

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1284/94

Transfer Application No.

Date of Decision 18.10.1995

Shri B.R.Jadhav

Petitioner/s

Shri S.S.Karkera

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri Suresh Kumar for Shri M.I.Sethna

Advocate for
the Respondents

J 12/5
✓
CORAM :

Hon'ble Shri. M.R.Kolhatkar, Member (A)

Hon'ble Shri.

(1) To be referred to the Reporter or not ? ✓

(2) Whether it needs to be circulated to
other Benches of the Tribunal ? X

M.R.Kolhatkar
(M.R.KOLHATKAR)

MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 1284/94

Shri B.R.Jadhav

... Applicant

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Member (A) Shri M.R.Kolhatkar

Appearance

Shri S.S.Karkera
Advocate
for the Applicant

Shri Suresh Kumar
for Shri M.I.Sethna
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 18.10.1995

(PER: M.R.Kolhatkar, Member (A))

In this application under Section 19 of the Administrative Tribunals Act, the facts are as below.
The applicant was engaged as Casual Labour^{er} in the office of Respondent No. 3 w.e.f. 1.1.1972 and was continuously working as Casual Labour^{er} upto 9.10.1989 till his regular appointment in Group 'D'. He worked for more than 240 days on full time basis in each year and he was paid the salary each month on the basis of daily wages from the contingent funds of the Respondents as admissible to the Casual Labourers. Extract from the Muster-Roll is annexed at Ex.'D' to the OA.

2. In terms of Supreme Court judgement in Daily Rated Casual Labour employed under P&T Department through Bhartiya Dak Tar Mazdoor Manch vs. Union of India & Ors. reported in (1987) 5 ATC 228 decided on 27.10.1987, the Department of P&T framed a scheme entitled "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme" issued on 17.11.1989 but brought into force w.e.f. 1.10.1989.

The applicant contends that although he was not conferred the temporary status as per the said scheme, he was regularly appointed in Group 'D' by order dated 29.9.1989 (Ex. 'E'). He worked as such ^{from 11.10.89} upto 31.7.1994 when he superannuated. His regular service therefore was for 4 years and 9 months. The applicant made a representation on 5.9.1994 pointing out that he was working in Co-Axial Station on the Muster since 1972. He pointed out that two of his co-workers were regularised but he was not so regularised. He was regularised only from 11.10.1989 and therefore his ^{casual} earlier service amounting to 17 years 9 months should be taken into account to the extent of 50% for grant of pensionary benefits. He was informed on 21.9.1994 and on 12.10.1994 (Ex. 'B' & Ex. 'A') that as per existing Pension Rules he is not entitled for any benefits of Pension because of only 4 years and 9 months qualifying Temporary service, and these communications the applicant has impugned. According to him, in terms of Govt. of India decision under CCS (Pension) Rules, Rule 14 dated 14.5.1968 at Annexure ^{if} / half the service put in by him prior to his regular appointment is required to be counted ^{for pension.} In view also the Circular dated 10.3.1986 which statutorily laid down that the staff paid from contingencies ^{if} subsequently appointed on regular basis will be entitled to count half the service paid from contingencies for the purpose of gratuity. Thus, the contention of the applicant is that the 50% of service of 17 years 9 months is required to be counted both for pension as well as for gratuity.

3. The respondents have opposed the prayers of the applicant. According to them the instructions under CCS (Pension) Rules, Rule 14 do not apply to the applicant because he has not been paid from the contingencies but was paid from the maintenance of systems, i.e. Apparatus and Plants Account which is not either from the Regular Establishment or Contingencies. So far as the scheme framed in terms of Supreme Court decision is concerned, ^{counsel} has pointed out that the scheme came into effect from 1.10.1989 onwards. The applicant was working ^{on} muster from 1.10.89 to 10.10.1989 and could at the most get the benefit in terms of ^{the} scheme for 10 days. The applicant, however, ^{was} ~~not~~ specifically covered nor he ^{prayed for this relief} ~~has~~ and therefore the question of grant of even this limited benefit does not arise. The counsel for the applicant has referred to Financial Handbook, Vol.I- General, ^{of} ~~Rule~~ 335/which reads as below :-

"335. Categories of employees, e.g. dhobis, tailors, syces, grass-cutters, etc., who do not work side by side with regular employees or with employees in work-charged establishments are treated as casual employees. These employees as also part-time employees of regular categories who are not brought on to regular establishments are treated as contingent staff and their pay and allowances are drawn on bills for contingent expenditure."

4. It is contended by the counsel for the applicant that the applicant can be paid either from regular establishment or from contingencies establishment and the so called Apparatus and Plants Account has really ~~to be~~ treated as contingencies ~~establishment~~ and in any case on instructions he has ~~stated~~ that he was not engaged in technical work and he was engaged in the work of sweeping and cleaning. The counsel for the applicant also relied on the case of Smt. N. Atchamma vs. The General

Manager & Ors. reported in 1994(1) ATJ 603. In para 6, ~~it is~~ stated that the applicant would be entitled to temporary status as soon as she completed 120 days as a Casual Gang Woman and for this purpose reliance is placed on Supreme Court judgement in Union of India vs. Basant Lal & Ors. JT 1992 (2) SC 459. According to the counsel for the Respondent, however, the case of the applicant is governed by the scheme covered by the P&T department which is a specific scheme applicable under the department in which the applicant was employed and the case law cited has no applicability.

5. In our view, the distinction between the Apparatus and Plants Account ~~being~~ separate from the contingencies does not appear to have any basis under rules and orders. According to us, the applicant has to be held to be paid from contingencies for the period from 1.1.1972 to 10.10.1989, if so he will be governed by instructions under CCS (Pension) Rules 14 ^{ly} particular instructions dated 10.3.1986 reproduced at page 34 of Swamy's compilation. It may be that this case is not specifically covered under the scheme framed by the P&T Department in terms of Supreme Court judgement but the background of the Supreme Court judgement was the ^{on made by the Dept.} distinction between casual labour who had put in different spells of work as casual labour. The Hon'ble Supreme Court held such distinction ^{to be untenable} and directed the department to frame a scheme. If therefore the applicant who became a regular employee is entitled to the benefits available to him under Pension Rules, he will be governed by the more beneficial ^{al} scheme which applies to his case.

6. We, therefore, allow the application and direct the department to count 50% of the service of the applicant for the period from 1.1.1972 to 10.10.1989 and add this service to regular service of 4 years and 9 months put in by him and on that basis decide the case of the applicant for grant of pension and other pensionary benefits under the rules and on this footing he should also be paid arrears of pension w.e.f. 1.8.1994. Action should be completed within four months from the communication of this order. No order as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

Order/Jud
to Appl
on

Order/Judgement (despatched
to Applicant/Respondent (s)
on 18/10/95

16/11/95

C.P. No. 28/96
Held for order
on 29/3/96

1213

Notices served to
Applicant/Respondents on
8.4.96

9/4/96

M.P. No. 34/1996
For extension of
Time, held on
2.5.96
244

Order/Judgement despatched
to Applicant/Respondent (s)
on 23/5/96

4/6/96

Dated: 29.3.96 (42)

Held Shri S.S. Karkera, Counsel
for the applicant.

Issue notice to the
respondents to file reply to C.P.
28/96.

Adjourned to 28.6.96.

M.R. Kollathkar
(M.R. Kollathkar)

m/p

(B.S. Hegde)
m(J)

(10) 2.5.1996

Held Shri S.S. Karkera
for the applicant and Shri Suresh
Kumar for Shri M.J. Sethna
for the respondents.

Respondents have filed M.P.
No. 34/1996 seeking extension of
time for implementing the order
of this Tribunal till 30/6/1996.
The reason given by the respondents
is that the matter is likely to
be taken up before the Supreme
Court by filing a S.L.P.

The reason given by the
respondents is not tenable
and the M.P. No. 34/1996 is
rejected.

The respondents are
hereby directed to make the
pension payment by 30/5/1996.

M.P. No. 34/1996 is
dismissed. Copy of the order
be given to parties.

(B.S. Hegde)
m(J)

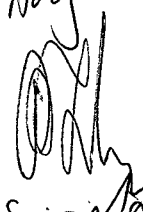
gement despatch
and respondent (s)

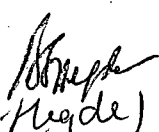
Dated: 28-6-96 (43)

Sh. S.S. Karkera, Counsel
for the applicant. Sh. Suresh
Kumar, Counsel for the
respondents.

Sh. Karkera seeks time
to verify the reply.

Adjourned to 23-8-96.


(P.P. Sivaraj)
M(A)


(B.S. Hegde)
M(J)

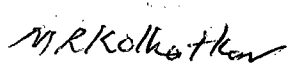
MS


(HH) 23.8.1996.

Heard Shri S.S. Karkera
for the applicant and Shri Suresh
Kumar for Shri M.J. Sethna,
counsel for the respondents.


Shri Karkera states
that the respondents have
paid all the dues to the
applicant and accordingly
the C.P. has become
infructuous.

C.P. dismissed
as infructuous.


(M.R. Kolhatkar)
M(A)


(B.S. Hegde)
M(J)

dt 23/8/96
Order/Judgement despatched
to Applicant/Respondent (s)
on 11/9/96


17/9/96