

Central Administrative Tribunal, Principal Bench

Original Application No.1993 of 1998

New Delhi, this the 7th day of September, 1999

Hon'ble Mr.N.Sahu, Member (Admnv)

Shri Yudhistir Dev, son of Late Shri
Mengh Raj, resident of 214, Dr.
Mukherjee Nagar, Delhi-110009

- Applicant

(By Advocate - T.C.Aggarwal)

Versus

Union of India through,

1. Secretary, Ministry of Information
& Broadcasting, Shastri Bhavan, New
Delhi 110001.

2. The Director General, Dte. of
Advertising & Visual Publicity,
P.T.I. Building, Parliament
Street, New Delhi-1.

- Respondents

(By Advocate Shri S.M.Arif)

O R D E R (Oral)

By Mr.N.Sahu, Member(Admnv) -

This O.A. is filed against an order of respondent no.2 dated 16.6.1998 by which the applicant is denied his pension.

2. The brief facts leading to the OA are as follows :- the applicant was engaged as a Casual Carpenter in Department of Advertising and Visual Publicity (in short 'DAVP') in 1963. He continued there till 1992 as a casual employee. He was not regularised till 1992. He approached the CAT in OA No.1185/91. It is stated by him that due to assurances given by the respondents that services rendered by him in casual capacity would be counted for pension, he withdrew the O.A. He was regularised on 18.6.1992. He retired on superannuation on

31.1.1998. Respondent no.2 denied him the benefit of past services for pension. The applicant was stated to have worked in spells with breaks from 1980-92. The respondents furnished the actual number of working days. For instance in 1980 the applicant worked for 294 days and in 1991 he worked for 245 days. For the years 1982, 1984 and 1988 the respondents stated that the records are not available. In other years he worked for less than a month or less than 1-3 months. For the period from 1980 to 1992 he had worked only for 1284 days. There is no record available with the respondents from March 1963 to December, 1979. He was not regularised in the post of Carpenter because he did not fulfil the eligibility condition. Therefore, he was regularised as a Group 'D' Chowkidar on 18.6.1992.

3. As 10 years of service are needed for grant of pension the applicant prayed for counting his casual services.

4. As per Govt. of India's decision no.2 under Rule 14 of the Pension Rules the services paid from contingency should have been continuous without a break. The applicants services were utilized from time to time. On the ground that the records were not available, the respondents proposed for counting the period from 1963 to 1969 on the average number of days from 1980 to 1992. According to this proposal the qualifying service added on to a little over 7 years. This would have enabled the applicant to claim his

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total qualifying service to be around 13 years but the Department of Personnel did not agree to this proposal.

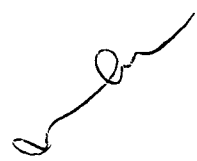
5. With regard to the period from 1962-1979 the applicant has filed an affidavit on 22.5.1999 copy of which had been handed over to the learned counsel for the respondents. He refers to a certificate of Chief Modeller under which he had worked at Exhibition Division. The said official admitted that the applicant worked from 22.7.1969 to 5.5.1987. This certificate is available at Annexure-A-3 to the OA. The respondents had the benefit of certificate of their own employee as well as the affidavit. There was no denial of the affidavit. The respondents might have lost the attendance record but they could have verified the same from the financial record because wages were paid from contingency. As the affidavit was not controverted, I have to hold that this material averment of the affidavit is unchallenged. If the records are not available as stated by the respondents, it is for them to search from other ancillary material or organise an enquiry. Otherwise, the affidavit based on the Chief Modeller's certificate at Annexure-A-3 to the OA must be held to hold the field.

6. The learned counsel for the applicant cited the following decisions :- (i) N. S.Nair Vs. Union of India and others, (1994) 28 ATC 40 wherein Ernakulam Bench of the Tribunal in similar circumstances directed to accept the statement of the

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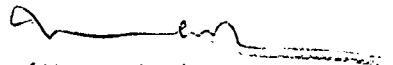
applicant by an affidavit in similar circumstances. The Bench in particular ruled that the object of the Pension Rules is to avoid undue difficulties to a Government employee on his retirement and directed acceptance of statement from the applicant of the portion of service not being capable of being verified from official records; (ii) T.J. Joseph and T.C. Anthony Vs. Sub Divisional Officer, Telephones, Alleppey and others, (1989) 10 ATC 142 wherein it was held that casual labourers cannot be expected to produce the evidence of their service; (iii) Sunil Kumar Vs. Union of India and others, ATJ 1995 (1) 320 wherein it was held that when the record of earlier casual labour service is not available the incumbent cannot be blamed and the charge of not performing the earlier casual service cannot be said to be proved.

7. In view of the facts stated above and the affidavit filed, I am satisfied that the period of service from 22.7.1969 till May, 1987 should be treated as continuous in view of Anneuxre-A-3 to OA which is a corroborative certificate by the employer himself. In view of this, the applicant must be held to have worked for more than 10 years qualifying service and is entitled to the pension. The said pension may be worked out and paid to him in accordance with the Pension Rules within a period of



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three months from the date of receipt of a copy of this order. No interest is payable in the facts and circumstances of the case. The O.A. is allowed with the above directions. No costs.


(N. Sahu)
Member (Admnv)

rkv.