Central Administrative Tribunal
Principal Bench

OA No.2876/2012
MA No.2493/2013
MA No.2494/2013

Order reserved on: 03.08.2016

Pronounced on: 21.09.2016

Hon'ble Mr. V.N. Gaur, Member (A)

Sh. Harchanda
S/o Late Sh. Sonpat
R/o 23, Zalim Mohalla,
Vill. Tughlakabad,
New Delhi-110044.

-Applicant

(By Advocate: Mr. R.K. Shukla)

-Versus-

1. DDA through
   Vice Chairman,
   INA Vikas Sadan,
   New Delhi.

2. Dy. CAO (HQ)-III,
   DDA, Vikas Sadan,
   New Delhi.

3. EE, SED-3/DDA
   Sarita Vihar,
   New Delhi-110044.

-Respondents

(By Advocate: Mr. Atul Kumar Singh for Sh. Karunesh Tandon)

O R D E R

The present OA was filed by late Shri Sonepat for grant of pension and gratuity for the service rendered by him as Chowkidar with respondent-DDA. The OA was filed on 28.08.2012 and notice was issued on 31.08.2012. However, unfortunately during the course of the proceedings the applicant died. MA No.2493/2013 and 2494/2013,the request for impleadment of legal representatives and condonation of delay in bringing the LRs on record, were allowed by order dated 26.08.2013. Accordingly the Memo of Parties was amended to bring his son on record.

2. Brief facts of the case are that the original applicant was appointed as Chowkidar vide memorandum dated 16.07.1984 and he retired on 30.06.1994 on attaining the age of superannuation. The original applicant claimed that he had submitted all the requisite papers for pension and gratuity vide letter dated 01.07.1994 and met the concerned officer personally for release of pension and gratuity and he was promised also to get the payment released. However, the original applicant could not pursue the matter due to his illness. Finally, he approached the respondents through an appeal dated 25.08.2011. The original applicant vide letter dated 14.12.2011 was informed that being an old case his file was not traceable in Pension Branch. It was further noted that the applicant was paid service gratuity of Rs.3143/- on 07.02.1995. As

per Pension Rules, service gratuity is paid to the retired employee who has rendered qualifying service of less than 10 years, as such, the original applicant was not eligible for pension. Aggrieved by this decision of the respondents, the original applicant has challenged this order of the respondents.

3. Learned counsel for the applicant submitted that the original applicant had rendered more than 10 years of qualifying service starting from 06.03.1984 to 30.06.1994. He was, therefore, entitled for pension and gratuity as per the Pension Rules. The original applicant had submitted the required documents for settlement of pension and gratuity vide letter dated 01.07.1994. Thereafter, the respondents never informed him about the issue of pension. Only after RTI applications in 2011, he was informed that his file was not traceable and that because he had been paid service gratuity on 07.02.1995, it implied that he had rendered qualifying service of less than 10 years, and therefore, not being eligible for pension. According to the learned counsel, all the fresh recruitments at that time in DDA were made on temporary basis and regularised from a later date, from the date of entry. In this case, as the appointment order placed on record as Annexure-1 would show, the original applicant was appointed in a regular pay scale on temporary basis and not on casual basis. The law is well settled that the period of temporary service after regularisation was to be counted for the

purpose of pensionary benefits. In this regard, he relied on **Shanno Devi vs. State of Haryana and others**, CWP No.15081/2011 decided on 11.04.2013 of Hon'ble High Court of Punjab and Haryana and **Nemai Ch. Chatterjee and others vs. State of West Bengal and others**, WPST No.532/2010 decided on 30.04.2014 of Hon'ble High Court of Calcutta.

4. With regard to the limitation, learned counsel submitted that once the original applicant was entitled for pension on the basis of his qualifying service, it was the duty of the respondents to have sanctioned the same without waiting for the applicant to represent. Being a group 'D' employee he was not fully conversant with the rules and regulations and it was for the respondents to have interpreted the rules correctly. If there was any mistake in the interpretation of the rules, the responsibility for the same cannot be shifted to the applicant. He relied on **Amrit Lal Berry vs. Collector of Central Excise, New Delhi and others vs. Collector of Central Excise, New Delhi and others,** (1975) 4 SCC 714.

5. Learned counsel for the respondents submitted that the OA was not maintainable due to delay and laches. The original applicant was paid service gratuity in the year 1995 which would indicate that he had not completed the minimum service required for grant of pension. The cause of action, therefore, arose in 1995 and he approached this Tribunal in the year 2011. He further

submitted that the DDA vide Resolution No.16/95 dated 23.02.1995 decided that half of the service period paid from Work Charge contingency was to be calculated for the pensionary/gratuity benefits, as contained under Govt. of India decision 14.05.1968 under Chapter-3 of CCS (Pension) Rules, 1972. It was also made clear that the benefit of this proposal would be admissible only to those of the Work Charge employees who were in DDA as on 10.01.1991 excluding the slum wing which stood transferred to MCD. The matter was further considered by the DDA in its meeting held on 24.03.2006 and 28.06.2006 and it was decided to give effect to the regularisation of Work Charge to Work Charge (regular) in favour of the then Work Charge staff with effect from the date respective Work Charge employees completed three years continuous service as Work Charge w.e.f. 1983 whichever was later. The original applicant, on the other hand, had a total qualifying service of 8 years 9 months and 24 days as detailed in the table given in Para-B of the counter filed by the respondents, which reads as under:

Date of appointment on Work-Charge Estt. Date of appointment on Regular Estt. As per E.O. No. 10007 dated 14.7.2006 (copy enclosed)	6.3.1984 – A 6.3.1987 – B
Difference of (A-B) Half of above qualifying service	3 Years 1 year 6 months – C
Qualifying service w.e.f. 6.3.1987 to 30.6.1994	7 years 3 months 24 days – D

Total qualifying service (C+D)	8 years 9 months 24 days

6. The respondents had calculated the qualifying service in terms of Rule 14 of CCS (Pension) Rules. The original applicant was, therefore, paid only service gratuity; other pensionary benefits were not admissible to him under Rule 49 of CCS (Pension) Rules.

7. We have heard the learned counsel for the parties and perused the record. It is undisputed that the original applicant served the respondents from 06.03.1984 till the date of his retirement on 30.06.1994. He had approached the respondents soon after his retirement on 01.07.1994 (Annexure A-4) for grant of pension. The respondents, however, claimed to have sanctioned service gratuity amounting to Rs.3143/- which according to the respondents indicated that the applicant had not completed the minimum qualifying service of 10 years for grant of pension. The first issue, therefore, is with regard to limitation. The Hon'ble Supreme Court in **Amrit Lal Berry** (supra) observed as follows:

> "24. ... ... We may, however, observe that when a citizen aggrieved by the action of a Government Department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the Department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to Court."

8. The Grade-IV employee, against whom the respondents have resorted to the ground of limitations, should have been assisted by

the concerned branches with regard to the rules and regulations and in arriving at the correct decision with regard to his pension. Even if the pension was not admissible the original applicant should have been informed well in time so that he could take the necessary remedial measures, if required. In this case there is nothing on record to show that respondents took any such step to inform the original applicant about his qualifying service being insufficient for pension. It was only after RTI application in the year 2011 that the original applicant could get to know that his full service starting from the date of his joining had not been counted for this purpose. In such a situation especially considering that the monthly pension, which is a right of the employee and not a bounty if he is entitled for the same, as held by the Hon'ble Supreme Court in **D.S. Nakara v. Union of India**, is a continuing cause of action. OA is, therefore, not barred by delay and laches. In **State of Rajasthan and Ors. Versus Mahendra Nath Sharma** Civil Appeal no. 1123 OF 2015 [Arising out of SLP(C) NO. 321 OF 2015] the Hon'ble Supreme Court reiterated the principle taking note of the explanations and dilutions that have taken place of Nakara and observed as under:

> "It is a well known principle that pension is not a bounty. The benefit is conferred upon an employee for his unblemished career. In D.S. Nakara v. Union of India2 , D.A. Desai, J. speaking for the Bench opined that:-
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> > "18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And

> why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service? 2 (1983) 1 SCC 305 20.
> 19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.
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> 20. The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad v. State of Bihar wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab v. Iqbal Singh ."
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> 20. We may hasten to add that though the said decision has been explained and diluted on certain other aspects, but the paragraphs which we have reproduced as a concept holds the filed as it is a fundamental concept in service jurisprudence. 3 (1971) 2 SCC 330 4 (1976) 2 SCC 1 21. It will be appropriate and apposite on the part of the employers to remember the same and ingeminate it time and again so that unnecessary litigation do not travel to the Court and the employers show a definite and correct attitude towards employees."

9. The main issue in this OA is: what was the nature of employment of the original applicant when he was appointed on 06.03.1984. The respondents vide EO No.130 dated 10.01.1991 had decided that all the Work Charge employees of DDA were to be treated as part of regular Work Charge establishment w.e.f.

10.01.1991. Subsequently, the matter was reconsidered and vide order dated 14.07.2006 it was decided to give effect to the regularisation from Work Charge to Work Charge (Regular) in favour of the then Work Charge staff with effect from the date respective Work Charge employees completed three years of continuous service as Work Charge or w.e.f. 1983, whichever was later (Annexure-C of the counter reply). The question, therefore, is whether the original applicant at the time of appointment was a Work Charge employee or a Work Charge (Regular) employee. The first two paras of the appointment letter, i.e., a memorandum dated 16.07.1984 reads as follows:

"**MEMORANDUM**

By virtue of this letter Sh. Harchanda S/o Sh. Sunpat is hereby appointed to the post Chowkidar in the pay scale of 196-3-200-EB-232 in the pay scale of per month in Horticulture Department of D.D.A. of Work Charged Estt. which is temporary. The pay and allowances as well as dearness allowances will be admissible to him in this pay scale from time to time in terms of rules.

2. (A) This service is purely temporary and the services of Sh. Harchanda can be terminated by way of giving 14 days notice in advance or salary of 14 days including dearness allowance in lieu of notice. If he himself wants to leave the services, he may do so by giving 14 days advance notice in writing to Delhi Development Authority otherwise the wages and dearness allowance for the said period will be deducted. When he will continue his services for one year then for Sh. Harchanda and Delhi Development Authority the notice period of 14 days will be enhanced to one month.

(B) The other terms and conditions of employment will be regulated according to the rules and regulations framed from time to time."

10. A reading of the above text would show that the appointment of the applicant was in a Work Charge establishment in a temporary capacity. According to the Government of India's instructions OM No. 12(1)-E.V/68 dated 14.05.1968 on the basis of which the DDA had taken a decision on 10.01.1991 (ibid) with regard to counting half of the service paid from the contingencies with regular service, stipulates the conditions under which such benefit will be given. The condition (c) of that OM reads as under:

> "(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 estb."

11. It is apparent that the service in Work Charge establishment, that is to be counted to the extent of 50% following regularisation should have been one for which the payment is made either on monthly or daily rates computed or 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 the staff in the similar establishment. In other words, such Work Charge employees are not in the regular scale but their monthly emoluments or daily rates which are paid on monthly basis have some relation with the regular scale.This further implies that those who are already in a regular scale even

though in temporary capacity, will not be covered by this instruction and hence they will be entitled to count their full service as regular service. In **Nimai Ch. Chaterjee** (supra), the issue before the Hon'ble High Court of Calcutta was whether the temporary service rendered initially by an employee should be reckoned for the purpose of qualifying service for payment of pension, if it is followed immediately by permanent service. The Hon'ble High Court following **Kesar Chand vs. State of Punjab and others**, 1998 (5) SLR 27 took a view that such temporary service must be reckoned for the purpose of qualifying service for pensionary benefits. In the case of **Kesar Chand** (supra) the Full Bench of Punjab and Haryana High Courthad held that temporary or officiating service under the State Government has to be reckoned for determining the qualifying service. The Court observed that it was illogical that the period of service spent by an employee on a work-charged establishment before his regularisation was not to be taken into consideration for determining the qualifying service. The Court further observed that the classification sought to be made out amongst Government servants who were eligible for pension and those who commence service as work-charged and were later regularised was not based on any intelligible criteria and, therefore, was not sustainable in law".

12. Considering the discussion in the preceding paras, it can be concluded that the original applicant was appointed in the pay scale of Rs.196-3-200-EB-232 in Work Charge establishment on temporary regular basis, and not in the category of employees covered by the EO No.130 dated 10.01.1991 and 14.07.2006. The original applicant being in a regular scalewas entitled for counting his full service from the date of appointment to the date of superannuation for the purpose of pensionary benefits.

13. In the light of above, the respondents are directed to work out the pensionary benefits of the original applicant in accordance with the rules by counting his entire service from 06.03.1984 to 30.06.1994 as fully eligible for the purpose of pensionary benefits and grant him pensionary benefits, including arrears with an interest of 9%, after adjusting the amount already paid to him as service gratuity in the year 1995. OA is allowed. No costs.

(V.N. Gaur)
Member (A)

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September 21, 2016