

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. NO.479/2009

Dated this the 27<sup>th</sup> day of January, 2011

C O R A M

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

Gowrikutty Amma D/o late Sri Gopalan Nair  
Retd. Telecom Mechanic  
residing at Uthram, Anayadi PO  
Sooranadu North, Kollam

..Applicant

By Advocate M/s M.R. Hariraj, P.A. Kumaran & Vineetha B

Vs

1 Bharath Sanchar Nigam Ltd.  
Represented by the Chairman and Managing Director  
Corporate Office, New Delhi.

2 Chief General Manager  
Telecommuncition, Kerala Circle  
BSNL, Trivandrum

3 General Manager,  
BSNL, Kollam SSA, Kollam

4 Sub Divisional Officer,  
Telegraphs, Sasthamcotta

5 Union of India represented by the  
Secretary, Ministry of Communciations  
New Delhi. ..Respondents

By Advocate Mr. Sunil Jacob Jose, SCGSC for R-5  
By Advocate Mr. T.C. Krishna for R 1-4

The Application having been heard on 11.1.2011 the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The grievance of the applicant is that she was denied pension on the ground that she does not have the required minimum qualifying service of 10 years.

2 The facts in short are that the applicant commenced service as a part-time Sweeper -cum- Water Carrier w.e.f. 22.11.1981 at Sooranad Telephone Exchange under Sub Divisional Officer, Telegraph, Quilon. She was assigned daily  $2 \frac{1}{2}$  hours of work which was enhanced to 4 hours and later to 5 hours and finally to 8 hours w.e.f. 1992. She was conferred with temporary status w.e.f. 1.8.1994 (A-2). She was later regularised and appointed as Group-D w.e.f. 1.4.1996 (A4). Subsequently, she was promoted to the grade of Telecom Mechanic and retired on superannuation on 31.1.2005. She was informed that as she did not have 10 years qualifying service she was not eligible for pension (A-5). She is challenging Annexure A-2 and A-5 orders on the ground that had she been made full time at the right time, she would have been granted temporary status w.e.f. 1.1.1992, her service would have been consequently regularised earlier than 1.4.1996, she has 8 years and 10 months regular service and 12 years part-time and 16 months full time casual service and 20 months temporary status mazdoor service at her credit, therefore, she was entitled to be considered for temporary status w.e.f. 1.4.94 and that refusal to count full time casual service on par with at least temporary status service is illegal unjust and

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discriminatory, denial of pension would cause severe hardship to the applicant as she had been working in the department from 1981 onwards and that she is not able to obtain benefits from the State Government under different social security measures.

3 The respondents filed reply statement opposing the O.A. Prima facie they contended that the O.A is hit by limitation as the applicant is challenging Annexure A-2 and A-5 orders which were issued in the year 1995 and 2005 respectively which were never challenged by her. As such, the O.A is hit by limitation as the applicant should have approached the Tribunal within a period of one year from the date of the order. There is no petition to condone the delay in filing the application.

4 On merits, they contended that when the applicant completed 240 days after conferment of temporary status, she was granted increment on 1.8.96. The applicant had accepted the conferment of temporary status and subsequent regularisation and has not opted to challenge the orders at any point of time. At the time of retirement, she had to her credit, total qualifying service of only 9 years and 8 months which falls short of the minimum period of 10 years for pension. The service was inclusive of her service rendered as temporary status mazdoor. They also stated that she received the service gratuity at the rate of half months pay for every completed six monthly period of qualifying service as per Rule 49(1) of CCS pension rules.

5 The applicant filed rejoinder stating that as per GO NO. 12011/1/85-Est. Dated 10.3.1986 issued by the Department of Personnel

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and Training , half of her 16 months casual labour service and 20 months temporary status service prior to regular absorption as Group-D employee ought to be reckoned as qualifying service for pension.

6 In the additional reply statement, the respondents submitted that the applicant was engaged as a full time casual labourer w.e.f. 1.8.1993 and produced Annexure R-1 in support of their plea. Vide Annexure R-2 dated 23.11.1993, she was issued casual labour card being a full time Mazdoor. On completion of one year as Mazdoor, she was conferred with temporary status w.e.f. 1.8.1994 and that half the service before regularistion was taken into account for counting the qualifying service. They further stated that the period of casual service prior to granting of temporary status cannot be taken as qualifying service for pension as per law.

7 I have heard the learned counsel appearing for the parties on either side and perused the document produced before me.

8 There is no dispute that the applicant was engaged as a part time casual labourer from 22.11.1981 till 31.7.1993 and was granted temporary status on 1.8.1994. Thereafter she was granted regular appointment w.e.f. 1.4.1996. The respondents have taken half the service rendered by her as Temporary Status Mazdoor i.e half of 1 year and 8 months as temporary status plus the regular service which falls short of the minimum qualifying service of 10 years for pension. The applicant has only a total period of 9 years and 8 months service to her credit. The contention of the applicant is that had she been made full time Mazdoor at the right time, she would have be been granted

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temporary status w.e.f. 1.1.1992 and consequent regularisation earlier than 1.4.1996. Since Annexure R-1 clearly shows that additional work in Sasthamkottah Telephone Exchange was given only from 1.8.93 to make her a full time casual labourer, the contention of the applicant cannot be accepted. She has not produced any proof to show that she was made a full time casual labour from 2002. Therefore, the issue of antedating the conferment of temporary status on the applicant does not arise. She was granted temporary status on 1.8.1994 on completion of one year of continuous service as full time casual labour in accordance with Government of India guidelines on the subject.

9 The applicant in her rejoinder cited DOPT OM NO. 12011/1/85-Estt dated 10.3.1986 which permits reckoning of half of the full time casual service rendered prior to permanent absorption as qualifying service for pension. The Government of India decision in OM No. F.12 (1)-E.V/68 dated the 14<sup>th</sup> May, 1968 was reiterated in DOPT OM of May, 1986. The relevant portion is extracted below:

(2) Counting half of the service paid from contingencies with regular service:- Under Article 368 of the CSRs(Rule 14), periods of service paid from contingencies do not count as qualifying service for pension. In some cases, employees paid from contingencies are employed in types of work requiring services of whole time workers and are paid on monthly rates of pay or daily rates computed and paid on monthly basis and on being found fit brought on to regular establishment. The question whether in such cases service paid from contingencies should be allowed to count for pension and if so,to what extent has been considered in the National Council and in pursuance of the recommendation of the Council, it has been decided that half the service paid from contingencies will be allowed to count towards pension at the time of absorption in regular employment subject to the following conditions,viz:-

(a) Service paid from contingencies should have been in a job involving whole time employment and not part-time for a portion of the day

(C) The service should have been one for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which though not analogous to the regular scale of pay should bear some relation in the matter of pay to those being paid for similar jobs being performed by staffs in regular establishments.

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(e) Subject to the above conditions being fulfilled, the weightage for past service paid from contingencies will be limited to the period after 1<sup>st</sup> January, 1961, for which authentic records of service may be available

It has been decided that half the service of even employees paid from contingencies will be allowed to count towards pension at the time of absorption in regular employment provided the service should have been in a job involving whole time employment.

10 There is no dispute that the applicant had been engaged as a full time Casual Mazdoor from 1.8.93. She was granted temporary status w.e.f. 1.8.94. During the period between 1.8.93 and 1.8.94 she was actually doing full time work which also be counted as qualifying service for the purpose of computing pension.

11 Rule 49(3) of CCS Pension Rules 1972, specifically states that:

(3) In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half year and reckoned as qualifying service.

That means, service of three months and above but less than six months will be treated as one half year.

12 In the facts and circumstances of the case and keeping in mind Rule 49(3) of CCS Pension Rules, 1972 and the instructions of the Govt. of India counting the service of full time casual labourers even paid from contingency, eligible to be counted for pension, I am of the view that the applicant who has been doing full time job from 1.8.1993, is eligible to count half the full time service rendered by her till the date of regularisation on 1.8.94, as qualifying service for computation of pension and other retiral benefits.

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13 Accordingly, I allow the Application and quash Annexure A-2. I declare that the applicant is entitled to count half of her service from 1.8.1993 to 1.8.1994, as qualifying service with all consequential benefits flowing therefrom. The retiral benefits including pension worked out on that basis shall be disbursed to the applicant within three months from the date of receipt of this order. Any service benefits already disbursed to her will be adjusted against the payment of revised retiral benefits. There shall be no order as to costs.

Dated 27<sup>th</sup> January, 2011

  
K. NOORJEHAN  
ADMINISTRATIVE MEMBER

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