

CENTRAL ADMINISTRATIVE TRIBUNAL**BANGALORE BENCH: BANGALORE****ORIGINAL APPLICATION NO.170/00560/2019****DATED THIS THE 19th DAY OF DECEMBER, 2019****HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER****HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER**

Babu Rao
S/o G.Kondaiah
Aged about 55 years
Working at Command Hospital
Indian Air Force
Ministry of Defence
Government of India
Bangalore-560 007.
Resident of No.279
5th Cross, Nellupuram
New Thippasandra
Bangalore-560 075.

....Applicant

(By Advocate Shri M.Rajakumar)

Vs.

1. Command Hospital
Indian Air Force
Ministry of Defence
Government of India
Vimanapura
Bangalore-560 007.
Rep. by its Air Officer Commanding.
2. The Air Officer Commanding-in-Chief
Headquarters Training Command
Indian Air Force
Ministry of Defence
Government of India
Bangalore-560 006.
3. The Joint Director of Personnel (Civilians)
Air Headquarters
Ministry of Defence
Vayu Bhavan
New Delhi-110 011.
4. The Union of India
Rep by its Secretary

Indian Air Force
Min of Def.
New Delhi-110 011.

...Respondents

(By Advocate Sri N.B.Patil, ACGSC)

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that he was initially engaged as Seasonal Anti Malaria Lascar(SAMLS) on 15.6.1994 and he was engaged on annual basis. Under the Seasonal Anti Malaria Lascar Grant of Temporary status and Regularisation scheme of IAF 1997, he is entitled for temporary status as well as regularization. When the respondents failed to grant temporary status and regularisation, the applicant along with his colleagues had filed an OA.No.455/2005 before this Tribunal. Upon the order passed by this Tribunal, the respondents have initiated the action for regularization of the applicant along with his colleagues(Annexure-A1) and he has been regularized in pursuance of letter dtd.11.1.2006(Annexure-A2) w.e.f. 1.3.2006 and he was placed under the NPS from 1.3.2006 to 1.5.2017. In pursuance of letter dtd.27.3.2017 he was brought under the benefit of GPF and Old Pension Scheme to Casual Labours covered under Scheme of 10.9.1993 vide letter dtd.28.3.2017(Annexure-A3). Thereafter, the respondents issued a letter dtd.13.12.2017(Annexure-A4) indicating that the fund from New Pension Scheme(NPS) is transferred to GPF. The Old Pension Scheme(OPS) was operated in respect of the applicant from 1.5.2017 to 31.12.2018. The respondents have issued a letter dtd.28.1.2019 wherein a reminder to transfer the contribution made towards NPS scheme to GPF fund was issued. That being so, without any show cause notice and without any knowledge of the applicant, the respondents brought the applicant under the New

Pension Scheme from 1.1.2019. The respondents are operating the New Pension Scheme again from 1.1.2019 which was discontinued on 1.5.2017.

2. The applicant submits that the New Pension Scheme came into force from 1.1.2004 for those who are appointed for the first time(Annexure-A5). But he is legally entitled for the Old Pension Scheme as he was in service before his regularization. He was not appointed after 1.1.2004 but he was regularized on 1.3.2006 and as such the action of the respondents in placing the applicant under New Pension Scheme is not only erroneous but also against the catena of judgments passed by this Tribunal as well as the Hon'ble Apex Court. He relied on the judgment passed by the Hon'ble High Court of Punjab & Haryana in CWP No.2371/2010(Annexure-A6) which has been upheld by the Hon'ble Apex Court. Hence, the action of the respondents is against the provisions of Article 14 & 16 of the Constitution. Aggrieved by the action of the respondents, the applicant has filed the present OA seeking the following relief:

- i. Call for the relevant records and on perusal,*
- ii. Direct the respondents to consider the case of the applicant under the Old Pension Scheme and effect the recovery on GPF while declaring the action of the respondents in bringing the applicant under the New Pension Scheme is arbitrary, discriminatory and invalid for the reasons stated in the application.*
- iii. Direct the respondents to refund the amount so far recovered under the New Pension Scheme with interest or transfer the same to GPF account of the applicant within the stipulated period and,*
- iv. Pass any other order or direction or grant any other relief as deemed fit by this Hon'ble Tribunal including the exemplary cost, in the interest of justice, equity and fair play in administration.*

3. The respondents, on the other hand, have submitted in their reply statement that they have regularised the applicant w.e.f. 14.6.2013 and not on 1.3.2006 as a regular employee in terms of Seasonal Anti Malaria Lascar(Grant of Temporary Status and Regularisation) Scheme of Indian Air Force, 1997. He was issued with appointment order vide letter dtd.12.6.2013(Annexure-R1) and brought

under New Pension Scheme of GOI. His name for entitlement of GPF benefits was inadvertently forwarded to Air Force Central Accounts Office and on receipt of clarification from AIR HQ, the GPF benefits erroneously extended were ceased. That being the clerical error in extending the benefits, the error was rectified immediately on realization and hence issuing of show cause notice to the applicant does not arise. The applicant has not approached the respondent for clarification on the aspect and has not exhausted normal remedies through service channel. The applicant is not entitled for the Old Pension Scheme as he was regularized and appointed after the implementation of National Pension System w.e.f. 1.1.2004. The DoPT instructions issued vide OM dtd.26.1.2016 clarified on New Pension Scheme for persons appointed to Central Government Service after 1.1.2004. Annexure-A5 has no relevance to the case on hand as the same is applicable to All India Services officers. The judgment passed by the Hon'ble High Court of Punjab and Haryana in CPW No.2371/2010 was made in relation to casual labourers/daily wages and hence is not applicable to the personnel regularized under SAML Scheme of IAF, 1997. Therefore, the applicant is not entitled for any relief and the OA is liable to be dismissed with costs.

4. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that the terms and conditions in both the schemes of Casual Labours Scheme 1993 and SAML 1997 are similar(Annexure-RJ1 –RJ3). The respondents have rightly extended the benefit of OPS to the applicant. In the Annexure-R2 referred by the respondents, it was not stated anything about denying the benefit of OPS to SAML. Besides the applicant was engaged under the scheme of 1993 thus the question of denial of benefits under OPS to the

applicant does not arise. A similarly situated employee namely Sri Kumaraswamy who filed OA.554/2018 was extended with the similar relief in pursuance of the order dtd.29.1.2019 passed in that OA(Annexure-RJ4). As per the scheme of 1993 and 1997, 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after their regularization. In this regard, the applicant has orally requested the respondents for the said benefits but till date the respondents could not count the 50% of service rendered under temporary status for retirement benefits. The OM dtd.28.7.2016 referred by the respondents at Annexure-R6 states that the benefits of GPF and OPS is applicable to all those casual labourers who are covered under the scheme of 10.9.1993 even if they have been regularized on or after 1.1.2004. The OM does not state anything about extending the benefit of OPS to SAML moreover applicant was engaged much earlier to introducing SAML Scheme of 1997.

5. The respondents have filed additional reply statement stating that the applicant was initially appointed on daily wages as Seasonal Anti Malaria Lascar(SAML) from 15.6.1994 to 15.12.1994 for a period of six months only. After completion of the Malaria season, the applicant was terminated. He was appointed on daily wages only and not on regular basis during the period. As per records during 1995 to 1999, the applicant was not engaged as SAML and after an interval of 5 years, he was again engaged as SAML at regular interval for a period of six months during 2000 to 2009. He had worked for 9 consecutive years and was granted temporary status on 15.12.2009 and not during the year 2006 as mentioned by him in the rejoinder which was covered under implementation of Seasonal Anti Malaria Lascar (Grant of Temporary Status & Regularization) Scheme of IAF 1997 vide letter dtd.21.8.1997(Annexure-R2) and the applicant

was specifically regularized in SAML 1997 Scheme only on the direction of AIR HQ letter dtd.22.3.2013(Annexure-r3) and not under 1993 Casual Labours Scheme. His name for entitlement of GPF benefits was inadvertently forwarded to Air Force Central Accounts Office based on the Signal No.FA/458 dtd.10.2.2017(Annexure-R4) and on receipt of clarification from AIR HQ on the subject vide their letter dtd.5.9.2017(Annexure-R5) and AFCAO letter dtd.12.9.2018(Annexure-R6), the GPF benefits erroneously extended were ceased as the SAMLs are not covered under the scheme of 1993. The benefits of GPF and old pension scheme are applicable only to Casual Labours Temporary Status(CLTS) covered under DoPT OM dtd.10.9.1993(Annexure-R7). Further, the DoPT order clearly mentioned only about the casual employees and not about SAML employees. The applicant was not engaged under the scheme of 1993. He was engaged under the scheme of SAML(Temporary Status & Regularisation) in IAF, 1997 from 2000. The respondents are not having the intention to disobey the directions of this Tribunal in OA.No.554/2018. The Tribunal relying on the judgment in OA.No.296/2017 in the matter of Extra Departmental employees of Postal Department has allowed the OA.554/2018. The core issue of 50% count of casual labour service for the purpose of pensionary benefits is an accepted law of principle. But in the instant case, the applicant was engaged as Seasonal Anti Malaria Lascar and was later regularized under SAML Scheme and was engaged seasonally. Hence, the clause of 50% service rendered under temporary status would be counted for pensionary benefits will not be applicable to the applicant. As per AIR HQ letter dtd.14.12.2016(Annexure-R8), the benefits of GPF and OPS is not applicable for SAML, it is applicable only in respect of persons granted benefits under DoPT's

CL-TS scheme 1993. Hence, the case of Sri Kumaraswamy does not fall within the ambit of the Govt. policy. The DoPT OM dtd.26.12.2016(Annexure-R9) specifically mentioned about the grant of temporary status to the Casual Labours who were in employment during the issue of DoPT OM dtd.10.9.1993 only and not mentioned about the SAML Scheme of IAF 1997. The OM dtd.28.7.2016(Annexure-R10) clearly stipulated that the benefits of GPF and OPS is applicable to all casual labours who are covered under the scheme of 10.09.1993 even if they have been regularized on or after 1.1.2004. In the instant case, the applicant is engaged as SAML only for six months during June 1994 to Dec. 1994 and he has not continued the service from 1995 to 1999. After an interval of 5 years, again he was engaged as per seasonal requirement at regular interval from the year 2000 to 2009. Hence, the claim of the applicant that he was engaged much earlier to introducing SAML scheme of 1997 is not justified. His claim to restore the OPS benefits is totally unjustified. Thus he is not entitled to seek the relief in the present application.

6. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The main issue in this case is whether the applicant can take advantage of his contention that he was appointed much earlier to the introduction of NPS scheme and therefore, as was given under the OM dtd.28.7.2016 at Annexure-R10 where the benefits of GPF and OPS is applicable to all those casual labourers who are covered under the scheme of 10.9.1993 even if they have been regularised on or after 1.1.2004, he can also be considered under the same footing. The respondents would state that the applicant who is appointed as Seasonal Anti Malaria Lascar and who has subsequently been regularised under the Seasonal Anti Malaria Lascar Grant of

Temporary Status and Regularisation Scheme of IAF 1997 cannot be considered under the same footing. We have gone through the details of both the 1993 scheme and 1997 scheme. It is very obvious that the 1997 scheme has been patterned on the same understanding as that of the scheme of 10.9.1993 granting a provision for regularisation of casual labourers. The only crucial difference is that in the case of casual labourers of the 1993 scheme, the temporary status was to be confirmed on all the casual labourers who are on employment on the date of issue of that OM(10.09.1993) and who had rendered continuous service of at least one year i.e. 240 days or 206 days in the case of officer observing 5 days week. In the scheme of 1993 after rendering 3 years of continuous service after conferment of temporary status, the employees are treated on par with temporary Group 'D' employees for the purpose of contribution to the General Provident Fund etc. The 1993 scheme also provides for 50% of their service rendered under temporary status being eligible to be counted for the purpose of retirement benefits after their regularisation. The difference in the 1997 scheme under which the applicant has been regularised is the periods are changed since the applicant is appointed only for the second half of each year due to the nature of the job where he is expected to perform the Anti Malaria operations. As per the 1997 scheme, the temporary status is to be given after 165 days of work (after 150 days in the case of officer having 5 days week) for two consecutive years. And in their case, those who completed a total of 650 days in the last consecutive 4 years (600 days in the case of officer having 5 days week) being eligible for regularisation against the regular vacant Group-D posts. As in the case of 1993 scheme, 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after

their regularisation. In the case of the applicant, the applicant was regularised only in the year 2006 about which there is no dispute. The only factor we have to examine is whether the persons like the applicant can be considered to have commenced their service after 1.1.2004 so as to make them ineligible for GPF and Old Pension Scheme. Vide Annexure-R10, this question has already been answered stating that even if the regularisation is after 1.1.2004, the casual labourers who are covered under the 1993 scheme would have the benefit of GPF and the Old Pension Scheme. As we have already seen, the 1997 scheme relating to the applicant is simply a modified scheme on the same lines with the similar conditions except that regarding the period of service to make them eligible for temporary status and regularisation keeping in mind the nature of the service of the applicant being used by the respondent organisation only for part of the year. Therefore, we have no hesitation in coming to the conclusion that the benefits of Annexure-R10 automatically will have to be extended to the applicant since he fulfilled all the necessary criteria as was in the similarly formulated 1993 scheme. In other words, he is not a new entrant to the service of the respondent organisation w.e.f. 1.1.2004 but was an entrant to the service of the respondent organisation much earlier irrespective of the fact that there was a break in service between 1995 and 2000 not due to any fault of the applicant but due to certain financial exigencies or other reasons for which the respondents did not give him the employment as SAML. However, without any further process of recruitment, he had been continued in the service of the respondents from the year 2000 onwards. The applicant is therefore certainly eligible for the relief which he is seeking for and which was also given to him in the year 2017 but subsequently withdrawn due to certain wrong interpretations given later. The respondents in

OA.No.553/2019 have also cited the orders of this Tribunal in OA.882-886/2013 stating that the case of the applicant has already been considered and dismissed by this Tribunal and therefore the principle of res-judicata will apply. We cannot agree with this contention since the prayer in that OAs was for grant of regularisation without taking note of the break in service. This was not accepted by this Tribunal and the OAs were rightly dismissed. However, in the present OA, the prayer is for considering him eligible for GPF and Old Pension Scheme. The applicant's case is also strengthened by our own order in OA.No.554/2018 dtd.29.1.2019.

7. For all the above reasons, the OA is allowed. The respondents are directed to issue necessary orders within two(2) months from the date of issue of this order. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00560/2019

Annexure-A1: Processing of applicant's name for regularization
Annexure-A2: Air HQ letter dtd.11.1.2006
Annexure-A3: Respondent's letter dtd.28.3.2017
Annexure-A4: Respondent's letter dtd.13.12.2017
Annexure-A5: OM dtd.4.11.2005 regarding NPS Scheme

Annexure-A6: Hon'ble High Court of Punjab & Haryana in CWP No.2371/2010

Annexures with reply statement:

Annexure-R1: Appointment order dtd.12.06.2013

Annexures with rejoinder:

Annexure-RJ1: Order dtd.14.6.1994

Annexure-RJ2: OM dtd.10.9.1993

Annexure-RJ3: Letter dtd.7.8.1997

Annexure-RJ4: Order dtd.29.1.2019 passed in OA.No.554/2018 by this Tribunal

Annexure-RJ5: e-Pay Slip for Jan 2019

Annexures with additional reply statement:

Annexure-R2: Copy of the letter dtd.21.8.1997

Annexure-R3: Copy of the letter dtd.22.3.2013

Annexure-R4: Copy of the Signal dtd.10.2.2017

Annexure-R5: Copy of the letter dtd.5.9.2017

Annexure-R6: Copy of the letter dtd.12.9.2018

Annexure-R7: Copy of the OM dtd.10.9.1993

Annexure-R8: Copy of the letter dtd.14.12.2016

Annexure-R9: Copy of the OM dtd.26.2.2016

Annexure-R10: Copy of the OM dtd.28.7.2016
