

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

OP (CAT) .No. 76 of 2015 (Z)

AGAINST THE ORDER/JUDGMENT IN OA 968/2011 of CENTRAL ADMINISTRATIVE
TRIBUNAL, ERNAKULAM BENCH DATED 24-07-2013

PETITIONER:

HARIDAS.K AGED 56 YEARS
S/O.SUNDARAMBAL.K & DIVAKARAN NAIR
AT PRESENT RESIDING AT: C-304 SAHYADRI CO-OPERATING HOUSING LTD.
SADGURU NAGAR, DEVIPADA (BORIVALI-EAST)
MUMBAI - 400 066

SENIOR ACCOUNTANT O/O.THE PRINCIPAL CONTROLLER OF
COMMUNICATIONS ACCOUNTS MAHARASHTRA - CIRCLE
3RD FLOOR 'C' WING BSNL ADMINISTRATIVE BUILDING
JUHU DHANDA, SANTACRUZ (WEST), MUMBAI - 400 054.

BY ADVS.SRI.T.C.GOVINDA SWAMY
SMT.KALA T.GOPI
SMT.S.SYAMALA DEVI
SMT.T.K.SREEKALA
SRI.K.JAYAKUMAR (RAVIPURAM)

RESPONDENTS:

1. UNION OF INDIA, REP.BY THE SECRETARY, MINISTRY OF DEFENCE
NEW DELHI - 110 001.
2. THE GENERAL MANAGER, CANTEEN STORES DEPARTMENT,
HEAD OFFICE, ADELPHI 119, M.K.ROAD, MUMBAI - 400 020.
3. THE CONTROLLER OF COMMUNICATION ACCOUNTS (KERALA)
DEPARTMENT OF TELECOMMUNICATIONS MINISTRY OF COMMUNICATIONS
& IT P.M.G.JUNCTION, THIRUVANANTHAPURAM - 695 003.
4. THE PRINCIPAL CONTROLLER OF COMMUNICATIONS ACCOUNTS
(MAHARASHTRA) DEPARTMENT OF TELECOMMUNICATIONS MINISTRY OF
COMMUNICATIONS & IT 3RD FLOOR, 'C' WING BSNL ADMINISTRATIVE
BUILDING, JUHU DHANDA
SANTA CRUZ (WEST), MUMBAI - 400 054.

R1-R4 BY ADV. SMT.I. SHEELA DEVI, CGC
SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 02-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (CAT) .No. 76 of 2015 (Z)

APPENDIX

PETITIONER(S) ' EXHIBITS:

- EXT.P-1: THE TRUE COPY OF THE ORDER OF THE HON'BLE CAT, ERNAKULAM BENCH IN OA NO.968/2011 DATED 24.7.2013
- EXT.P-2: THE TRUE COPY OF THE ORDER IN REVIEW APPLICATION NO.37/2013 RENDERED BY THE HON'BLE CAT, ERNAKULAM DATED 13.3.2014
- EXT.P-3: THE TRUE COPY OF THE MEMORANDUM OF REVIEW APPLICATION NO.37/2013 FILED BY THE PETITIONER BEFORE THE HON'BLE CAT, ERNAKULAM BENCH IN OA NO.968/2011.
- EXT.P-4: THE TRUE COPY OF MEMORANDUM OF ORIGINAL APPLICATION NO.968/2011 FILED BY THE PETITIONER BEFORE THE HON'BLE CAT, ERNAKULAM BENCH.
- EXT.P-5: THE TRUE COPY OF THE AMENDMENT APPLICATION WITH ANNEXURE A7 FILED BY THE PETITIONER BEFORE THE HON'BLE CAT, ERNAKULAM BENCH.
- EXT.P-6: THE TRUE COPY OF THE AFFIDAVIT FILED ON BEHALF OF THE RESPONDENTS WITH ANNEXURE R1 BEFORE THE HON'BLE CAT, ERNAKULAM IN OA NO.968/2011
- EXT.P-7: THE TRUE COPY OF THE AFFIDAVIT IN REPLY FILED BY THE RESPONDENTS IN RA 37/2013 IN OA NO.968/2011 FILED BEFORE THE HON'BLE CAT, ERNAKULAM.
- EXT.P-8: THE TRUE COPY OF THE JUDGEMENT OF THE HON'BLE HIGH COURT OF BOMBAY IN WRIT PETITION (L) NO.1202 OF 2012, IN RE: UNION OF INDIA AND ANR. VS. KARAN ANANT PURAO AND CONNECTED CASES DATED 24TH JULY 2013 (DIVISION BENCH).

RESPONDENT(S) ' EXHIBITS : NIL

/TRUE COPY/

P.A. TO JUDGE

P.R. RAMACHANDRA MENON

&

BABU MATHEW P JOSEPH, JJ.

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O. P (CAT) No. 76 of 2015

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Dated, this the 2nd day of June, 2015

JUDGMENT

P.R. Ramachandra Menon, J.

Petitioner is before this Court challenging the verdict passed by the Central Administrative Tribunal in O.A. No. 968 of 2011, vide Ext. P1 dated 24.07.2013, and the interference declined in the review application vide Ext. P2 order dated 13.03.2014 i.e. more than one year ago; although the original claim mooted by the petitioner before the departmental authorities vide Annexure A2 to count 50% of the casual service rendered as 'LDC' prior to the regularization has been directed to be accepted.

2. At the very outset, it is to be noted that the petitioner has approached this Court quite belatedly. There is absolutely no whisper anywhere in the writ petition, as to the reason for the delay. This by itself is enough to non-suit the petitioner and to have the O.P. dismissed accordingly, more so in view of the law declared by the Apex Court in **Rabindranath Bose Vs. Union of India (AIR 1970 SC 470)**, holding that jurisdiction of this Court cannot be extended to the persons who are resting on arm chair without any regard to their rights and liberties.

3. Coming to the merits of the case, the factual position disclosed from the proceedings is that the petitioner was working as LDC under the respondents 1 and 2 on ad hoc basis from 02.04.1984 till 01.03.1989 (on which day he was regularized in service). Subsequently, the petitioner left the service of the respondents 1 and 2, and joined service under the 4th respondent. According to the petitioner, he was entitled to have the benefit flowing from O.M. dated 14.06.1968 and O.M. dated 10.03.1986 and it was accordingly that ½ of the casual service was sought to be reckoned for the purpose of granting pensionary benefits. The department resisted the relief sought for, pointing out that the claim mooted by the petitioner had already been rejected as per Annexure A3 order, which was never subjected to challenge. It was also stated that the date of regularization of service in 1989 was never sought to be disputed and no claim was raised earlier by virtue of which the proceedings were barred by limitation as well.

4. The prayers raised in the O.A. were in the following terms:

"(i) to direct the 2nd respondent to regularize the service of the applicant from the date of his initial appointment as daily rated Lower Division Clerk with

effect from 02.04.1984 with all consequential benefits.

(ii) to declare that the applicant is entitled for the benefits granted in Annexure A4 order of this Hon'ble Tribunal declared as correct legal position by the Hon'ble High Court of Kerala and the Hon'ble Supreme Court as the applicant is a similarly situated person as that of the applicants in Annexure A4.

(iii) To direct the 2nd respondent to consider and pass orders on Annexure A6 representation within a time frame fixed by this Hon'ble Tribunal.

(iv) Grant such other further reliefs as this Hon'ble Court may deem just, fit and proper in the facts and circumstances of the case.

5. After considering the rival contentions raised, the Tribunal observed that, by virtue of the relevant Official Memorandums the petitioner was entitled to have 50% of his service on casual basis reckoned as qualifying service for pension and other terminal benefits. It was accordingly that the O.A. was allowed in part, giving appropriate direction to the concerned respondents. Still being aggrieved, the petitioner filed a review application before the Tribunal seeking to have his service regularized from the date of his initial appointment as 'LDC on casual basis' from 02.04.1984 and to recall the verdict dated 24.07.2013 in O.A. No. 968/2011. The said review application was rejected as per Ext. P2 order dated

13.03.2014, holding that there was no error apparent on the face of the record. This in turn is under challenge in this original petition.

6. Heard both the sides in detail.

7. After going through the sequence of events discussed above, this Court finds that there is no tenable ground to call for interference. There is a case for the petitioner that in similar circumstance, the O.A. filed by the concerned petitioners was allowed permitting them to have their entire service counted for granting the benefit. Though the same was sought to be challenged by the department by filing O.P. No. 32410 of 1999 before this Court, contention was not accepted and interference was declined as per Annexure A5 order in O.P. No. 32410 of 1999. It is pointed out that the matter was taken up further by the Government/Department before the Supreme Court, wherein also interference was declined. However, it was admittedly made clear by the Apex Court the same was never to be a precedent so as to grant relief in other cases.

8. The learned counsel for the petitioner submits that the scope of the above verdict passed by the Apex Court was considered by the High Court of Bombay in a batch of cases and

similar benefit was given to persons like the petitioner, giving financial upgradation under the assured career progression scheme.

9. The petitioner has not chosen to produce the O.M. dated 14.06.1968 before this Court. On going through the O.M. Dated 10.03.1986, this Court does not find any material to hold that the finding arrived at by the Tribunal as per Ext. P1 order required any interference. With regard to Ext. P2, it is to be noted that the application for review has to be considered with reference to the error apparent on the face of the record, as made clear by the Apex Court in **Meera Bhanja Vs. Nirmala Kumari Choudhary (AIR 1995 SC 455)**. This Court does not find any inconformity with regard to Ext. P2 as well.

In the said circumstances interference is declined and the O.P. is dismissed as devoid of any merit, apart from dismissing the same on the ground of delay as well.

sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

sd/-

**BABU MATHEW P. JOSEPH,
(JUDGE)**

kmd