

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/01375/2016

Dated the 29th day of October Two Thousand Eighteen

PRESENT

HON'BLE MR. T. JACOB, Member (A)

C.Indirani,
W/o (late) E.Sekar (Staff No. 16893),
Adyar Telephone Exchange, CHTD, Chennai.
Res: No. 59, Puzhuthivakkam Main Road,
Puzhuthivakkam,
Chennai 600091.Applicant

By Advocate M/s. T.N.Sugesh

Vs

- 1.The Union of India,
rep by the Chief General Manager,
BSNL – Chennai Telephones,
No. 78, Purasawalkam High Road,
Chennai 600010.
- 2.The Deputy General Manager (F&A)/CBA,
BSNL, CHTD,
Chennai.
- 3.The Deputy General Manager (Finance Cell),
BSNL, CHTD, Chennai – 600010.
- 4.The Chief Accounts Officer (IFA)/CBA,
BSNL, CHTD,
Chennai 600010.
- 5.The Accounts Officer (P&A) CBA,
BSNL, Chennai Telephones,
Chennai 600010.

....Respondents

By Advocate Mr. M.T.Aruman

ORDER**(Pronounced by Hon'ble Mr. T. Jacob, Member(A))**

This O.A. has been filed by the applicant seeking the following relief:-

"to call for the records relating to the impugned order of the 5th respondent herein in No. AO [P&A]/CBA/Pension/2015-16/288 dated 29.09.2016 and quash the same and direct the respondents herein to grant family pension to the applicant in respect of the services rendered by her husband Mr. E. Sekar [Staff No 16893] who had last worked as Group-D employee, till the date of his compulsory retirement from service on 14.07.2011 and to grant her arrears of pension and all attendant benefits and pass such further or other orders as this Hon'ble Tribunal may be pleased to deem fit and proper in the circumstances of the case and thus render justice."

2. The brief facts of the case as stated by the applicant are as follows:

The applicant's husband, Mr. E. Sekar was initially appointed as Casual Labour in the year 1985, and was later granted temporary status on 29.09.1995. His services were regularized and he was appointed as Group 'D' Mazdoor with effect from 08.12.2000 vide order dated 19.01.2001. It is stated by the applicant that her husband had serious ailments including Tuberculosis, and he was constrained to take leave for long periods for undergoing treatment. It is further submitted that he was compulsarily retired w.e.f 14.07.2011 on the allegations of unauthorized absence and appeal against the same evoked no response. Her husband, Mr. E. Sekar had expired on 20.01.2015 leaving behind the applicant, Ms. Sandhya (daughter), Manikandan (Son) and Mr. Ezhumalai (father), as his legal heirs. It is stated by the applicant that a letter was issued dated 17.10.2014, whereby, retirement gratuity of Rs. 86,142/- was sanctioned and it was mentioned that consequent to payment of commuted value of pension, the original pension will be reduced from Rs.6160/-p.m. However pension was not paid till the death of the applicant's husband on 20.01.2015.

After the death of her husband, pursuant to her representation, she had received a communication from the Accounts Officer [P&A]/CBA (the 5th respondent herein) in NO AO[P&A]/CBA/Pension/2015-16/288 dated 29.09.2016 stating that the grant of pension had been declined on the ground that total service rendered by husband is less than ten years of service and only DCRG amount of Rs. 86,142/- is admissible and was settled during 2014. Further the applicant is requested to contact AO(Pension), COBA if any clarification/doubt arises in this regard. Accordingly, applicant preferred representations on 28.08.2015 and again on 21.06.2016 to the respondents seeking grant of family pension, which evoked no response. Hence, she filed the instant OA seeking the aforesaid relief.

3. Respondents have filed reply stating that applicant's husband was granted Temporary Status Mazdoor (TSM) during the period 29.09.1995 to 30.09.2000 with total service of 5 years 0 months and 2 days. 50% of this TSM period comes to 2 years 6 months and 1 days which will be counted for the purpose of retirement benefits. As he was regularized as Group D and joined on 01.10.2000. While in service disciplinary case was initiated vide letter dated 30.08.2010 for absence from duty unauthorizedly without prior permission or proper sanction of leave in advance. Subsequently vide order dated 14.07.2011 he was given compulsory retirement. The total service rendered by the applicant's husband from 01.10.2000 to 14.07.2011 comes to 10 years 9 months and 13 days. During the period he worked as Group D, he had a non qualifying service of 3 years 7 months and 29 days.

The net qualifying service of Sri Sekar is as below:-

“1. 50% TSM period. 02 years 06 months 01 day
2. Gr.D Regular service 10 years 09 months 13 days
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Total13 years 03 months 14 days

Less: Non qualifying service03 years 07 months 29 days

Net qualifying service09 years 07 months 15 days

Further, respondents stated that the gratuity amount eligible to Shri Sekar was calculated as Rs. 86,142/- and the amount was settled vide order dt. 17.10.2014. It is further stated that as the deceased official is not eligible for pension, the question of family pension to the applicant does not arise. The respondents stated that the prayer of the applicant for family pension and consequential benefits is not tenable as per rules and are contrary to rules on the subject and hence the OA is liable to be dismissed as it is devoid of merits and facts.

4. Applicant filed rejoinder reiterating the contention made in the OA. It is stated by the applicant that charge memorandum dated 30.08.2010 reveals that her husband had even earlier submitted reply dated 22.11.2006 to letter No. Ady.I/X-1/2006-2007/dt Nil, stating that his absence was on account of his ill-health and in respect of the period up to 30.08.2010, her husband's services are stated to have been treated as 'dies-non' for a total period of 700 days. Further, it is stated that said disciplinary proceedings initiated vide aforesaid charge memorandum dated 30.08.2010 ended in passing of the final order dated 14.07.2011 by imposing compulsory retirement from service. It is stated by the applicant that in the absence of any specific direction in the said final order dated 14.07.2011 treating the period from the date of issuance of charge memorandum dated 30.08.2010 to till passing final order dated 14.07.2011, while the applicant's husband may not have been entitled to any wages for the said period, the said period ought to have been considered for the purpose of grant of pensionary benefits. If the authorities would do so, the applicant would

be entitled for family pension as total qualifying service period would be more than 10 years. And thus the applicant was entitled to family pension.

5. It is further stated by the applicant that the respondents ought to have granted temporary status to her husband as per the scheme of casual labour (Grant of Temporary Status and Regularization Scheme) dated 07.11.1989 much earlier to 29.09.1995 (delayed date of grant of temporary status to her husband), as her husband was in continuous service since 1985.

6. Learned counsel for the applicant submitted that the total service rendered by applicant's husband since 1985, including the service as Casual Labour, is 26 years and that even if a portion of his services as Casual Labour and the services rendered after grant of Temporary status were to be included, her husband would have put in qualifying service of much more than ten years. It is further stated by the counsel for the applicant that as per the scheme of casual labour (Grant of Temporary Status and Regularization Scheme) dated 07.11.1989, applicant's husband ought to have been granted Temporary status much prior to 20.09.1995. Having delayed in granting temporary status to her husband by the respondents, now they cannot contend that as per the said scheme only 50% of the service rendered as Temporary Mazdoor shall count for the purpose of grant of pensionary benefits. It is further stated by the counsel for the applicant that as per the decision of the Hon'ble Supreme Court in the case Union of India & Ors. Vs. Rakesh Kumar & Ors (2017) 13 SCC 388, a causal worker before obtaining temporary status is also entitled to reckon 50% of casual service for the purpose of pension.

7. Counsel for the applicant further submits that the respondents may take a lenient view by taking into account the period from the date of issuance of charge memorandum dated 30.08.2010 till passing final order dated 14.07.2011 for the purpose of grant of family pension, in the absence of any specific

direction in the final order dated 14.07.2011, even though the applicant's husband may not have been entitled to any wages for the said period. He prays for allowing the OA .

8. Learned counsel for the respondents reiterates the contentions made in the reply to the OA and stated that the applicant's husband was a habitual absentee and inspite of several opportunities given to the applicant's husband, he could not avail it, and, therefore, respondents by order dated 14.07.2011 imposed voluntary retirement. He also refuted the contention of the applicant that an appeal was preferred against the said order. As service rendered by applicant's husband was less than 10 years and he is not eligible for pension and the granting of family pension does not arise. Learned counsel for the respondents pray for dismissal of the OA.

9. Heard Ld. counsel on both sides and gone through the OA, reply and rejoinder.

10. The undisputed facts of the case is that applicant's husband was initially appointed as Casual Labour in the year 1985 and was later granted temporary status on 29.09.1995 and his services were regularized and was appointed as Group 'D' Mazdoor in the year 2000. He was compulsorily retired with effect from 14.07.2011 for unauthorized absence and applicant's request for grant of family pension had been rejected by the respondents vide order 29.09.2015 due to the reason that applicant's husband had less than 10 years of qualifying service. Even as per the respondents, the net qualifying service of the applicant's husband is 09 years 07 months 15 days and the minimum qualifying service for pension is 10 years. All along the applicant's prayer is that she may be granted family pension in view of the total service rendered by applicant's husband since 1985, including the service as Casual Labour, is 26 years and that even if a portion of her husband's services as Casual Labour and the services

rendered after grant of Temporary status were to be included, her husband would have put in minimum qualifying service of much more than ten years. Since the respondents had taken into account only temporary status service followed by regular service rendered by the applicant ignoring the casual service rendered by him for the purpose of pension, the qualifying service for pension is short of few months. Had the respondents not delayed in granting of temporary status as per the scheme of casual labour (Grant of Temporary Status and Regularization Scheme) dated 07.11.1989, the applicant's husband would have been entitled for pension. Apparently that delay cannot be attributed to the applicant's husband and the respondents could not explain the delay in granting temporary status and the applicant cannot be penalized for inaction of the respondents at the appropriate time. However, it is seen from the decision of the Hon'ble Supreme Court in the case Union of India & Ors. Vs. Rakesh Kumar & Ors (2017) 13 SCC 388, a causal worker before obtaining temporary status is also entitled to reckon 50% of casual service for the purpose of pension. Para 53, which is extracted as under for better appreciation of the case:-

"53. In view of foregoing discussion, we hold :

53.1. The casual worker after obtaining temporary status is entitled to reckon 50% of his services till he is regularised on a regular/temporary post for the purposes of calculation of pension.

53.2 The casual worker before obtaining the temporary status is also entitled to reckon 50% of casual service for purposes of pension.

53.3 Those casual workers who are appointed to any post either substantively or in officiating or in temporary capacity are entitled to reckon the entire period from date of taking charge to such post as per Rule 20 of the 1993 Rules.

53.4 It is open to Pension Sanctioning Authority to recommend for relaxation in deserving case to the Railway Board for dispensing with or relaxing requirement of any rule with regard to those casual workers who have been subsequently absorbed against the post and do not fulfill the requirement of existing rule for grant of pension, in deserving cases.

On a request made in writing, the Pension Sanctioning Authority shall consider as to whether any particular case deserves to be considered for recommendation for relaxation under Rule 107 of Rules, 1993."

11. Labour Legislations are welfare legislations and they always receive a liberal interpretation. Be it CCS Pension Rules, 1972 or any other pension regulations such as EPF Act. Provisions of these rules are expected to be interpreted to advance the object of the legislation. Referring to such purposive interpretation, the Apex Court in the case of ***Employees Provident Fund Commr. V. Official Liquidator, (2011) 10 SCC 727*** held as under :-

"a legislation made for their benefit must receive a liberal and purposive interpretation keeping in view the directive principles of State policy contained in Articles 38 and 43 of the Constitution."

In the case of Allahabad Bank V. All India Allahabad Bank Retired Employees Assn. (2010) 2 SCC 44d, the Apex Court has held as under:-

"Such welfare statutes always receive a liberal construction. They are required to be so construed so as to secure the relief contemplated by the statute. It is well settled and needs no restatement at our hands that labour and welfare legislation have to be broadly and liberally construed having due regard to the directive principles of State policy."

12. Thus reckoning 50 % of casual labour service as also 50% of Temporary Service, if the regular service of the applicant is incremented, the qualifying service exceeds the minimum required ten years of service. Even without reckoning the casual labour service, if the qualifying service is less than 9 years and 9 months, the shortage being minimum ie, less than 2 months, the same deserves condonation by way of relaxation under Rule 88 of the CCS (Pension) Rules. Had casual service been not reckonable, the Tribunal would have directed the respondents to press into service the provisions of Rule 88.

13. In view of the above, the impugned order dated 29.9.2015 is liable to be quashed and set aside and accordingly ordered. The respondents are directed to

consider and dispose of the pending representation of the applicant dated 21.6.2016 taking into account the above decision and process the case for payment of family pension to the applicant within a period of eight weeks from the date of receipt of a copy of this order. The OA is disposed of accordingly.

14. No costs.

(T. JACOB)
MEMBER(A)

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