

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.119/2004

Wednesday this the 16th March, 2005.

CORAM:

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR. H.P.DAS, ADMINISTRATIVE MEMBER

K.P.Ali Hassan, (Peon (Retd),
S/o Muhammed K.P.,
Office of the Assistant Executive Engineer
(Electricity), Electrical Sub Division,
Union Territory of Lakshadweep, Beypore,
residing at Thoufeeque Manzil, Alayar Vali,
West Hill, Kozhikode. Applicant

(By Advocate Shri. P. V. Mohanan)

VS.

1. The Administrator,
Union Territory of Lakshadweep, Kavaratti.
2. The Executive Engineer(Electrical)
Department of Electrical,
Kavaratti. Respondents

(By Advocate Shri S.Radhakrishnan)

The application having been heard on 16.3.2005, the Tribunal on the same day delivered the following:

ORDER (Oral)

HON'BLE MR.KV.SACHIDANANDAN, JUDICIAL MEMBER

The applicant who was working as Peon in the Office of the Assistant Executive Engineer (Electricity) Under the Union Territory of Lakshadweep was retired on superannuation on 30.6.2003, after rendering 30 years of service. His pension was fixed on the basis of the last pay drawn in the post of Peon. The claim of the applicant is that he had rendered contingency service from 1.9.1964 to 28.2.1973 which has not been reckoned as qualifying service for pension as stipulated in decision (2) of Rule 14 (2) of C.C.S.(Pension) Rules 1972, and if this service is reckoned, the last pay drawn by the applicant will have to be fixed at higher stage and there will be consequential revision of

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terminal benefits also. Aggrieved by non-reckoning of the said period of service, the applicant has filed this O.A. seeking the following main reliefs:

- i) To direct the respondents to reckon half of the contingency service between 1.9.1964 to 28.2.1973 as qualifying service for pension and refix the pensionary benefit at higher rate than fixed at Annexure A1 and disburse the same with effect from 1.7.2003 with interest.
- ii) To declare that the applicant is entitled to have half of the contingency service between 1.9.1964 to 28.2.1973 counted for terminal benefits in terms of decision (2) to Rule 14 (2) of C.C.S. (Pension) Rules.

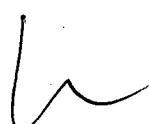
2. The respondents have filed a detailed reply statement contending that while the applicant was working as contingent employee in the office of the Secretary to the Administrator at Calicut, he was absorbed as per A-3 order and joined in the post under regular establishment on 4.3.1973 at Canning Factory, Minicoy as Watchman-cum-Sweeper. Thereafter, he had worked ~~under~~ ⁱⁿ various offices under the Administration. The retirement Gratuity of Rs.39,823/- has been fixed as per Annexure A-1, only proportionate to his service rendered in regular establishment without reckoning half of his contingency service under the Administration from 1.9.1964 to 28.2.73. The year-wise attendance particulars in respect of the period of his contingency service from 1.9.64 to 28.2.73 is mandatory to reckon half of the contingency service to count for retirement benefits in terms of Govt. of India DP & AR O.M. No.49014/19/84-Estt (C) dated 26.10.84 and also under clause (d) of Govt. of India Decision (2) below Rule, 14 of the CCS (Pension) Rules, 1972. As the year-wise attendance particulars relating to the period of contingency service of the applicant is not available in his service records or in the Office of his last year of service from where the pension proposals are to be submitted to the Pension



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Sanctioning Authority his pension and other retirement benefits were settled ignoring the contingency service. The existing entries available in his service records based on A-5 certificate will not suffice to determine the actual quantum of his eligible contingency service for the period from 1.9.64 to 28.2.73. The break or unauthorised absence etc. also should be taken into account. The Rule 14 of CCS (Pension) Rules, 1972 are not fulfilled and since no records are forthcoming to establish that the contingency service rendered by the applicant for the said period from 1.9.64 to 28.2.73 was a full-time or part-time nature so as to determine the eligibility, his claim cannot be accepted and therefore, the O.A. is not sustainable.

3. We have heard Shri PV Mohanan, Learned counsel appearing for the applicant and Shri S.Radhakrishnan, learned counsel for the respondents. Counsel on both sides have taken us through various pleadings, materials and evidence placed on record. Counsel for applicant submitted that on going through A-6 (Photo copy of the service records) it would be clear that the applicant was engaged as contingent employee in the office of the Secretary to the Administrator, Calicut from 1.9.64 to 28.2.1973 (vide U.O.F.No.12/64/7 /Services dated 28.11.78). It is also mentioned in A-6(2) that the applicant was appointed in quasi-permanent capacity in the post of Watchman w.e.f. 9.6.76 as per declaration F.No.19/4/79 (6) dated 22.6.79 of the Secretary , Lakshadweep, Kavarathi.

4. During the course of argument there was a dispute which was constrained to call for the original records. Counsel for respondents also produced the service records pertaining to the



applicant before the Bench for our perusal. We have perused the the service records of the applicant and there is a clear entry at page 20 of the Service records, which reads as follows:

"Shri K.P.Alihassan, Manual Assistant Kavaratti had worked as Packer and Scavenger on contingent basis in the office of the Secretary to the Administrator, Calicut from 1.9.64 to 28.2.73."

There is also a reference to letter U.O.F.No.12/64/78-Services dated 28.11.78. It is also available on record the appointment letter No.F.No.5/294/64-Genl. dated 1.9.64, issued by the Administrator to the applicant in which it is categorically stated that the applicant was temporarily appointed as Packer in the General Godown of the office on contingent basis on a fixed pay of Rs.70/- plus usual allowances. The contention of the respondents that the contingency Service Register has to be verified as to, whether there is any break in service or not, which is not much important in this case, since the applicant was engaged as a contingent employee on monthly payment of Rs.70/- on unequivocal terms. Therefore, we are convinced that, the applicant was engaged on contingent basis and the period of that service has to be taken as qualifying service for the purpose of pensionary benefits.

5. It is worthwhile to note the Decision(2) contained under Rule 14 (2) of CCS (Pension) Rules 1972 (O.M.No.F-12 (1) E.V./68, dated 14.5.1968 which reads as follows:

"(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

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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).
- (b) Service paid from contingencies should be in a type of work or job for which regular posts could have been sanctioned, e.g., malis, chowkidars, khalasis, etc.
- (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.
- (d) The service paid from contingencies should have been continuous and followed by absorption in regular employment without a break.
- (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. (G.I., M.F., O.M.No.F.12(1) - E.V/68, dated the 14th May, 1968.)".

Since we have found that the applicant ~~was~~ worked as contingent employee from 1.9.64 to 28.2.1973, his proportionate service should be considered as qualifying service for the purpose of pensionary benefits as per the rules quoted above.

6. Under these circumstances, we direct the respondents to consider this period of ~~the~~ service rendered by the applicant for computing the pensionary benefits as qualifying service and revise his pension and grant the benefit including ~~arrears~~^{arrears} if any, within a period of three months from the date of receipt of a copy of this order.

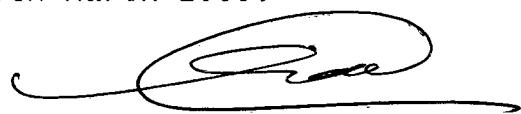
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7. O.A. is allowed. In the circumstance, no order as to costs.

Dated the 16th March 2005.

H.P.DAS

ADMINISTRATIVE MEMBER



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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