

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH  
HYDERABAD

C.A. NO. 1130 OF 1997

DATE OF DECISION: 16-2-1999

A. R. NAIDU

PETITIONER(S)

MR. C. SURYANARAYANA

ADVOCATE FOR THE  
PETITIONER(S)

VERSUS

The Secretary to Govt. of India, RESPONDENT(S)  
Ministry of Labour, New Delhi and Anr.

MR. V. BHIMANNA, ACGSC ADVOCATE FOR THE  
RESPONDENT(S)  
THE HON'BLE MR. JUSTICE D.H. NASIR, VICE-CHAIRMAN  
THE HON'BLE MR. H. RAJENDRA PRASAD, MEMBER(ADMN.)

1. Whether Reporters of local papers may be Yes allowed to see the Judgement?
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the No fair copy of the Judgement?
4. Whether the Judgement is to be circulated Yes to the other Benches

JUDGEMENT DELIVERED BY HON'BLE MR. JUSTICE D.H. NASIR, V.C.

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VICE-CHAIRMAN.

CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH :  
AT HYDERABAD.

O.A. No.1130 of 1997.

DATE OF ORDER: 16.02.1999

BETWEEN :

A. R. Naidu, /o Dr.A..Rao,  
aged about 64 year,  
Central Labour Service (Retd.)  
No.1-7-139/72 A, SRK Nagar,  
P.O. Muheerabad,  
Hyderabad -500 020.

.. APPLICANT

A N D

1. The Secretary to Government  
of India, Ministry of Labour,  
Shram Sakti Bhavan,  
Rafi Marg, New Delhi-11- 001.

2. Chief Labour Commissioner(Central)  
Government of India,  
Ministry of Labour,  
Shram Sakti Bhavan,  
Rafi Marg,  
New Delhi - 110 001.

.. RESPONDENTS.

Counel for Applicant : Mr. C.Suryanarayana

Counsel for Respondents : Mr. V.Bhimanna, ACGSC.

CORAM :

THE HONOURABLE MR. JUSTICE D.H. NASIR, VICE-CHAIRMAN

THE HONOURABLE MR.H. RAJENDRA PRASAD, MEMBER(ADMN.)

O R D E R.

(Per Hon'ble Mr.Justice D.H. Nasir, Vice-Chairman)

1. The respondent authorities are sought to be directed to give the benefit of the added years of service in accordance with Rule 30(1) of the Central Civil Services (Pension) Rules,1972 ('Pension Rules' for short),in this O.A.

2. The applicant initially joined Government of Madhya Pradesh service on 13.9.1960. He was subsequently selected by the Union Public Service Commission ('UPSC' for short) and joined as Labour Enforcement Officer (C) on 3.1.1966. He was selected by a duly constituted DPC for the post of Assistant Labour Commissioner (Central) and he took up this assignment on 11.9.1973. While working as Assistant Labour Commissioner (C) the applicant worked as Welfare Commissioner, Mica Mines Welfare Organisation, A.P. Kalichedu from 29.5.1975 to 3.8.1977, as Assistant Welfare Commissioner from 16.8.1977 to 22.4.1983, as Deputy Welfare Commissioner from 27.4.1983 to 30.11.1983 and lastly, as Welfare Commissioner for Andhra Pradesh, Tamil Nadu and Pondichery with headquarters at Hyderabad from 29.12.1983 to 2.2.1987.

3. The Central Labour Service ('CLS' for short) was constituted vide notification issued by the first respondent bearing No.GSC-75(E) dated 3.2.1987. Much before his appointment as Assistant Labour Commissioner (C) on 11.9.1973 the applicant had been selected by the UPSC and the second respondent offered an appointment dated 6.4.1973 which clearly establishes, according to the applicant, that he possessed the relevant professional qualifications and experience like LO (CP).He was thus fulfilling the conditions laid down in Clauses (a) & (b)

of sub-rule (1) of Rule 30 of the Pension Rules. When he retired on 31.1.1991 he had put in 30 years 4 months and 12 days as qualifying service for the purpose of pension, thus falling short by a few years for drawing full pension as per rules. According to the applicant, under Rule 8(2) of the Labour Officers' (Central Pool) Recruitment and Conditions of Service Rules, 1951 the benefit of added years of service according to Rule 30 of the Pension Rules, 1972 were admissible to LO (CP). A clarification was also issued by the first respondent vide OM No. A/38012/1/88/CLS I dated 29.5.1989 that the benefit of added years of service under Rule 30 of the Pension Rules was admissible to LO (CP) of the Central Labour Service in accordance with the 'then' L.O. (C.P.) Recruitment and Conditions of Service Rules, 1951. As per the above OM of the first respondent, the LO (CP) were continuing to get the benefit of added years of service as per Rule 30(1) of the Pension Rules despite the fact that as per Rule 17 of the CLS Rules, 1987, the LO (CP) Recruitment and Conditions of Services, 1951 had been repealed.

4. All the three posts, namely, Assistant Labour Commissioner (C), Assistant Labour Officer (CP) and Assistant Welfare Commissioner had been equated and were interchangeable as per Rules 4 and 9 of the CLS Rules, 1987 and therefore, according to the applicant, he was entitled to the benefit of added years of service under Rule 30(1). However, in spite of representation dated 18.9.1996 made by the applicant, no action had been taken to give any reply even after a lapse of more than six months. Non-extension of such benefit amounted to discrimination and violation of the principles of equality as enshrined under Articles 14 and 16 of the Constitution of India, according

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to the applicant; and therefore, it became necessary for him to approach this Tribunal.

5. The claim advanced by the applicant is opposed by the respondents on various grounds as follows :

According to the provisions of Labour Enforcement(Central) Recruitment Rules,1958, a degree in Economics/Sociology/ Social Work was the minimum qualification required and that the candidate should not have crossed 30 years of age. The Rules, according to the respondents, did not provide for any benefit of added years of service. The applicant did not join as Labour Officer (Central Pool) and continued only as Assistant Labour Commissioner (C). The essential qualification prescribed for the post of Assistant Labour Commissioner (Central) were as under :-

QUALIFICATIONS :

Essential :-

- (i) Degree of a recognised University preferably with Economics or Social Sciences.
- (ii) Degree in Law of a recognised University or Master(s) or equivalent Honours Degree in Economics or any other Social Sciences of a recognised University.
- (iii) Diploma of a recognised Institute in Labour Welfare or Labour Laws.
- (iv) 5 years experience in Labour problems in a responsible capacity in a Government Establishment or in any Industry or in a Trade Union Organisation.

(b) Desirable :-

Working knowledge of a regional language other than his mother tongue.

7. Further according to the respondents, the Central Labour Service was constituted by integrating all

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Group 'A' posts of three services - Labour Officers (Central Pool), Central Industrial Relations Machinery and Welfare Organisation of the Ministry of Labour and the Recruitment Rules of various services included in the Central Labour Service were repealed by Rule 17 of CLS Rules, 1987.

7. The letter dated 25th April, 1975 (Annexure-A.6 to the OA) issued by the office of the Chief Labour Commissioner (Central) taking into consideration the representation made by the applicant for counting of service rendered by him under the State Government for the purpose of pension under the Central Government, confirmed that A.R.Naidu (Applicant), Assistant Labour Commissioner (Central) was appointed as Labour Enforcement Officer (Central) with effect from 3.1.1966 through UPSC and that there was no break in service rendered by him as Lecturer and the Labour Enforcement Officer (Central). Therefore, his service may be counted for the purpose of pension under the Central Government. In 1989 the Under Secretary, Ministry of Labour, Government of India by his letter dated 29.5.1989 reiterated and confirmed that the benefit of added years of service under Rule 30 of the Central Civil Services (Pension) Rules, 1972 was 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 through the Ministry of Labour notification dated 13.11.1980.

8. As already observed earlier, before the applicant's appointment as Assistant Labour Commissioner (C) on 11.9.1973, the applicant had been selected by the

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UPSC and the Chief Labour Commisioner (Central), respondent No.2, offered the appointment vide Memorandum dated 6.4.1973 which establishes that the applicant possessed the requisite professional qualifications and experience like Labour Officer(Central Pool). In fact, it is in terms stated in the letter dated 6.4.1973 that, "the President is pleased to offer Shri A. Ramachandra Rao Naidu a temporary post of Labour Officer in the Central Pool (Gazetted Class I)". The conditions laid down in Clauses (a) & (b) of sub-rule (1) of Rule 30 of the Pension Rules, therefore, stood substantively satisfied in case of this applicant and therefore, there was no reason why the benefit accruing from the said provisions of law cannot be extended to the applicant. A representation dated 18.9.1996 was made by the applicant to the Ministry of Labour laying stress on the proposition that the Assistant Labour Commissioner (Central), Labour Officer (Central Pool) and Assistant Welfare Commissioner had been equated with and were similarly placed in the light of Rule 30 of the C.C.S. Pension Rules. The applicant also explained in his representation how he was legally eligible to get the benefit of addition of service to his qualifiying service in terms of the said rule and requested the Ministry to revise and re-calculate his pensionary entitlements accordingly and also to arrange to pay all consequential arrears accruing from 1.2.1991.

9. The applicant in the said representation also pointed out that in a similar case the Hyderabad Bench of this Tribunal in OA No.750/95 between C.C.S. Reddy and Ministry of Labour etc., had considered this issue on 24.1.1996. The facts of the present case were similar to the facts in O.A.No.750/95 which was decided by this Tribunal on 24.1.1996. The Bench took into consideration in the said decision that although the applicant was recruited as Assistant Labour Commissioner(Central) the 'said post was interchangeable with that of Labour Officer (Central Pool) and that the applicant had in fact worked as Labour Officer (Central Pool ) from August, 1989 to June, 1991.

June, 1992. According to the respondents, on the formation of the Central Labour Service the Labour Officers (Central Pool) Recruitment Rules ceased to operate. However, the Tribunal observed that there could be no denial of the fact that the Central Civil Services (Pension) Rules, 1972 applied to the applicant. The Bench further observed that there was considerable merit in the argument advanced by the applicant's counsel that the benefit available to a Labour Officer (Central Pool) could not be denied to Assistant Labour Commissioner (Central) because both the posts were interchangeable and were apparently on the same footing. The Bench further observed that the applicant's case was to be examined in terms of Rule 30(1) of the CCS(Pension) Rules. The same is reproduced below :

" Addition to qualifying service in special circumstances.-

(1) A Government 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 whichever is less, if the service or post to which the Government 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 Government servant unless his actual qualifying service at the time he quits Government service is not less than 10 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."

The Bench further observed in its order dated 24.1.1996 in OA 750/95 that the last proviso to Rule 30(1) which stipulated that the concession under Rule 30(1) would be admissible only if the Recruitment Rules contained a specific provision that the service or post was one which carried the benefit of the rule which came into being sometime in 1988 and was not there in 1981 when the applicant was recruited as Assistant Labour Commissioner (Central), and therefore, the said proviso could not be made applicable retrospectively to the case of the applicant.

The Bench also referred to a decision in OA No.365/94 decided by the earlier Bench of this Tribunal on 6.12.1995 in which the same issue was considered, the relevant extract of which is reproduced below :

" As regards the stand taken by the respondents, what I note is that the issue of giving the benefit of added years of service to specifically qualified and experienced personnel came up for consideration before the III Pay Commission. The Commission after examining Rule 30 of CCS(Pension) Rules which is in pari materia with rule 2423-A of IREC, Vol.II observed that "the existing provision for giving the benefit of added years of service to the specially qualified or experienced personnel appointed to posts where these qualifications are necessary in the public interest is salutary and should continue". The Commission, however, recommended that a suitable provision should be incorporated in the relevant recruitment rules so that the benefit is automatically available to all the candidates who are recruited in accordance with the provisions of the rules and it should not then be necessary to take a decision in each individual case at the time of recruitment. The Commission also recommended that in the advertisement issued by the Union Public Service Commission for recruitment to



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the Central Civil Services (Pension) Rule, 1972 will be admissible to the Labour Officers of the Central Pool. This rule 8(2) was incorporated in the aforesaid rules framed in 1951 by an amendment in 1980 and therefore, the next question which may arise is, whether any retrospective effect could be given to the amendment made in 1980.

12. In the case before us, the applicant joined the Government of Madhya Pradesh service on 13.09.1960 and on being selected by the Union Public Service Commission, he joined as Labour Enforcement Officer (Central) on 3.1.1966 in the office of the Chief Labour Commissioner in the Ministry of Labour, Government of India. It is pertinent to note that the second respondent by his letter dated 25th April, 1975 recorded in his letter addressed to the Accountant General, Bihar, Ranchi that the applicant A.R.Naidu, Assistant Labour Commissioner (Central) who was formerly working as Lecturer with effect from 13.9.1960 to 2.1.1966 in the Re-orientation Training Centre, Sihora District Mandla, M.P. was appointed as Labour Enforcement Officer (Central) with effect from 3.1.1966 through the UPSC. It is further recorded in the said letter that there was no break in service rendered by him as Lecturer and the Labour Enforcement Officer (Central) and therefore, his service may be counted for the purpose of pension under the Central Government. A copy of this letter dated 25.4.1975 was endorsed to the applicant.

13. The amendment made on 31st December, 1980 in the provisions of the Labour Officers (Central Pool) Recruitment and Conditions of Service Rules, 1951 provides under Clause (c) of the amendment that the pool shall, to start with, consist of all Labour officers who are required to perform the duties specified in rule 11 in any Undertaking except the

Railways, whether such officers are designated as Labour Officers/Labour Welfare Officers, Civilian Labour Officers or by any other name and whether they are appointed under a statute or otherwise.

Under Definition Clause (c) the word 'Undertaking' has been defined to mean a Central Undertaking, such as a Defence Installation, a Postal and Telegraphs Circle, Central Public Works Department and a Government Factory where one or more Labour Officers are employed for performing duties specified in rule 11. Under Clause (2) of Rule 8 it is specifically provided that 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.

14. The Office Memorandum dated 29th May, 1989 issued by Government of India, Ministry of Labour bearing No.A-38012/1/88-CLS-I (Annexure-A.8 to the OA) minces no words in saying that the benefit of added years of service under Rule 30 of the CCS(ension) Rules, 1972 would be admissible to the persons apointed to the service in accordance with the then Labour Officers (Central Pool) Recruitment and Condisions of Service Rules, 1951 in terms of Rule 8(2) thereof which was inserted in the said rules by way of amendment through notification issued by the Milnistry of Labour dated 13.11.1980. This notification makes it ~~amply~~ clear that the benefit of added years of service under Rule 30 of the CCS(Pension) Rules, 1972 could be applied to the then (emphasis supplied) Labour Officers (Central Pool) Recruitment and Conditions of Service Rules, 1951. There could be no denial of the fact that by using the term 'the then' the Government

had made its intention quite clear that the persons appointed under the aforesaid rules which came into force in 1951 earlier to the formation of the CCS(Pension) Rules, 1972 were also eligible for the advantage of Rule 30 of the CCS(Pension) Rules, 1972 providing for the benefit of added years of service. This O.M. dated 29.5.1989, in our opinion, did not envisage that the benefit be extended to those officers of C.L.S. only who belonged to Labour Officers (C.P.) cadre obviously because 1951 Rules had been repealed in 1987 on formation of C.L.S. The O.M. dated 29.5.1989 (Annexure-A.8) was issued with a view to ensuring that no officer of CLS was discriminated and that every one should get the benefit thereof because the A.L.C.(C), Labour Officers and Assistant Welfare Commissioners (C) were all recruited with the minimum age requirement which was 25 years, the maximum ranging upto 40 years. No person could be recruited if he was below 25 years. A perusal of Rule 30 of the CCS (Pension) Rules, 1972 discloses that the minimum prescribed age being 25 years for recruitment to any post, the officers so recruited stand covered under the purview of the said Rules and would become entitled to the benefit of added years of service.

15. The Supreme Court by its order dated 1.11.1996 dismissed the Petition for Special Leave to Appeal (Civil) No.16291 of 1996 from the judgment and order dated 24.1.1996 of this Tribunal in OA No.750/95 and therefore, the judgment in the said O.A. acquired the status of finality. A submission was made on behalf of the respondent-authorities by the learned Standing Counsel Mr. V.Bhimanna that the Tribunal in the case cited on behalf of the applicant extended the benefit of added years of service because the said applicant (CCS Reddy) also served as Labour Officer after merger whereas the present applicant did not serve as Labour Officer after merger. This contention raised on behalf of

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the respondent was sought to be contradicted by the learned counsel for the applicant Mr.C.Suryanarayana by submitting that in the C.L.S.Rules,1987 it was made clear that the posts were interchangeable and that the same were equated with one another. Even if it was believed, according to the learned counsel for the applicant, that the Tribunal directed the benefit to be extended to C.C.S.Reddy because he served as Labour Officer after merger, in such a case every officer of the Central Labour Service would strive to get posted as Labour Officer atleast for a day before retirement so as to secure the benefit of added years of service which, in our view, cannot be ignored and in that view of the matter, therefore, it is difficult to accept the argument advanced on behalf of the respndents that merely because C.C.S.Reddy served as Labour Officer after merger, the benefit of added years of service could lawfully be extended to him and denied to the present applicant. The respondent-authorities in the case of C.C.S.Reddy took a plea that he did not opt for the benefit of Rule 30(1) aforesaid prior to his retirement. The Tribunal, however, in C.C.S.Reddy's case observed that "it did not find support from any statutory provision or administrative instructions".

16. It is pertinent to note that sub-rule (1) of Rule 5 of the Pension Rules lays down that the provisions of rules in force at the time when a Government servant retires or is retired or is discharged or is allowed to resign from service or dies, as the case may be, shall regulate the claim for pension and family pension etc. The Principal Bench of this Tribunal at Delhi in O.A.No.443/97 by order dated 26.5.1998 has also observed in para-7 of its judgment that Rule 5 of CCS(Pension) Rules,1972 provides that any claim to pension shall be regulated by the provisions of rules in force at the time when a Government servant retires. In our opinion since the C.L.S.Rules came into existence on 3.2.1987 and the same were in force even on the date on which the applicant retired, the provisions of the said rule read with executive order in

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Annexure-A.8 dated 29.5.1989 cannot be excepted from application to the case of the applicant before us. In spite of the same if the benefit of added years of service is not made applicable to the applicant, a clear case of discrimination would emerge from the same inasmuch as the Assistant Labour Commissioners (Central), Labour Officers and Assistant Welfare Commissioners who have been equated with each other under the first proviso to sub-rule (1) of Rule 9 of the Central Labour Service Rules,1987 would receive a separate treatment and would be denied the benefit of added years of service in spite of the posts having been equated.

17. The applicant who initially joined as Asst. Labour Commissioner(Central) retired in 1991. The Ministry of Labour vide its Office Order No.40 of 1991 dated 31.12.1991 directed that consequent upon the judgment passed by the Hyderabad Bench of C.A.T. in OA No.676/89 Sri A.R.Naidu, A.L.C.(C) who retired in Grade V of the CLS was appointed to officiate notionally in Grade IV of the service purely on ad hoc basis with effect from 21.2.1989 and that Sri Naidu would be entitled to revision of pay with effect from 21.2.1989 and pension and other retirement benefits on his retirement on superannuation on 31.1.1991. The recruitment rules relating to the Assistant Labour Commissioner(Central) as well as Regional Labour Commissioner(Central) were repealed by Section 17 of the Central Labour Service Rules,1987 so that the same may be regulated by the integrated Central Labour Service Rules,1987. It is, therefore, evident that from the date of creation of Central Labour Service and framing of rules for such service in 1987, the applicant stood governed by

the C.L.S.Rules, 1987. We have also seen above that the Ministry of Labour vide its Office Memorandum dated 29th May, 1989 issued a direction 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 inserted in the said rules by way of amendment through Ministry's notification dated 13.11.1980. The rules relating to Labour Officers (Central Pool) have also been repealed in 1987, the same having merged in the integrated rules of 1987 in respect of the Central Labour Service. If the argument advanced on behalf of the respondents is accepted, it would mean that only a part of the officers governed by the C.L.S. Rules, 1987 would derive the advantage of added years of service and the remaining part would not be entitled to the said benefit which could be allowed in terms of the letter dated 29.5.1989 issued by the Ministry of Labour. Such could indeed not be the intention of the Ministry of Labour. It would amount to a clear case of discrimination if the benefit is strictly confined to the Labour Officers (Central Pool) only and denied to other officers governed by the C.L.S. Rules, 1987 in spite of the fact that 1951 Rules relating to Labour Officers (Central Pool) merged into C.L.S. Rules, 1987.

18. By order dated 30th September, 1998 in O.A. No.1135/97 another Bench of this Tribunal did not find any merit in the said O.A. in which the applicant K. Ramakrishna sought similar relief as is made in the present O.A. The Bench held that the benefit of added years of service was given to the Labour Officers (Central Pool) as otherwise <sup>they</sup> would be put to serious financial difficulties after retirement and that such acute financial

difficulties may not be experienced by the other cadre officers, such as, Assistant Labour Commissioners etc. and that the applicant having been appointed to the post of Labour Enforcement Officer and Assistant Labour Commissioner, those rules did not provide for added years of service and therefore, the applicant could not demand as a matter of right the benefit of added years of service because of the fact that the three services were combined by the C.L.S.Rules,1987. The Bench further held that Rule 30 of the C.C.S. (Pension) Rules clearly indicated that the added years of service can be given only if it was provided for under the Recruitment Rules. When it was not provided for in the Recruitment Rules of A.L.C. to which the applicant belonged prior to formation of C.L.S. Service Rules, 1987 he could not demand the benefit of added years of service as a matter of right.

19. But in paragraph 27 of the said order, the Bench observed that in the case of Civil Appeal No.503/93 dated 28.10.1993 between Union of India and another v. S. Dharmalingam, the Supreme Court considered the applicability of Rule 30 of the C.C.S. (Pension) Rules to an employee who had already been in Government service and was allowed to count his past service as qualifying service and in that case it was held that the addition of qualifying service under sub-rule (1) of Rule 30 was available to every Government servant who was appointed to a post or service referred in sub-rule (1) of Rule 30 after 31.3.1960 irrespective of the fact whether he was already in Government service or was joining the Government service for the first time, at the time of appointment to the service for the post referred to in Rule 30.

20. In the case before us the applicant prior to his selection by the Union Public Service Commission as Labour Enforcement Officer (Central) on 3.1.1966 in the Chief Labour Commissioner Organisation in the Ministry of Labour,

Government of India was already in service of the Government of Madhya Pradesh since 13.9.1960 and it was in continuation of the State Government service that he was selected for the post of Labour Enforcement Officer (Central) which is abundantly clear from the letter dated 25.4.1975 of the second respondent stating that there was no break between the service rendered by him as Lecturer and Labour Enforcement Officer (Central) and therefore, his service may be counted for the purpose of pension under the Central Government. This fact, however, is not relevant for deciding the real question before us in this O.A. The period from 13.9.1960 to 3.1.1966 has already been accepted as "qualifying service" and the same has already been accounted for in the Pension Payment Order appearing at pages 32 and 33 of the O.A.

21. Let there be no confusion between "qualifying service" and "added years of service". Qualifying service relates to the period of service actually put in by a public servant but excluded from the length of his total service eligible for pension on account of any disciplinary action or for some such reason. The added years of service is a legal fiction which may be allowed by Government to a class of public servants on account of the fact that they may not be considered eligible for appointment unless they have attained a particular age which could even be above the maximum age requirement for entry into Government service and in a case where a minimum experience in a particular field is a must for entry into Government service. The legal fiction of added years of service in public employment comes into operation for weightage to be given for late entry into public employment which may be inevitable on account of any basic eligibility criteria. It is intended to offset the disadvantage which may be caused at the stage of retirement in terms of the length of service which could

qualify for pensionary benefits. "Added years of service" is a notional concept which entitles the concerned incumbent to a longer length of service <sup>for the purpose of pension</sup> without actually putting in such longer period and without having received pay and allowances for such notional period. This legal fiction has been embodied in the Pension Rules in the form of Rule 30(1). Concomitants of this legal fiction have found place, significantly in almost all the Rules referred to above in the clause relating to age relaxation, minimum requirements of qualification, experience, etc.

22. Let us once again have a close look at the rule position which is as follows :

- (a) The applicant claims that he was selected by Union Public Service Commission for appointment as Labour Enforcement Officer (C) on 3.1.1966.
- (b) He was selected as Assistant Labour Commissioner (Central) in 1973.
- (c) In his appointment letter dated 6.4.1973 it is clearly mentioned that "The President is pleased to offer Shri A. Ramachandra Naidu a temporary post of Labour Officer in the Central Pool (Gazetted Class I)." By a notification dated 4th February, 1974 the applicant (Sl. No. 10 of the notification) was appointed by the President to officiate as Assistant Labour Commissioner (Central) from his post of Labour Enforcement Officer (Central).
- (d) The Labour Officer (Central Pool) Recruitment and Conditions of Service Rules were framed in 1951. The same were amended on 13.11.1980 (Annexure-A.8) incorporating Rule 8(2) allowing the benefit of added years of service under Rule 30 of the CCS (Pension) Rules, 1972.
- (e) By letter dated 29.5.1989 (Annexure-A.8) the Ministry of Labour, Government of India directed that the benefit of added years of service be extended to the persons appointed to the service in accordance with the then Labour (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 through the Ministry of Labour's notification dated 13.11.1980.

(f) There is no provision in the Assistant Labour Commissioner (Central) Recruitment Rules, 1958 regarding the benefit of added years of service. However, the Officer appointed under the ALC Rules, 1958 has to be treated as General Central Service Class I Officer with gazetted status.

(g) Under Rule 5 of ALC Rules appointments to the extent of 50% of the posts have to be made by promotion by selection from amongst the Labour Enforcement Officers (Central) who have completed not less than 3 years of service in the post of Labour Enforcement Officer (Central).

(h) By letter dated 25th April, 1975 Ext.A.6 it is clarified that the applicant was appointed as Labour Enforcement Officer (Central) with effect from 3.1.1966 through the UPSC.

(i) Under sub-rule (3) of Rule 3 of the Labour Officers (Central Pool) Recruitment and Conditions of Service Rules, 1951 it is provided that the scale of pay of the posts of Labour Officers shall be Rs.700-1300 and that these posts will be treated as Central Civil Service Group A with gazetted status.

(j) Under sub-rule (2) of Rule 4 thereof it is provided that the recruitment to the posts in the Senior Labour Officers Grade shall be made by promotion by selection from amongst the Labour Officers who have rendered atleast 8 years of service in the pool, on pool basis and not Ministrywise.

(k) Under the proviso to sub-rule (2) of Rule 4 of the said Rules it is further provided that the existing incumbents of the selection grade post of Labour Officers shall be deemed to have been appointed to the posts of Senior Labour Officers.

(l) Under Clause (a) of Rule 1 of the Labour Officers (Central Pool) Recruitment and Conditions of Service Rules, 1951 it is provided that the said rules shall apply to all the Labour Officers included in the Pool.

(m) Under sub-rule (2) of Rule 8 of the 1951 Recruitment Rules it is provided that 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.

(n) Under Rule 9(2) thereof it is provided that in matters of disciplinary procedure, rights of appeal etc., Labour Officers shall be covered by the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

(o) Under sub-rule (2) of Rule 3 of the Assistant Labour Commissioner (Central) Recruitment Rules, 1958 it is provided that such (ALC) Officer shall be a General Central Service Class I Officer with gazetted status and under sub-rule (3) thereof, ALC (Central) shall be a selection post.

(p) Under the Central Labour Service Rules 1987 within the meaning of "Departmental Candidates", all the existing officers holding Grade A posts recruited under the following rules, are included.

(i) The Labour Officers (Central Pool) Recruitment and Conditions of Service Rules, 1951.

(ii) The Chief Labour Commissioner(Central) and Joint Chief Labour Commissioner (Central) Recruitment Rules,1981.

(iii) The Deputy Chief Labour Commissioner (Central) Recruitment Rules,1962.

(iv) The Regional Labour Commissioner (Central) Recruitment Rules,1984.

(v) The Assistant Labour Commissioner (Central) Recruitment Rules,1958.

(vi) The Labour Welfare Organisation, Ministry of Labour (Group A and Group B posts) Recruitment Rules,1979.

(vii) Ministry of Labour and Employment (Welfare Adviser) Recruitment Rules,1965.

(q) Under Rule 6 of the Central Labour Services Rules,1987 it is provided that all the existing departmental candidates holding Grade A posts in various grades on regular basis on the date of commencement of these rules shall be deemed to be appointed to the corresponding duty post and the grade of service in a substantive or officiating capacity as the case may be.

(r) Under Schedule I annexed to the said Rules the details of name, number and scale of pay of due posts included in the various grades of the Central Labour Service (Group A ) are incorporated, which include Assistant Labour Commissioners (Central)/ Labour Officer/Assistant Welfare Commissioner.

(s) In Schedule II of the said Rules it is provided that 88 1/3% of the promotion quota the Labour Enforcement Officer (Central) with 13 years

regular service in the grade be promoted under item 5 thereof to Assistant Labour Commissioner (Central)/ Labour Officer/ Assistant Welfare Commissioner.

(t) The fact that by Office Memorandum dated 29.5.1989 (Annexure-A.8) when it is directed that the benefit of added years of service would be admissible to persons appointed to the service in accordance with the then Labour Officers (Central Pool) Recruitment and Conditions of Service, 1951 in terms of Rule 8(2) thereof which was inserted in the said Rules by way of amendment through the Ministry's notification dated 13.11.1980, entitles the applicant to the benefit of added years of service.

23. From the above provisions of law and rules, the following conclusions could legitimately be deduced :

- (1) That the applicant by virtue of his initial appointment on 3.1.1966 as Labour Enforcement Officer(C) followed by his selection on 6.4.1973 as Assistant Labour Commissioner(C) was covered within the meaning of "Labour Officer in the Central Pool (Gazetted Class, I)" (See (c) and (e) above).
- (2) Hence he stood covered within the scope and ambit of Labour Officers (Central Pool) Recruitment and Conditions of Service Rules, 1951 (See (c) above).
- (3) By virtue of amendments made in 1980 in the above mentioned Rules of 1951, the applicant became entitled to the benefit of Rule 8(2) providing for added years of service under Rule 30 of CCS (Pension) Rules, 1972. (See (d) and (e) above).
- (4) Under the said Rules of 1951 (Rule 3 sub-rule (3) Labour Officers are conferred with the status of Civil Service Group A Rules (See (i) above).

XX

(5) There is a specific provision in 1951 Rules that the same shall apply to all Labour Officers included in the Pool (See (1) above).

(6) Since the applicant is explicitly and implicitly covered within the scope and ambit of 1951 Rules, he cannot be precluded from the benefit of Rule 30 of the CCS (Pension) Rules, 1972. (See (m) above).

24. We wonder how the benefit of "added years of service" could be denied notwithstanding the fact that there is an abundance of analogous and allied rules which eloquently and unequivocally render assistance to the applicant's case. May be in a given case the rules may be silent on the aspect of "added years of service", but the same cannot be taken as ~~the~~ <sup>or ~~the~~</sup> yardstick for denying the benefit when the whole network of different hierarchy of Labour Officer Personnel who are inter-related on one or other aspects stands manifested threadbare before us. In such a situation interpretation of relevant Rules should be so made that harmonious and not heterogeneous situation emerges for application, more so in the case of retired officers. If one set of rules permits a certain advantage to a public servant, it would amount to gross discrimination if similar advantage is denied to another public servant who is subjected to different set of rules covering other aspects of the same network of rules. Realising this incompatibility perhaps the integrated set of rules called "Central Labour Service Rules, 1987" were framed replacing and repealing as many as seven different sets of rules. Unfortunately, however, the provisions relating to superannuation benefits seem to have escaped the attention of the Government when the integration exercise was undertaken. Government would do well to take corrective measures so as to eliminate the incongruent and incompatible situation which is now prevailing.

(X)

25. We are not at all impressed by the arguments advanced on behalf of the respondents that in any case no retrospective effect could be given to the amendment made in 1980 to the Rules originally enforced in 1951. This submission, in our considered opinion, is not a thoughtful submission. Any amendment in a matter of pensionary benefits would fall for consideration only when the public servant retires. All such benefits if enforced before his retirement can be legitimately claimed by him irrespective of the fact whether such benefits were provided for in a statute or rules framed under the statute on the day of his initial entry into public service or during the course of his service. Suffice it for a public servant to say that the amendment was made and implemented before his actual retirement.

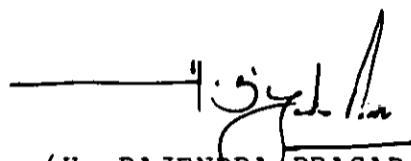
26. We have, therefore, no hesitation in reiterating that no case is made out by the respondents for denying the benefit of added years of service to the present applicant and therefore, no cause is warranted to interfere with the earlier order passed by one of us (H.Rajendra Prasad, Member (A)).

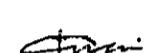
27. The O.A. is, therefore, allowed as prayed for inasmuch as the respondents are directed to allow the benefit of "added years of service" in accordance with law to the applicant. This direction shall be complied with and enforced within 3 (three) months from the date of receipt of the copy of this order. No costs.

28. Before parting with this judgment, we must put on record that this O.A. was earlier disposed of by order dated 22.8.1997 by one of us ( H.Rajendra Prasad, Member(A)) by giving a direction to the respondents to dispose of the

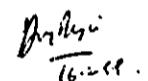
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representation made by the applicant in the light of the judgment passed in O.A.No.750/95 within 45 days. However, the respondents made Review Application No.68/98 and on such Review application having been made, the matter was reopened for hearing. The above exercise has therefore been undergone and the O.A. is now disposed of with the order as stated above.

  
(H. RAJENDRA PRASAD)  
MEMBER (ADMN.)

  
( D.H. NASIR)  
VICE-CHAIRMAN.

DATED THE 16th FEBRUARY, 1999.

  
16-2-99

DJ/