

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 65/95 alongwith 198
EA-No. M.A. No.39/95

DATE OF DECISION 31.01.2000.

Badri Lal Petitioner

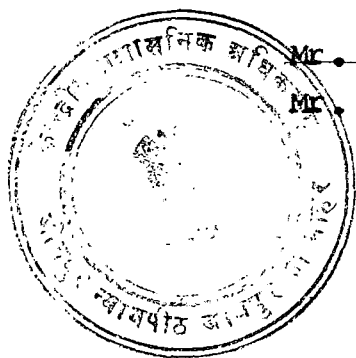
Mr. M.S. Singhvi, Advocate for the Petitioner(s)

Versus

Union of India & O r s. Respondent (s)

Mr. Vineet Mathur Advocate for the Respondent ~~(s)~~ No.1

Mr. Arun Bhansali, Advocate for Respondent No.2



CORAM :

The Hon'ble Mr. A.K. Misra, Judicial Member

The Hon'ble Mr. Gopal Singh, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? No
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No

Gopal Singh
(Gopal Singh)
Adm. Member

A.K. Misra
(A.K. Misra)
Judl. Member

(14)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH: JODHPUR

Date of order : 31.01.2000

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alongwith
2. M.A. No. 39/95
in
O.A. No. 65/95.

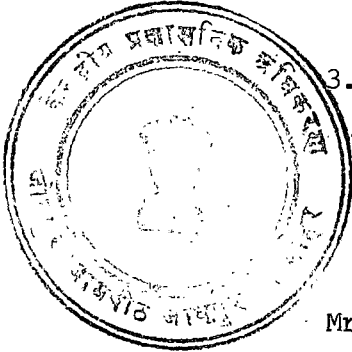
Badri Lal, aged about 62 years, son of Shri Kanhaiya Lal, by caste Mathur, resident of Near Maszid Main Road, Rawat Bhata, District Chittorgarh, retired as Light Vehicle Driver, Rajasthan Atomic Power Project, Plant Site.

... Applicant.

v e r s u s

1. The Union of India through the Secretary, Ministry of Atomic Energy, C.S.M. Marg, Bombay - 400 039
2. The Assistant Personnel Officer, Rajasthan Atomic Power Project, Anushakti, Rawatbhata (Distt. Chittorgarh)
3. Nuclear Power Corporation of India through the Managing Director, N.P.C. of India, World Trade Centre, Carlte Parade Road, Bombay.

... Respondents.



Mr. M.S. Singhvi, Counsel for the applicant.

Mr. Vinit Mathur, Counsel for the respondent No.1.

Mr. Arun Bhansali, Counsel for the respondents Nos. 2 and 3.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member

Hon'ble Mr. Gopal Singh, Administrative Member.

O R D E R

(Per Hon'ble Mr. Gopal Singh)

Applicant, Badri Lal, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for that the condition No. 2(3) of Circular dated 31.03.82/29.05.82 (Annexure A/1) be declared illegal and struck down and further

Gopal Singh

2. Applicant's case is that he was initially appointed as Driver at Chumbal Hydel Scheme in the State of Madhya Pradesh on 1.8.57 on daily wages. While the applicant continued on daily wages, he was appointed as Work-charge Driver with effect from 1.11.62. The applicant's name was sponsored by the Employment Exchange for selection and appointment for the post of Light Vehicle Driver in Rajasthan Atomic Power Project (RAPP, for short), Rawatbhata. The applicant was appointed on the post of Driver on work charge basis vide respondents' order dated 1.7.68 (Annexure A/2), after resigning from the post of Driver in Chumble Hydel Project. The resignation of the applicant was accepted on 4.7.68 and he was relieved on the same date. The applicant joined his duties under respondent Nos. 1 and 2 on 5.7.68. He was given regular appointment on the post of Driver vide respondents' order dated 17.1.69 (Annexure A/5). The applicant superannuated from the service with effect from 31.10.90 on attaining the age of 58 years. The contention of the applicant is that under Fundamental Rule 56 (b), he should have retired from service on attaining the age of 60 years. It has also been contended by the applicant that he had approached the respondent-department for counting his services rendered in Chumbal Hydel Project on daily wages as work-charge staff, but no action was taken on that representation.

3. Notices were issued to the respondents and they have filed their reply. In their reply, the respondents have asserted that the name of the applicant was sponsored by the Employment

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Exchange and he was given appointment as a fresh candidate from the market. Moreover, the applicant had not approached the respondent-department for counting his past services at the time of his appointment. In column 11(a) of the attestation from filed by the applicant, it has been mentioned that he had worked from 1957 to November 1962 in Gandhisagar Division and he was retrenched therefrom. It is also contended by the respondents that the representation submitted by the applicant on 18.2.89 was never received by the respondents. Moreover, the applicant had never approached the respondent-department for counting his past services before submission of his alleged representation dated 18.2.89 just before his retirement. The respondents have also contested the application on the point of limitation. The applicant had retired on 31.10.90 whereas this application was filed on 12.01.95. It is thus the contention of the respondents that the application is barred by limitation and, therefore, deserves to be rejected.

4. We shall first deal with the limitation point.


5. The applicant had joined the respondent-department on 5.7.68. He should have raised the issue of counting previous services rendered in Madhya Pradesh Government with the respondent-department immediately after joining that department. This was not done by the applicant. The applicant had allegedly submitted a letter to the respondent-department on 18.2.89 (the receipt of which is denied by the respondent-department) for counting his past service rendered under the Madhya Pradesh Government. The applicant retired on superannuation on 31.10.90. Thus, the applicant raised the issue only when he was due to retire. The applicant even did not protest this issue at the time of his retirement when he was paid all retirement dues. The question of less pension being sanctioned to him arose when he was paid retirement dues. However, he kept silent and only raised this issue through the present O.A. Thus, there has been delay on the part of the applicant in claiming counting of his past services rendered under the Madhya Pradesh Government. Secondly, the applicant retired on 31.10.90 on attaining the age of 58 years on superannuation. Now, he is demanding through the present O.A. that he should have retired on attaining the age of 60 years in

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terms of F.R. 56 (b). This aspect could also have^{been} raised at the time of his retirement, but was not raised. The applicant has filed an M.A. No. 39/95 stating therein that he did not challenge the order of retirement at that time as he was not aware of the correct legal position. However, in the light of the order dated 26.5.93 in OA No. 9/93, Rajasthan Anu Shakti Pariyojana Karamchari Sangh, Rawat Bhata, District Chittorgarh & Ors. vs. Union of India & Ors., of this Bench of the Central Administrative Tribunal, the respondents were required to extend the benefit of that judgement to the applicant also. But as that benefit has not been extended to the applicant, therefore, the applicant has filed this O.A. now. The applicant has also asserted that he is getting less pension and the grievance arises every month and as such, the application is not time barred. The learned counsel for the applicant has cited the judgement of Hon'ble the Supreme Court in P.L. Shah vs. Union of India & Anr., (1989) 1 SCC 546, in support of his contention. In this case, the subsistence allowance of 50% of the salary originally ordered was reduced to 25% of the salary. The applicant approached the Tribunal for a direction to the Government to restore the original order more than 5 years after the order of reduction was made. The Tribunal dismissed the application on the ground of being time barred under Section 21(2) of Administrative Tribunals Act. On appeal, it was held that the cause of action arises every month in which reduced subsistence allowance is paid and, therefore, despite lapse of time, the Tribunal could examine propriety of continuance of subsequent order of reduction of subsistence allowance and pass appropriate orders fixing a date within 3 years as contemplated under Section 21(2)(a) for payment of the allowance at a revised rate. Learned counsel for the respondents has, in this connection, cited the judgement of Hon'ble the Supreme Court in State of Karnataka & Ors. vs. S.M. Kotrayya and Ors., 1996 SCC (L&S) 1488, and it has been held in this case that the mere fact that the applicants filed the belated application immediately after coming to know that in similar claims relief had been granted by the Tribunal, it was not a proper explanation to justify condonation of delay. The explanation must relate to failure to avail the remedy within the limitation period. In the instant case, the explanation offered is that the applicant came to know of the relief



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granted by the Tribunal in May, 1993, and that the applicant filed an application immediately thereafter. This is not a proper explanation in terms of the judgement of Hon'ble the Supreme Court cited above. Learned counsel for the applicant has also cited the judgement of Hon'ble the Supreme Court in M.R. Gupta vs. Union of India & Ors., AIR 1996 SC 669, wherein it has been held that non-fixation of pay being continuing wrong, question of limitation does not arise. In the instant case, it is not a question of wrong fixation of pay. The applicant is seeking fixation of his pension and pensionary benefits after taking into account his past services as daily wager/work-charge staff rendered under the Government of Madhya Pradesh. As such, it cannot be said that his pension has wrongly been fixed and that amounts to continuing wrong. Thus, the application is barred by limitation on all counts. However, in the interest of justice and fair play, we will examine the application on merits as well.

6. As has already been stated, the applicant joined the respondent-department on 5.7.68, but he never raised the issue of counting his past services rendered under the Government of Madhya Pradesh except through his alleged letter dated 18.2.89 submitted to the respondents within 2 years of his retirement. In the attestation/^{form} submitted by the applicant at the time of his appointment, he has indicated in column 11(a) of the said form that he was working as Driver from 1957 to November, 1962 in Gandhisagar Dam Project of Madhya Pradesh Government and he was retrenched therefrom. The applicant has not produced any letter of his appointment. However, as per Annexure A/10 placed at page 63 of the case file, it is seen that the applicant was engaged on work charged basis and when the work was completed his services were retrenched with effect from 1st November, 1962 vide Executive Engineer, Stores & Mechanical Division, Chambal Hydel Scheme, Madhya Pradesh, office order No. 295 dated 26.9.1962. The applicant has claimed that he had joined as Work Charged Driver with effect from 1.11.1962. This appears to be a mis-statement of facts on the part of the applicant. The applicant has also produced a letter dated 4.7.68 at Annexure A/3 wherein it is stated that the applicant

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is relieved on 4.7.1968 subject to the acceptance of his resignation by the Chief Engineer, Irrigation Department, Bhopal (M.P). Since there is an anomaly in the statement of the applicant and the letter dated 4.7.68 (Annexure A/3), the learned counsel for the applicant was asked to produce the original copy of this letter. However, the same could not be produced before us. The fact remains that the applicant was retrenched with effect from 1.11.1962 from his earlier service. It has already been mentioned that there is no document available on record about the appointment of the applicant with Gandhisagar Dam Division, Madhya Pradesh, so as to establish the length^{of}/service he had rendered under the Madhya Pradesh Government. The learned counsel for the applicant has cited the judgement of Rajasthan High Court in Ismail Khan vs. State of Rajasthan & Ors., RLR 1986 24, wherein it has been held that daily wages employee appointed against anticipated post cannot be termed as casual employee but may be temporary employee and protection of Articles 14 and 16 of the Constitution is available to the temporary employees. It has further been held that the services of the employee appointed on daily wages basis towards anticipated work during the period he remained as daily wages employee falls within the definition of qualifying service for pension. The learned counsel for the applicant has also cited the judgement of Rajasthan High Court in Smt. Sayari Devi vs. State of Rajasthan & Ors., RLR 1995 (1) 87, wherein it has been held that a work-charged employee was eligible and entitled for status of permanent employee and as such he was entitled to all pensionary benefits and his widow is entitled to family pension. In these two judgements, it has been held by Hon'ble the Rajasthan High Court that services of a daily wage/work-charged employee would count for pensionary benefits and, therefore, it was urged on behalf of the present applicant that the services rendered in Madhya Pradesh Government on daily wages and as work-charged employee should be counted for the purpose of pension.

7. For the purpose of counting previous service, the learned counsel for the applicant has cited two judgements of Rajasthan High Court (supra), wherein it has been held that the services of an employee on daily wages/work-charged basis should be treated as temporary/permanent service and should ^{be} treated as

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qualifying service for the purpose of pensionary benefits. These citations could be applied only when it is proved that the applicant had worked on daily wages/work-charged basis for the entire period from 1957 to 4.7.1968. The records placed before us does not corroborate this statement of the applicant. The applicant has also challenged the condition No.2 (3) of Circular dated 31.3.82/29.5.82. Para 2 of the aforementioned circular provides as under:-

"2. The Government servants claiming the benefit of combinet service in terms of the above decision are likely to fall into one of the following categories:

- 1) Those who having been retrenched from the service of Central/State Govt. secured on their own, employment under State/Central Govt. either with or without interruption between the date of retrenchment and date of new appointment;
- 2) Those who while holding temporary posts under Central/State Government apply for posts under State/Central Governments through proper channel/with proper permission of the administrative authority concerned;
- 3) Those who while holding temporary posts under Central/State Governments apply for posts under State/Central Governments direct without the permission of the administrative authority concerned and resign their previous posts in join the new appointments under State/Central Governments.

The benefit may be allowed to the Government servants in categories (1) and (2) above. Where an employee in category (2) is required for administrative reasons for satisfying technical requirements to tender resignation from the temporary posts held by him before joining the new appointment, a certificate to the effect that such resignation had been tendered for administrative reasons and/or to satisfy a technical requirement to join with proper permission, the new posts, may be issued by the authority accepting the resignation. A record of this certificate may also be made in his service book under proper attestation to enable him to this benefit at the time of retirement, Government servants in category (3) will obviously, not be entitled to count their previous services for pension."

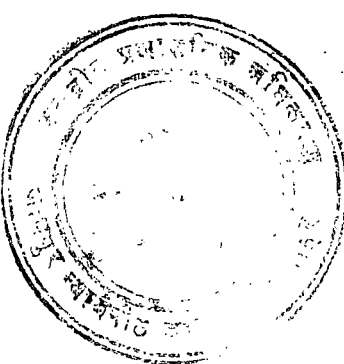
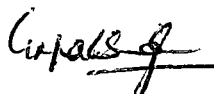
8. Accordingly, the temporary employees who apply for posts under State/Central Governments without the permission of the administrative authority and resign their previous posts to join the new appointments will not be entitled to count their


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previous service for pension. This provision has been challenged as a wrong classification and not meeting the purpose for which it was made by the Government. Here again, it is pointed out that the question of counting previous service for the purpose of retirement benefits would only arise once it is established that the applicant had rendered services on daily wages/work-charged basis under the Madhya Pradesh Government from 1957 to 4.7.1968. Further, the established law is that if an employee of whatever status resigns his job any time during his service is not entitled to pensionary benefits. In the circumstances, we see no reason why the applicant be granted pensionary benefits for the services which he resigned as the correctness of the service is not established. Further, the circular dated 31.3.82/29.5.82 has stood the test of time over the years and in our opinion, it does not require any intervention.

9. As regards superannuation age of 60 years, the learned counsel for the applicant has relied upon the order dated 26.5.93 in OA No. 9/93 of this Bench of the Tribunal. In this order, the post of Driver is held to be a Skilled Artisan post and accordingly, the superannuation age is held to be 60 years in terms of F.R.56 (b). It is pointed out that in Government of India, the post of Driver is a Group 'C' post and for the purpose of age of superannuation, it is covered under F.R.56 (a), i.e., a Driver under the Central Government would retire on superannuation on attaining the age of 58 years. Therefore, we are not inclined to follow the order of this Bench of the Tribunal mentioned supra. Thus, the application falls on merit also.

10. The O.A. as well as the connected M.A. are accordingly dismissed with no order as to costs.



(GOPAL SINGH)
Adm. Member.


31/1/2000
(A.K. MISRA)
Judl. Member

cvr.

Hon'ble member (A)
L-6. } 23-2-2000

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(For M.S. Singh) Not

Copy of order sent to Counsel for
Respondent- R2 & R3

vide NO 39

dt 3/4/2000

[Signature]

R/C on 7/2/2000

[Signature]
For (Vinit-mathur)
Not

Part II and III destroyed
in my presence on 26.9.06
under the supervision of
section officer () as per
order dated 23.1.06

[Signature]
Section officer (Record)