

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.1135 of 1997

DATE OF ORDER: 30th SEPTEMBER, 1998

BETWEEN:

K.RAMAKRISHNA

.. APPLICANT

AND

1. Union of India rep. by the
Secretary, Ministry of Labour,
New Delhi 110 001,
2. The Chief Labour Commissioner (C),
Shramshakti Bhavan,
Rafi Marg,
New Delhi 110 001.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.WILLIAM BURRA

COUNSEL FOR THE RESPONDENTS: Mr.K.RAMULU, ADDL.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, Member (Judl.)

JUDGEMENT

(ORDER PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

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The learned counsel for the applicant Mr. William Burra has submitted written arguments which are taken on record. Heard Ms. Shama for Mr. K. Ramulu, learned standing counsel for the respondents.

2. The brief facts of this case are as follows:-

The applicant in this OA was originally appointed as Investigator Gr. II in the office of the Central Wage Board for Cotton Textile and Sugar Industries, Himayatnagar, Hyderabad on 1.2.65. He worked in that capacity till 17.11.68. Later he was selected through UPSC as Labour Enforcement Officer (Central) (LEO for short) and as such appointed on 18.11.68 and was posted at Chitragudurga and other various places in that capacity till 30.12.81. Later he was selected through UPSC as Assistant Labour Commissioner (Central) (ALC for short) under the Assistant Labour Commissioner Recruitment Rules, 1958 (Annexure A-3 at page 17 to the OA). While he was functioning as ALC, the Central Labour Service was constituted by the respondents with effect from 3.2.87 merging the cadres of ALC (Central), Assistant Welfare Commissioners and Labour Officers (Central Pool) etc. The formation of the Central Labour Service, merging ^{the} three categories was issued by the order dated 3.2.87 (Annexure A-4 at page 20 to the OA). The officers of the three categories mentioned above which were merged, were recruited under ^{the} different Recruitment Rules.

3. As per the proviso (1) to Rule 9 of the Central Labour Service Rules 1987 "Assistant Labour Commissioner (Central), Labour Officers and Assistant Welfare Commissioners shall be equated, but, however all ^{the} Assistant Labour Commissioners (Central) holding such posts on or before 31.12.72 shall be enblock seniors to Labour Officers". As per the proviso to Rule 4 of the said rules,

the above three posts as mentioned in Schedule (1) to that rule, shall be interchangeable with one another. That means ALC can be posted as Labour Officer (Central Pool) and vice-versa. This holds good for the Officers who were posted as ALC earlier.

4. The applicant was a direct recruit to the post of ALC before formation of the Central Labour Service and he was on deputation to the Central Ware-Housing Corporation from 1.7.85 to 28.9.86 as Industrial Relations Officer and posted at Madras. The applicant was promoted as Regional Labour Commissioner (Central) and posted at Chandigarh on 29.9.86 and he continued there till 4.5.89, after formation of the Central Labour Service. Later he was posted as Senior Labour Officer, CPWD at Madras which is equivalent to the post of Regional Labour Commissioner (Central) as can be seen from Annexure A-5 at page 27 to the OA. The applicant worked in the capacity of Senior Labour Officer, CPWD at Madras till 31.10.91. Later he was posted as Regional Labour Commissioner (Central) Madras on 1.11.91 and worked as such till 27.4.94. Thereafter, he was promoted as Deputy Chief Labour Commissioner (Central) and was posted at Bangalore on 28.4.94. He ^{was} had superannuated on 30.6.97 from that post.

5. The applicant submits that as the posts of Labour Officer (Central Pool), Assistant Labour Commissioners and Assistant Welfare Commissioners have been equated and have become interchangeable and transferable from one place to another, the benefit of added years of service for the purpose of pension ^{as} was provided under the Labour Officers (Central Pool) Recruitment and ~~Conditions of Service Rules~~

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Conditions of Service Rules, 1951 (Annexure A-6 at page 28 to the OA) is applicable. ^{to him also.} The amended rule as per OM NO.A-38012/1/88-CLS-I, dated 29.5.89 (Annexure A-7 at page 36 to the OA) is applicable to him even though he was directly recruited as ALC. The above, in his opinion, is in order as he had worked as Senior Labour Officer (Central Pool) from 5.5.89 to 31.10.91. As the applicant retired from service with the qualifying service of 32 years and five months by the added service as stated by him above, he will get 33 years of service for giving him full retiral benefits. He had submitted ^a representation to the higher authorities. It was replied by the impugned order dated 13.1.97 (Page 11 to the OA) rejecting his request for grant of the benefit of added years of service as provided for under Rule 30(1) of CCS (Pension) Rules, 1972 on par with Senior Labour Officers. Once again, the Ministry of Labour had also confirmed the order dt. 13.1.97, by the order No.Adm.I/4(8)/96, dated 9.5.97 (Page 12 to the OA).

6. This OA is filed praying for a direction to the respondents to extend the benefit of added years of service for the purpose of pension as per Rule 30(1) of the CCS (Pension) Rules 1972 on par with the Senior Labour Officers as he had also worked as Senior Labour Officer from May 1989 to 31.10.91 and on that basis refix his pension and other pensionary benefits with all consequential benefits.

7. The main contention of the applicant in this OA is that after merger of the three cadres, namely, Assistant Labour Officers, Assistant Welfare Commissioners and Labour Officers (Central Pool), the benefits available to the

Labour Officers are also applicable to him even though he was recruited as Assistant Labour Officer in terms of the Recruitment Rules dated 25.4.59 (Annexure A-3 at page 17 to the OA) as the posts are interchangeable due to formation of the Central Labour Service Rules 1987. He also submits that as he had worked as Labour Officer from May 1989 to 31.10.91, he should be treated as Labour Officer entitled for added years of service which were given to Labour Officers (Central Pool) who were recruited as per the Recruitment Rules of Labour Officer (Central Pool) Recruitment and Conditions of Service Rules, 1951 (Annexure A-6 at page 28 to the OA). In case, the added years of service is not given in his favour, it will be a case of discrimination. In support of the above contention, he relies on the judgment of this Tribunal in OA 750/95 decided on 24.1.96 (CCS Reddy v. Union of India rep. by the Secretary, Ministry of Labour) and also the subsequent judgment of this Tribunal in OA 1130/97 decided on 22.8.97 (A.R.Naidu v. Secretary to Govt. of India, Ministry of Labour) and the subsequent MA and RA in that OA decided on 1.9.98. He also contends that the Supreme Court judgment in Civil Appeal No.503/93 dated 28.10.93 between Union of India and another v. S.Dharmalingam will speak for his case.

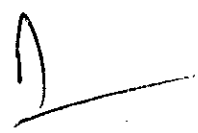
6. A reply has been filed in this OA. The main contention of the respondents is that the applicant was recruited to a service earlier to the formation of the Central Labour Service, 1987 which do not provide ^{for} the added weightage of years for the purpose of pension and pensionary benefits. Since it was not there, the applicant

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cannot claim the same even though he was inducted into the combined Central Labour Service 1987. The Combined Labour Service 1987 does not provide for the added years of service for pension and pensionary benefits. Hence he cannot get any relief of added years of service by filing this OA. The rules of various categories earlier to the formation of the Central Labour Service and the rules in regard to the Central Labour Service, 1987 have been examined by the respondents and on that basis, they submit that the applicant is not entitled for the same. They rely on the judgment of the Principal Bench of this Tribunal in OA 443/97 (Shri R.C.Agarwal v. Union of India) decided on 25.5.98 to contend that the applicant therein who was similarly placed to the applicant in this OA was ~~refused~~^{granted} the added years of service for the purpose of fixation of pension and pensionary benefits and that will be equally applicable in this case also.

9. Before analysing the contentions, it is essential to note down the various relevant Recruitment Rules for the post of ALC and for the post of Labour Officer (Central Pool) earlier to formation of the Central Labour Service, 1987.

10. The applicant was initially appointed as Labour Enforcement Officer (Central), a Group-B post, as a direct recruit through the Union Public Service Commission on 18.11.68. The relevant portion of the Recruitment Rules known as Labour Enforcement (Central) Recruitent Rules are detailed below:-



(i) The age limit for direct recruitment not exceeding 30 years;

(ii) Educational and other qualifications:-

Essential: 1. Degree in Commerce or degree with Economics, Sociology, Social work as one of the subjects from a recognised University or equivalent.

2. Post Graduate Degree-Diploma in Law, Labour relations, Labour Welfare, Labour Laws, Sociology, Commerce, Social Work/Welfare/Business Admn. Personnel Management or any other allied subject relating to Labour from a recognised University/Institute or equivalent.

11. The above rules ~~does~~ not provide any provision of benefit of added years of service as stipulated under Rule 30 of the CCS (Pension) Rules.

12. The applicant was later appointed as ALC (C), a Group 'A' Gazetted post on regular basis with effect from 31.12.81 following the Recruitment Rules known as ^{the} Assistant Labour Commissioner (C) Recruitment Rules, 1958. The relevant rules of the said Recruitment Rules, 1958 are as follows:-

(i) 50% of the posts by promotion by selection from Labour Enforcement Officer (C) who have completed not

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less than 3 years of service and rest by direct recruitment;

(ii) The age requirement is between 25 to 35 years;

(iii) The qualifications:-

1. Degree of a recognised Univeristy preferably with Economics or Social Sciences;

(ii) Degree in Law of a recognised Univeristy or Master's or equivalent, Honours Degree in Econoics or any other Social Sciences of a recognised University;

(iii) Diploma of a recognised Institution in Labour Welfare or Labour Laws;

(iv) 5 years experience in Labour problems in responsible capacity in a Government Establishments or in any Industry or in a Trade Union organisation.

13. The above Recruitment Rule of ALC (C) also does not provide for the benefit of added years of service as stipulated under the CCS (Pension) Rules, under Rule 30.

14. The applicant was thereafter appointed as Regional Labour Commissioner with effect from 18.6.84 following the Recruitment Rules of that post which also do



not have the provision of Rule 30 of the CCS (Pension) Rules for giving him the added years of service. The posts of ALC, Assistant Welfare Commissioner and Labour Officer (Central Pool) were combined and Central Labour Service Rules were formed. The salient features of Central Labour Service Rules, 1987 are as under:--

(a) The service consists of five grades;

(b) The lowest rung of the service is Grade-V of CLS in the pre-revised pay scale of Rs.2200-4000;

(c) Grade-V posts are to be filled by promotion and direct recruitment in the ratio of 33 1/3% and 66 2/3% respectively;

(d) The Recruitment Rules of various services included in the Central Labour Service were repealed by Rule 17 of CLS Rules, 1987.

15. However, by the OM No.A-38012/1/88-CLS-I dated 27.5.89 (Annexure A-7 at page 36 to the OA), it was stated that the benefit of added years of service under Rule 30 of the CCS (Pension) Rules, 1972 would be admissible to persons appointed to the service in accordance with the then Labour Officers (Central Pool) Recruitment and Conditions of Service Rules, 1951 in terms of Rule 8(2) thereof which was inserted in the said rules by way of amendment vide Ministry's notification dated 13.11.80.

16. The Recruitment Rules for Labour Officers

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(Central Pool) Recruitment and Conditions of Service Rules, 1951 are enclosed as Annexure A-6 at page 28 to the reply. The relevant portion of the said rules are as follows:-

(i) Appointment to the post of Labour Officers other than Senior Labour Officers shall be made by direct recruitment through Union Public Service Commission;

(ii) Essential Qualifications required are dealt in Rule 5 of the said rules which reads as below:-

"(1) A Bachelor's Degree in Arts of recognised University or equivalent with Economics or Commerce or Sociology as one of the subjects;

(2) A post-graduate Degree or diploma in social work or Labour Welfare or Industrial Relations or Personnel Management or in any other allied subject, or a recognised University or equivalent.

(3) Two years' experience of Labour Welfare work, Industrial relations or Personnel Management or in any Organisation employing substantial Labour force."

(iii) The maximum age limit is 40 years and below (relaxable for Govt. Servants).

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(iv) The rule 8(2) of the said rules reads as follows:-

"The benefit of added years of service under Rule 30 of the Central Civil Services (Pension) Rules, 1972 will ^{be} admissible to the Labour Officers of the Central Pool."

17. Having seen the Recruitement Rules of Labour Officers of Central Pool Recruitment and Conditions of Service Rules, 1951, ALC Recruitment Rules, 1958 and the Rules of Central Labour Service of 1987, Rule 30 of the CCS (Pension) Rules is essential to be read. This rule reads as below:-

"30. Addition to qualifying service in special circumstances:

(1) A Governement Servant who retires from a service or post after the 31st March, 1960, shall be eligible to add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one-fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded twenty-five years or a period of five years, whichever is less, if the srvice or post to which

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the govt. servant is appointed is one-

(a) for which post-graduate research, or specialist qualification or experience in scientific, technological or professional fields, is essential; and

(b) to which candidates of more than twenty five years of age are normally recruited;

Provided that this concession shall not be admissible to a govt. servant unless his actual qualifying service at the time he quits Govt. service is not less than ten years;

Provided further that this concession shall be admissible only if the recruitment rules in respect of the said service or post contain a specific provision that the service or post is one which carries the benefit of this rule.

Provided also that this concession shall not be admissible to those who are eligible for counting their past service for superannuation pension unless they opt before the date of their retirement, which option once



exercised shall be final, for the weightage of service under this sub-rule forgoing the counting of the past service.

(2) A government servant who is recruited at the age of thirty-five years or more, may, within a period of three months from the date of his appointment, elect to forgo his right to pension whereupon he shall be eligible to subscribe to a Contributory Provident Fund.

(3) The option referred to in sub-rule (2) once exercised, shall be final."

18. Having perused the rules, following position emerges:-

The applicant was appointed as Labour Enforcement Officer and thereafter he was appointed as ALC be it by promotion or by direct recruitment. In both ^{cases in} the rules it is seen that the maximum age limit is 35 years on the first day of January of the year in which Commission invites applications for promotion as ALC. Whereas in the case of Labour Officers (Central Pool) the maximum age limit is fixed as 40. Hence, an officer ^{appointed} ~~posted~~ to the post of Labour Officer (Central Pool) earlier to the formation of the Central Labour Service Rules may be more aged than an

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officer ^{appointed} ~~posted~~ as ALC. If so, a Labour Officer (Central Pool) posted earlier to the formation of the Central Labour Service Rules will have much less qualifying service at the time of superannuation and that will reduce his pension and pensionary benefits considerably. In view of the above, that provision has been made in the recruitment Rules of Central Pool Labour Officers Recruitment and Service Conditions Rules, 1951 to give the added years of service under Rule 30 of the CCS (Pension) Rules, 1972 as can be seen from the sub-rule 8 of Rule 12 of that Service Rules which is extracted above. But in the case of LEO and ALC, the added years of service was not given as they can be recruited at a much younger age and their qualifying service will also be much higher even if they are appointed as per maximum eligible age conditions. Hence it has to be held that the added years of service was given to the Labour Officers (Central Pool) as otherwise they ^{would} ~~will~~ be put to serious financial difficulties after retirement. Such acute financial difficulties may not be experienced by the other cadre officers such as ALCs etc. The applicant having been appointed to the post of Labour Enforcement Officer and ALC, those rules do not provide for added years of service. Hence, he cannot demand as a matter of right to give him that added years of service because of the three services were combined by ^{the} ~~the~~ CLS Rules, 1987.

19. Further, rule 30 of the CCS (Pension) Rules, clearly indicates that the added years of service can be given only if it is provided for under the Recruitment Rules. When it is not provided for in the Recruitment Rules of ALC to which the applicant belongs earlier to formation of CLS Service Rules, ¹⁹⁸⁷ ~~he~~ he cannot demand the added years of service as a matter of right.

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20. There is no such provision in the CLS Rules 1987 after merger for grant of added years of service. But in terms of OM dated 27.5.89 (Annexure A-7 at page 36 to the OA), the Labour Officers (Central Pool) are to be given the benefit of added years of service as they joined a service earlier to formation of the Central Labour Service Rules where provision existed for grant of added years of service.

21. A benefit enjoyed by an officer cannot be revised to his detriment by the subsequent Recruitment Rules. In the case of Labour Officers (Central Pool) earlier to formation of CLS Rules, 1987, the benefit of added years of service was available to them. Hence the combination of three services by CLS Rules cannot deprive them of earlier benefit available to them. If it is taken away, it will be treated as a irregular deprivation in the case of Labour Officers (CP) who were recruited earlier to ^{the} CLS Rules, 1987. There was no provision in regard to the added years of service for pension and pensionary benefits in case of ALCs. Hence ^{the} officers recruited as ALC are not deprived of any benefit. Had they continued as ALC without merger of the services, they ^{could have} ~~cannot~~ claim the added years of service for pension and pensionary benefits. Hence they lost nothing by combining of the services. Though the applicant submits that the post of ALC and Labour Officers are interchangeable, that will not give him any right to get the added years of service for pension and pensionary benefits as the interchangeability was effected under ^{the} CLS Rules, 1987 which provides no benefit of added years of service to all earlier. However, the added years of

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service was confined to Labour Officers ^{only} whose services were integrated by ^{the} CLS Service Rules, 1987 as they were enjoying that benefit of added years of service earlier to formation of ^{the} CLS Services Rules ¹⁹⁸⁷ and hence they cannot be deprived of that benefit because of the formation of the combining of services called CLS Service Rules, 1987.

22. The applicant submits that as he ^{had} worked as Labour Officer from May 1989 to 31.10.91, he is entitled for getting the added years of service. But he worked as Labour Officer after the combination under CLS rules. That the CLS rules did not provide for any added years of service for ALCs who had joined as ALCs earlier to formation of that combined service. The applicant cannot, as a matter of right, demand parity with the Labour Officers just because he was posted as Labour Officer after 1987. Had he enjoyed that benefit earlier to formation of CLS Rules, 1987, he ^{could} ~~can~~ not be deprived of the added years of service. As he had not enjoyed that benefit earlier, he is not eligible for that benefit even though he was posted as Labour Officer (Central) after formation of CLS Rules, 1987.

23. The proviso (2) to sub-rule (1) to Rule 30 of CCS (Pension) Rules clearly states that the concession of added years of service shall be admissible only if the Recruitment Rules in respect of the said service or post contain a specific provision that the service or post is one which carries the benefit of that rule. As the Recruitment Rules of service to which the applicant joined earlier to formation of CLS Rules do not contain any

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concession of added years of service, the applicant cannot demand that benefit as a matter of right. But he ^{submits} says that the said proviso was added later and hence he is entitled for the same. The rule as in force at the time of retirement is the criterion for deciding the qualifying service. On the ground that it was not available at the time of his joining as ALC, he cannot demand that he should be given the added years of service as qualifying service. But as the proviso to sub-rule (1) to Rule 30 was available at the time of his retirement, he cannot say that the proviso is not applicable to him as that proviso was inserted later after he joined as ALC. In view of what is stated above, we are of the opinion that the contention as raised by the applicant as above is not sustainable.

24. The applicant relies on the judgement of this tribunal in CCS Reddy's case cited supra. He submits that Mr.CCS Reddy also joined as Labour Enforcement Officer. Later he was taken over as the Assistant Labour Commissioner and when he retired, he was not given the concession of added years of service. But the judgement in that OA had directed the respondents to give him the concession. Hence that judgment is equally applicable to him also.

25. This point was considered by the Principal Bench of the Tribunal in Agarwal's case cited supra and that submission was rejected for the reasons stated therein. We do not see any reason to adhere to the judgement in CRS Reddy's case as certain information had not been brought to the notice of the Bench when Reddy's case was ^{decided} disposed.



When full facts are not brought to the notice of the Bench, that judgement cannot be treated as a judgment in "rem". It has to be held that the judgment is in "personam". Hence the applicant cannot rely on the judgment of Reddy's case to sustain his case.

26. The applicant also relies on the subsequent judgment of this Tribunal in OA 1130/97 and the review petition in that OA. A study of those two judgments clearly indicates that the Bench just followed the observations of the judgement in Reddy's case and granted the benefit. That judgment does not scrutinise the full facts of that case as it was disposed of at the admission stage itself. Hence reliance on the subsequent judgment of this Tribunal also do not give any benefit to the applicant herein.


27. The applicant relies on the judgment of the Apex Court in S.Dharmalingam's case cited supra. That was the case where the Apex Court decided the applicability of Rule 30 of CCS (Pension) Rules to an employee who had already in Govt. service and he was allowed to count his past service as qualifying service. The plea of the respondents therein that such an interpretation of the rules [Rule 30 and 3(q), 13 and 26(ii)] will confer double benefit was rejected by the Apex Court. In that case, it was held that the addition to qualifying service under sub-rule (1) of rule 30 is available to every Govt. servant who was appointed to a post or service referred in sub-rule (1) of rule 30 after 31.3.60 irrespective of the fact that whether he was already in Govt. service or was joining Govt. service for

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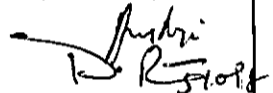
the first time, at the time of appointment to the service or post referred to in Rule 30. What was allowed was the applicability of the rules and not on violation of the provisions appended to the rule. Hence that judgment also may not come to the rescue of the applicant.

28. In view of the above discussions, we find that there is no merit in this OA and hence the OA is liable only to be dismissed. Accordingly it is dismissed. No order as to costs.


(B. S. JAI PARAMESHWAR)
MEMBER (JUDL.)

30.9.98


(R. RANGARAJAN)
MEMBER (ADMN.)


R. Rangarajan

DATED: 30th September, 1998

vsn

OA.1135/97

Copy to:-

1. The Secretary, Ministry of Labour, New Delhi.
2. The Chief Labour Commissioner (C), Shramshakti Bhavan, Rafi Marg, New Delhi.
3. One copy to Mr. William Burra, Advocate, CAT., Hyd.
4. One copy to Mr. K. Ramulu, Addl. CGSC., CAT., Hyd.
5. One copy to D.R.(A), CAT., Hyd.
6. One duplicate copy.
7. Reporters copies 7 + 6 = 14.

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22/10/98

II COURT

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : M(A)

AND

THE HON'BLE SHRI S.S. JAI PARAMESHWAR :
M(J)

DATED: 30/9/98

ORDER/JUDGMENT

M.A./T.A/C.P.NO.

in

G.A.NO.

1135/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLKR

