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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.654/2002

New Delhi, this the 19th day of May, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri Govindan S.Tampi, Member(A))

1. All India CPWD(MRM) Karamchari
Sangathan, through its President
Satish Kumar, 4823, Balbir Nagar Extn.
Gali No.13, Shahdara, Delhi-32.

2. Inder Singh, s/o late Shri Bihara Singh
Wireman, Sub-Division-2
Electrical Division II
CPWD, New Delhi .. Applicants

(Shri Naresh Kaushik, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Urban Development
Nirman Bhavan, New Delhi

2. Director General (Works), CPWD
Nirman Bhavan, New Delhi

3. Executive Engineer
Electrical Division II
CPWD, IARI, Pusa, New Delhi .. Respondents

(Shri A.K. Bhardwaj, Advocate)

O R D E R

Shri Justice V.S. Aggarwal :

Applicants by virtue of the present application seek that the respondents should count the period of 14 years of service rendered by the applicant No.2 as a Muster Roll worker for the purpose of qualifying service for pensionary benefits and he should be granted pension and gratuity with consequential benefits.

2. The relevant facts are that the applicant No.2 was engaged on 9.1.1979 as a Wireman in the category of Muster Roll worker by the respondents. He continued to work as such for 14 years. Thereafter, he was absorbed

on permanent basis as a regular work charged employee on 13.12.1992. In this process, he worked for 14 years as a Muster Roll worker without any break. The respondents are alleged to have denied him pension and gratuity benefits by not computing the period of service rendered by him from the date of his initial engagement. It is on these broad facts that the abovesaid reliefs are being claimed.

3. In the reply filed, the application has been contested. The basic facts are not disputed. So far as gratuity is concerned, it had been pointed that the Gratuity Act is an industrial law and in terms of the law laid down by a Full Bench of this Tribunal, the applicants can raise such a plea before the Industrial Tribunal. However, it is denied that the period for which the applicant No.2 worked on casual/seasonal basis can be counted for the purpose of pension, as claimed by the applicants.

4. The learned counsel for the applicants during the course of submissions highlighted that it is the guarantee prescribed by the Constitution that there has to be economic justice besides social justice and in that back-drop, the applicant No.2, who has served for 14 long years as a Muster Roll employee, cannot be denied the benefit of the said service for purpose of pension. He relied upon a decision of the Apex Court in the case of **G.B.Pant University of Agriculture & Technology,**

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Pantnagar, Nainital v. State of U.P. and Others, (2000)7 SCC 109 wherein the Supreme Court held:-

"10. Admittedly, cafeteria employees need succour for livelihood- would they continue to remain half-fed and half-clad as long as they live- is this the society that we feel proud of? Is this the guarantee provided by the founding fathers of our Constitution or is this the concept of socialism which they conceived? None of the answers can possibly be in the affirmative. The situation is rather awesome and deplorable- the University by compulsion directs students to be residents of the hostel with a definite ban on having food from outside agencies excepting under special circumstances and the provider of food, namely the staff of the cafeteria ought not to be treated as an employee of the University - whose employees are they if we may ask and we think it would not be impertinent on our part to ask the same- is it the consumer of food? Since when the consumer of food becomes the employer? These are the questions which remain unanswered. The society shall have to thrive. The society shall have to prosper and this prosperity can only come in the event of there being a wider vision for total social good and benefit. It is not bestowing any favour on anybody but it is a mandatory obligation to see that the society thrives. The deprivation of the weaker section we had for long but time has now become to cry a halt and it is for the law courts to rise up to the occasion and grant relief to a seeker of a just cause and just grievance. Economic justice is not mere legal jargon but in the new millennium, it is the obligation for all to confer this economic justice on a seeker. Society is to remain, social justice is the order and economic justice is the rule of the day. A narrow pedantic approach to statutory documents no longer survives. The principle of corporate jurisprudence is now being imbibed on to industrial jurisprudence and there is a long catena of cases in regard thereto - the law thus is not in a state of fluidity since the situation is more or less settled. As regards interpretation, widest possible amplitude shall have to be offered in the matter of interpretation of statutory documents under industrial jurisprudence. The draconian concept is no longer available. Justice- social and economic, as

> noticed above ought to be made available with utmost expedition so that the socialistic pattern of the society as dreamt of by the founding fathers can thrive and have its foundation so that the future generations do not live in the dark and cry for social and economic justice."

There is indeed no dispute with these laudable ideas, but necessarily a right has to flow from the relevant rules. The Central Civil Services (Pension) Rules, 1972, (for short, "the Rules") prescribe as to what would be qualifying service for purposes of pension. Rule 13 of the Rules reads as under:

> 13. Commencement of qualifying service
>
> Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:
>
> Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post:
>
> Provided further that-
>
> (a) in the case of a Government servant in a Group 'D' service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose, and
>
> (b) in the case of a Government servant not covered by Clause (a), service rendered before attaining the age of eighteen years shall not count, except for compensation gratuity."

This rule in unambiguous terms prescribes that qualifying service shall commence from the date the person takes charge of the post to which he was first appointed either substantively or in an officiating or temporary capacity.

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In other words, this is a necessary ingredient for qualifying service that a person must be working against a post. If there is no such post that is available which has not been shown to us in the present case, we have no hesitation in concluding that the applicant no.2's service as a Muster Roll employee cannot be counted for the purpose of pension. As referred to above, no such post is available or brought to our notice.

5. Close to the facts of the present case is the decision of the Supreme Court in the case of **State of U.P. and others** vs. **Ajay Kumar**, (1997) 4 SCC 88. Therein also Ajay Kumar was appointed on daily-wage basis as a class IV employee. He filed a Writ Petition for his regularisation. The Supreme Court held :

> "It is now settled legal position that there should exist a post and either administrative instructions or statutory rules must be in operation to appoint a person to the post. Daily-wage appointment will obviously be in relation to contingent establishment in which there cannot exist any post and it continues so long as the work exists. Under these circumstances, the Division Bench was clearly in error in directing the appellant to regularise the service of the respondent to the post as and when the vacancy arises and to continue him until then. The direction in the backdrop of the above facts is, obviously, illegal."

Identical is the position herein. When there is no post against which the applicant was working, he cannot seek a direction to count his service for the purpose of pension. We have already referred to Rule 13 of the Rules which also as pointed above specifically refers to there being a post. In the absence of the same, there

being no challenge to Rule 13 in this regard necessarily, the present application must be held to be without merit.

6. For these reasons, the present application being without any merit must fail and is dismissed. No costs.

(GOVINDAN S. TAMPI)
MEMBER (A)

(V.S. AGGARWAL)
CHAIRMAN

/sns/