

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.24/99

Thursday, this the 9th day of December, 1999.

CORAM:

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

A.Ramakrishna Pillai,
S/o Ayyappan Pillai,
Retired Slipway Worker,
Integrated Fisheries Project,
Koch-16.
(Kottaraparambil House,
Karimalur Post,
via Alwaye).

- Applicant

By Advocate Mr T.C.Govindaswamy

Vs

1. Union of India through
the Secretary to the Government of India,
Ministry of Agriculture,
Krishi Bhavan,
New Delhi.
2. The Director,
Integrated Fisheries Project,
Kochi-16.

- Respondents

By Advocate Mr Govindh K Bharathan, SCGSC(represented)

The application having been heard on 9.12.99, the
Tribunal on the same day delivered the following:

O R D E R

The applicant seeks to quash A-5 to the extent it
does not reckon 50% of the whole of the casual service
rendered by him prior to his regular absorption for the
purpose of reckoning his qualifying service for pensionary
benefits, to declare that his service from March 1968 upto
to the date of his regular appointment in terms of A-1 was
continuous and unbroken, he is entitled to reckon 50% of
the said service between September 1968 and 2.9.1978 for

the purpose of his pensionary benefits and to direct the respondents to calculate and refix his pensionary benefits in terms of the declaration and to grant consequential benefits with interest at 12% per annum.

2. The applicant is a retired Slipway Worker of Integrated Fisheries Project, Kochi. He superannuated from service on 30.11.98. He joined service under the respondents in March, 1968. He had a continuous service without break and was regularised as an unskilled worker as per A-1 dated 31.8.78 issued by the 2nd respondent. As per rules on the subject, the applicant is entitled to reckon 50% of the casual service rendered by him between September, 1968 and 31.8.78 as qualifying for pensionary benefits. Since there was no response to various representations submitted by him, he approached this Bench of the Tribunal by filing O.A.1031/97 inter-alia praying for a declaration that he is entitled to reckon 50% of the casual service rendered by him between March 1968 and 31st August, 1978 and for consequential reliefs. That O.A. was disposed of on 27.8.97 directing the respondents to trace out the relevant records and to issue appropriate orders regarding reckoning of 50% of the casual service rendered by him for the purpose of qualifying service for pension. In purported implementation of the direction in the said O.A. the 2nd respondent has passed A-5 order wherein it is stated that the casual service rendered by the applicant prior to his regular service as unskilled worker in the Integrated Fisheries Project with effect from 2.9.78 has been verified with respect to the records available in the office and it is seen that he had been engaged for 1198 days as shown in the statement appended. The statement

appended to A-5 contains only the service of the applicant from 1975. The particulars shown therein are not complete.

3. In the reply statement filed by the respondents, the contentions raised are that as per the records available, he was engaged as casual worker in April, 1972. He had put in 1198 days of casual service from April, 1972 to September, 1978. Half of the casual service paid from contingencies have to be counted for pension. Fifty percent of the casual service rendered by the applicant has been counted for pension/gratuity. In compliance with the judgement of this Bench of the Tribunal in O.A.1031/97, the department verified all relevant records and found that the applicant had been engaged only for 1198 days prior to his absorption to his regular post with effect from 2.9.78. A-5 shows the correct position of the past service of the applicant as casual worker.

4. The applicant says that he commenced service under the respondents as a casual worker from March, 1968 and without break continued as such till he was regularised as per A-1 dated 31.8.78. Respondents say in the reply statement that the applicant was working as casual worker only from April, 1972. It is the admitted case of the both sides that the applicant approached this Bench of the Tribunal earlier by filing O.A.1031/97. There a reply statement was filed by the very same officer who has filed the reply statement in this O.A. stating that:

"He was appointed on regular basis with effect from the forenoon of 2.9.1978 and casual service is to be counted for the period from March, 1968 to August, 1978"

(Emphasis supplied)

So there is a crystal clear admission by the very same officer who filed the statement in this O.A. to the effect that the applicant was in casual service under the respondents from March, 1968 to August, 1978.

5. A-4 is the copy of the order passed by this bench of the Tribunal in O.A.1031/97. There in paragraph 2 it is stated thus:

"The respondents in their reply have stated that the period of casual service mentioned by the applicant in his application is to be reckoned for computation of qualifying service for pension, but orders in that regard could not be passed as the relevant records could not be traced out."

Again in the same order it is stated:

"Now that the respondents have not disputed the claim of the applicant about reckoning 50% of the casual service rendered by him for computation of pension and as the only difficulty is that the records are yet to be traced out, counsel on either side stated that the application may be disposed of with appropriate direction in regard to tracing out the records and passing an order as in the case of other employees similarly situated as evidence by A-2"

6. In the light of the specific admission in the reply statement filed in O.A.1031/97 and in the light of what is contained in A-4 the copy of the order in O.A.1031/97, it is too much for the respondents now to contend that the applicant's casual service was only from April, 1972. It shows how irresponsible the particular officer is in filing the reply statement. The respondents are totally estopped from contending in this O.A. that the applicant's casual service commenced only from April, 1972 when it is

specifically admitted in the earlier O.A. that the applicant's casual service commenced from March, 1968. The reply statement is filed in this O.A. and was filed in earlier O.A. also by the Director of Integrated Fisheries Project, Kochi. He is expected to be responsible and to file pleadings before the Tribunal in a responsible way. The stand now taken by the respondents in this O.A. cannot be accepted for a moment since the respondents are estopped from contending as stated in the reply statement.

7. In the reply statement, it is stated that A-5 shows the correct position of the past service of the applicant as casual worker. This is totally contradictory to what is admitted in the reply statement filed in O.A.1031/97. A senior officer cannot and should not act in this irresponsible way. A-5 shows the details of service of the applicant only from 1972. When it is specifically admitted in the earlier O.A. by the respondents that the applicant commenced his service as casual worker from March, 1968, how the respondents can say now that the correct position has been shown in A-5 is not known.

8. Since A-5 takes in only the casual service rendered by the applicant under the respondents from 1972 onwards and as already stated, it is admitted by the applicants in the earlier O.A. that the applicant commenced his service as a casual worker under the respondents from March, 1968 and the specific finding in A-4, the order in O.A.1031/97 it could only be said that A-5 has been passed wrongly if not intentionally, at least inadvertently.

9. As far as the other prayers are concerned, those covered by the order in O.A.1031/97.

10. Accordingly, the O.A. is allowed quashing A-5 to the extent it does not reckon 50% of the whole of the casual service rendered by the applicant prior to his regular absorption for the purpose of reckoning his qualifying service for pensionary benefits, declaring that applicant's service from March, 1968 upto the date of his regular appointment in terms of A-1 was continuous and unbroken, that he is entitled to reckon 50% of the said service between September, 1968 and 2.9.198 for the purpose of the pensionary benefits and directing the respondents to recalculate and refix applicant's pensionary benefits in terms of the declaration and to grant consequential benefits thereof within two months from the date of receipt of a copy of this order with interest at 12% per annum from the date of his retirement and costs Rs.1000(Rupees one thousand).

Dated, the 9th of December, 1999.

(A.M.SIVADAS)
JUDICIAL MEMBER

trs/101299

List of Annexures referred to in the Order:

1. A-1: A true copy of the Memorandum No.A1/1-10/77 dated 31.8.78 issued by the 2nd respondent.
2. A-2: A true copy of the representation submitted by the applicant to the 2nd respondent dated 19.3.97.
3. A-4: A true copy of the judgement in O.A.1031/97 dated 27.8.97.
4. A-5: True copy of the office order No.43/98 dated 27.2.98 issued by the 2nd respondent.