

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 351 of 2006

Wednesday, this the 7th day of February, 2007

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

T.H. Mydhili,
S/o. Kannan,
Mailman, HRD,
RMS Division, Calicut,
Residing at Bhaskra Nivas,
Kottoli, Calicut. ... **Applicant.**

(By Advocate Mr. V. Sajith Kumar)

versus

1. Union of India represented by
The Secretary to the Government,
Ministry of Communications,
Department of Posts,
Government of India, New Delhi.
2. The Chief Postmaster General,
Kerala Circle, Trivandrum,
3. The Superintendent,
RMS CT Division, Calicut.
4. Sub Records Officer,
RMS Division, Calicut ... **Respondents.**

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER



The applicant's appointment as Group D employee in 1997 was

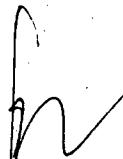
preceded by her engagement as a G.D.S. Employee, from October, 1983 and during the period from October, 1989 to the date of regular appointment as Group D employee, she was asked to officiate in a group D post with intermediate breaks, the total period of such officiation amounting to 1759 days (i.e. 4 years and 99 days). The qualifying service of the applicant from the date of her appointment as a Group D employee comes to 8 years, 11 months and 18 days, while the eligibility condition for deriving superannuation pension prescribes a minimum of 10 years service. The applicant's claim is that her services in officiating capacity in a group D post prior to her regular appointment, which is for a substantial period of 4 years and 10 months should also be counted, by condoning the break in service. According to the applicant, even if half the services be counted, as in the case of contingent/casual employees (vide OM dated 14th May 1968 at Annexure A-4), the applicant, a widow, without any children, would be able to derive the pensionary benefits.

2. Respondents have no dispute over the period of services rendered as GDS, as officiating group D employee and the extent of regular service. It has also been admitted that temporary status casual labourers are given the benefit of 50% of such services for the purpose of pension. But since the rules do not provide for counting of the broken officiating services, they have rejected the claim of the applicant to count the period of officiation. Hence this O.A.

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3. Counsel for the applicant argued that provision exists in the CCS (Pension) Rules, 1972 with regard to condonation of break in service and as such, in the interest of justice, the case of the applicant should be considered favourably. He has supplemented his arguments by filing written arguments as well.

4. Arguments were heard and documents perused. The applicant was initially engaged in 1983 and from 1989 she was given officiating promotion as Group D, though with break. At the time when the ban on recruitment was lifted in 1989, the applicant could not be considered as she was over aged as per the then provisions (the age limit being 40 years, while the applicant was by then 43 years) but since she was the senior most amongst GDS, she was given officiation. When the age limit was increased to 50 years, the applicant was over-aged, but the applicant could not be promoted prior to 1996 as she was comparatively lower in the Divisional Seniority List (Para 9 of the counter). It was under an order of this Tribunal (order dated 15.07-1996 in OA No. 729/96) that her case was considered for appointment as a group D employee notwithstanding she being above fifty years of age. Thus, the services on regular basis account for only less than 10 years while the applicant had at her credit period of officiation for 4 years plus anterior to the date of her regular service, but the same was with intermittent break. The question is whether the break in service prior to regular appointment can be

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condoned to enable the applicant to count the period of officiation also for the purpose or working out the extent of qualifying service for pension.

5. An almost identical situation (with regard to condonation of break in service) arose for consideration in the case of **Director General, CSIR v. K. Narayanaswami (Dr), (1995) 3 SCC 124**. The Apex Court has dealt with the case as under:-

2. Respondent 1 was one of such Pool Officers to be appointed by letter dated 7-4-1965 issued by the Council. He was to be paid a salary of Rs 520 per month plus admissible allowances. He was attached with the Regional Research Laboratory of the Council at Hyderabad. He resigned from the post, which was accepted w.e.f. 5-3-1969, whereafter he joined as Assistant Director, (Chemistry) Central Forensic Science Laboratory (CFS) w.e.f. 10-6-1969 and worked there till January 1984. Thereafter, on 28-1-1984 he joined as Principal Scientific Officer in the Department of Science and Technology to be transferred in 1986 to the Department of Bio-Technology. He retired on superannuation on 31-12-1992.

3. What led the respondent to approach the Central Administrative Tribunal, New Delhi was that his service as Pool Officer rendered in the Council for the period from 1-7-1965 to 5-3-1969 was not counted for pensionary benefits, and so, he sought a direction from the Tribunal on the appellant to count the aforesaid period as a qualifying period for the purpose of grant of pensionary benefits. This prayer has come to be allowed by the Tribunal. Hence this appeal.

4. The relevant provisions governing pension for an incumbent like the respondent are to be contained in Rules 13 and 28 of the Central Civil Services (Pension) Rules, 1972 (the Rules) which read as below:

13. Commencement of qualifying service. Subject to the provisions of these rules, qualifying service of a government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an

officiating or temporary capacity:

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post:

Provided further that

28. Condonation of interruption in service. (a) *In the absence of a specific indication to the contrary in the service-book, an interruption between two spells of civil service rendered by a government servant under Government including civil service rendered and paid out of Defence Services Estimates or Railway Estimates shall be treated as automatically condoned and the pre-interruption service treated as qualifying service.*

(b) *Nothing in clause (a) shall apply to interruption caused by resignation, dismissal or removal from service or for participation in a strike.*

(c) *The period of interruption referred to in clause (a) shall not count as qualifying service.*

5. The principal contention of the appellant is that a Pool Officer like the respondent is not an employee of the Council, and so, the service rendered by the respondent as Pool Officer cannot count as qualifying service. The contention of respondent on the other hand is that if the aforesaid scheme and its various provisions are borne in mind, there would be nothing to doubt that a Pool Officer has to be regarded as an employee of the Council, as was the view taken by Central Administrative Tribunal, Bangalore in M.G. Anantha Padmanabha Setty (Dr) v. Director, National Institute of Oceanography(1990) 14 ATC 314 (CAT) (Bang).

6. For the disposal of the present appeal it is not necessary to express any opinion on the aforesaid question inasmuch as, according to us, even if we were to agree with the respondent on the aforesaid question, the service rendered by him as a Pool Officer cannot be counted towards qualifying service in view of what has been mentioned in the first proviso to Rule 13 of the Rules. This is for the reason that there was admittedly interruption in the temporary service and the substantive appointment. The submission of Shri Tiwari for Respondent 1 is that this interruption must be taken to have been condoned because of what has been provided in Rule 28 of the Rules. For the reasons to be alluded, we have not been able to persuade ourselves to agree with Shri Tiwari.

7. There are two reasons for our disagreement. The first is that Rule 28 as quoted above was substituted by notification of even number dated 19-5-1980. Prior to that, Rule 28 was in the following language:

28. Condonation of interruption in service. (1) The appointing authority may, by order, condone interruptions in the service of a government servant:

Provided that

(i) the interruptions have been caused by reasons beyond the control of the government servant;

(ii) the total service excluding one or more interruptions, if any, is not less than five years duration; and

(iii) the interruption, including two or more interruptions, if any, does not exceed one year.

(2) The period of interruption condoned under sub-rule (1) shall not count as qualifying service.

8. If the aforesaid rule were to determine the question of condonation, specific order of the appointing authority was a prerequisite. Admittedly, there is no such order. Secondly, even if the substituted rule were to apply because of the superannuation of the respondent in 1992, by which date substituted rule had come into force, we are of the view that rule cannot override what has been mentioned in the aforesaid proviso to Rule 13. This is for the reason that any contrary view would make the proviso altogether otiose. It is a settled rule of interpretation that where two provisions operate in one field, both have to be allowed to have their play, unless such operation would result in patent inconsistency or absurdity. If Rule 28 were to be confined to the interruption between two substantive appointments, as is the contention on behalf of the appellant, we are of the view that both the aforesaid provisions can co-exist, and harmoniously. Rule 13 being on the subject of commencement of qualifying service, the same has first to commence, which, in case the incumbent be in temporary service first would not if there be interruption between temporary service and substantive appointment, because of what has been mentioned in the first proviso. Where the qualifying service has commenced, Rule 28 would take care of interruption; and the period of interruption would then stand condoned in the absence of a specific indication to the contrary in the service-book. This is the field of operation of these two rules, according to us, as the same would permit, in such a

case, both the provisions to co-exist.

9. For the aforesaid reasons, we hold that there being interruption in the present case between the temporary service of the respondent as Pool Officer and the subsequent substantive appointment, the period of temporary service cannot be counted as qualifying service for the purpose of pensionary benefits. The appeal is, therefore, allowed by setting aside the impugned judgment. We, however, make no order as to costs.

6. In the above case, though the respondent therein resigned from the post of Pool Officer, the aspect of resignation did not come in his way. What the Apex Court considered was whether period of temporary service could be counted for qualifying service for the purpose of pensionary benefits and whether break if any in service could be condoned. This question was answered in negative by the Apex Court.

7. In view of the above, the case of the applicant does not come within the purview of the rules and regulations and as such, the OA is dismissed. No costs.

(Dated, the 7th February, 2007)



K B S RAJAN
JUDICIAL MEMBER

cvr.