

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH; JODHPUR**

**ORIGINAL APPLICATION NO. 146/2008**

**Date of Order: 20<sup>th</sup> May, 2011**

**CORAM:**

**HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER  
HON'BLE MR. SUDHIR KUMAR, ADMINISTRATIVE MEMBER**

Dunga Ram Bhati S/o Shri Mangla Ram, aged 45 years, R/o Ravon Ka Bass, Purana Narta Road, Bhinmal, District Jalore (Raj.) – Applicant presently working on the post of "Khalasi" in the department of Central Water Commission, GND Site No. 1, Gandhav Kalan, Vaya Guda Malani, Dist. Barmer (Raj.).

...Applicant.  
Mr. Anish Ahmad, Counsel for the applicant.

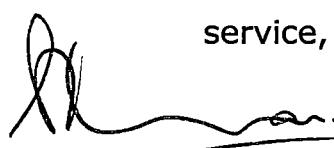
**Versus**

1. The Union of India through the Secretary, Ministry of Water Resources, Government of India, New Delhi.
2. The Chairman, Central Water Commission, Government of India, Sewa Bhawan, R.K. Puram, New Delhi.
3. The Under Secretary, Central Water Commission, Sewa Bhawan, R.K. Puram, New Delhi.
4. The Superintending Engineer, H.O.C., Central Water Commission, House No. 516, Indira Nagar Colony, Dehradoon.
5. The Executive Engineer, Central Water Commission, HGD 7-B, Sewak Ashram Road, Dehradoon.
6. The Superintending Engineer, H.O.C., Central Water Commission, Narmada Tapi Bhawan, Sector No. 10A Gandhi Nagar, Gujrat.

...Respondents.  
Mr. M. S. Godara, proxy Counsel for  
Mr. Vinit Mathur, Counsel for respondents.

**ORDER  
( Per Sudhir Kumar, Administrative Member )**

The applicant is before us with a prayer for directions upon the respondents to count the past service rendered by him during the period from 15.07.1982 to 24.02.1986 as regular service, instead of treating him as a permanent employee only



with effect from 13.09.1986, on the date he joined under Executive Engineer, Himalayan Ganga Division, Central Water Commission, Dehradun. In this connection, he had made the following prayers -

- 8.1. That record of the case may kindly be called for.
- 8.2. The present Original Application may kindly be allowed.
- 8.3. The communication dated 02.07.2007 (Annex. A-1) as well as communication dated 27.12.2007 (Annex. A-2) may kindly be declared illegal & set aside.
- 8.4. The respondents may kindly be directed to treat the applicant as permanent employee of the department since 15.07.1982 and regularize his service accordingly.
- 8.5. The respondents may kindly be directed to count the service of the applicant rendered during period of 15.07.1982 to 24.02.1986, as regular service and to grant all consequential benefits to the applicant accordingly.
- 8.6. Any other relief, which this Hon'ble Tribunal deems fit and proper in favour of the applicant, may be granted. The Original Application may kindly be allowed with costs and all circumstantial benefits may be granted in favour of the applicant.
- 8.7. Costs of this application are ordered to be awarded in favour of the applicant."

2. The case of the applicant is that on 29.06.1982, he was issued an offer for temporary appointment to the post of work charged Khallasi in the office of Executive Engineer, Flood Forecasting Division, Central Water Commission, Jodhpur, for the period of 89 days with effect from 15.07.1982. Though it was mentioned in the letter that the offer is for a purely temporary

appointment for 89 days, and will not confer upon him any title to permanent employment, this process of temporary employment was repeated for several periods of 89 days, till his services were finally discharged on 24.02.1986, the date when the office of the Executive Engineer, Flood Forecasting Division, Central Water Commission, Jodhpur, was abolished. The applicant was without any employment for a period of 6-7 months thereafter, and he submitted a complaint in this regard before the Regional Labour Commissioner (Central), Ajmer, assailing the said action of the respondent-authorities in retrenching his service.

3. In view of the fact that some other persons had also been so retrenched due to the suspension of the field activities of the Flood Forecasting Division, Central Water Commission, Jodhpur, respondent no. 4, the Superintending Engineer, Central Water Commission, Upper Ganga Circle, New Delhi, issued a direction on 14.08.1986 to the applicant through Annexure A/5, directing him and two other similarly retrenched persons to report in the respective indicated Divisions of the Central Water Commission, and obtain their appointment / posting orders from those Divisions. It is seen through Annexure A/5 that one person was indicated to report to Chambal-Betwa Division, Central Water Commission, Jaipur, against the clear vacancy, and the applicant and one more person were directed to report to the Himalayan Ganga Division, Central Water Commission, Dehradun, against the existing vacancies. The Executive Engineer, Flood Forecasting Division, Central Water Commission, Jodhpur, from

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whose office the applicant and the two others had been retrenched due to suspension of field activities of Flood Forecasting Division, was directed to send the previous service xx. records of all the three persons.

4. Thereafter, through Annexure A/6 Memorandum dated 09.09.1986, issued by the Executive Engineer, Himalayan Ganga Division, Central Water Commission, Dehradun, an offer of appointment was issued to the applicant for appointment against a temporary post on work charged establishment as Khallasi Boatman in the indicated scale of pay and allowances, once again indicating that the appointment is temporary and will not confer any title to permanent employment, though this time no period of such temporary employment had been mentioned. Simultaneously, a copy of this Annexure A/6 dated 09.09.1986 had been marked to the Executive Engineer, Flood Forecasting Division, Central Water Commission, Jodhpur, to ascertain as to whether the first temporary appointment of the applicant (for 89 days' period) had been made through the Employment Exchange or not, and the service documents of the applicant were asked to be sent to that office. The applicant reported to the Junior Engineer, Tharali, P.O. Tharali, Dist. Chamoli (U.P.), for joining duty on 13.09.1986, which joining date of his was later notified by the office of Executive Engineer, Himalayan Ganga Division, Central Water Commission, Dehradun, through Annexure A/7 office order dated 17.10.1986. After his date of joining at Tharali as Khallasi Boatman, the respondents later regularized his services and treated him as a permanent employee with

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effect from that joining date of 13.09.1986 itself. The applicant has, however, sought shelter behind Annexure A/8 letter dated 01<sup>st</sup> May, 2003, through which it had been directed to consider the cases of condoning of the break in service and counting of past service for fixation of pay and retiral benefits in the case of redeployed work charged employees, who had been rendered surplus in other units, and, in this context, it had been pointed out that provisions contained in Government of India's decision vide Ministry of Finance O.M. No. F.12 (19)-E-IV(B)/63, dated 17.09.1963 and 15.01.1964 below Rule-9 of the CCS (Leave) Rules, 1972, have not been complied with.

5. Further case of the applicant is that in the case of some other employees, who were similarly placed, and had been working earlier as temporary employees under various Circles of Central Water Commission, the respondent-authorities have regularized their services from a back date, from the date of their initial temporary appointment, taking them to be regular employees from the date of their initial temporary appointment through Annexure A/9 order dated 26.09.1986, and in that directions have been issued to obtain leave applications in respect of the break in service given after 89 days of their initial appointment. The applicant also cited the case of another person Shri Devendra Sharma, in whose case, through Annexure A/10, the services of the said Shri Devendra Sharma had been regularized with effect from 15.06.1983, from the date of his joining in Himalayan Ganga Division, Central Water Commission, Dehradun.

6. The applicant had submitted a detailed representation in this regard through Annexure A/11 dated 11.07.2006, and even addressed a petition to the Hon'ble President of India on 09.11.2006 through Annexure A/12, which was acknowledged by the President's Secretariat, Rashtrapati Bhawan, New Delhi, through Annexure A/13 dated 07.12.2006, and he had also addressed a petition to the Hon'ble Minister for Water Resources, New Delhi, through Annexure A/14 on 20.03.2007, and another petition to the Chairman, Central Water Commission, New Delhi, on 06.08.2007 through Annexure A/15, as well as through letter dated 25.09.2007/11.10.2007 Annexure A/16, and another representation addressed to the Director (Administration), Central Water Commission, New Delhi, through Annexure A/17 letter dated 01.12.2007, but of no avail. Therefore, being aggrieved by the actions and inactions of the respondent-authorities, and after receipt of the impugned communications dated 02.07.2007 (Annexure A/1) and 27.12.2007 (Annexure A/2) issued by the respondents, the applicant approached this Tribunal in the present O.A.

7. The grounds taken by the applicant for his prayers to be allowed are that such regularization from previous dates had been done in the case of some other persons, and since the applicant had remained out of his continued employment with the Central Water Commission only for a short period of 6-7 months between 24.02.1986 to 13.09.1986, the earlier artificial breaks provided in his case from 15.07.1982 to 24.02.1986 after every 89 days, and the break in service of more than 6 months

in the year 1986, can be condoned by treating the same as sanctioned leave, and his services can very well be regularized w.e.f.15.07.1982, which aspect was not considered by the respondent no. 3 while passing the impugned orders. The further plea of the applicant is that his earlier office of Flood Forecasting Division, Jodhpur, as well as Himalayan Ganga Division, Dehradun, where he was re-appointed, come under the same Delhi circle, and if due to non-availability of work at one place in the circle, the applicant has been rendered surplus, and then later re-appointed at ~~the~~ another place in the same circle, his earlier service cannot be washed away, which aspect was not considered by the respondents. He also stated that the reasons stated in Annexure A/1 for distinguishing his case from that of Shri Devendra Sharma are inappropriate, and therefore the impugned order Annexure A/1 is liable to be quashed and set aside. He submitted that the action of the respondents in not regularizing his service from the date of his initial appointment, while doing so in the case of some others by regularizing their breaks in service, amounts to hostile discrimination qua the applicant, and violative of Article 14 of the Constitution of India, and therefore, not tenable in the eyes of law. It was further submitted by the applicant that the actions of the respondent authorities in repeated ~~by~~ keeping the applicant in employment for only 89 days at a time, with breaks in service, was, thus, violation of the instructions communicated through Annexure A/4 dated 23.10.1984, and submitted that the subsequent instructions dated 01.05.2003 Annexure A/8 clearly indicate and

require for the past services of the work-charged employees rendered surplus to be counted for the purposes of pay fixation and retiral benefits.

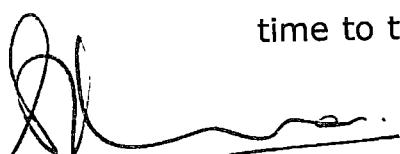
8. In the reply written statement filed on 29.01.2009, the respondents admitted that the applicant was being repeatedly appointed as Khallasi for 89 days at a time on work charged establishment at the Flood Forecasting Division, CWC, Jodhpur, as per the requirements of work, by giving a break for each extension, and that his services were so engaged upto 24.02.1986. But when on completion of its work, the Flood Forecasting Division, CWC, Jodhpur, itself was closed, the services of the applicant stood terminated. When the applicant represented for re-appointment and moved the Regional Labour Commissioner, considering his request sympathetically and on humanitarian grounds, he was offered the employment by the respondents on regular basis, which he joined on 13.09.1986.

9. Distinguishing the case of the applicant from that of Shri Devendra Sharma and others cited by the applicant, it was mentioned that even in the case of the said Shri Devendra Sharma, the previous period of temporary service rendered by him in the Lower Lagyap Hydel Project, Sikkim, prior to 21.03.1979, and upto the date prior to the date of his joining at Himalayan Ganga Division, Central Water Commission, Dehradun, on 15.06.1983, had not been regularized and the ~~other officials~~ whose names had been cited by the applicant were appointed in the Chambal-Betwa Division, Central Water



Commission, Jaipur, itself earlier and their services were then regularized within the same division where they were initially appointed temporarily, by grant of earned leave in respect of the period of break in service, and those divisions were still in existence. It was submitted that the applicant's temporary services rendered with breaks in one division, which was already closed, could not have been regularized in another division in the same manner.

10. Further, a preliminary objection was also raised regarding the maintainability of the O.A., since the applicant had started claiming for counting his past services rendered between 1982 to 1986 only in the year 2008, and the applicant had not filed even an application for condonation of delay, nor the delay in filing the O.A. had been explained in any manner whatsoever. It was submitted by the respondents that even if the applicant has any cause of action in his favour, that cause of action arose in the year 1986, and came to end in the year 1987, when he was appointed on regular basis, and the applicant cannot be now allowed to agitate the matter after more than 20 years' delay. It was submitted that as per the Manual of Central Water Commission, the Divisional Officer of the Division alone is competent to take suitable action for regularization of the staff in the work charged establishment, but that was not done in the case of the applicant while the Flood Forecasting Division, CWC, Jodhpur, was in existence, and that Division had now been closed, and that the applicant had also not represented at that time to the Executive Engineer, as well as to the Superintending

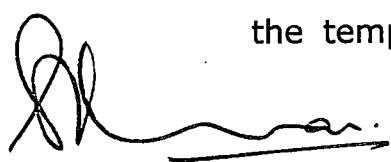


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Engineer of the circle under whom the Division was functioning, in this regard. It was submitted that the Flood Forecasting ~~h~~ Division, CWC, Jodhpur, having been closed, and the applicant having been given a fresh appointment after a gap of 6-7 months in another division on humanitarian grounds, the present division cannot order for regularization of the periods of the breaks in service in his previous employment on temporary basis.

11. The respondents also cited Govt. of India, Ministry of Finance OM No. F12 (19)-E-IV (B) / 63 dated 17.09.1963 and 15.01.1964, below Rule 9 of the CCS (Leave) Rules, 1972, which was cited by the applicant, and is being reproduced below, according to which, in cases where the period of break in service exceeds 30 days, the question of condoning the break either for purposes of pension or for carry-forward of leave will have to be examined under the orders issued on the subject from time to time and may be decided by Administrative Ministries in consultation with the Ministry of Finance, but that it could not have been so done in the case of the applicant's break in service of 239 days, and therefore the claim of the applicant cannot be covered under the OM cited by him, as given below:

**"Carry-forward of leave in cases where break due to retrenchment is condoned. – 1. In suppression of the orders contained in G.I., M.F., O.M. No. F.5 (57)-E.IV/47, dated the 4<sup>th</sup> July, 1947, 18<sup>th</sup> November, 1954 and the 23<sup>rd</sup> February, 1955 (not reproduced), the President is pleased to decide that the following concessions shall be granted to the temporary Government servants who are discharged**



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due to reduction of establishment from one Central Government office and reappointed in another Central Government office.

2. In all cases in which there is no break or the break, if any, is converted into joining time with or without pay, the past service will count for pension and carry-forward of leave will be permissible. The carry-forward of leave in the case of Government servants retrenched from one Central Government Department and appointed in a Railway Department or vide versa may be regulated under G.I., M.F., O.M. No. F.7 (165), F. IV/59, dated the 28<sup>th</sup> October, 1959 (Annexure-II of Appendix-I at the end of this Compilation).

In cases where the period of break in service exceeds 30 days, the question of condoning the break either for purposes of pension or for carry-forward of leave will have to be examined under the orders issued on the subject from time to time and may be decided by the Administrative Ministries in consultation with the Ministry of Finance.

[G.I., M.F. OM. No. F. 12 (19)-E. IV (B)/63, dated the 17<sup>th</sup> September, 1963 and 15<sup>th</sup> January, 1964.]"

12. The respondents had then explained the cases of other employees cited by the applicant, and had distinguished their cases from the case of the applicant, which distinction had already been communicated to the applicant through the impugned order Annexure A/1. Explaining the case of Shri Devendra Sharma in particular, the respondents had explained that he was initially temporarily appointed in 1979 at Lower Lagyap Hydel Project, Sikkim, and was later transferred to the



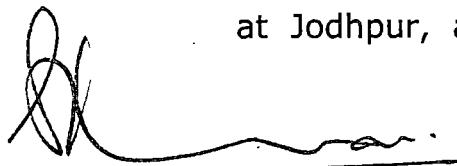
Himalayan Ganga Division, CWC, Dehradun, vide order dated 28.05.1983, and joined at Himalayan Ganga Division, CWC, Dehradun, with effect from 15.06.1983. He had sought regularization of his services in his new division with effect from 15.06.1983, the date when he was appointed in the Himalayan Ganga Division, CWC, Dehradun, and not from 1979, when he was initially appointed temporarily in the Lower Lagyap Hydel Project, Sikkim. Since Shri Devendra Sharma was seeking for regularization of his service only in respect of the period of his service within the same division, and not in respect of his past services in another Division in Sikkim, his services were regularized with effect from 15.06.1983, through Annexure A/10, by sanctioning leave for the break periods. It was submitted that on a similar basis, like in the case of Shri Devendra Sharma's periods of employment from 1979 to 1983 at Lower Lagyap Hydel Project, Sikkim, having been ignored, the applicant also cannot lay a claim for regularization of his previous service in respect of his discontinuous engagement by now closed down Flood Forecasting Division, CWC, Jodhpur. In the result, the respondents had prayed for the O.A. to be dismissed, as the answering respondents have not violated any laid down rules, and none of the rights of the applicant have been infringed upon.

13. The applicant filed a rejoinder more or less reiterating the case already presented earlier through his O.A., but also filed a fresh Annexure A/18 letter dated 09.01.1987, by which the Regional Labour Commissioner (Central), Ajmer, had through his

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letter dated 09.01.1987 requested the Executive Engineer of Central Water Commission, Flood Forecasting Division, Jodhpur, to consider the request of the applicant. The applicant therefore submitted that this communication clearly shows that a dispute regarding termination of his services had already been raised by him in the year 1986 itself, but that it had not been decided by the respondents till the year 2007, and therefore, his O.A. was not hit by vice of delay. He submitted that his case was a plain and simple case of transfer from one division to another due to suspension of the activities in the earlier division, and therefore, treating his case as a fresh appointment in the new Division was untenable in the eyes of law. He further submitted that even the break of 239 days in his service can be regularized by the respondents, and further that his case cannot be distinguished from the cases of other persons including Shri Devendra Sharma, whose cases were cited by him in the O.A. It was denied that there had been any delay on his part in seeking relief from this Tribunal, and he had prayed that the O.A. should be allowed.

14. The respondents chose to file an additional affidavit on 27.07.2010 in response to the rejoinder. In this, they reiterated the points already made in their earlier reply, and stated that even when the Regional Labour Commissioner (Central), Ajmer, had requested the respondents to consider the claim of the applicant, such a request was addressed only to the closed office at Jodhpur, and the respondent-authorities were within their



rights to examine as to whether the claim of the applicant was genuine, and in accordance with the law, or not.

15. Heard the learned counsel for both the parties. The learned counsel for the applicant emphasized upon the fact that the applicant's earlier discontinuous engagement at Jodhpur and the later appointment from 13.09.1986 were both within the same Circle, though under different Divisions. He relied upon the Memorandum dated 29.06.1982, which he filed during the course of hearing, to show that even for the first period of 89 days with effect from 15.07.1982, the temporary appointment of the applicant as work charged Khallasi was in an indicated pay scale, and hence ought to be treated as an appointment against a regular vacancy. He further argued the case along the lines of his O.A. and rejoinder, as already discussed above.

16. The learned counsel for the respondents reiterated his objections regarding the maintainability of the O.A. because of the long delay of 20 years, and further added that OA is also not maintainable as none of the respondents is resident of Rajasthan, within the jurisdiction of this Bench of the Tribunal, to whom a direction can be issued by this Tribunal.

17. The learned counsel for the respondents further submitted that the engagement of the applicant at Flood Forecasting Division, CWC, Jodhpur, was only a casual appointment, and his retrenchment from service at Jodhpur is not under challenge, and the prayer in the O.A. only relates to counting of his past broken periods of service, and also condoning the break of 239

days, which took place before his re-engagement and re-employment under Himalayan Ganga Division, CWC, Dehradun.

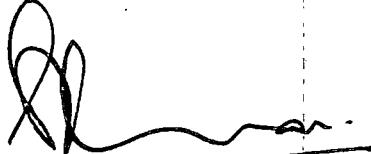
18. We have given our anxious consideration to the facts of the case. It is clear that the applicant had been engaged repeatedly for 89 days' periods after his initial engagement with effect from 15.07.1982 through OM dated 29.06.1982 produced during the arguments of the case. However, there appears to be merit in the submissions of the respondents that rules of the Central Water Commission do not permit the service rendered under one division to be regularized in another division, as was rightly pointed out by the respondents in the case of Shri Devendra Sharma, whose case had been cited by the applicant himself through Annexure A/10 letter dated 30.09.1986. It is clear from the said Annexure A/10 that the service rendered by the said Shri Devendra Sharma within the Central Water Commission itself in his previous division of Lower Lagyap Hydel Project, Sikkim, had never been regularized. Annexure A/10 speaks of the regularization of the case of Shri Devendra Sharma only with effect from 15.06.1983, on the date he joined in the Himalayan Ganga Division, CWC, Dehradun. The order at Annexure A/9 passed in the case of the other three persons named by the applicant also deals with regularization of those incumbents from the date of their initial joining within the same division itself, in Chambal-Betwa Division, Central Water Commission, Jaipur. Therefore, if in the case of the applicant, the respondents have applied the same yardstick, and have through Annexure A/1 clarified that his services have already

been regularized from the date of 13.09.1986, the date he first joined at Himalayan Ganga Division, CWC, Dehradun, as a Khallasi Boatman, it cannot be said that the respondents have applied discriminatory yardstick in the case of the applicant.

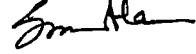
19. Fortuitous circumstances are a part of the service career of any person. It appears that if the Flood Forecasting Division, CWC, Jodhpur, had not been closed down on 24.02.1986, and the broken period engagements of the applicant had continued within the same division at Flood Forecasting Division, CWC, Jodhpur, perhaps the applicant may have had a chance of his services being regularized with effect from 15.07.1982 within the Flood Forecasting Division, CWC, Jodhpur. But this was not to be, as the division itself was closed down, and the applicant had to remain outside any kind of employment for 239 days before his case was considered on a compassionate basis by the respondents, and he joined in his newly indicated post, against which his service has already been regularized. Therefore, we do not find anything which has been done by the respondents which is either contrary to the Rules, or the OM of Govt. of India dated 17.09.1963 and 15.01.1964 cited above, or against the principles of natural justice, by applying a discriminatory rule in the case of the applicant. The respondents have also been correct in pointing out that the applicant has not pursued this matter vigorously for many years i.e. for around 19-20 years. The Regional Labour Commissioner (Central), Ajmer, had recommended his case for favourable consideration on 09.01.1987 through Annexure A/18, but the applicant made his

first representation in this regard for counting his past services only through Annexure A/11 representation dated 11.07.2006. Since the applicant himself has chosen to remain quiet for 19 years to agitate the matter regarding his perceived rights, he is not entitled to pursue that at a belated stage now. Therefore, the Original Application is also hit by the vice of delay and laches on the part of the applicant.

20. In the result, the Original Application is, therefore, dismissed. No order as to costs.



(SUDHIR KUMAR)  
ADMINISTRATIVE MEMBER



(JUSTICE S.M.M. ALAM )  
JUDICIAL MEMBER

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