

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

19

O.A. NO.245/2003

New Delhi, this the ¹⁶14th day of July, 2004

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

1. Jagan Nath S/o Shri Parma Nand
2. Kartar Singh S/o Sh. Daya Nand
3. Chand Ram s/o Sh. Shri Chand
4. Ram Kishan S/o Sh. Rai Singh
5. Jagdish Singh S/o Shri Kanhia
6. Om Prakash S/o Sh. Mir Singh
7. Ram Charan Saini S/o Shri Pirbhu Ram Saini
8. Ashok Kumar S/o Sh. Bani Singh
9. Ranbir Singh S/o Shri Sardha Nand
10. Rama Nand Misra S/o Late Sh. Keshav Mishra
11. Karambir Singh S/o Sh. Kundan Lal
12. R.K. Dixit S/o Sh. Ramesh Sharma
13. Devinder Kumar S/o Sh Banwari
14. Parkash Chand S/o Sh. Karan Singh
15. Ramesh S/o Shri Kali Ram
16. Kitalu S/o Sh. Pyare Lal
17. Shyam Singh S/o Shri Goman Singh
18. Kailash S/o Shri Kan Singh
19. Satyawar S/o Sh. Sheo Karan
20. Nar Singh S/oo Shri Sheo Karan
21. Smt. Gurwanti W/o Sh. Mahabir Singh
22. Narain Singh S/o Shri Roop Chand
23. Om Prakash S/o Shri Banwari Lal
24. Hari Singh S/o Sh. Khyali Ram
25. Smt. Yeswantin W/o Sh. Jaggar Singh
26. Azad Singh S/ Shri Miot Lal
27. Dev Chand S/o Shri Jaldharm
28. Suresh Kumar S/o Shri Ram Narain

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29. Man Singh S/o Shri Kan Singh
30. Sher Singh S/o Sh. Moti Lal
31. Ramesh S/o Shri Sharada Nand
32. Lal Chand S/o Shri Hira Lal
33. Ajeet Singh S/o Shri Bhagwana
34. Chhalu Ram S/o Shri Mir Singh
35. Hari Kishan S/o Shri Mir Singh
36. Rajinder Singh S/o Shri Tika Ram
37. Narain Singh S/o Shri Kehar Singh
38. Om Prakash S/o Shhri Devak Ram
39. Surinder Singh S/o Shri Budh Ram
40. Ramesh Kumar S/o Shri Daya Ram
41. Jai Singh S/o Shri Rich Pal
42. Suraj Mal S/o Shri Ram Narain
43. Mange Ram S/o Shri Mewa Ram
44. Sukhbir Singh S/o Shri Driyave Singh
45. Ram Singh S/o Shri Mange Ram
46. Jain Pal S/o Sh. Lakhi Chand
47. Jai Kishan S/o Shri Munshi Ram
48. Ramphal Singh S/o Shri Kehar Singh
49. Bhagat Singh S/o Shri Ram Singh
50. Sant Raj S/o Shri Surte
51. Chiranji Lal S/o Shri Richapal Singh
52. Devi Singh S/o Shri Bhuru Lal
53. Ombir S/o Shri Balbir Singh
54. Bahadur S/o Shri Jhurudha

(Applicants No.1 to 9 are working as Tube well operators
Applicants No.10 & 11 are working as N.T. Staff
Applicant No.12 is working as Store Keeper
Applicant No.13 is working as Mason
Applicants No.14 to 50 are working as Baildar in the
Office of respondents)

... Applicants

(By Advocate : Shri Yogesh Sharma)



(3)

Versus

1. N.C.T. of Delhi through The Chief Secretary
New Sectt., New Delhi
 2. The Chief Engineer,
I & Flood Department,
Govt. of Delhi, 4th Floor,
ISBT Building, Delhi
 3. The Executive Engineer, CD-XIII
I & F Department, Govt. of Delhi
Basaïdarapur, New Delhi-27
- ... Respondents
(By Advocate : Shri Ajesh Luthra)

O R D E R

Heard.

2. MA No.259/2003 for joining together is allowed.

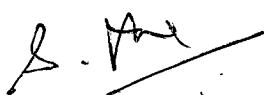
3. The applicants have impugned the order of respondents (respondent No.3) dated the 27th September, 2002 whereby they have rejected their claims for counting of 50% of their muster roll service/service paid from contingencies for the purpose of pensionary and retirement benefits. They have prayed that the said impugned order be quashed, directing the respondents to count half of the muster roll service rendered by them before their regularisation for the purpose of granting pensionary benefits and other consequential benefits.

4. The applicants, who were initially engaged by the respondents against different posts, as detailed in paragraphs 4.1 and 4.2 of the OA during the period 1970-1985 as per details given in Annexure A-1 to the OA, had approached this Tribunal earlier vide OA No.1559/2002 which was decided on 6.6.2002 with directions to the respondents to consider their representations in the matter and to pass

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detailed and speaking orders within three months from the date of receipt of the order. Incidentally, respondent No.3 who has issued the impugned order, was not one of the parties in the said OA. The applicants have alleged that respondent No.3 in the present OA is not the competent authority to have passed the impugned order and hence the OA.

5. The applicants have placed reliance on the decision of this Tribunal in an identical case of Smt. Bhagwani W/o Late Shri Kanhiya Lal vs NCT of Delhi & Others as decided vide OA No.808/2002 on the 7th November, 2002 in which the respondents had been directed to count half of the casual service of the deceased Baildar towards qualifying service for pension with all consequential benefits. Reference has also been made to the Notification as issued by the Govt. of India vide No.F.12(1)-ed/v/68 Dated 14.5.1968 in which provision for counting half of service paid from contingencies in respect of daily rated casual labourers has been made for the purpose of pension. Reliance has also been placed on the decisions of this Tribunal in the case of Gita Rani Santra vs. Union of India as reported in 1997 (2) ATJ 308, in which it has been held that casual services should be counted 50% for computation of qualifying service for the purpose of pension. Similarly, decisions are reported to have been taken in the case of Smt. Gayabhai Gangraram & Ors vs. Union of India & Ors reported in 1999 (2) ATJ 578. Similar view has also been taken in the case of M.K. Ramachandran vs. Union of India & Ors as decided by the Ernakulam Bench of this Tribunal in OA No.1861/1992 on 16.12.2003. The applicants have also taken me through the decisions of the Mumbai Bench of this Tribunal in OA



No.1284/1994 as passed on 18.10.1995 in the case of Shri B.R. Jadhav vs. Union of India & Ors in which, among other things, it has been held that the applicant in that OA is entitled to count 50% of the service for pensionary benefits which was not part of regular establishment or contingencies, taking a view that there was no basis for distinction between 'the Apparatus and Plants Account and Contingencies under the rules and orders'.

6. Referring to the decisions of the Hon'ble Supreme Court in the Writ Petition (Civil) No.253/1988 as filed by similarly situated persons, namely, Shri Parkash Chand & Others as given on 31.10.1988 whereby the respondents had been directed to frame a scheme for regularisation of the services of the petitioners and persons similarly situated who had been in service for more than two decades and the respondents having prepared a scheme in the year 1987 and further that some of the applicants in the present OA along with others having filed OA No.1056/1995 for their regularisation, it has been submitted that during the pendency of the said OA the respondents regularised the services of the applicants w.e.f. 1.6.1989. While the respondents regularised the services of the applicants w.e.f. 1.6.1989, they did not give them the benefit of 50% muster roll service/service paid from contingencies prior to their regularisation for the purpose of their pensionary benefits as per rules. Most of the applicants are due to retire within the next one or two years.

7. The applicants have submitted that one of the similarly situated persons, namely, Shri Randhir, who was

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(6)

one of the applicants in the earlier OA No.2161/2002 seeking pensionary benefits, was granted relief on 6.9.2001. This matter was appealed against by the respondents in the Hon'ble Delhi High Court and the same was dismissed. Resultantly, pension was granted to Shri Randhir. The applicants have accordingly prayed that similar dispensation should be allowed in their case also.

8. The respondents, in their counter reply, have, however, claimed that the applicants, prior to 1.6.1989 when their services were regularised, had been on muster roll as casual workers purely on daily wage basis and had been paid against the works/schemes which were of temporary nature and had not been paid from contingencies as stated by the applicants and hence 50% of the muster roll service rendered as casual workers cannot be counted towards the pensionary benefits even in terms of the DOP&T's Scheme of 1993 as the said Scheme provides that 50% of the service rendered under temporary status would only be counted for the purpose of retirement benefits after regularisation. Accordingly, they have claimed that the applicants are eligible for pensionary benefits only from 1.6.1989, i.e., the date of their regularisation and that too after fulfilling all other requirements under the rules. They have, therefore, shown dis-inclination to accept the contention of the applicants to count 50% of their services rendered on muster roll/daily wage basis towards the pensionary benefits. They have also found the submission of the applicants regarding their having submitted representations for granting pensionary benefits being factually incorrect, and that they came to

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know of the request of the applicants only through OA No.1550/2002.

9. They have further submitted that Randhir's case which has been relied upon by the applicants is not relevant to their case. The decisions of the Tribunal in Randhir's case had been appealed against in the Hon'ble High Court of Delhi in which the Hon'ble Court had observed - "We find no scope to interfere in the impugned Tribunal Order. It is, however, observed that this would not constitute any precedent". The respondents have thus not considered the case of the applicants with reference to the decisions of the Hon'ble High Court. This aspect of the matter appears to have been referred to in the orders of this Tribunal in OA No. 808/2002 passed on the 7th November, 2002 and in which it had been observed that the applicant in the said OA was not relying on the said decision of the Hon'ble High Court and his relief was to be accorded independently on the decision under statutory Rule 14 of the CCS (Pension) Rules which were binding on the respondents. Vide the Government of India's decision under Rule 14 of the CCS (Pension) Rules, counting of half of the services paid from contingencies with regular service has been provided for subject to certain conditions. One of the conditions as prescribed for the purpose is that service paid from contingency should have been in a job involving whole time employment (and not part-time or a portion of the day). It also provides that the service paid from contingencies should have been continuous and followed by absorption in regular employment without a break. The respondents have contended that the applicants, though employed on muster



(8)

roll/daily wages, had not been paid from contingencies; they had been paid against the works/schemes which were of temporary nature. This statement of the respondents has, however, been disputed by the applicants in their rejoinder. They have asserted that they were paid their wages from contingencies only.

10. On a closer look at the facts and decisions as relied upon by the applicants and as referred to hereinabove, it is observed that in all the cases the benefit of 50% of the services rendered by the applicants on casual/daily wage basis has been given for the purpose of pensionary benefits. On a deeper analysis of the rationale behind giving such workers the benefit of 50% of their services rendered on casual/daily wage basis paid through contingencies or otherwise leading to their regular absorption/regularisation of their services appears to be that such employees should not be deprived all together of the benefit of that period as qualifying service for pensionary purposes. It does not appear quite pre-requisite that one must have been paid from contingencies only in order to make that period eligible for pensionary benefits. It is also not quite reasonable on the part of the respondents to have argued that the Hon'ble High Court of Delhi has held that their decisions in Randhir Singh's case would not constitute any precedent and that the case of the applicants is accordingly not to be given any consideration for that reason. While it is very clear that the said case as decided by the Hon'ble High Court is not to be taken as a precedent, there is no denying the fact that the principles involved in the said case are quite relevant to the case of

S. P. Mehta

the applicants. Moreover, in the orders of the Tribunal in Smt. Gayabhai Gangaram and Ors vs. Union of India & Ors (supra) as well as M.K. Ramachandran vs. Union of India & Ors. (supra) there is no specific reference to such employees being paid from contingencies as to be a pre-requisite for 50% of the services rendered as casual labourers being treated as qualifying service for pensionary benefits. In fact, in the decisions of the Tribunal as given in B.R. Jadhav vs. Union of India & Ors (supra) the aspect of payment being made from contingencies being not very relevant or being not a pre-requisite has been clarified in the following words:

"4. It is contended by the counsel for the applicant that the applicant can be paid either from regular establishment or from contingencies establishment and the so called Apparatus and Plants Account has really to be treated as contingencies establishment and in any case on instructions he has stated that he was not engaged in technical work and he was engaged in the work of sweeping and cleaning. The counsel for the applicant also relied on the case of Smt. N. Atchamma v. The General Manager & Ors. reported in 1994 (1) ATJ 603. In para 6, it is stated that the applicant would be entitled to temporary status as soon as she completed 120 days as a Casual Gang Woman and for this purpose reliance is placed on Supreme Court judgement in Union of India v. Basant Lal & Ors. JT 1992 (2) SC 459. According to the counsel for the Respondent, however, the case of the applicant is governed by the scheme covered by the P&T department which is a specific scheme applicable under the department in which the applicant was employed and the case law cited has no applicability.

5. In our view, the distinction between the Apparatus and Plants Account being separate from the contingencies does not appear to have any basis under rules and orders. According to us, the applicant has to be held to be paid from contingencies for the period from 1.1.1972 to 10.10.1989, if so he will be governed by instructions under CCS (Pension) Rules 14 particularly instructions dated 10.3.1986 reproduced at page 34 of Swamy's compilation. It may be that this case is not specifically covered under the scheme framed by the P&T Department in

S. J. [Signature]

terms of Supreme Court judgement but the background of the Supreme Court judgement was the distinction made by the Dept. between casual labour who had put in different spells of work as casual labour. The Hon'ble Supreme Court held such distinction to be untenable and directed the department to frame a scheme. If therefore, the applicant who became a regular employee is entitled to the benefits available to him under Pension Rules, he will be governed by the more beneficial scheme which applies to his case.

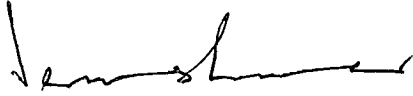
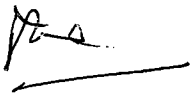
6. We, therefore, allow the application and direct the department to count 50% of the service of the applicant for the period from 1.1.1972 to 10.10.1989 and add this service to regular service of 4 years and 9 months put in by him and on that basis decide the case of the applicant for grant of pension and other pensionary benefits under the rules and on this footing he should also be paid arrears of pension w.e.f. 1.8.1994. Action should be completed within four months from the communication of this order. No order as to costs."

11. The above observations/decisions of the Tribunal in the said case thus make it clear that it is not important whether the period of service rendered as casual labourers has been paid for from the contingencies in order to be eligible for 50% of the said period being counted as qualifying service. It is assumed that the ratio behind Rule 14 of the CCS (Pension) Rules and also the decisions of the Tribunal as referred to above including those of the Hon'ble Supreme Court as referred to in B.R. Jadhav's case was certainly to give the benefit of 50% of the service rendered by the applicants as casual labourers if the same is followed by regularisation of their services/absorption for the purpose of pensionary benefits. Under these circumstances, the case of the applicants certainly merits consideration and decision on the lines of Randhir's case.

12. In consideration of the facts and circumstances of the case and also keeping in view the decisions of this



Tribunal in various cases including those of the Hon'ble Supreme Court as referred to hereinabove, I am inclined to allow this OA with directions to the respondents to consider the prayer as made in paragraph 8 of this OA and to give them the benefit of 50% of their muster roll service/ service paid from contingencies/against works/schemes, as the case may be, as on 1.6.1989 when their services were regularised. The respondents are further directed that they will implement the above direction within a period of three months from the date of receipt of a copy of this order. No order as to costs.

 
(SARWESHWAR JHA)
ADMINISTRATIVE MEMBER

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