

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

OA. 353/99

dt. 15.12.1999

Between

A. Satyavathi

: Applicant

and

1. Union of India, rep. by
The Secretary
Dept. of Telecommunications
Min. of Communications
20 Ashok Road
New Delhi

2. Chief General Manager
Telecommunications
AP Telecom Circle
Nampally Station Road
Hyderabad 500001

3. General Manager
East Godavari Telecom Dist.
Rajahmundry

: Respondents

Counsel for the applicant

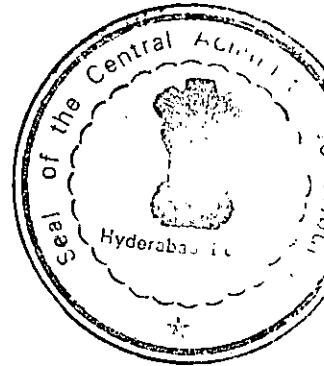
: N.R. Srinivasan
Advocate

Counsel for the respondents

: B. Narasimha Sarma
Sr. Standing counsel for
Central Govt.

Coram

Hon. Mr. Justice D.H. Nasir, Vice Chairman



OA.353/99

Order

Order (per Hon. Mr. Justice D.H. Nasir, Vice Chairman)

The question arising for our consideration in this OA is whether 50% of the casual service rendered by an employee prior to his regular appointment as Group D could be included for the purpose of calculation of qualifying service for pension.

2. The applicant's husband (A. Kameshwara Rao, herein after referred to as the applicant), in the present case was working from 1972 to 1987 as casual mazdoor before his regularization as Group-D and pleads that his casual labour service to the extent of 50% be included in the length of qualifying service for pension as stipulated in Government instructions No.2 below Rule 14 of CCS (Pension) Rules, 1972 issued by the Ministry of Finance, office memorandum No.F.12 (1) E.V/68 dated 14.5.68. According to the respondents since the applicant was appointed as temporary Group D employee from 21.3.1987 he was eligible for pensionary benefits from that date only and that he was eligible only for service gratuity as he had rendered less than 10 years of qualifying service.

3. In the reply statement it is contended that the memorandum dated 14.5.1968 referred to above was issued by the Ministry of Finance and therefore the applicant was not entitled to claim any benefit of the said circular and that even if 50% of the said service was taken into consideration for the purpose of pension, a period 6 months and 22 days only could be added, as a result of which the applicant's effective period of service would work out to be 8 years, 10 months and 3 days, still falling short of one year, one month and 27 days for qualifying service for pensionary benefits because the applicant's eligible service started from 5.2.86, being the date from which the casual mazdoor was given the benefit of the minimum of Group D scale. It is further submitted by the learned standing counsel for the respondents that in the Department of

Telecommunications only 50% of casual mazdoor service with temporary status (emphasis supplied) could be counted for the purpose of pension qualifying service as per para 6(iv) of the Casual Labour (Grant of Temporary Status and Regularization) Scheme, 1989, which is enclosed as Annexure to the DOT, New Delhi order dated 7.11.1989 (Annex.R-3).

4. The learned Standing counsel for the respondents submitted further that the DOT did not make any specific rule providing for 50% continuous service to be taken for pension purpose. In the Department of Telecommunication, according to Mr. M.C. Jacob, 50% of service of casual labour with "temporary status" only was made eligible for qualifying pensionary service under the scheme of 1989.

5. Even in terms of Government of India, Ministry of Finance memorandum dated 14.5.1968 as submitted by the learned counsel for the respondents, the applicant did not fulfil the conditions laid down in the office memorandum and that the applicant though working as casual labour from 1972 onwards was granted minimum of Group D scale as per DOT, New Delhi, letter dated 23.2.1988 from 5.2.1986 and therefore even if the said memorandum was applied to the case of the applicant he would be falling short of one year, one month and 27 days for his eligibility to qualify for pension.

6. On perusing the enclosure R-1 produced by the respondents, it appears that it had been decided that half the service put in from contingencies could be allowed to count towards pension at the time of absorption in the regular employment subject to several conditions as mentioned in Clauses (a), (b), (c), (d), and (e) in the said annexure. Clause (d) thereof provides that the services from contingencies should have been continuous and followed by absorption in regular employment without break. Clause (e) provides that subject to the conditions being fulfilled the weightage of past service paid from contingencies would be limited to the period after first January, 1961 for which authentic records of service is available.

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7. In the Regularization Scheme of 1989 it is provided in clause 6(iv) that counting of 50% of service rendered under Temporary Status only could be considered for the purpose of retirement benefits after their regularization. We have no misgiving in our mind that the advantage of the above provision cannot be extended to the applicant as it relates to the period of service rendered under Temporary Status and not the entire period of service as casual labour.

8. The applicant has given in paragraph 4(i) of the OA the details of the service put in by him from 1972 to 73 to 1986-87 aggregating 3814 days. It is pertinent to note that from 1978-79 onwards the applicant appears to have put in more than 240 days in each year up to 1986-87 and therefore he could be well neigh treated as entitled to the benefit. Annexure A-1 dated 14.1.1968 produced by the applicant at Annexure 1 to the OA, which lays down the following, conditions for qualifying service for pension:

- a. Service paid from contingencies should have been in a job involving whole time employment (and not part-time for a portion of the day).
- b. Service paid from contingencies should be in a type of work or job for which regular posts could have been sanctioned, e.g. malis, chowkidars, khalasis. Etc.
- c. The service should have been one for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which though not analogous to the regular scale of pay should bear some relation in the matter of pay to those being paid for similar jobs being performed by staffs in regular establishments.
- d. The service paid from contingencies should have been continuous and followed by absorption in regular employment without a break.
- e. Subject to the above conditions being fulfilled, the weightage for past service paid from contingencies will be limited to the period after 1st January, 1961, for which authentic records of service may be available.

9. It has also been stated in the first half paragraph of the said OM dated 14.1.1968 that the question whether in such cases service paid from contingencies could be allowed to count for pension and if so to what extent had been considered by the National Commission and in pursuance of the recommendations



of the Council which has decided that half of the service paid from the contingencies should be allowed to be counted towards pension at the time of absorption in regular employment subject to the conditions as already reproduced above.

10. Adverting first to the submissions made by the learned Standing counsel Mr. M.C. Jacob argued, that since the OM dated 14.1.1968 was issued by the Ministry of Finance, Government of India, the provisions thereof could not be straightaway applied to the Department of Telecommunications unless the same was categorically adopted by the Department of Telecommunications. However, in my opinion, this submission is not made in right spirit, which becomes evident from the perusal of the material papers, which have come on the record of this case. By a letter dated 3.1.1996 issued by the Sub Divisional Office, Telecom, Tuni in which details were called for in respect of three employees including the applicant, firstly whether the service paid from contingencies (the service as casual mazdoor/TSM) in respect of the applicant had been continuous and followed by absorption in regular employment without break. The length of service paid from the contingencies before regular employments were also called for in the said letter. A clarification was also sought whether the retired official worked part-time or full-time. The details of only full time service were directed to be furnished and whether payments were made on monthly or daily wage basis.

11. By a ~~clarification~~ letter dated 26.3.1996 the Sub Divisional Officer, Telecommunications, Tuni, a further clarification was sought whether the applicant's service was continuous as Casual Mazdoor from April, 1972 followed by regularization as Group-D on 21.3.1987, because in the Mazdoor Identity card the retired official was shown to have worked from 1.4.1986 to 31.1.1987 only during 1986-87.

12. The above communication is referred to in this judgement for the purpose of ascertaining whether it would be in order to accept the submissions made by the learned Standing Counsel for the respondents that the OM dated 14.1.1968

was not applicable to the Telecommunications Department. It becomes abundantly clear from the queries raised in the communication referred to in the preceding paragraph that an effort was made to ensure whether the conditions as stated in clause (a) to (e) of the OM dated 14.1.1968 were satisfied or not for considering the applicant eligible for counting of 50% of his casual labour service for the purpose of determining the length of continuous service for pension. If it was true that the said OM dated 14.1.1968 was not applicable to the Telecommunications Department, no effort would have been made by the respondents to ascertain and verify the said particulars which were required to be satisfied under the terms of the said OM dated 14.1.1968. Even if we believe that the same was not applicable to the Telecommunications Department, the learned counsel did not make any submission as to under which other order the said particulars were required to be obtained and verified, but the respondents were silent over this aspect of the case and therefore I find no hesitation in coming to the conclusion that the applicant was covered by the aforesaid OM dated 14.1.1968.

13. It is also necessary to take note of the fact that the respondents vide their letter dated 26.6.1997 in reply to the representation dated 21.8.1996 made by the applicant, stated that as per GID (2) (E) under Rule 14 of CCS (Pension) Rules and the direction of the Hon. Supreme Court, 50% of the applicant's casual service after 5.2.1986 was only qualified for his total service. It is further stated in the said letter that even though the casual mazdoor service with effect from 5.2.1986 was extended to the total qualifying service of the applicant, he would still not have rendered minimum qualifying service of 10 years to get the benefit of pension. The applicant's representation dated 21.8.1996 referred to by the respondents in their communication dated 26.6.1997 contains a statement that he (applicant) was denied pension on the ground that there was a break in service of one day prior to his regularization of service. The applicant also stated in the said representation that he worked continuously in the exchange until the last date

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i.e.20-3-1987 prior to his regularization on 21.3.1987 and was paid for full day work. The SDO, Telecommunication, Samalkot, certified that the applicant had worked for 196 days between 1-3-1987 and 20-3-1987 which clearly established, according to the applicant, that he worked up to 20-3-1987. He further states in his representation dated 21.8.1996 that his MR Book and the entire record was surrendered to DE, Telecommunications - KD for processing at the time of regular appointment. However, the respondents have not dealt with the above claims advanced by the applicant in the representation dated 21.8.1996 in their reply dated 26.6.1997.

14. By a further representation dated 18.1.1988 the applicant stated in the third paragraph of his representation that as per Ministry of Finance OM No.F-12(1)-E.V/68 dated 14.4.1968, his service paid from contingencies was continuous and was followed by absorption under regular appointment without any break for the purpose of qualifying service for pension and that such service rendered after 1.1.1961 had to be counted for the said purpose and therefore according to the applicant his entire casual service had to be considered for determining the qualifying service. The applicant further points out in the said representation that he had rendered 3814 days of service as casual mazdoor and had worked as regular Group D for about 8 years. Thus according to the applicant he had rendered more than 10 years of qualifying service and was thus entitled to pension.

15. By a further representation dated 27.6.1998 addressed to the Chief General Manager, Telecommunications, Hyderabad, the applicant stated that Bombay Bench of the Central Administrative Tribunal, in its order dated 18.10.1995 reported in 1996 (33) ATC 58 (BR Jadav vs. Union of India) rejected the plea of the respondents that a distinction had to be made between Apparatus and Plants Accounts and in contingent account and directed the respondents therein to count 50% of the casual labour service of the applicant for pension and to pay him pension accordingly. The applicant, therefore, urged that he was entitled to

similar benefits as he was similarly placed as the applicant in the aforesaid decision of the Bombay Bench of CAT. However, these contentions raised by the applicant seem to have escaped the consideration of the respondents.

16. In the counter affidavit filed by the respondents, it is not disputed that the applicant was appointed as Casual labour with effect from 1972 and after his retirement the applicant represented that he worked as casual mazdoor before his regularisation as Group D from 1972-87 and to count his casual labour service to the extent of 50% as available in Government of India instruction No.(2) below Rule 14 of CCS(Pension) Rules, 1972 issued by the Ministry of Finance, office memorandum dated 14.1.1968. It is further stated in the second paragraph at page No.3 of the reply affidavit that the case of the applicant was examined from the provisions of the Government of India, Ministry of Finance, office memorandum dated 14.1.1968 but the applicant was not considered to be fit in accordance with the conditions laid down in the office memorandum and therefore his case was rejected.

17. These contentions raised by the respondents give a definite reason to believe that the order relevant for the purpose of deciding whether the applicant was entitled to the relief as prayed for in the OA, was the aforesaid memorandum dated 14.1.1968 only.

18. In all, five different requirements have been stated in the said OM dated 14.1.1968 as stated in the preceding para ⁸ to determine whether an official is entitled to claim 50% of his casual service for the purpose of calculating pension. The first requirement is that the service rendered by the official should have been paid from the contingencies in a job involving full-time employment and not part-time for a portion of the day.

19. For the purpose of determining whether the service rendered by the applicant is casual labour could be treated as service paid from contingencies, the respondents, Sub Divisional Officer, Telecommunications, vide his letter dated 3.1.1996 (Annex. A.5 page 12 of the OA) called upon the JTO interalia whether

the service paid from the contingencies (the Service of the Casual Labour / TSM) in respect of Sri A. Kameswara Rao, retired watchman, Tuni, had been continuous and followed by absorption in regular employment without a break. By his subsequent letter dated 17.2.1996 the Sub Divisional Officer, Telecommunications, Tuni, addressed to JTO, Tuni, stated that as per his (JTO, Tuni) the letter under reference the services of Sri A. Kameswara Rao, retired Watchman, Tuni, were continuous as casual mazdoor from April, 1972 followed by regularization as Group-D from 21.3.1987. But in the Mazdoor Identity Card submitted by the JTO, Tuni, it was shown that the retired official worked from 1.4.1986 to 31.1.1987 only during 1986-87. He was therefore again directed to clarify whether the retired official had worked from 1.2.1987 to 20.3.1987.

20. The applicant has himself produced MR particulars of his engagements as Watchman, Tuni, at Annexure A.13 beginning from page 20 to 35 giving his MR particulars. The same have not been disputed by the respondents. In fact, a positive averment is made in the reply affidavit in paragraph-3 that the applicant was appointed as casual labourer from 1972. The MR particulars furnished by the applicant at page 20 to 35 of the OA appear to have been countersigned by the Departmental authorities. Since the same have not only not been disputed but in fact admitted in paragraph-3 of the reply affidavit as stated above, there is no reason why the particulars stated in paragraph 4.1 of the OA should not be accepted.

21. The contentions raised by the respondents that there was a break in service for one day prior to regularization of service also stands negated by the particulars produced by the applicant. In his representation dated 21.8.1996 the applicant stated that he worked continuously in the Exchange till the last date i.e. 20.3.1987 prior to his regularization on 21.3.1987 and that he was paid for full day's work. The applicant was so regularized from 21.3.1987 is borne out from the appointment order dated 6.4.1987 appearing at annexure A-2 page 9 of the OA. At page 35 it is categorically stated under the signature of SDO, Samalkot,

that A. Kameshwar Rao, Casual mazdoor, was engaged on muster roll and worked for 19 days between 1-3-1987 and 20-3-1987 as per his office records available. The contention regarding the applicant's continuous employment from 1978-79 onwards thus stands amply proved. It is also not disputed by the respondents that the applicant was in full-time employment and not in part-time employment. It is also not disputed that the applicant was working as Watchman and was paid as Casual labour from contingencies.

22. As regards the provision of the Regularization Scheme of 1989, as seen earlier, Clause-iv of paragraph-6 provides for count of 50% service rendered in temporary status for the purpose of retirement benefits after their regularization. The submission made on behalf of the respondents that in view of the aforesaid provision, the applicant was not entitled to claim 50% of service as casual labourer for the purpose of retirement benefits, cannot be disputed. However, as far as the applicant is concerned, we are not concerned with the service rendered by him as temporary status in this OA. What the applicant claims is that 50% of the casual labour service of 3814 days rendered by him should be considered eligible for qualifying service for the purpose of pension which is governed by the OM dated 14.1.1968 and not by the Regularization Scheme of 1989. As far as the 1968 OM is concerned, we have minutely examined the eligibility conditions and we are convinced that the applicant succeeds in making out a case that he is entitled to claim 50% of the service rendered by him, if not from 1972-73; at least from 1978-79 from which he appears to have rendered continuous service without any break till his services were regularized in 1987.

23. We have, therefore, no hesitation in allowing this application.

24. The Respondent No.2 is directed to count 50% of the service of the applicant for the period from 1978-79 till the date of his regularization from 21.3.1987 and add this service to the regular service put in by him and on that basis decide the case of the applicant for grant of pension and other pensionary

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benefits together with arrears of pension as may become due and payable in compliance with this order.

25. The OA is allowed accordingly. No order as to costs.

D.H. Nasir
(D.H. Nasir)
Vice Chairman

Dated: 15.12.1989.

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M. M. T. M.

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20/12/99

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH.
HYDERABAD.

1ST AND 2ND COURT

COPY TO.

1. HONJ

2. HRRN M (ADMN)

3. HGSJ P.M. (JUDL)

4. D.R. (ADMN)

5. SPARE ✓

6. ADVOCATE

7. STANDING COUNSEL

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

THE HON'BLE MR. JUSTICE D.H. NASIR
VICE-CHAIRMAN

THE HON'BLE MR. R. RANGARAJAN
MEMBER (ADMN)

THE HON'BLE MR. B.S. JAI PARAMESHWAR
MEMBER (JUDL)

DATE OF ORDER 15/12/99

MA/RA/EP. NO.

IN
CA NO. 353/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

CP CLOSED

RA CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

END ORDER AS TO COSTS

