

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.363/05

Monday this the 12th day of December 2005.

CORAM:

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

P.Cheriyekkan,,
S/o Kunhi Kannan,
Punathil House, Nandi, P.O.Kadaloor,
(Working as Light House, Safaiwala,
at Chettuvai Light House,
Under the second respondent) Applicant

(By Advocate Shri Ghosh Yohannan)

Vs.

1. Union of India, represented by the
 Secretary, Ministry of Surface Transport,
 (Shipping Road Transport and Highways)
 New Delhi.
2. The Director of Light House and Light Ships
 Department of Light House and Light Ships,
 Ministry of Surface Transport,
 Gandhi Nagar, Kadavanthra,
 Cochin-20. Respondents

(By Advocate Smt. Aysha Youseff, ACGSC)

The application having been heard on 12.12.2005
the Tribunal on the same day delivered the following

ORDER (Oral)

HON'BLE MR. KV SACHIDANANDAN, JUDICIAL MEMBER

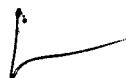
The applicant was working as Casual Mazdoor at Kadaloor Light House from 1981 onwards. On denial of employment during 1992, the applicant has filed O.A.No.No.358/92 before this Tribunal. Vide order dated 7.4.93 this Tribunal had directed the 2nd respondent to consider the re-employment and regularization of the service of the applicant on that basis, but, the applicant was regularized in the service only in the year 1999. The applicant has retired on 30.6.2005. The grievance of the applicant is that, he was denied the monthly

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pension vide A-IV only on the reason that he has not completed ten years of service. He has made a representation (A-V) before the 1st respondent, which is not yet disposed of. Aggrieved by the in action on the part of the respondents he has filed this O.A. seeking the following main reliefs:

- i. Declare that the intimation by way of Annexure IV by the 2nd respondent so far as to deny the pension of the applicant is illegal.
- ii. Declare that the applicant is entitled to monthly pension after retirement as if he had completed 10 years of service considering the service he rendered between the period from 1981 to 1999.
- iii. Direct the respondents to sanction and pay monthly pension to the applicant after his retirement.
- iv. Direct the 1st respondent to consider and dispose of Annexure V representation forthwith and in accordance with law.

2. The respondents have filed a detailed reply statement contending that the applicant was considered for re-engagement only in the year 1999 on the basis of a request made by him. Since no post of Casual Mazdoor as mentioned by the applicant in O.A.358/92 was not available, he was engaged on daily basis for works such as sweeping, cleaning when the regular Safaiwala went on leave. As per the directions of this Tribunal, he could not be accommodated since there was no post of Casual Mazdoor in the light house department. An Advocate's notice sent by the applicant on 20.10.1998 requesting his appointment and to regularize him in the light of the order in O.A.358/92. On receipt of the lawyer's notice the applicant was informed the position of the non-availability of vacant post of Mazdoor, to regularize the applicant vide Annexure R1(a). On humanitarian grounds, the applicant was asked whether he is willing to work as Safaiwala when one post became vacant and if so, the applicant was directed to give his willingness to work as Safaiwala. Accordingly, the applicant has given his willingness on 14.1.1999 vide Annexure R-1(b) and he was appointed at Chetwal Lighthouse. He could not be appointed from 1993 to 1999 for want of vacancy




of Mazdoor. The representation made by the applicant was addressed to the Secretary, Ministry of Shipping and Road Transport & Highways, which has been considered that, the applicant is not entitled for pensionary benefits as he has rendered less than 10 years service and the fact has already been communicated to the applicant by the Directorate as per Annexure IV. The applicant was not appointed since 1993 to 1999 for want of vacancy in the department as Mazdoor as mentioned above. Hence, there is no delay on the part of the department in appointing the applicant. Since no rule exists to consider casual/daily wages broken service rendered by the applicant in different occasions within the said six years period, the said period cannot be counted for pensionary benefits. The period that was mentioned in the order in O.A. has already been considered but still the length of service of the applicant cannot fulfill 10 years of service. The contention that the period from 1993 to 1999 wherein he was not worked should have been considered for pensionary benefits cannot be accepted since there is no legal provision for the same.

3. I have heard Shri Ghosh Yohannan, learned counsel appearing for the applicant and Mrs. Aysha Youseff, learned counsel appearing for the respondents.

4. Counsel for the applicant submitted that, had the applicant been given an employment as per the directions of this Tribunal, he should have been engaged even as a Casual Mazdoor from 1993 to 1999. In that case, he would have been completed 10 years. This was not considered by the respondents.

5. Counsel for the respondents on the other hand persuasively argued that, there was no vacancy to accommodate the applicant in any post as directed by the Tribunal in O.A.358/92 and finally in the year 1999 he has been accommodated as Safaiwala after seeking his willingness to do that work.



Therefore, there is no question of granting him pensionary benefits by considering the delay in appointment by the department. The contention of the applicant for reckoning that period of service, is against the facts and legal position.

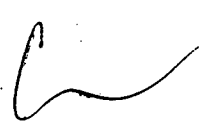
6. I have given due consideration to the arguments advanced by the counsel and the documents, evidence, and material placed on record.

7. The short question arises for consideration by this Tribunal is, though the applicant could not be accommodated for want of vacancy or for any other reasons from 1993 to 1999, whether this period can be considered as service for reckoning for pensionary benefits to the applicant or not? This Court vide order dated 7.4.1993 in O.A.358/92, directed the respondents to consider the applicant for re-engagement with regard to the facts that he has got prior service in 1981 and take him as Casual Mazdoor in the Light House in the next arising vacancy. The operative portion of which is reproduced as under:

“Having heard the counsel on both side, we are of the view that this application can be disposed of with appropriate directions. In the interest of justice we direct the Respondent-3 to consider re-engagement of the applicant having regard to the facts that he has got prior service in 1981 as stated by the applicant and take him as Casual Mazdoor in the Light House in the next arising vacancy. Respondent-3 may also consider his regularization depending upon the vacancy that may arise in future.”

Vide that order this Court has also concluded that, the total number of 435 days of engagement of the applicant as Casual Mazdoor from 1983 to 1991 was purely on casual basis/daily wages.

8. On going through the said order of this Tribunal, it was made clear that, the applicant has been directed to be posted as Casual Mazdoor in the next arising vacancy and directed the respondents to consider him for regularization




depending upon the vacancy that may arise in future.

9. The specific case of the respondents is that, no such vacancy arose in the department even till 1999 or as on today. But, when the applicant sent a legal notice, his case was sympathetically considered on humanitarian grounds and on his representation dated 14.1.99(Annexure R1(b) expressing willingness, he was appointed as Safaiwala by order dated 6.9.99 (A-3) with effect from 17.8.99 (A2).

10. It is evident from the records that, the applicant has put in service only for 5 years, 10 months and 8 days as on the date of retirement i.e. on 30.6.2005. The applicant admittedly had not worked from 1993 to 1999 that he could not be appointed for want of vacancy. The applicant was not able to point out that any vacancy arose during that period and the direction given by this Tribunal was, for appointment/regularization against a vacancy. Therefore, the respondents' inability to accommodate the applicant during that period, cannot be faulted. In the absence of a clear vacancy in the department and an alternative engagement that was granted by the respondents to the applicant as Safaiwala, is an indication that there was no vacancy.

11. Then the question is whether such period for which the applicant could not be engaged be reckoned for pensionary benefits or not? The principle that has been laid down under C.C.A. (Pension) Rules is that, the applicant should have completed ten years of service for entitlement of pension. The period that has been mentioned in the earlier order in O.A.358/92 for 435 days periods was also reckoned and the applicant did not acquire the required period.

12. In the conspectus of facts and circumstances, this Court is of the view that the applicant has not completed ten years of service as is evident from the



records, he cannot claim for pensionary benefits and therefore, the O.A. does not merit and the same is to be dismissed.

13. In the circumstances, the O.A. is dismissed. There is no order as to costs.

Dated 12th December, 2005.



K.V.SACHIDANANDAN
JUDICIAL MEMBER