be entitled to any pension. However, they shall be entitled to ex-gratia gratuity or any other payment as may be decided by the Government from time to time."

This particular Rule, making service of this category of employees non-pensionable however, has been struck down as unconstitutional by the Principal Bench of the Central Administrative Tribunal, New Delhi by a decision delivered on 17th November, 2016. We are apprised in course of hearing of these appeals by the learned counsel for the Central Government that the said decision of the Tribunal has been challenged before the Delhi High Court by the Union of India by way of a Writ Petition, registered as W.P. (C) No. 832 of 2018. We are also informed that no effective order has as yet been passed by the Delhi High Court in the said writ petition. In the judgment giving rise

to Civil Appeal No. 109-110 of 2017, a similar provision of the 1964 Rules, being Clause 4 thereof has also been invalidated by the Punjab & Haryana High Court. Though the fact that the service of GDS was not pensionable was one of the factors considered by this Court in the case of **Union of India & Ors. Vs. Registrar & Anr.** (supra), that was not the main reason as to why the plea of the GDS was turned down by this Court. We have reproduced above the relevant passages from the said judgment containing the reasoning for allowing the appeal. For adjudication of this set of appeals, thus the proceeding in which the Rule making service of GDS non-pensionable has been struck down is not of much relevance. The controversy which we are dealing with in this judgment is whether the period of service rendered by a regular staff of the postal department while he was serving as GDS

would be computed for the purpose of determining his qualifying service to entitle him to get pension.

15. The case of **D.S. Nakara** (supra) has been relied upon on behalf of the respondents in support of their contention that there cannot be any artificial discrimination between two groups of pensioners. But the factual context of the case of **D.S. Nakara** (supra) is different. The discrimination which was challenged in that case related to two sets of retired Armed Forces personnel who were categorised on the basis of their dates of retirement and one set had better terms of pension. The decisions in the cases of **P.K. Rajamma** (supra) and **Chet Ram** (supra) are for the proposition that the respondents held civil posts as GDS and were government servants. But again ratio of these authorities cannot be applied to combine the services rendered by GDSs in posts guided by an altogether different service

rule with their services in regular employment. The other authority on which reliance has been placed on behalf of the respondents is a judgment of this Court delivered on 23rd August, 2017 in the case of **Habib Khan v. State of Uttarakhand and Others [2018 (1) SLR 724 (SC)]**. That case arose out of a similar dispute involving a work-charged employee of the State of Uttarakhand who wanted his service in that capacity counted for computing the qualifying service in regular post on the question of grant of pension. This judgment was also delivered by a two-Judge Bench of which Hon'ble Justice Ranjan Gogoi, before His Lordship assumed the post of Chief Justice of India, was a member. The aforesaid decision followed an earlier judgment of this Court delivered in the case of **Punjab State Electricity Board and Another v. Nakara Singh and Another [(2010) 4 SCC 317]**. The latter case arose out of similar claims of

work charged employees who were engaged in the Irrigation and Power Department of the State of Punjab. The relevant provision of the Punjab Civil Services Rules allowed temporary or officiating service under the State Government without interruption followed by confirmation in the same or another post to be counted in full as qualifying service but excluded the period of service in work charged establishment. The aforesaid Rule was struck down by the Full-Bench of the Punjab and Haryana High Court. The decision of this Court in the case of **Nakara Singh** (supra) was however founded on two circulars which permitted counting the period of service rendered by a work charged employee in the Central Government or the State Government for the purpose of computing pensionary benefits as an employee of the Punjab State Electricity Board. The respondents in these appeals also cannot be held to be

work-charged employees. The said category of employees, i.e. work-charged employees are engaged against specific work and their pay and allowances are chargeable to such work. But the scope of respondents' work as GDS was part-time in nature. They had the liberty to engage themselves in other vocations, though the work they involved in carried an element of permanency. The fact that they were engaged as GDSs which constituted civil posts cannot by implication treat their service having whole-time characteristic to be an extension of their service rendered in the capacity of GDSs. The subsequent service was guided by different service Rules having different employment characteristics. The selection of an employee in regular post cannot also be pre-dated 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.

16. In the case of **Union of India & Ors. v the Registrar & Anr.** (supra), a plea similar to that made by the GDSs for computation of service in that capacity was specifically rejected. There is no specific Rule or even administrative circular specifying computation of service period rendered as GDS to fill up the gap in the qualifying service requirement of the respondents in this set of appeals. The only circular on which the respondents laid stress on was the 1991 circular which was considered in the case of **Union of India & Ors. v. Registrar & Anr.** (supra). As the post of GDS did not

constitute full-time employment, the benefits of the said circular cannot aid the respondents. Thus, there being a clear cut finding on similarly placed employees, we do not think we can apply the ratio of the judgment delivered in the case of **Habib Khan** (supra) in support of the respondents' plea. An unreported judgment of Karnataka High Court delivered on 17th June, 2011 in the case of **W.P. No. 81699/2011 Union of India and Others Vs. Dattappa** has also been cited on behalf of the respondents. This judgment went in favour of counting the period of service as extra-departmental Agent for qualifying service in relation to pension and the Division Bench of the Karnataka High Court proceeded on the basis that for all intents and purpose, the employment was continuous in nature and it was not as if it was from one service to another. But, this view has not been

accepted by this Court in the case of **Union of India & Ors. Vs. Registrar & Anr.** (supra).

17. It is also the respondents' case that under Clause 49(3) of the 1972 Rules, if they had served more than 9 years and 3 months in regular employment, they would be entitled to have additional period computed for the purpose of qualifying service. Said Rule 49(3) specifies: -

> "In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service."

Arguments were advanced that if within a period of one year an employee had served more than six months, then the total employment term ought to be computed as twice the period of one half year in two tranches and one year ought to be added to the service. But on a plain reading of the said Rule, in our view such an interpretation cannot be given. The Rule contemplates

one time benefit in case of service of more than 3 months in fraction of a year.

18. Rule 88 of the 1972 Rules empowers the concerned ministry or the department to relax the operation of any Rule to prevent undue hardship in a particular case. This provision as embodied in Rule 88, provides:-

> **"88**. Power to relax.
>
> Where any Ministry or Department of the Government is satisfied that the operation of these rules, causes undue hardship in any particular case, that Ministry or Department, as the case may be, may, by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner:
>
> Provided that no such order shall be made except with the concurrence of the Department of Pension & Pensioner's Welfare."

Exercise of power under the said Rules however comes within the decision making domain of the executive. The appellants' case has been that if such

power to relax is exercised in each case of marginal shortfall in qualifying service, that would constitute an endless exercise.

19. Having regard to the provisions of the aforesaid Rules relating to qualifying service requirement, in our opinion the services rendered by the respondents as GDS or other Extra-Departmental Agents cannot be factored in for computing their qualifying services in regular posts under the postal department on the question of grant of pension. But we also find many of the respondents are missing pension on account of marginal shortfall in their regular service tenure. This should deserve sympathetic consideration for grant of pension. But we cannot trace our power or jurisdiction to any legal principle which could permit us to fill up the shortfall by importing into their service tenure, the period of work they rendered as GDS or its variants. At the same time, we also find that

in the case of **Union of India & Ors. v. The Registrar & Anr.** (supra), though the incumbent therein (being respondent no.2) had completed nine years and two months of service, the Union of India had passed orders granting him regular pension. This Court in the order passed on 24th November 2015 had protected his pension though the appeal of Union of India was allowed.

20. For the reasons we have already discussed, we are of the opinion that the judgments under appeal cannot be sustained. There is no provision under the law on the basis of which any period of the service rendered by the respondents in the capacity of GDS could be added to their regular tenure in the postal department for the purpose of fulfilling the period of qualifying service on the question of grant of pension.

21. We are also of the opinion that the authorities ought to consider their cases for exercising the power to relax

the mandatory requirement of qualifying service under the 1972 Rules if they find the conditions contained in Rule 88 stand fulfilled in any of these cases. We do not accept the stand of the appellants that just because that exercise would be prolonged, recourse to Rule 88 ought not to be taken. The said Rules is not number specific, and if undue hardship is caused to a large number of employees, all of their cases ought to be considered. If in the cases of any of the respondents' pension order has already been issued, the same shall not be disturbed, as has been directed in the case of **Union of India & Ors. v Registrar & Anr.** (supra). We, accordingly allow these appeals and set aside the judgments under appeal, subject to the following conditions:-

(i) In the event the Central Government or the postal department has already issued any order for pension to any of the respondents, then such pension should not be disturbed. In

issuing this direction, we are following the course which was directed to be adopted by this Court in the case of **Union of India & Ors. v. Registrar & Anr.**(supra).

(ii) In respect of the other respondents, who have not been issued any order for pension, the concerned ministry may consider as to whether the minimum qualifying service Rule can be relaxed in their cases in terms of Rule 88 of the 1972 Rules.

22. Interim orders passed in these appeals, if any, shall stand dissolved. All connected applications shall stand disposed of.

23. There shall be no order as to costs.

.....CJI
(Ranjan Gogoi)

.....J
(Deepak Gupta)

.....J
(Aniruddha Bose)

New Delhi
Dated: November 08, 2019.