

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

OA No.4227/2012

**Reserved on :12.09.2017
Pronounced on:27.09.2017**

Hon'ble Ms. Praveen Mahajan, Member (A)

Shri Dharam Chand
S/o late Shri Hari Chand
R/o M-163, J.J.Colony, Raghbir Nagar
Najafgarh Road, New Delhi. Applicant

(By Advocate:Ms. Karishma for Shri Umesh Singh)

VERSUS

1. South Delhi Municipal Corporation
Through its Commissioner
9th floor, Dr. Shyama Prasad Mukherjee
Civic Centre, JLN Marg
New Delhi – 110 002.

2. The C.A.Cum F.A.
23rd floor
Dr. Syama Prasad Mukherjee
Civic Centre, New Delhi – 110 002. Respondents.

(By Advocate:Ms. Anupama Bansal)

ORDER

The applicant has come before the Tribunal seeking the following reliefs :-

- "(a) Declare the above said act of the respondent of not counting the service rendered by the applicant for the period from 1.1.1969 to 30.09.1971 as qualifying service for the purpose of pension and other service benefits is illegal, invalid, arbitrary and discriminatory and also violative of the provisions of rule 14 of CCS (Pension) Rules ;

- (b) Direct the respondent to count the past service for the period from 1.1.1963 to 30.09.1971 as qualifying service for the purpose of pension and to pay all consequent benefits i.e. revision of pension, arrears of pension, gratuity etc. to the applicant;

- (c) Pass any other order or directions as this Hon'ble Tribunal deems fit and proper may also been passed in favour of the applicant and against the respondent."

2. Briefly stated, the facts of the case are that the applicant retired from service on 31.08.1998. It is alleged that his pay was not fixed properly and after a long spate of court cases, his pension has been fixed w.e.f. 09.06.2011. The applicant states that his qualifying service for the period from 01.01.1963 to 30.01.1971 has not been counted for the purpose of fixation of pension, as admissible under the rules.

3. The case of the applicant is that he rendered service on muster roll basis on monthly pay, as painter for the period 01.01.1963 to 30.09.1971, without any break. Hence he is entitled for reckoning of the above said period for the purpose of pension which has not been done by the respondents. The applicant was initially appointed by the respondent, on muster roll basis, as painter w.e.f. 01.01.1963 and was regularized on the said post in the pay scale of Rs.85-110 with the respondents vide letter dated 6.3.1972 w.e.f. 1.10.1971 with Municipal Corporation of Delhi. He retired on 31.08.1998 (Annexure A-1). The applicant was placed in the pay scale of assistant painter i.e. Rs.210-290. The salary of the applicant was reduced without any reason or information. The applicant challenged the action of the respondents by sending legal notice vide letter dated 30.08.2000 to the respondents but his case was not considered. Thereafter, the applicant challenged the said act of the respondents in I.D.No.118/2006 (Old ID No.118/2002) before the Labour Court praying that the management may be directed that his pay be fixed in the pay scale of painter instead of assistant painter from 06.03.1972 to 31.8.1998 with all consequential benefits with interest @ Rs.24% p.a. It is stated that the claim of the applicant was listed before Industrial Tribunal and decided in his favour on 12.10.2006, holding that:

"17. It is very strange that since the regularisation of the workman as painter w.e.f. 01.10.71 at the pay scale of Rs.210-270,

there is no subsequent pay scale shown in the Pay Commission's recommendations which also strengthens the version of the workman that he is entitled to the scale of painter of Rs.260-350 as per the 3rd Pay Commission, Rs.950-1500 as per 4th Pay Commission and to Rs.3050-4590 as per 5th Pay Commission. Therefore, the workman is entitled to the pay scale of Rs.3050-4590 painter as adopted by MCD vide 5th Pay Commission.

18. keeping in view the discussion made above and the facts & circumstances, I hold that the workman is entitled to the pay scale of painter of 260/400 (revised from time to time) w.e.f. 01.10.1971 (date of regularisation). The management is directed to fix the salary of the workman with all consequential benefits from 1.10.71 I further hold that the workman/applicant is entitled to the pay scale of Painter as adopted by MCD vide 5th pay commission. However, he is entitled to the arrears of back wages w.e.f.1.1.1996. The management is directed to pay the same to the workman within three months of the date of publication of this award. Reference is answered in favour of the workman. Award is passed accordingly."

4. The applicant made a representation dated 12.03.2006 to the respondents for implementation of the award. Subsequently, again, the applicant filed an application under Section 33-C(2) of the I.D.Act 197 for computation of the Realization of revised pensionary benefits as per the Award dated 12.10.2006 in ID No.118 of 2002, which was settled on 24.10.2010.

5. The applicant avers that he had rendered the service as daily wage muster roll employee for about eight years from 01.01.1963 to 30.09.1971. Half of this period needs to be counted for the purpose of pension, as per the settled law on the subject. Not including the said period for the purpose of pension and other retiral benefit is illegal and violative of pension rules. He has only been sanctioned the pension for the period, which he has rendered on regular basis, w.e.f. 01.10.1971. The applicant came to know in the month of January 2012 from his family friends that he has been given the pension, without including the period of service rendered by him from 1.1.1963 to 1.10.1971. The applicant approached the respondent office immediately and also served them with the legal notice dated 27.03.2012, but received no

reply. The applicant has cited the Government of India orders the M.F.O.M. No.F.12(i)-E V/68, dated 14th May, 1968 in support of his claim, reproduced as under:

“2 . Counting of half of the service paid from contingencies with regular service:- Under Article 368 of the CRSs 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 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 of 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 timer 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 i.e. malis, chowkidars, Khalasi etc.
- (c) The service should have been one for which the payment is made either on monthly 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.

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) rule, 1965, where the staff paid from contingencies is subsequently appointed on regular

basis. The benefit will be subject to the conditions laid down in O.M., dated the 14th May, 1968 above

- xii. The applicant submits that he has served the department as painter, skilled workmen for the period from 01.01.1963 to 01.10.1971 on muster roll basis without any break and paid on monthly basis and fulfil all the conditions as per said Govt. India orders regarding the counting of service rendered by him, during the period mentioned above should be counted as qualifying service for the purpose of pension.
- xiii. That the above said act on the part of the respondents is illegal, invalid, arbitrary, unjustified and violative of Article 14, 16 and 21 of the constitution of India.
- xiv. The applicant has been challenging the above said illegal act of the respondents."

6. The applicant states that due to reduction of his pay by the respondent, there was lengthy litigation between the applicant and the respondent since 2000 till 2010 against the reduction of his pay and his pension could be sanctioned only in July, 2011. The applicant had rendered service as daily wage employee for about eight years w.e.f. 01.01.1963 to 30.09.1971. Thus half of this period should be counted for the purpose of pension, as per rules. Not including the said period for the said purpose of pension and other retiral benefit, is not only illegal and arbitrary but also not sustainable in law.

7. In their counter, the respondents state that the applicant has been paid all the terminal benefits due to him and the order of the Industrial Tribunal passed earlier in 2006 has been implemented. The pension of the applicant and has been sanctioned on 04.7.2011.

8. They admit that the benefit claimed by the applicant is as per circular No.RPA-V/CED (C-II/2000/RK/123 dated 08.09.2000 which stipulates that any employee working less than 33 years service as a regular worker is entitled for 50% of his daily wage service for pensionary benefits only. However, the record pertaining to the initial engagement of the applicant, as

Daily wager, is not traceable since it pertains to the years 1963-1971 and is almost five decades old. In the absence of such verification of the Muster Roll of the service of the applicant, the respondents are unable to process the claim of the petitioner and pay 50% pensionary benefits to the employee.

9. Heard both the counsels and perused the available record.

10. The relief as claimed by the applicant in the OA is based on Government of India order on the subject, cited in para 5 above, and is not in dispute.

11. The only defence of the respondents in this regard is that the service record of the applicant being very old is not readily available with them. Hence they are unable to finalise his claim as per rules on the subject.

12. The learned counsel for the applicant has relied upon the Punjab-Haryana High Court judgments in the cases Sher Singh Vs. The State of Haryana and Another (CWP No.20186 of 2005 decided on 17.05.2012) and Malkiat Singh, Ex Security Guard vs. Presiding Officer Industrial (CWP No.17820 of 2005 decided on 17.04.2012) wherein it has been held that the workman is entitled for grant of pension by counting half his services as daily wager.

13. In the instant OA the applicant has not been able to provide any record/documents in support of his claim that he was on the muster roll of the respondents w.e.f.1963-1971. It is not disputed that as per circular no. RPA-V/CED (CII/2000/RK/123 dated 08.09.2000 an employee is entitled for 50% of his daily wage service for pensionary benefits only. However, the service record of the applicant pertaining to his engagement, as daily wager is not readily traceable being very old. In the absence of such verification, the respondents cannot extend the benefit of the aforesaid circular to the applicant.

14. While understanding the dilemma of the respondents in this case, the fact remains that pension is a fundamental right of an employee and cannot be denied to him. While pension has been sanctioned to the applicant in July, 2011, it is important that the applicant be sanctioned/paid the amount which is his rightful due. Order dated 12.10.2006 of the Industrial Tribunal (referred to in para 2 above) leads one to the logical inference that prior to 01.10.1971 (i.e. before his regularization) the applicant was on the muster roll of the respondents' department. The fact that he was regularized as Painter in the year 1971, in pursuance to the order of the Industrial Tribunal, would necessarily imply, that prior to his regularization, he was a casual employee of the respondents. Hence, it seems only fair, that the minimum casual service required, before an employee could be considered for regularization, as per the relevant instructions in 1971, be taken, as the bench mark, for processing the claim of the petitioner to pay him 50% pensionary benefits as applicable under the rules. The respondents are directed to make a final attempt to locate the old records to process the claim of the applicant. This may be done in the next 30 days. If they fail in this endeavour, then they may take into account the minimum years of casual service required before an employee could be considered for regularization (in the year 1971) and process the claim of the applicant and refix his pension, accordingly. This exercise may be completed within three months from the date of receipt of a certified copy of this order. No costs.

(Praveen Mahajan)
Member (A)

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