

**Central Administrative Tribunal  
Principal Bench, New Delhi.**

**OA-1381/2016  
MA-3278/2017  
MA-4754/2018**

**Reserved on : 16.11.2018.**

**Pronounced on : 14.12.2018.**

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

1. Sh. Nizamuddin Mehmood Miyan Bashey,  
S/o Mehmood Miyan Bashney,  
Aged about 63 years,  
R/o 3031/1, St.No.4,  
Ranjit Nagar, New Delhi-110008.
2. Sh. Narayan Bahadur K.C.,  
S/o Sh. Bal Bahadur, Aged about 54 years,  
Working as Sr. Attendant,  
Power Grid Corporation of India,  
Western Regional Load Despatch  
Center, Mumbai.
- 3/ Sh. Bhimrao Hanmant Dabhade,  
S/o Sh. Hanmant Dabhade, Aged  
About 52 years, Working as  
Technician W-6, Power Grid  
Corporation of India, Western  
Regional Load Despatch Center,  
Mumbai. .... Applicants

(through Sh. Vidya Sagar, Advocate)

Versus

1. Union of India through:  
The Secretary,  
Ministry of Power,  
Shram Shakti Bhawan,  
Rafi Marg, New Delhi-110001.
2. The Chairman,

Central Electricity Authority,  
Sewa Bhawan, R.K. Puram,  
New Delhi-110066.

3. The Executive Engineer (A&S),  
Western Region Electricity Board,  
M.I.D.C. Area, Marol Andheri (East),  
Bombay-400093. .... Respondents  
(through Sh. R.K. Sharma, Advocate)

### **O R D E R**

Though the medium of this O.A., the applicants have sought the following relief:-

“(a) Allow the instant O.A. and set-aside the impugned order dated 11/02/16 issued by the office of Respondent no.2.  
(b) To direct the respondents to count and grant pro-rata pension, terminal gratuity along with consequential benefits to applicant no.1 and count the half past service for grant of pro-rata pension, terminal gratuity to the applicants along with consequential benefits to applicant no. 2 and 3.  
(c) Award costs in applicant's favour.  
(d) Any other relief or order in applicant's favour which this Hon'ble Tribunal considers appropriate in applicant's favour, in the facts and circumstances of this case.”

2. Briefly stated, the facts of the current O.A. are that the applicant No.1 was appointed as Electrician-cum-Pump Operator with the respondents on daily wages on 15.12.1980 @ 23.55 per day. He was appointed as Wireman on regular basis on 28.10.1988 in the pay scale of Rs.950-20-1150-EE-25-1400. He was promoted as Electrician on 31.12.1993.

2.1 Applicant No.2 was appointed as Wash Boy on 22.02.1985 on temporary basis with a written assurance that he shall be considered for regularization/permanent absorption as the next opportunity arises. On 18.02.1986, he was appointed as Guest Room Attendant on regular basis.

2.2 Applicant No.3 was appointed as Helper on 11.07.1985 as Helper on daily wages with the respondents. On 26.05.1988, he was appointed as Messenger on regular basis.

2.3 In 1995, W.R.E.B. (CEA) employees were given an option for getting their service merged into the Power Grid Corporation of India Ltd. Accordingly, applicant No.1 was absorbed in the Power Grid Corporation of India Ltd. w.e.f. 01.01.1996 on regular basis as a Technician Grade-W6. Applicant No.2 was absorbed on regular basis as a Attendant whereas the applicant No.3 was absorbed as a Attendant-W1.

2.4 On 31.12.2012, applicant No.1 retired from Power Grid Corporation as a Technician Grade-W8.

2.5 On 08.09.2015, the applicants represented to respondent No.2 requesting that half of their past service should be counted for the purpose of pension and other related benefits under CCS

(Temporary Service Rules, 1965) for which the applicants were paid from contingencies but which involved a full time employment.

2.6 On 24.09.2015, the respondent No.2 forwarded the representations of the applicants to respondent No.3 for taking necessary action. The applicants submit that respondent No.2 rejected their claim on 11.02.2016 without application of mind and in an arbitrary manner, which has caused grave injustice to them.

2.7 It is submitted that this Tribunal in OA-1442/2008 (**Sh. Kultarr Chand Rana Vs. Union of India**) granted the benefit of pro-rata pension to the applicant on work charged benefits with arrears. This decision of the Tribunal was also affirmed by Hon'ble High Court in **WP(C)-5/2010**. Similar benefits have been extended to the applicants by Mumbai Bench of this Tribunal in OA-1284/1994 (**B.R. Jadhav Vs. Union of India & Ors.**). Reliance has also been placed by the applicant on the decision of Hon'ble High Court in the case of **UOI & Ors. Vs. O.P. Sharma and Anr.** in CWP-5871/2001.

3. In the counter reply, the respondents concede that applicant No.1 was appointed as Wireman on regular basis w.e.f. 28.10.1988 in WREB; applicant No.2 was appointed as Guest Room Attendant on regular basis in WREB w.e.f. 01.04.1986 and applicant No.3 was appointed as Messenger in WREB w.e.f. 03.06.1988. In 1995, the applicants opted for absorption in Power Grid on permanent basis

w.e.f. 01.01.1996. As per the terms and conditions for absorption only permanent Central Government servants, who have completed 10 years or more of service and who opt for the retirement benefits of Power Grid are entitled to receive pro-rata retirement benefits.

4. It is contended that as per O.M. dated 14.05.1968 of GOI, it has been laid down that half the service paid from contingencies will be allowed to be counted towards pension at the time of absorption in regular employment subject to the following conditions:-

- (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 1<sup>st</sup> January, 1961, for which authentic records of service may be available (**Annexure R-7**).

4.1 The respondents submit that the applicants have filed this case after a gap of almost 21 years. WRPC have no records with regard to their daily wages services as the retention period of the record pertaining to contingencies is 10 years. It would thus not be possible to decide their eligibility (for pro-rata pension) in the absence of authentic records of service, as envisaged at 'e' above.

4.2 On their absorption in Power Grid w.e.f. 01.01.1996, the applicants were paid all terminal benefits like GPF, Leave Encashment, ECEGIS etc. As per the available records, it is clear that Contributory Provident Fund along with 6% interest was paid by WRPC/CEA to Power Grid for the applicants of this O.A. As such, allowing pro-rata pension for the same spell of service would amount to payment of double benefits.

4.3 The respondents further contend that the applicants are not eligible for grant of pro-rata pensionary benefits as per Government Rules as also in accordance with the terms and conditions of their absorption in Power Grid for the service rendered under Government before their absorption in Power Grid.

4.4 Reliance placed by the applicants on the decision of the Tribunal in OA-1442/2008 is not relevant as the applicant in that case had completed 10 years of service whereas the applicants herein had specifically opted for pensionary benefits as per Power Grid Rules of complete 10 years of regular service at the time of absorption. Additionally, the O.A. is terribly barred by limitation and is not maintainable.

5. The applicants have filed a rejoinder reiterating the same issues as stated in the O.A.

5.1 Respondents in their sur-rejoinder have reiterated the points already made in the counter reply. It is also submitted that the applicant No.2 was actually appointed on 01.04.1986 and not on 18.02.1986 and applicant No.3 was actually appointed on 03.06.1988 and not on 26.05.1988, as stated earlier.

5.2 The applicants have filed a reply to the sur-rejoinder stating that the O.A., as prayed for, be allowed with costs.

6. During the course of hearing, the learned counsel for the applicants Sh. Vidya Sagar emphasized that the applicants are entitled to the benefit of pro-rata pension as per rules. He relied upon Rule-37 of CCS Pension Rules which lays down the condition of pension on absorption in or under a Corporation, company or body

and conditions for payment of pension on absorption as laid down in Rule-37-A. He forcefully argued that the applicants are entitled for grant of pro-rata retirement benefits under the aforesaid rules which have wrongly been denied to them by the respondents. He heavily relied upon the decision of the Tribunal in OA-1442/2008 (**Kultarr Chand Rana Vs. UOI & Ors.**) dated 21.04.2009 wherein the applicant had been absorbed in Power Grid Corporation before getting a regular status. The Tribunal in the said case had directed the respondents to grant pro-rata pension (with arrears) to the applicant, on his work-charged benefits in relaxation of having completed 10 years service. On the point of limitation, the learned counsel argued that the case is squarely covered by the judgment of Hon'ble Supreme Court in the case of **UOI & Ors. Vs. Tarsem Singh**, (2008) 8 SCC 648 wherein it has been observed that a relief can be granted if there is a continuous wrong, even if there is a long delay in seeking remedy like re-fixation of pay or pension and if it does not affect the rights of third party.

7.1 Per contra, the learned counsel for the respondents Sh. R.K. Sharma took the Bench through the facts of the case and emphasized that the applicants had completed less than 10 years of service in the Power Grid Corporation. Quoting the provisions of the O.M. dated 14.05.1968, he explained that one of the essential conditions before the applicants case/cases can be considered for

pro-rata pension is the availability of the authentic records of service. In the instant case, the applicants have chosen to claim the pensionary benefits after a period of almost 21 years when the records pertaining to their period of service have already been destroyed, (since the period of retention of the records pertaining to contingent expenditure is only 10 years.) Hence, the applicants are not entitled to any relief, for the reasons already elaborated in the counter affidavit to the OA.

8. I have gone through the facts of the case and considered the rival submissions of both sides. It is not disputed that the applicants were paid all terminal benefits like CPF, leave encashment and other benefits to which they were entitled at the time of their absorption with Power Grid Corporation w.e.f. 01.01.1996. Even the CPF along with interest was paid by the Western Regional Power Committee (WRPC) /CEA to Power Grid. One of the essential conditions for considering the pro-rata pension, as laid down in O.M. dated 14.05.1968 (relied upon by both sides) is proviso 'e' Para-4 above) which stipulates that:-

"Subject to the above conditions being fulfilled, the weightage for past service paid from contingencies will be limited to the period after 1<sup>st</sup> January, 1961, for which authentic records of service may be available."

The earlier provisos i.e. provisos a, b, c & d lay down that half of the service paid from contingencies will be allowed to be counted

towards pension at the time of absorption in a regular employment (para-4 above). However, clauses a, b, c & d cannot be read in isolation. To get those benefits, the relevance of proviso 'e' cannot be over emphasized. For the reasons of the applicants raising their claim after almost two decades, it would be impossible for the respondents to fix an amount of admissible pro-rata pension since the relevant service records of the applicants are now not available for the envisaged authentic verification.

81. Cause of action to the applicants arose as early as 1996 (when applicant No.1 retired). To allow them to agitate an issue after 21 years would tantamount to flogging a dead horse. The benefit of "continuous wrong" also has a logical shelf life and cannot be raised at will beyond the expiry of a time frame, where compliance to laid down procedures/verifications is not possible.

8.2 Here I place reliance on the decision of the Hon'ble Supreme Court in the case of **D.C.S. Negi Vs. Union of India & Ors.**, [Special Leave (Civil)CC No. 3709/2011] dated 07.03.2011 wherein it has been held as under:

"Before parting with the case, we consider it necessary to note that for quite some time, the Administrative Tribunals established under the Act have been entertaining and deciding the Applications filed under Section 19 of the Act in complete disregard of the mandate of Section 21. ....

**Since Section 21 (1) IS COUCHED IN NEGATIVE FORM, IT IS THE DUTY OF THE Tribunal to first consider whether the application is**

**within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under section 21 (3)."**

9. I also feel that the judgment of the Hon'ble High Court of Delhi in the matter of **Kultarr Chand Rana** (supra) has correctly been distinguished by the respondents. The applicants in the instant O.A. had specifically opted for pensionary benefits available to them in Power Grid Corporation whereas Sh. K.C. Rana had given option of retaining pensionary benefits available to him under Govt. Rules (Annexure-I).

10. In view of the aforesaid discussions, the claim of the applicants, is terribly time barred and even on merits, does not pass the test of judicial scrutiny. Prayer in the O.A. is accordingly declined. O.A. is dismissed. No costs.

**(Praveen Mahajan)  
Member (A)**

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