

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO.497/2010

Dated this the ^{23rd} day of June, 2011

C O R A M

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

P.Unnikrishnan, S/o Sh.P.S.Narayanan Nair,
Retd. Telecom Mechanic,
BSNL Perinthalmanna,
Malappuram, R/o Sreesyam,
Pullibel Parambu, Nellicode P.O,
Kozhikode - 603 016.

.. Applicant

(By Advocate Mr. M.R. Hariraj)

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, Malapuram SSA,
Malapuram
- 4 Union of India represented by
The Secretary,
Ministry of Communciations,
New Delhi.

..... Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

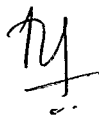
The Application having been heard on 20.6.2011, the Tribunal delivered the following:

ORDER

HON'BLE Mrs. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant is aggrieved by the impugned order Annx.A1 rejecting his claim to the canteen service towards qualifying service for computing pension and pensionary benefits.

2. The facts in short are that the applicant commenced service as Wash Boy on 22.9.1986 at Telecom Canteen, Palakkad on daily wages. Consequent on the judgment of the Hon'ble Supreme Court orders to regularize all employees of the Non-Statutory Departmental Canteen as Central Govt servants, the applicant was appointed as regular Mazdoor w.e.f 1.10.1991. It is stated that he was promoted as Telecom Mechanic in July 1999. He was absorbed in BSNL w.e.f. 01.10.2000. He further stated that in the case of Shri A. Sadanandan, H.R, a similarly situated canteen employee, who was granted the Central Govt servant status w.e.f 1.10.1991, his canteen service rendered by him prior to 1.10.1991 was reckoned for qualifying service for pension. Similarly S/Sh. M. Valsalan and Smt Parvathy M.A have also been extended the same benefit. He represented the matter before the DGM (Admn.) and Chief General Manager, requesting them to count the service rendered by him prior to 1.10.1991. His representation was rejected. He made another representation requesting the 1st respondent to reckon at least half of his canteen service as qualifying service. Therefore the applicant has filed this OA alleging that he alone was singled out in not counting his canteen service prior to 1.10.1991 as qualifying service.



3. The respondents filed reply statement opposing the O.A. It is submitted by the respondents that prior to 1.10.1991 the applicant was working only on daily wages basis whereas Smt Parvathy M.A was appointed as Safaiwala in the scale of Rs. 160-275, 196-232 and 780-940 prior to 1.10.91. It is further stated that as per CCS Pension Rules, 1972 the period of work on daily wages is not eligible for pension. They denied that details of work in daily wages will not be entered in the service book of the incumbent. They have quoted the Supreme Court judgments and stated that period of work on daily wages is not eligible for service pension.

4. The applicant amended the OA by filing MA 751/2010. In the MA it has been stated that subsequent to the filing of the OA his representation requesting to consider at least half of service rendered as casual mazdoor towards qualifying service, was rejected vide order dated 2.7.2010. It is also alleged that the respondents have not given any reply regarding similar benefit granted to M. Valsalan.

5. The respondents filed reply to the amended OA and contended that applicant was working on daily wage basis prior to 1.10.1991 whereas Smt. Parvathy named in the OA was appointed as Safaiwala prior to 1.10.1991. As per CCS Pension Rules, 1972 the period of work on daily wages is not eligible for service pension.

6. I have heard the learned counsel appearing for the parties on either side and perused the record.

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7. There is no dispute that the applicant was appointed as Wash Boy in Telecom Canteen, Palakkad on daily wages on 22.9.1986 and was appointed as regular employee w.e.f 1.10.1991. The counsel for the applicant has referred the order of this Tribunal in OA479/2009 decided on 27th Jan. 2011 and has also 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 14th 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.

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

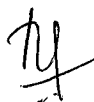
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It has been decided that half the service of even employees paid from contingencies will be allowed to count towards pension at the time of absorption in regular employment provided the service should have been in a job involving whole time employment.

8. The counsel for the applicant averred that he was drawing Rs. 15 as daily wages which was more than the pro-rata for the pay scale of Rs. 150-232 for a regularly appointed Wash Boy. There is no dispute that the applicant was engaged as a full time Wash Boy from 22.9.86. He was granted the status of the government servant from 1.10.1991 and regularized as Casual Mazdoor and later appointed as Telecom Mechanic. During the period between 22.9.1986 and 1.10.1991 he was actually doing full time work which is eligible to be counted as qualifying service for the purpose of computing pension.

9. Annexure A-3 and A-5 reveals that in respect of Shri M. Valsalan, who was engaged as Tea Maker was treated as government servant from 01.10.1991, the respondents allowed his Casual Labour service from 1983 to 1991, to count towards qualifying service for pension. Therefore, the reasons for denying the applicant, the same benefit is not apparent to me. The applicant is a similarly placed employee and is entitled to the same right as Shri M. Valsalan. The respondents have not referred to the case of Shri M. Valsalan in their reply statement.

10. In the facts and circumstances of the case and keeping in mind the instructions of the Govt. of India to count half the service of full time casual labourers as qualifying service for pension, I am of the view that the applicant who was doing full time job from 22.9.1986, is eligible to count half the full time service rendered by him from 22.9.1986 to 30.09.1991, as qualifying service for computation of pension and other retiral benefits.



11. Accordingly, I allow the Application and quash Annexures A-1 and A-9. I declare that the applicant is entitled to count half of his service from 22.9.1986 to 30.09.1991, as qualifying service towards pension. The retiral benefits including pension worked out on this basis shall be disbursed to the applicant within three months from the date of receipt of this order. Any service benefits already disbursed to him will be adjusted against the payment of revised retiral benefits. There shall be no order as to costs.

(Dated 23rd June, 2011)


K. NOORJEHAN
ADMINISTRATIVE MEMBER