

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No.  
~~XXXXXX~~

523/1991

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DATE OF DECISION 28.2.92

E.Karunan \_\_\_\_\_ Applicant (s)

Mr.M.Girijavallabhan \_\_\_\_\_ Advocate for the Applicant (s)

Versus

The Union of India, represented by  
the Secretary, Ministry of Defence, \_\_\_\_\_ Respondent (s)  
New Delhi and 2 others.

Mr.K.A.Churian, ACGSC \_\_\_\_\_ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr.A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? ☒
2. To be referred to the Reporter or not? ☒
3. Whether their Lordships wish to see the fair copy of the Judgement? ☒
4. To be circulated to all Benches of the Tribunal? ☒

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 27.3.91 the applicant who has been working as a Unskilled Labourer in the Naval Store Depot, Southern Naval Command, Cochin has prayed that the casual service rendered by him for 178 days from 6.7.82 to 1.10.82 and from 6.10.82 to 3.1.83 be declared to be qualifying service for pension and his total service without break for nine years seven months and twenty six days should be deemed to be equivalent to 10 years of qualifying service on the basis of the rule which lays down that period of service of six months and above shall be treated as one year for the purpose of pension. His further prayer is that the breaks in two spells of his casual service should be treated as automatically condoned by virtue of the rule 28(a) of the CCS Pension Rules. The material facts of the case, as admitted by both the parties are as follows.

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2. The applicant is an ex-serviceman who retired from the Army in February 1975. He was reemployed as a casual Unskilled Labourer in the Southern Naval Command in three spells viz. from 6.7.82 to 1.10.82, from 6.10.82 to 3.1.83 and from 6.1.83 to 29.3.83. He was regularised with effect from 30.3.83. The respondents have conceded that in accordance with the Ministry of Defence O.M. of 26.11.67<sup>(Annex A)</sup> as amended by a further O.M dated 27.5.80 casual employees absorbed against regular posts are entitled to all benefits except seniority from the date of the last spell of <sup>continuous</sup> casual service without break. Since the applicant's last continuous spell without break of service commenced from 6.1.83 he was granted the benefits of a regular employee from 6.1.83. The applicant claims that in accordance with the decision of this very Bench of the Tribunal in O.A. 434/89 and O.A. 609/89 the breaks in casual service are to be condoned and his entire casual service from 6.7.82 should be regularised for the purpose of pension by excluding the period of breaks. His representation to this effect was rejected by the impugned order dated 4.91 at Annexure-1 on the ground that the benefit of the aforesaid judgment cannot be extended to those who were not a party to those cases. It was, however, stated that the matter has been taken up with the Government. The applicant has further supported his claim by rule 28 of the CCS Pension Rules, according to <sup>which</sup> the interruption between two spells of civil service shall be treated as automatically condoned and pre-interruption service to be treated as qualifying service. He has referred further to clause 3 of Rule 49 of the CCS Pension Rules according to which "in calculating the length of qualifying service, fraction of an year equal to three months and above, shall be treated as completed one-half year and reckoned as qualifying service".

3. In the counter affidavit the respondents have stated that his qualifying service has been reckoned from the commencement of the last spell of continuous service, i.e, 6.1.83 but they have not given any comment in so far as extending the benefit of our judgment in O.A. 434/89 is concerned. However, they have stated that since the applicant was not a party to the O.A. 434/89 he cannot claim the benefit of that

judgment. As regards the applicant's claim under Rule 28 of the CCS Pension Rules the respondents have not met the point but erroneously referred to non-applicability of Rule 20 of those rules. Regarding application of Rule 49 of the Pension Rules they have stated that this does not apply to the minimum period of ten years required for earning pension.

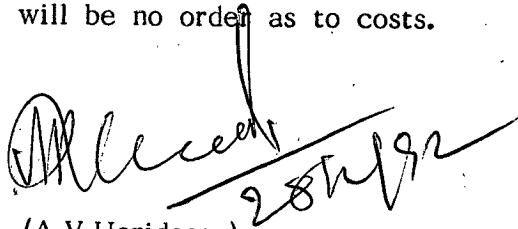
4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. According to the respondents themselves if the applicant's qualifying service is counted from 6.1.83 from which date his last spell of casual service commenced, since he retired on 31.8.93 he had put in nine years seven months and 26 days of service. However if the break of 3 days between 3.1.83 and 6.1.83 and break of 5 days between 1.10.82 and 6.10.82 is condoned and his service regularised in accordance with the O.Ms of 24.11.67 and 27.5.80 he will be able to add 178 days, i.e., 5 months 28 days service to his already recognised qualifying service of 9 years 7 months and 26 days. This will take his total qualifying service to 10 years 1 month and 4 days. The question, therefore, is whether he is entitled to the condonation of two breaks in his casual service as indicated above and counting his casual service from 6.7.82 for pension. An identical question of regularisation of casual service of casual labour of Southern Command came up before this very Bench in O.A. 434/89 and O.A.609/89. Relying upon the decisions given by the Andhra Pradesh High Court and Hyderabad and Calcutta Benches of this Tribunal we decided as follows:-

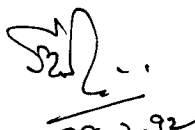
" In the above circumstances and in conformity with the various decisions of High Court of Andhra Pradesh, Hyderabad Bench, Calcutta Bench, Madras Bench and New Bombay Bench of this Tribunal, we allow this application in part with the direction that the respondents shall ignore the artificial or technical breaks in the casual services of the applicants and regularise them from the date of their initial appointment on a casual basis with all benefits due to them as per Ministry of Defence letter No. 83482/EC-4/Org.4(Civ)(d)/13754/D(Civ-II) dated 24.11.67 as amended by corrigendum No.13051/OS-SC(ii)/2968/D(Civ-II) dated 27.5.80."

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Since the applicant before us is similarly situated as the applicants in the aforesaid two cases we have no hesitation in directing the respondents that the breaks in his casual service between 1.10.82 and 6.10.82 and from 3.1.83 to 6.1.83 should be ignored and the applicant allowed to count his entire casual service from 6.7.82 for the purpose of pension in accordance with the Ministry of Defence letter dated 24.11.67 and 27.5.80. Since the applicant will thus be entitled to pension as his total qualifying service would be more than ten years we need not go into the applicability of Rules 28 and 49 of the CCS Pension Rules.

5. In the facts and circumstances we allow this application with the direction that the respondents shall ignore the breaks in the casual service of the applicant between 1.10.82 and 6.10.82 and between 3.1.83 and 6.1.83 and regularise his casual service from 6.7.82 for the purpose of pension ignoring the breaks and give him all the benefits in accordance with the Ministry of Defence letters, dated 24.11.67 and 27.5.80. Action on the above lines should be completed within a period of three months from the date of communication of this order. There will be no order as to costs.

  
(A.V. Haridasan)  
Judicial Member

  
28.2.92  
(S.P. Mukerji)  
Vice Chairman