

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

**OA-4484/2015
with
OA-4492/2015**

Reserved on : 21.12.2018.

Pronounced on : 03.01.2019.

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

OA-4484/2015

1. Sh. Anokey Lal, Aged
S/o Sh. Devi Din,
R/o B-343, Gali No.13,
Indira Basti I.P. Colony,
NathuPura, Burari,
Delhi-110084.
2. Sh. Bugal Singh, Aged
S/o Sh. Ram Nath,
R/o Vill.&P.O. Bamrolli,
District Jhazzar, Haryana. Applicants

(through Sh. B.K. Pandey and Sh. Mudasir Nabi, Advocate)

OA-4492/2015

Sh. Mustak Khan Posla, Aged
S/o Sh. Ramjan Khan Posla,
R/o Village Qutab Gargh,
Near Dispensary Delhi-110039. Applicant

(through Sh. B.K. Pandey and Sh. Mudasir Nabi, Advocate)

Versus

1. Ministry of Telecommunication
Through Secretary Government of India,
Ministry of Communication & Information
Technology, Room No. 513,
Sanchar Bhawan, 20, Ashok Road,
New Delhi-110001.

2. General Manager (Administration), MTNL
Khurshid Lal Bhawan,
Janpath, New Delhi-110050. Respondents
in both OAs

(through Sh. Subhash Gosain, Sh. Harsh Pandit and Sh. Vivek Goyal,
Advocate)

ORDER

The issue involved in these two OAs is similar. Hence, they are being disposed of by a common order. For the sake of convenience, facts of OA-4484/2015 are being discussed hereunder.

2. The applicants, who were appointed as Bearer and Wash Boy in the Non Statutory Canteen, Government of India, Department of Personnel on the basis of interim order of the Hon'ble Supreme Court dated 03.11.1983 were granted the pay scale of Rs. 196-232/- w.e.f. 01.01.1984 and 01.02.1986.

2.1 As per the order passed by the Hon'ble Supreme Court, canteen employees working in departmental canteen and cooperative canteens as well as Tiffin rooms in the government offices were granted the status of government servant as per order dated 11.01.1991. The Court order reads as under:-

"In fact, this group of cases should have been finally disposed of along with the main case W.P.(C) No. 2275-76 of 1982 reported as M.M.R. Khan & Ors. Vs. Union of India & Ors. (1990 Supple.) SCC 191.

We are of the view that the facts before us in these cases squarely attract the decision in the reported case to be applied to them. In that view of the matter, we allow the writ petitions for the reasons

indicted in the said judgment and direct the benefits to be given to the petitioners in the following way:

By an interim order dated 26.09.1983 certain reliefs had been granted. In respect of the reliefs already granted this order shall be deemed to be operative from that date. In case any further benefits are admissible, those will be admissible from 1.10.1991.

For the purpose of calculation of pension, service from the date of the interlocutory order shall be counted."

3. On the basis of the above order of the Hon'ble Supreme Court, Government of India, Department of Personnel issued an order dated 16.12.1993 that pensionary benefits be extended to canteen employees w.e.f. 26.09.1983 (Annexure A-4).
4. An OA No. 3059/2012 was filed before the Principal Bench of this Tribunal through the General Secretary of All India Central Government Canteen Employees Association & Canteen Mazdoor Sabha for grant of pensionary benefits to canteen employees who had completed 10 years of service as per CCS (Pension) Rules, 1972. On 08.10.2012, the OA was disposed of at the admission stage with certain directions (Annexure A-5). In compliance, Ministry of Communication & Information Technology, Department of Telecommunication (DoT) vide their order dated 22.05.2013 issued an order to "extend the benefit of counting the entire past service rendered on regular basis by the non-statutory Canteen Employees as 'Qualifying Service' for the purpose of calculation of pension in accordance with the relevant provisions contained. CCS(Pension)

Rules, 1972 and related orders subject to the condition specified in DoP&T, Om No. 12/4/97-Dir.(Vo.II) dated 26.11.2012, to all eligible non-statutory canteen employees absorbed in MTNL w.e.f. 1.11.1998."

5. The applicants submitted that they be granted pro rata pension since similarly placed canteen employees absorbed in MTNL were granted the pro rata pension on completion of 10 years of service.

6. The applicants have filed the current O.A. seeking the following relief:-

"Grant of pro rata pension w.e.f. 1.1.1984 & 1.2.1986 after completing 10 years of services."

7. In reply affidavit filed on behalf of respondent No.1, it is submitted that the current O.A. is barred by res judicata, hence the same is liable to be dismissed. It is further submitted that the judgment relied upon by the applicant is factually different from the facts of the current case, hence, the same is not applicable.

8. I have gone through the facts of the case carefully and considered the rival submissions of both sides. The MTNL was carved from Department of Telecommunication in the year 1986. However, its employees kept on working in MTNL on deputation till absorption by MTNL. The Group-C & D employees of DoT, who opted for

absorption in MTNL were absorbed in MTNL on 01.11.1998. Those employees, who had rendered minimum service of 10 years prior to absorption in MTNL, were eligible for pro rata pension. The contention of the applicants is that they had rendered more than 10 years of service till permanent absorption in DoT, hence they should be granted pro rata pension.

8.1 The respondents in their counter admit that applicant No.1 (Sh. Anokey Lal) had rendered more than 10 years of service from 01.11.1984 till permanent absorption in DoT vide order dated 15.12.1990 (Annexure-P3). There is also proof that applicant No. 2 (Sh. Bugal Singh) of DoT had joined DoT as Wash Boy w.e.f. 01.10.1986 on temporary basis as per the order dated 01.02.1986 of DoT annexed with the rejoinder of applicant No.2.

8.2 The respondents aver that the applicants were directly recruited by the MTNL in the year 2001 through proper process of selection, therefore, their claim for pro rata pension w.e.f. 01.01.1984 and 01.02.1986 is not reasonable.

8.3 This plea of the respondents does not seem to be convincing in view of the appointment letters produced by the applicants, which show that they had been working with DoT for more than 10 years before their absorption in MTNL. The Hon'ble Supreme Court has clarified their earlier judgment dated 11.10.1991 with regard to

counting of service of pensionary benefits to employees of non-statutory canteens as under:-

“.....The pension will be given to all those who have retired after 01.10.1991. However, for the purpose of calculating the pension their service on and from 26.9.83 will be taken into consideration. In case of those whose service falls short off the qualifying period, the service rendered by them prior to 26.9.83 will be taken into consideration to the extent off the shortfall.....”

Clearly, the spirit of the two orders of the Hon'ble Supreme Court have been lost sight of by the respondents by trying to take shelter under technicalities and ignoring the long years of service put in by the applicants.

9. The respondents are directed to re-examine the case of the applicants in view of the documents referred to above and to extend the benefit of counting of entire past service rendered by them for the purpose of calculation of pension in accordance with relevant provisions of CCS (Pension) Rules, 1972. This exercise may be completed within a period of three months from the date of receipt of a certified copy of this order. The O.A. is disposed of accordingly. No costs.

10. A copy of this order be placed in OA-4492/2015.

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

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