

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1173/97

Date of Decision: 2/12/98

Shri Babu Ramji Dhang Applicant.

Shri I.J. Naik. Advocate for
Applicant.

Versus

Union of India and others. Respondent(s)

Shri V.S. Masurkar. Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G. Vaidyanatha, Vice Chairman

Hon'ble Shri. D.S. Bawej, Member (A)

- (1) To be referred to the Reporter or not? *W*
- (2) Whether it needs to be circulated to *W* other Benches of the Tribunal?

R.G. Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO:6
PRESOT ROAD, BOMBAY:1

Original Application No. 1173/97.

Decembor
Pronounced the 2nd day of November 1998.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri D.S.Baweja, Member (A)

Babu Ramji Dhanu
Residing at Magelwad
P.O. Moti Daman

... Applicant.

By Advocate Shri I.J. Naik.

V/s.

The Executive Engineer
Public Works Department
Works Division No.1
Fort Area, Moti Daman.

The Superintending Engineer
Public Works Department
Fort Area, Moti Daman

The Administrator
Union Territory of
Daman and Diu,
Administrator's Secretariat,
Fort Area, Moti Daman.

Union of India through
The Secretary
Ministry of Home Affairs
Central Secretariat,
North Block,
New Delhi.

... Respondents.

By Advocate Shri V.S.Masurkar.

O R D E R

¶ Per Shri Justice R.G.Vaidyanatha, Vice Chairman ¶

This is an application filed under Section 19
of the Administrative Tribunals Act 1985. The
respondents have filed reply. We have heard Shri I.J.
Naik, the learned counsel for the applicant and
Shri V.S. Masurkar, the learned counsel for the
respondents.

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2. The applicant has approached this Tribunal praying for regularisation of service and for consequential benefits including pension etc.

3. The applicant's case is that he was appointed on Daily Wages basis in the Water Supply Department of the Public Works Department in the Union Territory of Daman and Diu, in the year 1969. He was working on Daily Wages basis for a period of 18 years till September 1987. With effect from 1.10.1987 the applicant continued in the service of the respondents on temporary Work Charge basis as per order of the respondents dated 29.9.1987. The applicant retired from service on attaining superannuation on 31.8.1996. In spite of having put in 28 years of service the applicant is not paid the pension. His representation came to be rejected by the respondents. The respondents are bound to regularise the service of the applicant in grade 'D' post in pursuance of the Office Memorandum dated 7.5.1985. In view of the law declared by the Supreme Court and other Courts and Tribunal, the applicant's service has to be regularised. Some other employees like the applicant has approached this Tribunal and obtained orders from this Tribunal for regularisation of their service. Therefore, the applicant prays that the respondents should be directed to regularise his service from the date of his continuous employment and to pay him regular salary and allowances, upto the date of his retirement. The respondents be directed to grant retirement benefits to the applicant as are granted to the temporary Government servant after counting his entire service as qualifying service and for other incidental reliefs and costs.

4. The respondents in their reply admitted that the applicant was engaged on temporary regular work Charge post from 1.10.1987 and he retired from service on 31.8.1996. The respondents have stated that the service rendered by the applicant cannot count for pension because one must have 10 years of regular service or more to claim for pension and the applicant is governed by C.P.W.D. Manual and not by other service rules. The applicant is not entitled to pension since he has not completed 10 years of service as mentioned in C.P.W.D. Manual Vol.III. Therefore it is stated that the applicant is not entitled to any other reliefs.

5. The learned counsel for the applicant contended that the applicant is entitled to be regularised from the date of initial appointment in 1969 and entitled to treat the entire 28 years of service as qualifying service for pension. Alternatively he submitted that atleast the applicant is entitled to treat the period from 1.10.1987 to the date of retirement as qualifying service in addition to 50% of service as Casual Labourer and entitled to pensionary benefits and also entitled to salary like regular employee at least from 1.10.1987. The learned counsel for the respondents refuted both the contentions and contended that the applicant's previous service of Daily Wage Labour cannot be counted as qualifying service for pension and even if the service from 1.10.1987 is taken into consideration it does not come under statutory requirement of minimum 10 years service for claiming pension. Hence it was argued that the applicant is not entitled to any ^{of the} reliefs.

6. The question is whether the applicant is entitled to the relief of regularisation of service and if so from what date and whether he is entitled to pension and other retirement benefits.

7. The learned counsel for the applicant submitted that since the applicant has worked for 28 years, 18 years as Daily Wages Labourer and 10 years as temporary employee, the applicant should be regularised from the date of initial appointment and on that basis the applicant should get retirement benefits. He has invited our attention to some decisions.

In 1990 (III) Current Service Journal page 1. Bhullar Nath Yadav and others V/s. Mayo Hall Sports Complex, Allahabad and others, Wherein the Allahabad High Court has held that Daily Wage Labourers working for three years and more are entitled to be absorbed in service and therefore directed the Government to prepare a Scheme for regularising and absorbing such labourers working on daily wages. But such question does not arise since the applicant has already retired from service. Now we cannot give a direction to the respondents to prepare a Scheme since it will be prospective in nature and may not help the applicant who has already retired from service.

In (1992) 20 ATC 190 (Karnataka State Private College Stop-Gap Lecturers Association V/s. State of Karnataka and others), The question was about the absorption of Teachers and the facts of the case have no bearing on the point under consideration.

In the case reported in 1997(3) SLJ 32 (Madhusudan Patra and Others v/s. Union of India and Others, of Calcutta Bench of this Tribunal held that the petitioners there in were working for 20 to 25 years against Group 'C' posts and therefore a direction was given to regularise the services of the petitioners and if adequate posts are not available they should create additional posts.

In all the above decisions the stress is that the services of the Casual Labourers or Daily Wages Labourers should not be ignored and steps to be taken to regularise their services.

8. In the present case admittedly the applicant has been confirmed as Beldar on temporary workcharged establishment in P.W.D. Sub-Division No.I, Nani Daman vide Annexure A-9 at page 40 of the paper book. Even the respondents have admitted in their reply that the applicant was engaged on temporary regular work in the workcharged post from 1.10.1987. The respondent's further defence is that since from the date of regularisation i.e. from 1.10.87 to the date of superannuation on 31.8.1996 falls short of 10 years, the applicant is not entitled to pensionary benefits.

The learned counsel for the respondents invited our attention to Rule 2 of CCS Pension Rules 1972 which excludes the persons of Causal and Daily rated employees from getting pension. It is true that the period of service as Daily Wages Labourer or Casual Labourer will not count for the purpose of pension under the normal rules.

Rule 14 of the Pension Rules provide for the qualifying service. In Swamy's Pension Compilation, 1993 Edition, at page 31, under item No.2, there is a reference to two Office Memorandum of Government of India dated 14.5.1968 and 10.3.1986. It speaks about claim of Daily rated Labourers or monthly rated Labourers and who are paid from contingencies and who are not on regular job. The Government of India under these two circulars has taken a decision that 50% of such service should be allowed to count towards pension at the time of absorption in regular employment.

Now we have seen that admittedly the applicant was taken as temporary Daily rated Labourer from 1.10.1987. Even temporary employee is entitled to pensionary benefits provided he has the required qualifying service as provided under Rule 10 of CCS (Temporary Service) Rule 1965. Rule 10 provides Gratuity and proposed pension on the basis of qualifying service of temporary service.

The learned counsel for the respondents invited our attention to CPWD Manual Volume III which pertains to Workcharged Establishment. It is 1972 edition. There must be subsequent amendment, but they are not placed before us. Even in this manual we find that the policy of the Government as could be seen from Rule 12.01 (page 34) in 1947-48 itself it was decided that those who have put in 10 years of service as on 1.7.1946 should be confirmed. Then in Rule 12.02 it is mentioned that on the basis of the recommendations of the Second Pay Commission Additional Permanent posts were created in the workcharged establishment. Then we find that even the temporary employees in the

Workcharged Establishment are entitled to pension and other retirement benefits.

Then we came to page 69 of the book, where it refers to confirmation of Workcharged Establishment retrospectively after retirement. That means the Rules contemplate~~s~~ that a temporary employee on the Workcharged Establishment can be confirmed in the post retrospectively even after retirement.

Then we came to Rule 24.08 where it is mentioned that one half of the service rendered prior to 1.7.1946 on Muster Rolls shall count for pension and gratuity. Though the period mentioned is prior to 1946, the Rules must have been subsequently amended. Then we came to Rule 24.11 where it is mentioned that Liberalised Pension Rules are extended to the Workcharged Staff and all orders applicable to the regular staff shall apply to the Workcharged staff.

We have already seen the Pension Rules where the decision is taken by the Government of India to treat half of service of Daily Wages Labourer as qualifying service for pension.

The objective of the Rules even in the CPWD Manual is that temporary Workcharged Staff should be regularised or absorbed after the lapse of certain time.

In the present case we find that the applicant ~~had~~ worked as Daily Wages Labourer for 18 years and then as a temporary Labourer in Workcharged Establishment for 9 years. In these circumstances it is a fit case that the

service of the applicant should be regularised at least from 1.10.1987, when he was given temporary appointment on the Workcharged Establishment.

9. From the above discussion we can hold that the applicant is entitled to pension even as temporary employee provided he has the ~~requisite~~ ^{regular} qualifying service. Since the applicant has been working for 9 years in regular post but on temporary basis, the applicant is entitled to regularisation or absorption in that post from 1.10.1987. The applicant is entitled to the benefit of half of previous 18 years service as Daily rated employee for the purpose of claiming retirement benefits. There is no allegation of mis-conduct against the applicant or about his work being not satisfactory. He has retired on attaining the age of superannuation. He is entitled to be regularly absorbed from 1.10.1987 and is entitled to count half of his earlier service for the purpose of pensionary benefit.

The applicant has approached this Tribunal about one year after his retirement. He did not approach this Tribunal for regularisation when he was in service. In the circumstances we feel that though the applicant is entitled to salary of regular employee from 1.10.1987, he is not entitled to any arrears of salary at this late stage. However his salary will have to be fixed as regular employee from 1.10.1987 with notional pay from time to time and then his pay shall be notionally fixed as on date of superannuation i.e. on 31.8.1996. Then for this period of 9 years half of his earlier service of 18 years, which comes to 9 years shall be added

for the purpose of pensionary benefits and as a whole 18 years of qualifying service shall be taken for the purpose of determining the retirement benefits to the applicant.

10. In the result the application is allowed partly as follows:

1. The respondents are directed to regularise and absorb the applicant as regular employee with effect from 1.10.87. On that basis the applicant's pay shall be notionally fixed on 1.10.87 and from time to time and then his notional pay shall be fixed as on date of superannuation i.e. on 31.8.96. However the applicant is not entitled to any arrears of monetary benefits ~~for this period~~.
2. After fixing the applicant's last pay notionaly as on 31.8.96 for the applicant's regular service from 1.10.87 to 31.8.96, his half service as daily wages labourer from 1969 to 30.9.87 shall be added for determining the qualifying service for the purpose of retirement benefits. Then on this basis ~~of~~ ^{of} said qualifying service the applicant shall be granted all retirement benefits as per rules from 1.9.1996.

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3. The respondents are granted four months from the date of receipt of this order to take necessary steps to comply with the order.
4. In the circumstances of the case there will be no order as to costs.

~~D.S. Baweja~~
(D.S. Baweja)
Member (A)

~~R.G. Vaidyanatha~~
(R.G. Vaidyanatha)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

REVIEW PETITION NO.04/1999
IN
ORIGINAL APPLICATION NO.1173/97.

THURSDAY, THIS THE 14TH DAY OF JANUARY, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

Babu Ramji Dhanu.Applicant.

V/s.

The Administration of Daman, Diu & Ors.Respondents.

:ORDER ON REVIEW PETITION BY CIRCULATION :

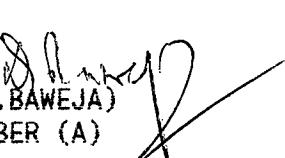
(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is a Review Petition filed by the Respondents to the O.A. against our Judgment dt. 21.12.1998. We have perused the Review Petition and the case file.

2. One of the points taken in the Review Petition is that the C.C.S. (Temporary Service) Rules, 1965 do not apply to persons employed in Work Charge Establishments. After considering the facts and circumstances of the case and having regard to the fact that the applicant had put in about 9 years service as a temporary employee and about 18 years service as a daily wages Labourer, we have given direction that applicant should be absorbed as a regular employee w.e.f. 1.10.1987. We have pointed out that even under the CPWD Manual pertaining to Work Charge Establishment, there is a provision for regularisation or absorption of an employee retrospectively even after retirement. Therefore, we have given a direction for regularising the services of the applicant from a retrospective date. When once the applicant is treated as a regular employee as directed in our order then automatically CCS(Pension) Rules will get attracted. Therefore, the applicant will be entitled to add 50% of his service as a Casual Labourer to the regular service from 1.10.1987 for the purpose of qualifying service to get pension.

3. In our view, there is no error apparent on record and there is no discovery of any new fact within the meaning of Order 47 Rule 1 of CPC. We have considered the contentions on both sides and perused the relevant rules and accordingly necessary directions are given. In our view, the Review Petition does not come within the scope of Order 47 Rule 1 CPC. We therefore, find that there is no merit in the Review Petition.

4. In the result, the Review Petition is rejected by way of circulation.


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE-CHAIRMAN

B.