

CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

OA 1881/2000

New Delhi, this the 5th day of April, 2002

Hon'ble Shri Govindan S.Tampi, Member (A)

1. Shri Bhagat Bhadur Thapa
S/o Late Bhim Lal Thapa
R/o Village Kumar-ward No.7
P.O. Sheopur, Distt. Rohom
NEPAL.
2. Shri Daya Chand, R/o
55/9, Sector-1, Saket,
M.B. Road, New Delhi.
3. Shri Bal Chand, S/o
Shri Manful, Village Bamnolli,
P.O. Choolsiras,
New Delhi-45.
4. Shri Pritam Singh, S/o
Chiman Lal, R/o H-510, Seva Nagar
New Delhi.
5. Shri Hari Chand, S/o
Shri Ratti Ram, C/o Sh. Daya Chand,
55/9, Sector-1, Saket,
New Delhi.
6. Shri Bal Kishan, S/o
Sh. Hoshiar Singh, R/o
Village Sultanpur Dabas,
P.O. Puth Khurd, Delhi-39.Applicants
(By Advocate Shri T.C.Agarwal)

V E R S U S

Union of India, through,

1. Secretary,
Ministry of Information & Broadcasting,
Shastri Bhavan,
New Delhi-01.
2. The Director General, All India
Radio, Akashvani Bhavan, Parliament
Street, New Delhi.
3. The Chief Engineer, North
Office of All India Radio & Doordarshan,
Jamnagar Huments, New Dholpur House,
New Delhi- 110 001.Respondents
(By Advocate Shri R.P.Agarwal)

O R D E R

By Hon'ble Shri Govindan S.Tampi, Member (A)

Relief sought by the six applicants in this case, is the counting of their work charged service

alongwith the regular service, while computing pensionable service.

2. Heard S/Shri T.C. Aggarwal and R.P. Agarwal, learned counsel for the applicant and the respondents respectively.

3. All the six applicants are those who came over from work charged establishment to regular posts. They have joined between 1966 and 1982 and have changed over to regular strength between 1979 and 1988. Civil Construction Wing of I & B Ministry in which they are working are covered by the provisions of CPWD Manual Vol III, in accordance with para 4.03 whereof the entire service will be treated as continuing and qualifying service for pension/gratuity. This was also settled by the Tribunal on 11.04.1997 in favour of the employee, while disposing of OA NO.1140/94 filed by Satya Prakash. Besides, as far back as on 17.8.1960, Govt. had been advised by the 2nd Pay Commission to convert work charged posts to regular posts and to bring in such staff to regular establishment. It is on account of the inaction and reluctance on the part of the respondents, that the respondents have to approach the Tribunal, according to the respondents. Grounds raised in the OA are the arbitrariness of respondents, inaction inspite of Tribunal's decision in OA No.1140/94 and respondents failure to implement Finance Ministry's directions of 17.8.1960 in Administration which have been adversely commented upon by the Hon'ble Supreme Court.

4. In the reply filed on behalf of the respondents it is pointed out that CCS (Pension) Rules, 1972 and not CPWD Manual is applicable in the case of retirees. Applicants 2-6 have no cause of action as they are still in service. Rule 14 ibid provides that only the service paid out of Consolidated fund of India would be pensionable service and in the case of other kinds of service, only half of it would be pensionable service. The same represents the position in law. Neither the case of Satya Prakash nor that of Saroj Malhotra relied upon by the applicant was relevant in this case. Since Rule 14 is a statutory provision, the same cannot be overlooked, as the applicants would like the respondents to do.

5. In the additional affidavit filed by the applicants, it is alleged that the respondents have not disclosed all the necessary facts. The applicants have been discriminated. In terms of AIR Manual work charged staff are governed by the same service conditions as regular employees, as settled in Lilloo Singh's case. They are also governed by the Pension Rules. Work charged staff are not contingent staff as is sought to be made out by the respondents, they are as good as regular employees except that their expenditure is booked under the head 'Works' and they are not muster roll staff. Since the applicants are equivalent to regular staff, there was no justification for not counting their work charged service also on pensionable service. The respondents are acting in a discriminatory and irregular manner

and the Tribunal should set it right, plead the applicants through their learned counsel Shri T.C. Aggarwal, who also rely upon the Prasar Bharati's letter dated 04.07.2001 permitting inclusion of eligible service for computing the benefits of ACP.

6. According to Shri R.P. Aggarwal, learned counsel for the respondents the applicants have no case at all. According to him, in the case of retirement pension, CCS(Pension) Rules would come into play and not the provisions of CPWD Manual. As work charged staff and regular staff are of two different categories service rendered in one category cannot be added to the other for purpose of pension and other benefits. Shri Aggarwal also points out that the decisions cited by the applicants are not applicable to their case and their plea should merit rejection.

7. I have carefully considered the matter. What the applicants seek in this OA is the inclusion of service rendered by them as Work Charged staff also, for computing pensionary service. According to the respondents, this was not acceptable as the work charged staff are not paid out from the Consolidated fund of India, and the same cannot be compared with regular service. However, in view of the averments made by the applicant, supported by the Manual Provisions, I am convinced that the applicant has a strong case. Chapter III of AIR Manual refers to Chief Construction Wing of AIR, became operational during 1972-73, as a successor to CPWD. The organisational set up of CCW has been modelled in

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CPWD, except for very few charges. Para 3.5.17 of Chapter II, relating to Work Charges Estt. reads as under :-

"Broadly speaking work charges establishment means that establishment whose pay, allowances are directly chargeable to 'Works'. Work charged staff is employed on the actual execution of a specific work, sub - works of a specific worker. The cost of work charged establishment is invariable shown as a separate sub head of the estimate for a work. In other respects the work charged staff is quite comparable to the regular Govt. servants. The work charged establishment exists in CCW field offices only. For the recruitment pay scale and other rules CPWD Manual Vol.III is applicable to them."

Evidently therefore but for the source of their pay and allowances, work charged staff and the regular staff are similar to one another. Therefore, it follows that is principle that the service rendered on the work charged establishment and regular establishment can be treated alike for purposes of grant of benefits like pension. After having spent a few years of service in the work charged establishment and having been regularised in continuation thereof, it would be unfair and unjust to deny the addition of the said service as pensionable service. Merely because in the one case, pay and allowances come from contingency expenditure head and in the other from consolidated fund of India. This finding is supported by the decision of the Tribunal dated 11.04.1997 in OA No. 1140/94, filed by Satya Prakash and that dated 27.04.2000 in OA No. 2464/96 filed by Lillo Singh relied upon by the applicant, and correctly too. The applicants are entitled to get the benefit of treating the work charged service also as pensionable service and other allied benefits.

8. In the above view of the matter, the OA succeeds and is accordingly allowed. Respondents are directed to treat the work charged service rendered by the applicants also as pensionable service and take action, accordingly. They would have to initiate action for sanctioning pensionary benefits to applicant No.1 Bhagat Bahadur Thapa, who has already retired on 30.06.2000, and give him arrears of pensionary benefits, within three months from the date of receipt of a copy of this order. With regard to the other applicants, they may take action as and when they become due for retirement on superannuation. No costs.

(GOVINDAN S. TAMPI)
MEMBER (A)

