

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
XXXXXX

345 of 91 1990

DATE OF DECISION 21.2.1992

K. Devakikutty Amma _____ Applicant (s)

Mr. M.R. Rajendran Nair _____ Advocate for the Applicant (s)

Versus

Union of India & 2 others _____ Respondent (s)

Shri K.A. Cherian, ACGSC _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.V. Krishnan, Member (Administrative)

The Hon'ble Mr. N. Dharmadan, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. To be circulated to all Benches of the Tribunal ? *No*

JUDGEMENT

N. Dharmadan, M(J)

The grievance of the applicant deserves to be considered sympathetically in view of the peculiar facts and circumstances. Applicant commenced her service as Part time sweeper-cum-Water carrier in the Central Telegraph Office, Trichur on 1-1-70, but was regularly absorbed in Group-D post with effect from 6-1-86 and retired on 31-3-91 without any retiral benefits on account of the stringent provisions of the law.

2. Though the applicant was taken in service on 1-1-70 through the Employment Exchange after satisfying

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all requirements, she was not regularised until 6-1-86 despite the fact that the post was available and repeated requests were made by the applicant for the same. She had been making representations for relaxations of age and absorption in service in Group-D post from 1975 onwards. The representations were rejected on the ground that she was over aged even at the time of initial appointment. Later DGP&T directed by letter No.269/40/83-STN(Pt-1) dated 9-1-83 that casual mazdoors recruited before 20-3-79 may be absorbed in Group-D even if they are over aged and the applicant was engaged as Full Time from 1-10-83. She was appointed as regular Group-D woman attendant with effect from 6-1-86, granting age relaxation. She retired on 31-3-91. Her case would not come within the ambit of CCS(Pension) Rules since at the time of her retirement she has only 5 years, 2 months and 26 days of regular service and 2 years, 3 months and 5 days of Full Time service to her credit. No pension was granted to her. But she submitted Annexure-II representation for getting pensionery benefits. This was forwarded to the competent authority with due recommendations by the Supdt., Central Telegraph Office, Trichur for counting her part-time service towards pension in the interest of justice. The Assistant General Manager (Adam), Ernakulam also recommended that considering her long period of service

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her case requires to be examined by the authorities in relaxation of the rules to the extent of 3 years, 8 months under Rule 88 of CCS(Pension) Rules. Annexures III, to VI are the letters containing recommendations of the authorities. Nevertheless by the impugned order dated 17-1-91 (Annexure-I), Assistant Director General (STP) rejected the request of the applicant in one sentence order which reads as follows:

"..... I am directed to refer to your office letter No. STT/21/7/II dated 19-10-90 on the above subject and to say that the case for counting of service paid from contingencies, rendered by Smt. K. Devakikutty Amma, Women Attendant, CTO, Trichur, has been examined in consultation with Department of Pension & PW and it has been decided not to accede to the request of Smt Amma for granting her minimum pension in relaxation of Rules....."

3. In the reply affidavit filed by the respondents facts averred in the application were admitted, but they submitted that the applicant is not eligible for minimum pension for she has not completed 10 years of service required for sanction of the pension under the Rules. According to them even after adding full time service from 1-10-83 to 5-1-86, the applicant has only a total of 6 years, 4 months and 14 days as qualifying service.

4. We have heard the arguments and perused the records. After the retirement of the applicant the

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applicant submitted Annexure-II representation forgetting pensionary benefits, stating that she had put in 16 years of service. From 1-1-70, she was given 3 hours of work in the morning and 2 hours work in the evening. She used to work 5 to 6 hours continuously in the office till she was appointed as Woman Attendant in the Group-D post. This fact is not denied by the respondents. xxxxxxxxxxxx The xxxx authorities had given strong recommendations as seen from Annexure-III to VI for sympathetic consideration and grant of minimum pensionary benefits taking into consideration her extra departmental service. It has been mentioned in Annexure-III, the letter of Superintendent, Central Telegraph Office, Trichur, that the applicant's mother was originally worked before 1970 and when she stopped work, the applicant was engaged through the Employment Exchange and appointed as Part Time Sweeper, from 1-1-70. Her services from that date deserve consideration. It is further seen from Annexure-IV letter of Senior Superintendent of Post Office, Ernakulam that the applicant's case is eminently fit one for sympathetic consideration and grant of pensionary benefits in the relaxation of Rules. So also Annexure-V shows that Assistant General Manager recommended her case quoting provisions for relaxation in the CCS(Pension) Rules for making her eligible for pensionary benefits, considering her long service in the capacity as Part Time sweeper and Woman Attendant in the department prior to her appointment as regular Group-D employee. In the same line Annexure-VI letter was couched by the Assistant General Manager (Admn)

Telecommunications, Kerala. The last part of the said letter reads as follows:

".....7. Considering the long period of service put in by this official in the capacity as part time sweeper and woman attendant in the department prior to her appointment to the regular Group-D cadre and also the undue hardship that may be caused to this official in the retired life, if no pension is granted, her case is recommended for sympathetic consideration for taking up the matter with the Department of Personnel and Administrative Reforms under Rule 88 of CCS (Pension) Rules to cause sanction of minimum pension irrespective of the number of years she put into service in relaxation of minimum of 10 years service as laid down in Rule 49 ibid.

8. This letter has been issued with the approval of Chief General Manager, Telecom....."

5. There is no reason why all these recommendations of three senior officers should be ignored. They ought not have raised their voice unless it is a genuine case of hardship if the minimum pension is denied to the applicant. The qualifying services of the applicant had been calculated as 6 years 7 months and 16 days. If the applicant's prior service from 1-1-70, though called as Part Time contingency, she was discharging the duties for five hours per day in the beginning which was increased later, were taken into account as recommended by the officers, the deficiency could have been adjusted by making suitable calculations and computation with regard to applicant's part time services from 1-1-70 to 1-10-83. Admittedly, the applicant has 13 years, 8 months service in

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her credit as part-time employee. Having regard to the facts and circumstances of the case her part time service cannot be ignored completely particularly when there is strong recommendation from senior officers as seen from Annexures-III to VI.

6. Failure of the respondents to take into consideration the long service of 13 years 8 months prior to her full time absorption on 5-1-86 necessarily causes undue hardship and injustice to the applicant as indicated by the authorities in Annexures III to VI. In the impugned order, the respondents have not given any reason for rejecting the request despite the strong recommendations of three senior officers of Telecommunications department. The provision for relaxation in CCS(Pension) Rules reads as follows:

"....88. Power for relax: Where any Ministry or department of the Govt. is satisfied that the operation of any of these rules, causes undue hardship in any particular case, that Ministry or department, as the case may be, may be order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case, in a just and equitable manner:

Provided that no such order shall be made except with the concurrence of the Department of Personnel and Administrative Reforms"

8. This provision is intended to be invoked in appropriate cases when the Govt. is satisfied considering

the facts and circumstances that there is likelihood of hardship for the employee. An evaluation and assessment of the facts of this case considering the hardship of the applicant had not been done by the Government in this case. The Govt. should have applied the mind to the facts in the light of the above provisions and examined the case of the applicant and decided as to whether there would have been a real hardship to the applicant by the denial of minimum pension. In fact there are sufficient materials to establish that the respondents can legitimately invoke Rule 88 and grant relief to the applicant unless they are of the view that 13 years and 8 months of part time service of the applicant cannot be given credit to applicant in any manner.

9. The Govt. should have approached the question from a different perspective. The applicant who had devoted major portion of her life viz. 20 years for serving the department is leaving the establishment without any retiral benefits, only because of the stringent privisions of law that for being eligible for minimum pension one should have completed minimum 10 years of full time regular service. This is not satisfied by the applicant due to the delay on the part of the department to regularise her service at the appropriate time. She was selected through employment exchange in 1970 and appointed though over-aged at that time. Subsequently when the question of regularisation came up, age bar should not have been treated as a disqualification for getting her service regularised when she

is otherwise fully eligible and qualified for getting regularisation as Group-D official from 1975 onwards, taking due consideration of her request. The respondents have no case that there is no regular post of Sweeper-cum-Water Carrier in that office. Under these circumstances they should have regularised her service at an earlier date when the applicant became due for regularisation in accordance with the rules in vogue, notwithstanding the fact that she was over-aged at the time of regularisation. But the respondents did not regularise the applicant during 1975 or thereafter till 1986. Since the applicant cannot be held at fault for non-regularisation of her part-time service, at an early date, the subsequent denial of pension and pensionary benefits on the plea that she was not having required minimum period of regular service, will cause undue hardship to her. So to the extent possible, if there is no prohibition the Govt. should have found out some means or method by which the part-time service of the applicant could have been utilised for making up the deficiency of 3 years 7 months and 16 days. She has in her credit a total of 13 years 8 months as part-time service. If this period was converted into full-time by proper computation, the deficiency noted by the respondents should have very well been made up for making her eligible for minimum pension under the relevant rules. There is no explanation as to why such an attempt was not made in this case particularly when there are strong recommendations

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from her superior officers to consider her case for the grant of minimum pension.

10. Though the senior officers have strongly recommended the case of the applicant for sympathetic consideration, and grant of minimum pension for her and render justice to her, the respondents have neither endeavored to consider her case for relaxation under the provisions (Rule 88 of CCS (Pension) Rules) nor did they make any attempt by proper calculation utilising 13 years and 8 months of her part-time service by converting the same into full time for making up the deficiency as stated in the reply affidavit.

11. As indicated at the outset this is a case where, an employee has been inducted into service from the Employment Exchange and allowed her to work for long periods and ultimately, even though her age has been relaxed it was denied for granting regularisation in service at proper time, she is not benefited fully for she is now deprived of the minimum pension. Had there been a decision for regularisation of service considering her request making it effective from 1979 as a special case, in the light of thw DGP & T letter she would have been contained the benefit of minimum pension.

12. The learned counsel for the applicant brought to our notice a decision of Punjab and Haryana High Court reported in Mohinder Singh V. State of Haryana and others.

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1991(5) SLR 114 following the Full Bench decision of the same Court in Kesar Chand V. State of Punjab and others, AIR 1988 P & H 265. In this case the services of a work charged employee who had been regularised had been given benefit of pension taking into consideration his prior service. A work charged employment is an engagement of workers for a particular work and on completion of work such worker is supposed to be out of service. In the case such a work charged employee the Full Bench observed as follows:

"..Once the services of a work charged employee have been regularised there is no logic to deprive him of the pensionary benefits as are available to other public servants under rule 3.17 of the Rules. Equal protection of laws must mean the protection of equal laws for all persons similarly situated. Article 14 strikes at arbitrariness because a provision which is arbitrary involves the negation of equality. Even the temporary or officiating service under the State Govt. has to be reckoned for determining the qualifying service. It looks to be illogical that the period of service spent by an employee in a work charged establishment before his regularisation has not been taken into consideration for determining his qualifying service. The classification which is sought to be made among Govt. servants who are eligible for pension and those who started as work charged employees and their services regularised subsequently, and the others is not based on any intelligible criteria and, therefore, is not sustainable at law. After the services of a work-charged employee have been regularised, he is a public servant like any other servant. To deprive him of the pension is not only unjust and inequitable but is hit by the vice of arbitrariness, and for these reasons the provisions of sub-rule(ii) of Rule 3.17 of the Rules would be liable to be struck down being violative Article 14 of the Constitution. The fact that the authorities had granted exemption from rules in certain cases would not be justifiable reason for excluding others from the grant of pension and gratuity benefits. For this reason, too, rule 3.17(ii) is bad at law, as it enables the Govt. to discriminate between employees similarly situated..."

This decision of the Full Bench has been followed in Mohinder Singh V. State of Haryana and others, 1991(5) SLR 114 by the Punjab and Haryana High Court.

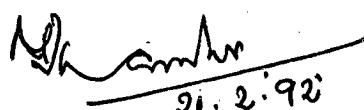
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13. Having regard to the facts and circumstances of the case as indicated above we are of the view that the respondents have not considered the recommendations contained in Annexures III to VI carefully after due application of mind to grievance of the applicant and relevant provisions of CCS (Pension) Rules.

14. In the result, we quash Annexure-I order and dispose of the application directing the respondents to reconsider the claim of the applicant in the light of the above observations, taking a lenient view having regard to the facts and circumstances of this case. This shall be done within a period of three months from the date of receipt of the copy of the judgment.

15. Accordingly, the Original Application is disposed of as above. There shall be no order as to costs.


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(N. Dharmadan)
Member (Judicial)

(N.V. Krishnan)
Member (Administrative)