IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.376/92

DATE OF DECISION : 20.09.1993

P.Saramma,
Panikulam House,
Cochin - 17. .. Applicant

Mr. M.G.K.Menon .. Adv. for applicant

V/s

1. The General Manager (Telecoms),
Ernakulam,
Cochin 682 031.

2. The Chief General manager
Telecoms, Kerala Circle,
Trivandrum-695 003.

3. Union of India rep. by the
Chairman,
Telecom Commission,
Sanchar Bhavan,
New Delhi-110 001. .. Respondents

Mr.George Joseph, ACGSC .. Adv. for respondents

CORAM : The Hon'ble Mr. N.Dharmadan, Judicial Member

JUDGEMENT

MR. N.DHARMADAN, JUDICIAL MEMBER

The short question that arises for consideration in this application filed under Section 19 of the Administrative Tribunals Act is whether the continuous part-time service of the applicant from 29.9.1966 till her regular absorption on 18.10.85 can be considered for calculating the pensionary benefits payable to the applicant.

2. Applicant was appointed as a part-time Sweeper at the Telephone Exchange, Ernakulam with efect from 1.4.1964 till 29.9.1966. Respondents have given artificial breaks in service but from 29.9.1966 the applicant was continuously continuing as a part-time Sweeper. Annexure-A1 certificate

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establishes the above position. By Annexure-A2 order the applicant was absorbed in the newly sanctioned post as a regular Group-D employee with effect from 18.10.1985. She retired from service on 31.12.90. Annexure-A3 representation was filed on 12.12.90 for getting pensionary benefits. It was rejected as per impugned order, Annexure-A4. It reads as follows:-

> " It is regretted to inform you that Chief General Manager, Telecommunication, Trivandrum has intimated that part-time Service served by you could not be counted towards pension, as it does not fulfil the conditions laid down in Government of India Decision No.2 below Rule 140 of CCS (Pen). Rules 1972 (Ministry of Finance OM No.F.12(1)-E.V/68 dated 14.5.68)."

3. The learned counsel for the applicant submitted that if 50% of the service from 29.9.66 is taken into consideration for calculating the total service rendered by the applicant, she would have been eligible for getting pensionary benefits under Rule 49 of the CCS (Pension) Rules, 1972.

3. The respondents in the reply admitted all the facts but contended that the applicant has regular service only from 18.10.1985 and she has in her credit 5 years 2 months and 14 days of service which is insufficient for pensionary benefits as per Article 368 of Civil Service Regulations. They have also produced Annexure-R1 Government of India decision dated 14.5.1968 for counting the service paid from contingencies with regular service, interpreting Article 368 of Civil Service Regulations.

4. Learned counsel for the applicant submitted that the case is covered by an earlier judgment of this Tribunal dated 5.2.1993 in OA 569/90 and connected cases.

5. A batch of cases pertaining to regularisation of contingencies paid employees and calculations of their pensionary benefits were considered and this Tribunal

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declared that the applicants therein are entitled to count 50% of their continuous casual service after they completed six months service from the original date of appointment and that period should be reckoned for the purpose of granting pension. The operative portion of the judgment is extracted below:-

> "16. In the above circumstances, we allow these applications to the extent of declaring that 50% of continuous casual service after the applicants had put in six months of such casual service, even with breaks, shall be reckoned for the purpose of pension. The breaks in casual service will not be taken into account for grant of temporary status but intermittent casual service shall be taken into account for computation of six months period for the grant of temporary status to project casual labour. The respondents are directed to refix the ritiral benefits of the applicants on this basis and revise the retiral benefits accordingly and pay arrears, if any. Action on the above lines should be completed within a period of three months from the date of communication of this order. There will be no order as to costs."

6. The learned counsel for the respondents did not object to the statement of the learned counsel for the applicant that this case is covered by the judgment in OA 569/90 and connected cases. But he submitted that in the light of Government of India decisions, the applicant is not eligible for consideration for grant of pensionary benefits by reckoning 50% of the part-time service.

7. The question of counting part-time service for regularisation came up for consideration in K.Devakikutty Amma vs. Union of India & Others (O.A.345/91). In that case, the applicant, who worked as a part-time Sweeper-cum-Water Carrier and served long period before regularisation but denied pensionary benefits, had in her credit a total of 13 years and 8 months as part-time service. If that period was converted into full-time by proper computation, the deficiency noted by the respondents should have been very well

made up for making her eligible for minimum pension under the relevant rules. Considering the factual position and also Rule 88 of CCS (Pension) Rules, we have disposed of the application directing the respondents to consider the claim of the applicant for granting pensionary benefits taking a lenient view. In para 12 of the judgment we have observed as follows:-

> "12. The learned counsel for the applicant brought to our notice a decision of Punjab and Haryana High Court reported in Mohinder Singh vs. State of Haryana and others, 1991 (5) SLR 114, following the Full Bench decision of the same Court in Kesar Chand vs. State of Punjab and others, AIR 1988 P&H 265. In this case the services of a workcharged employee who had been regularised had been given benefit of pension taking into consideration his prior service. A workcharged 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 of such workcharged employee the Full Bench observed as follows:-
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> > '... Once the services of a workcharged 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 workcharged 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 workcharged 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 workcharged employee have been regularised, he is a public servant like any other servant. To deprive him of the pension is not only 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 of 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...'
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> This decision of the Full Bench has been followed in Mohinder Singh vs. State of Haryana & Ors., 1992 (5) SLR 114 by the Punjab and haryana High Court."

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8. The principles discussed in the decision in OA 345/91 applies to the facts of this case also. The respondents have not examined the claim of the applicant applying the above principles. In this view of the matter I am of the opinion that the matter requires further consideration by the 1st respondent. He may pass orders in accordance with law bearing in mind the principles in OA 569/90 and 345/91.

9. In the result, I quash Annexure-A4 order and send the case back to the first respondent for a fresh consideration and disposal of the claim of the applicant in accordance with law.

10. The application is allowed as above. No costs.

20.10.93

(N.DHARMADAN)
JUDICIAL MEMBER

v/-

LIST OF ANNEXURES:

1. Annexure-A1	.. Copy of Certificate dated 10.6.1969.
2. Annexure-A2	.. Copy of order dated 22.5.86.
3. Annexure-A3	.. Copy of representation dated 12.12.1990.
4. Annexure-A4	.. Copy of order dated 4.3.91.
5. Annexure-R1	.. Copy of Government of India's decision below Rule 14 of CCS (Pension) Rules incorporating GIMF OM No.F12(1) E.V/68 dated 14.5.1968.