

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 3513/2014

New Delhi, this the 8th day of November, 2017

HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MS. NITA CHOWDHURY, MEMBER (A)

Tek Ram Shekhar
(Aged about 70 years)
S/o Late Shri Sultan Singh,
R/o WZ 65, Budhela Village,
Vikas Puri, New Delhi-110018
Retired as Work Assistant.

.. Applicant

(By Advocate : Shri T.D. Yadav)

Versus

1. Union of India through Secretary,
Ministry of Urban Development,
Parliament Street, New Delhi.

2. Delhi Development Authority,
Through its Vice Chairman/
Commissioner (P), 'B' Block,
Vikas Sadan, INA, New Delhi.

3. The Lieutenant Governor,
Raj Niwas, Delhi.

.. Respondents

(By Advocate: Mrs. Sriparna Chatterjee)

ORDER (ORAL)

By Mr. V. Ajay Kumar, Member (J)

The applicant, who retired from the service of the 2nd respondent – Delhi Development Authority (in short DDA) on 29.02.2004 filed the present O.A. seeking the following relief(s):

“(i) Set aside and quash the impugned order dated 16.6.2014 (Annexure A).

- (ii) direct the respondent to count entire daily wages services of the applicant w.e.f. 24.2.1973 to 7.03.1982.
- (iii) direct the respondents to fix the pay scale of the applicant from due date or from the date of his juniors.
- (iv) direct the respondent to revise all the pensionary benefits including pension after granting relief (i) and (ii).
- (v) direct the respondent to grant all the consequential benefits like promotion as Work Assistant in year 1982 and subsequent promotion as per his higher and technical qualification alongwith arrears to the applicant.
- (vi) pass any other order(s) as may be deemed just fit and proper in the facts and circumstances of the case.
- (vii) Award Cost.”

2. When this matter is taken up for hearing, learned counsel for the applicant, on instructions from the applicant who is present in the court, submits that he is pressing only reliefs 8(i) and (ii) and not pressing the remaining reliefs, i.e. from 8(iii) to 8(vii).

3. It is the case of the applicant that he was originally appointed as Mason on daily wages (Muster Roll) w.e.f. 24.02.1973 in the 2nd respondent organization and thereafter, he was appointed on the post of Assistant Mason on regular establishment vide order dated 08.03.1982, however, w.e.f. 18.05.1976. Finally, he retired from service on 29.02.2004. The respondents granted him all the benefits, such as, financial upgradations including for calculation of pension for the period from 18.05.1976 till the date of his retirement, i.e. 29.02.2004, however, though he is entitled for consideration of 50% of service from 24.02.1973 to 17.05.1976, during which period the applicant worked on daily wages (muster

roll), they have not considered the said period for the purpose of calculation of pension.

4. Heard Shri T.D. Yadav, learned counsel for the applicant and Mrs. Sriparna Chatterjee, learned counsel appearing for the respondents and perused the pleadings on record.

5. Shri T.D. Yadav, learned counsel appearing for the applicant, mainly placed reliance on Rules 13 and 14 of the Central Civil Services (Pension) Rules, 1972 and submits that in terms of Govt. orders issued under the said rules, the applicant is entitled for counting of 50% of his daily wage service for the purpose of pensionary benefits.

6. The learned counsel also placed reliance on a judgment of Hon'ble Punjab & Haryana High Court in Civil Writ Petition No. 7378 of 2003 dated 17.01.2005 in **Hari Chand vs. Bhakra Beas Management Board and Others**. The learned counsel further submits that since the claim of the applicant was finally rejected by the respondents vide the impugned order dated 18.07.2014, the O.A. is well within the period of limitation.

7. Per contra, Mrs. Sriparna Chatterjee, learned counsel for the respondents would submit that the O.A. is hopelessly barred by limitation as his claim to treat the period from 24.02.1973 to 17.05.1976, for which he represented for the first time on 23.12.2013, i.e. after lapse of about 37 years, and the rejection of

the said claim cannot extend the period of limitation as the same is a stale and dead claim by the date of the representation itself.

8. The learned counsel for the respondents further submits that since the applicant was granted all the benefits w.e.f. 18.05.1976, i.e. on which date he was permanently appointed on the post of Assistant Mason on regular establishment, he is not entitled for any relief claimed in the O.A.

9. It is further submitted that the applicant was appointed vide Annexure-D dated 17.05.1976 wherein it was specifically mentioned that services rendered by the applicant on muster-roll prior to his being brought on work-charged establishment will not be counted. The applicant having accepted the same in the year 1976 cannot question the same after a lapse of about 37 years by filing the O.A. in the year 2014.

10. As rightly contended by the learned counsel for the respondents, the Annexure-D, dated 17.05.1976, under which the applicant was appointed, there was a condition to the effect that the services rendered on muster-roll prior to his being brought on work-charged establishment will not be counted. The clause 2(c) and clause 7 of the said order read as under:

“2(c) Counting of past services:

Services rendered by Shri Tek Ram Shekhar S/o Shri Sultan Singh, on muster roll prior to his being brought on the work-charged establishment, will not be counted. ”

7. If Shri Tek Ram Shekhar accepts the offer on the above terms, he should report for duty to the undersigned by 5/5/76. If no reply is received or the candidate fails to report for duty by the prescribed date, the offer will be treated as cancelled.”

11. The applicant having accepted the said terms and conditions and having joined the services of the respondents in the year 1976, cannot question the same after a lapse of about 37 years. Further, in **Hari Chand** (supra), the Hon’ble High Court of Punjab & Haryana considered the Punjab Civil Services Rules, which are special rules applicable to particular service. The CCS (Pension) Rules, 1972 were not considered in the aforesaid decision and, hence, the said decision has no application to the facts of the applicant’s case.

12. The Government of India’s decisions issued under Rule 14 of the CCS (Pension) Rules, 1972 read as under:

“(1) **Benefit of service rendered under Government in respect of scientific employees.** – see Paragraphs 20 to 24 of Appendix 18.”

(2) **Counting half of the service paid from contingencies with regular service.**– Under Article 368 of the CSRs (Rule 14) periods of service paid from contingencies do not count as qualifying service for pension. In some cases, employees paid from contingencies are employed in types of work requiring services of whole-time workers and are paid on monthly rates of pay or daily rates computed and paid on monthly basis and on being found fit brought on to regular establishment. The question whether in such cases service paid from contingencies should be allowed to count for pension and if so, to what extent has been considered in the National Council and in pursuance of the recommendation of the Council, it has been decided that half the service paid from contingencies will be allowed to count towards pension at the time of absorption in regular employment subject to the following conditions, viz. :-

(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.

[G.I., M.F., O.M. No. F. 12 (1)-E. V/68, dated the 14th May, 1968.]

It has been decided that half the service paid from contingencies will be allowed to be counted for the purpose of terminal gratuity as admissible under the CCS (TS) Rules, 1965, where the staff paid from contingencies is subsequently appointed on regular basis. The benefit will be subject to the conditions laid down in OM, dated the 14th May, 1968, above.

[G.I., Dept. of Per. & Trg., O.M. No. 12011/1/85-Est. (C), dated the 10th March, 1986.]”

13. The benefit of counting of half of the service is subject to certain conditions. But the applicant failed to plead and prove that how he satisfied the said conditions. In the absence of the same, he is not entitled for the relief claimed.

14. In the circumstances, we do not find any merit in the O.A. and, accordingly, the same is dismissed. No order as to costs.

(NITA CHOWDHURY)
Member (A)

(V. AJAY KUMAR)
Member (J)