

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.395/11

...Monday, this the 13th day of February 2012

C O R A M :

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

A.V.Cicily, W/o.P.Augustine,
Group D (Retired),
Office of SDE, BSNL, Kothamangalam.
Residing at Aickarakudy House,
M.A.College P.O., Near Sub Station, Kothamangalam.Applicant

(By Advocate Mr.M.R.Hariraj)

V e r s u s

1. Bharath Sanchar Nigam Limited,
represented by the Chairman & Managing Director,
New Delhi.
2. Chief General Manager,
Tele Communication, Kerala Circle,
BSNL, Trivandrum.
3. General Manager,
Ernakulam SSA, Ernakulam.
4. Union of India represented by Secretary,
Ministry of Communication, New Delhi.Respondents

(By Advocates Mr.T.C.Krishna [R1-3] & Mr.George Joseph,ACGSC [R4])

This application having been heard on 7th February 2012 this
Tribunal on 13th February 2012 delivered the following :-

O R D E R

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

This is the third round of litigation. The applicant was initially engaged as Part time casual labourer in 1985. She had filed OAs No.248 of 1997 and 505 of 1999 for her temporary status but in view of the Apex Court decision in the case of Sakkubai (1997) 11 SCC 224, the same could not be successful. The applicant was, however, afforded full time casual

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employment w.e.f. 8.11.1999 vide Annexure A-5. Thereafter, she was absorbed as Group D employee w.e.f. 1.10.2000 treating her as a temporary status employee (presumably from the date of full time casual labour service), vide Annexure A-6 order dated 11.7.2001. The applicant retired on 31.1.2009 by which time, she had put in 8 years and 5 months' qualifying service. As the above period fell short of the minimum period of qualifying service required for pension, the applicant had submitted a detailed representation dated 20.10.2008 vide Annexure A-7 whereby, she had requested the C.M.D, BSNL to afford her notional temporary status as of 1990 so that 50% thereof would be treated as a qualifying service and the same when added to the aforesaid 8 years and 5 months' service would enable the applicant to earn minimum pension. However, as there was no response, the applicant moved OA No.727 of 2008 which was disposed of by Annexure A-8 order dated 19-11-2009 with permission to the applicant to move a supplementary representation and the respondents were directed to consider the same if the representation reached them within fifteen days and if not, the pending representation vide Annexure A-7 be disposed of. Order at Annexure A-8 refers. The applicant has thus filed a supplementary representation vide Annexure A-9 and the respondent through Annexure A-1 order dated 29.4.2010 rejected the same, holding that the applicant having less than 10 years of service, her request to relax the rules in accordance with the provisions contained in Rule 88 of the CCS(Pension) Rules, 1972 had been examined by the Secretary, DOT but since pension rules cannot be applied to part time employees, her case is rejected. It is against the aforesaid decision vide Annexure A-1 that this application has been filed seeking the following reliefs:-



supplementary w.e.f. 1.1.1998 vide Annexure A-2. Thereafter, the was
 suspended as Group D employee w.e.f. 1.10.2000 resulting per as a
 temporary status employee (presumably from the date of full time casual
 sport service), vide Annexure A-8 order dated 11.3.2001. The applicant
 lettered on 31.1.2002 by which time, the had but in 8 years and 6 months
 to board minimum ent to hold last board position to minimum service. As the spouse belongs
 a pensioned position for pension, the applicant had submitted a
 disability service request dated 20.10.2008 vide Annexure A-7 whereby, the
 had requested the C.W.D. Board of Sindh for disability status as
 to 1990 so that 50% thereof would be treated as a disability service and
 the same would apply to the starting 8 years and 6 months service
 would ensure the applicant to earn minimum pension. However, as there
 was no response, the applicant moved OA No.73 of 2008 which was
 disposed of by Annexure A-8 order dated 18.11.2008 with permission of
 the applicant of same as supplementary release and the
 respondents were directed to consider the same in the release
 issued from within fifteen days and if not, the pending release will be
 Annexure A-7 be disposed of. Order of Annexure A-8 letter. The
 applicant has thus filed a supplementary release vide Annexure A-9
 and the respondent through Annexure A-1 order dated 28.4.2010 rejected
 the same, providing that the applicant having less than 10 years of service
 per request of less than the rules in accordance with the provisions contained
 in Rule 88 of the CCS(Pension) Rules, 1972 had been examined by the
 Secretary, DOT but since pension rules cannot be applied to past time
 employee, per case is rejected. If in absence the starting decision vide
 Annexure A-1 this this application has been filed seeking the following:

Order:

.3.

1. To quash Annexure A-1.
2. To direct the respondents to invoke their power under Rule 88 of the CCS (Pension) Rules and grant minimum pension to the applicant with effect from 31.1.2009 and to draw and disburse the arrears.
3. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
4. Grant the costs of this Original Application.

2. Respondents have contested the O.A. Separately, reply had been furnished by Respondent No. 4 on the one hand and by other respondents on the other. In so far as reply statement by the fourth respondent is concerned, it has been stated that the applicant earlier compared her case with one Sarasu in which her part time employment had been converted into full time employment whereas, in the instant case, the Secretary, DOT ruled that such a conversion cannot be made in the case of the applicant. As part time employment does not qualify for being treated as qualifying service, the applicant is not entitled to any benefit. The other respondents who had filed a common reply, by and large reflected identical reason for rejecting the request of the applicant.

3. Counsel for the applicant submitted that the rejection of the case of the applicant is due to non consideration of the case of the applicant in proper perspective. It has been argued by the counsel that whereas the applicant's part time employment was converted into full time (albeit for a short period from November, 1999 to regularization in July, 2001) vide Annexure A-5, the same had not been duly considered by the respondents.



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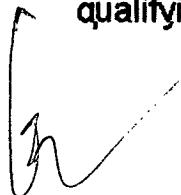
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.4.

4. Counsel for the respondents submitted that the case of the applicant had been dealt with at the level of Secretary DOT but her request could not be acceded to as no relaxation could be granted to the applicant.

5. Arguments were heard and documents perused. The applicant had been working as part time casual labourer since 1985. Of course, the period of such part time employment could not get her any benefit like grant of temporary status etc., and thus, rightly the period of part time casual labour service has been ignored. However, from 8.11.1999 the applicant's part time service had been converted as full time casual labour, vide Annexure A-5. Thus, till her services had been regularized on 11.7.2001, she had been working as a full time casual labourer and order dated 11.7.2001 indicates that she had been granted temporary status as well. Thus, if the said period from 8.11.1999 to 11.7.2001 amounting to 20 months be treated as temporary status service, the same would afford her 10 months' qualifying service, since half the temporary status service qualifies for the purpose of terminal benefits. In that event, the applicant completes a total of 9 years and 6 months. What is required is six months relaxation under the powers vested with the Secretary.

6. The Secretary did consider the case of the applicant but not with reference to the full time casual labour service and the extent of shortfall in qualifying service when he considered the case of the applicant was one year and seven months, while if the period of full time casual labourer service is considered as Temporary status and half of it considered as qualifying service, the shortfall in service reduces to only six months.



4. Counsel for the respondent submitted that the case of the applicant had been dealt with to the level of Secretary DOT but her letter could not be accessed as no legislation could be drawn up to the application.

5. Arguments were heard and documents presented. The applicant had been working as part time casual reporter since 1982. Of course, the period of such part time employment could not get her any benefit like draw to temporary status etc., and thus the period of part time casual reporter service has been ignored. However, from 1982 till application's part time services had been considered as full time casual reporter. Annexure A-2. Thus, all her services had been reckoned on 11.7.2001, since had been working as a full time casual reporter and older dated 11.7.2001 indicates that she had need of temporary status as well. Thus, if the said period from 8.11.8 to 11.7.2001 amounts to 20 months as lesser as temporary status service, the same would still be 10 months, although service since 1982 till the temporary status service has been for the purpose of temporary service. In that event, the applicant qualifies for the purpose of 10 years and 6 months. While it is intended the applicant completes a total of 8 years and 6 months.

legislation under the powers vested with the Secretary

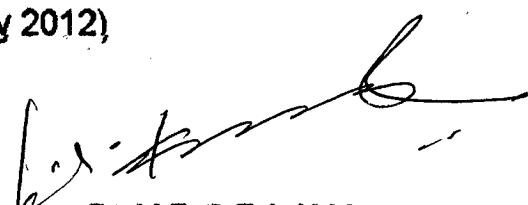
6. The Secretary did consider the case of the applicant but not with reference to the full time casual reporter and the existing legislation which was only drawn up when the considered the case of the applicant was due year and seven months, while it the period to full time casual reporter services is considered as temporary status and that of it considered as service is considered as temporary status and that of it considered as drawling service, the authority in service reduces to only six months.

.5.

7. It is exclusively for the Secretary DOT at his discretion to consider and if felt appropriate, to have the rules relaxed in respect of the applicant. The Tribunal cannot suggest the administration to relax the rules though it could suggest consideration of the case for relaxation. It leaves the same to the wisdom and full discretion of the Secretary to reconsider the case of the applicant keeping in view the extent of full time casual labour service from November 1999 to July, 2001 and decide the matter and communicate the same to the applicant, preferably within a period of four months from the date of receipt of a copy of this order. Registry may directly make available one certified copy of this order to the Secretary, DOT for his consideration.

8. The OA is thus disposed of with the above terms. No orders as to costs.

(Dated this the 13th day of February 2012)



Dr. K.B.S. RAJAN
JUDICIAL MEMBER

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