

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

OA-427/2004

New Delhi this the 22<sup>nd</sup> day of April, 2004. (2)

Hon'ble Sh. Shanker Raju, Member(J)

Sh. Mohammad Razak,  
S/o Sh. Dalmira M.R.P.  
from the Organisation of  
Military Dairy Farm,  
Meerut Cantt.  
R/o Lal Mahmudpur,  
P.O. RAjban,  
Meerut Cantt. .... Applicant

(through Sh. VPS Tyagi, Advocate)

Versus

1. The Union of India through  
Secretary,  
Ministry of Defence,  
South Block, New Delhi.
2. The Dy. Director General,  
Military Farm (DDGMF),  
QMG's Branch, AHQ,  
R.K. Puram, New Delhi.
3. The Controller General of  
of Defence Accounts,  
West Block-V,  
R.K. Puram,  
New Delhi.
4. The Controller General of  
Defence Accounts (Army),  
Belvadioer Complex,  
Meerut Cantt.
5. The Officer Incharge cum Manager,  
Military Farms, Mawana Road,  
Meerut Cantt. .... Respondents

(through Sh. M.K. Bhardwaj, proxy for Sh. A.K.  
Bhardwaj, Advocate)

O R D E R

Applicant impugns the action of the  
respondents whereby on attaining the age of 60 years  
as casual labourer he was deprived of the pensionary  
benefits.

2. Applicant was appointed by the respondents as casual labourer on daily rates but the payment was made on monthly basis. Since then the applicant continued to work with the respondents and had completed more 240 days in each year till October 2003. Applicant was working in the pay scale of Rs. 2550 - 3200 and his total emoluments included D.A., H.R.A., C.C.A. and Cycle allowance. Applicant was also issued an identity card. Applicant whose services were dispensed with gave a certificate undated to the respondents that if he is allowed to work on monthly payment he would not claim any permanancy and as per rule whatever the date of retirement he would leave the job. Applicant was accorded temporary status and was allowed increments as well.

3. Applicant made representation for his regularisation but without any success.

4. On attaining the age of superannuation from government service i.e. 60 years applicant was not allowed to join duties. His claim for pension though agitated has not been acceded to giving rise to the present O.A.

5. Learned counsel for the applicant Sh. V.P.S. Tyagi placing reliance of a decision of Full Bench of this Tribunal in Gita Rani Santra Vs. U.O.I. & Ors. (1997(2) ATJ 308 contends that the minimum period of continued service of a casual

labourer with temporary status prior to the death or superannuation has been held to be 20 years for entitlement of pensionary benefits in railway case.

6. Learned counsel further relies upon a decision of the Principal Bench of this Tribunal in Meena Devi Vs. U.O.I. & Ors. (2004(1) ATJ 556 where on the basis of decision in Smt. Latifan Vs. U.O.I. --(ATJ 2002(1)81 CAT) upheld by the High Court pensionary benefits have been awarded to casual labourers without regularisation.

7. Learned counsel contends that half of the service with temporary status is to be reckoned towards pensionary benefits and non grant of pension offends principle of equality under Articles 14 & 16 of the Constitution of India.

8. Learned counsel further places reliance on a decision of the Apex Court in Piara Singh Vs. State of Haryana (1992(2) SLJ 34) to contend that if a casual labourer has been continuously working for number of years there is a presumption for regular service and his regularisation is must.

9. On the other hand Sh. M.K. Bhardwaj, learned proxy counsel for respondents by referring to Rule 2 of the CCS (Pension) Rules, 1972 as well as Rule 13 ibid contends that casual labourer and daily rated employees are not amenable to the purview of the pension rules and for the purpose of pension

qualifying service would be service when a person is appointed on a substantive post and as the applicant was not regularised his service cannot be reckoned as qualifying service.

10. It is further stated that doctrine of acquiescence applies to the present case as the applicant himself has chosen on his own volition not to claim permanancy and other benefits.

11. It is further stated that the applicant had only worked as casual labourer with temporary status from 1.5.1994 to 31.10.2003 i.e. for a period of 9 years and 5 months as such not covered by O.M. dated 14.5.1968.

12. On careful consideration of the rival contentions of the parties, I am of the considered view that whosoever completes even a temporary service for 10 years is entitled for pension under the CCS (Pension) Rules, 1972. Applicant acquiescence by not claiming permanancy which is a substantive right cannot debar him from claiming the pension as the Apex Court in U.O.I. & Anr. Vs. Wing Commander T. Parthasarathy (2001(1) SCC 158) held as follows:-

"The reliance placed upon the so-called policy decision which obligated the respondent to furnish a certificate to the extent that he was fully aware of the fact that he cannot later seek for cancellation of the application once made for premature retirement cannot, in our view, be destructive of the right of

(11)

the respondent, in law, to withdraw his request for premature retirement before it ever became operative and effective and effected termination of his status and relation with the Department. When the legal position is that much clear it would be futile for the appellants to base their rights on some policy decision of the Department or a mere certificate of the respondent being aware of a particular position which has no sanctity or basis in law to destroy such rights which otherwise inhered in him and available in law. No such deprivation of a substantive right of a person can be denied except on the basis of any statutory provision or rule or regulation. There being none brought to our notice in this case, the claim of the appellants cannot countenanced in our hands. Even that apart, the reasoning of the High Court that the case of the respondent will not be covered by the type or nature of the mischief sought to be curbed by the so-called policy decision also cannot be said to suffer any conformity (sic infirmity) in law, to warrant our interference."

13. Having regard to the above, right of a pension and regularisation are substantive rights which cannot be acquiesced or waived off. Moreover, in a country where unemployment is on rise and the threat of dispensation of service in lieu of continuance as a bargain an undertaking to this effect the substantive right of regularisation and grant of pension cannot be construed to be waived off on the undertaking. Right to life is a fundamental right so as the right to benefits of service rendered with Government.

14. Moreover, it is very strange that for 40 years the applicant has been utilised on monthly basis as casual labourer whereas during this

interregnum special schemes applied to casual labourers for their regularisation. These schemes undisputedly have been adopted by the respondents. In fact the respondent should have suo moto regularised the applicant but this has not been done. This cannot be attributed to the applicant in any manner.

15. In so far as the conclusion of the respondents that the applicant has completed 9 years and 5 months with temporary status the casual service of an employee has to be counted 50% as per O.M. dated 14.5.1968 ibid. However, we find in Geeta Rani Santra (supra) Full Bench of this Tribunal held in reference 20 years making a casual labourer with temporary status eligible for pensionary benefits. The decision in Smt. Meena Devi's case (supra) has already been implemented.

16. Equitable considerations are within the purview of Rule of Law. Sometimes technical considerations are to give go bye to equity although equity cannot be in conflict with the statutory rules.

17. Rule 88 of the CCS (Pension) Rules, 1972 provides as under:-

"Where any Ministry or Department of the Government is satisfied that the operation of any of these rules, causes undue hardship in any particular case, the 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."

18. If one has regard to the above, any Ministry or Department if it is satisfied that the operation of the rules causes undue hardship in a particular case may relax the requirement of the rule for the reasons to be recorded in writing in just and equitable manner with the prior concurrence of DOP&T.

19. We find Respondent No.1 Secretary, Ministry of Defence represents Government of India. We also find undue hardship in the present case though working for more than 40 years applicant has not been regularised and given a permanent status. He at the end of 40 years has been left in pecuniary with no assets in the name sake of retiral benefits. The prime of his youth and middle age has toiled in the service of the government. As a model employer. It is the responsibility of the government to look after the interest of the applicant as a welfare state. By depriving the applicant not only permanancy but also pensionary benefits. Applicant has been treated unjustly. However, there is a cure for every disease. Rule 88 empowers to relax any provision in undue hardship and even to bring within the purview of non-entitled person for grant of pension.

20. Keeping in view the aforesaid provisions, I dispose of this O.A with a direction to Respondent No.1 to consider the case of the applicant for relaxation of rules treating it to be a case of undue hardship for grant of pensionary benefits atleast treating the applicant service as 10 years qualifying for the purpose of pension. The aforesaid proposal shall be sent to the DOP&T for their concurrence within three months from the date of receipt of the copy of this order.

21. In the event the aforesaid proposal is acceded to applicant shall be granted pension and other benefits in accordance with the rules. No costs.

(Shanker Raju)  
Member(J)

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