

**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 :-

ORDER

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

not be successful. The applicant was, however, afforded full time casual Court decision in the case of Sakubai (1981) 11 SCC 224, the same could of 1987 and 202 of 1988 for her temporary status but in view of the Apex engaged as part time casual employee in 1982. She had filed O.A. No. 248

This is the third round of litigation. The applicant was initially

HON. B. D. K. B. S. KALAN, JUDICIAL MEMBER

ORDER

Impudant on February 2012 delivered the following :-

This application having been heard on 17 February 2012 this

(By Advocates Mr. T. C. Krishna (P.T-2) & Mr. George Joseph ACCSC (P.T-1))

- | | | |
|---|--|-----------------|
| 4 | Ministry of Communication, New Delhi.
Union of India represented by Secretary. | ... Respondents |
| 3 | Emakulam SSA, Emakulam.
General Manager. | |
| 2 | B.S.I.G. Thiruvandur.
Tele Communication, Kerala Circle.
Chief General Manager. | |
| 1 | New Delhi.
represented by the Chairman & Managing Director.
Bharati Sanchar Nigam Limited. | |

Versus

(By Advocate Mr. M. B. Hanraji)

- | | |
|--|---------------|
| M.A. College P.O., Near Sub Station, Kothamangalam.
Residing at Aickaravady House,
Office of SDE, B.S.I.G., Kothamangalam.
Group D (Retired).
A.V. Ciciy, M.D. P. Augustine. | ... Applicant |
|--|---------------|

HON. B. D. K. B. S. KALAN, JUDICIAL MEMBER

C O R A M :

..... this the day of February 2012

O.A. No. 248/11

EMAKULAM BENCH
CENTRAL ADMINISTRATIVE TRIBUNAL

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:-



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

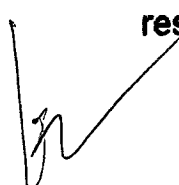
relates:-

.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.



respondents.

vide Annexure A-2, the same had not been duly considered by the short bench from November, 1988 to regularization in July, 2001. Applicant's part time employment was converted into full time (albeit for a proper perspective). It has been argued by the counsel that whereas the of the applicant is due to non consideration of the case of the applicant in

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3. Any other further relief or order as this Hon'ble Tribunal

draw and disputes the same.

pension to the applicant with effect from 31.1.2003 and to Rule 88 of the CCS (Pension) Rules and grant minimum

2. To direct the respondents to invoke their power under

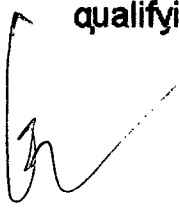
1. To pass Annexure A-1.

.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.



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.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 3rd day of February 2012)


Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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