

**Central Administrative Tribunal
Chandigarh Bench
Chandigarh**

**MA No.62/1018/2017 &
OA No.62/333/2013 &
MA No.62/201/2018**

Decided on : 17.09.2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman

Hon'ble Ms. P. Gopinath, Member (A)

Mohd. Jamal Kalu, aged about 62 years, Ex-Mazdoor, PN No.5605, C/o Manager, CSD Depot Srinagar, S/o Abdul Karim Kaloo, R/o Rampora, Chatabal, Srinagar, J&K.

... Applicant

(By Mr. Mir Majid Bashir, Advocate)

Versus

1. Union of India, Notice to be served through Secretary, Ministry of Defence, L1 Blocks, Road No.16, Church Road, New Delhi 110001.
2. Joint General Manager, Canteen Store Department, Head Office, Adelphi, 119, M.K. Road, Mumbai-400020.
3. Regional Manager, Canteen Store Department, B.D. Bari, Jammu.
4. Area Manager, Canteen Store Department, BB Cantt. Batwara, Srinagar, J&K.

... Respondents

(By Ms. Monika Kondal, Advocate proxy for Mr. K.K. Thakur, Advocate / Mr. Satinder Singh, Advocate)

ORDER (ORAL)

P. Gopinath, Member (J) :

The facts giving rise to filing of the instant Original Application (OA) are that the applicant joined service as temporary Mazdoor in the respondent department w.e.f 5.4.1971. Vide order dated 15.3.1989 (Annexure A), the services of the applicant were regularized and further confirmed as well, vide order dated 14.6.1993, w.e.f. 5.9.1990. He retired from service w.e.f. 31.5.2008. However, for calculation of retiral dues, the service rendered by him as casual mazdoor were not taken into consideration, resulting into payment of less pensionary benefits. The repeated representations filed by applicant have evoked no response, hence the O.A. for issuance of direction to the respondents to count his service w.e.f. 5.4.1971, the date of initial appointment, for the purpose of financial up-gradation, post-retirement and other pensionary benefits.

2. Earlier, the O.A. was dismissed as barred by limitation, vide order dated 14.3.2017. It was challenged in CWP No. 822/2017 before the Hon'ble J&K High Court, Srinagar. While disposing of the Petition, liberty was granted to the applicant to move an application for condonation of delay. Pursuant thereto, the applicant has also filed an M.A.No.062/01018/2017.

3. The respondents have resisted the O.A as well as M.A. for condonation of delay. They submit that the O.A. lacks any merit as the applicant has lodged the claim without any rule or law and there is no justification given by him for the huge delay in filing the O.A.

4. We have heard learned counsel for the parties at length and examined the material on file.

5. Considering the fact that the applicant was a Group 'D' employee and is getting less pension every month, and further pension being a recurring cause of action, and as a matter of equity also, we condone the delay in filing the O.A. M.A. for condonation of delay shall stand disposed of accordingly.

6. Though the applicant has lodged his claim for grant of service rendered by him as daily wager for various purposes like ACP/MACP and promotion etc. but considering the fact that there is no rule or instructions quoted by him to support this contention, he cannot be extended any benefit in that relevant connection.

7. However, in so far as claim of the applicant for counting of daily wage service for retiral dues is concerned, in our view, that needs to be accepted for the reasons mentioned below.

8. It is not in dispute that the applicant has worked as daily wagger for about 19 years, before his services were regularized and eventually confirmed as a Group D employee. That being the factual scenario, he could not be denied the benefit of counting of service rendered on daily wage basis, towards retiral dues.

9. The issue is no longer res-integra and stands clinched by the appendix attached to "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993, which came into force w. e. f. 1.9.1993. Clauses 5(v) of the same being relevant is reproduced as under :-

“(v) 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after their regularisation.”

10. Similarly, in CIVIL APPEAL NO.(S) 10806 OF 2017 [Arising out of Special Leave Petition (Civil) No.7434 of 2016] titled **HABIB KHAN VERSUS STATE OF UTTARAKHAND & ORS.** decided on 23.8.2017, the Apex Court has settled the issue, in the following manner :-

“The relevant provisions under which the period of work-charged service is not to be counted for computation of 'qualifying service' in the State of Uttarakhand is Rule 370 of the Civil Service Regulations which is extracted below:

“370. Continuous temporary or officiating service under the Government of Uttar Pradesh followed without interruption by confirmation in the same or any other post shall qualify except-

- i) periods of temporary or officiating service in a non-pensionable establishment,
- ii) periods of service in a work-charged establishment, and
- (iii) periods of service in a post paid from contingencies.”

6. The pari materia provision contained in Rule 3.17(ii) of the Punjab Civil Services Rules had been struck down by a Full Bench decision of the Punjab and Haryana High Court in Kesar Chand vs. State of Punjab and ors.¹ The challenge by the State against the aforesaid decision of the Full Bench of the Punjab and Haryana High Court was negatived by this Court. The matter came up for consideration before this Court, once again, in the case of Punjab State Electricity Board and anr. vs. Narata Singh and anr.² While dealing with the said question this Court in paragraph 25 of the report held that the Full Bench decision of the Punjab and Haryana High Court was perfectly justified in striking down Rule 3.17(ii) of the Punjab Civil Services Rules resulting in obliteration of the distinction made in the said Rules between 'temporary and officiating service' and 'work-charged service'. On the said basis, this Court took the view that the period of work-charged service should be 1 1988 (5) SLR 27 2 (2010) 4 SCC 317 reckoned for purposes of computation of 'qualifying service' for grant of pension.

7. As already observed, the provisions of Rule 370 of the Civil Service Regulations applicable to the State of Uttarakhand are pari materia with the

provisions of Rule 3.17(ii) of the Punjab Civil Services Rules, discussed above. If that is so, we do not see as to why the period of service rendered on work-charged basis by the appellants should not be counted for purposes of computation of 'qualifying service' for grant of pension. The pari materia provisions of Rule 3.17(ii) of the Punjab Civil Services Rules having been interpreted and understood in the above manner by this Court in *Narata Singh (supra)* we do not find any room for taking any other view except to hold that the appellants are entitled to reckon the period of work-charged service for purposes of computation of 'qualifying service' for grant of pension. We order accordingly; allow these appeals and set aside the impugned orders passed by the High Court."

11. Similarly, earlier also in **UNION OF INDIA & OTHERS VS. RAKESH KUMAR & OTHERS**, C.A.No. 3938 of 2017 arising out of SLP © No. 23723 of 2015 decided on 24.03.2017, similar view was taken by their Lordships regarding Railway employees.

12. Even Central Administrative Tribunal, Jodhpur Bench, Jodhpur, in O.A. No. 40/2013 titled **SUGREEV VS. UOI ETC.** decided on 27th day of August, 2013, has also allowed similar claim, holding as under :-

"(ii) The respondents are directed to reckon 50% of the qualifying service as per the provisions of Para 5(v) of OM No.51016/2/90-Estt (C) dated 10th September 1993 and allow grant of pension and all retiral and consequential benefits under CCS (Pension) Rules, 1972."

13. In view of the facts and law as noticed above, this O.A. is allowed. The respondents are directed to count 50% of the service rendered by the applicant as daily wage service, prior to his regularization, towards qualifying service for pension and other related retiral benefits and release the revised retiral dues accordingly. The needful be done within a period of three months from the date of receipt of a certified copy of this order. The parties are, however, left to bear their own costs.

(P. Gopinath)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

HC*