

CENTRAL ADMINISTRATIVE TRIBUNAL**BANGALORE BENCH: BANGALORE****ORIGINAL APPLICATION NO.170/00556/2019****DATED THIS THE 19th DAY OF DECEMBER, 2019****HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER****HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER**

G.Shankar
S/o Shri A.Govinda Swamy
Aged about 53 years
Working as MTS, No.60683-F
O/o The Air Officer Commanding
Institute of Aerospace Medicine
Ministry of Defence
Government of India
Bangalore-560 017.
Resident of No.24/4
VV Camp
Challaghatta
Bangalore-560 087.

....Applicant

(By Advocate Shri M.Rajakumar)

Vs.

1. The Institute of Aerospace Medicine
Indian Air Force
Ministry of Defence
Government of India
Vimanapura
Bangalore-560 017.
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 Advocates Sri Vishnu Bhat, Sr.PC for CG & Sri N.B.Patil)

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 the applicant was engaged as Seasonal Anti Malaria Lascar(SAML) w.e.f. 15.6.1994 to 15.12.1994. He was again engaged between the period June to December every year from the year 2000 to 2005. He was not engaged during 1995 to 1999 owing to ban on direct recruitment except for filling up of vacancies

in critically deficient Group 'D' Posts. Hence, the services rendered by him in the year 1994 could not be counted towards the grant of Temporary status and regularization thereafter. On not being granted temporary status and thereafter regularization, the applicant filed OA.No.455/2005. Subsequently, he along with his colleagues was regularized in pursuance of letter dtd.11.1.2006(Annexure-R1). The applicant was placed under NPS from 1.3.2006. In pursuance of AIR HQ letter dtd.11.1.2006 & 27.3.2017(Annexure-R4), he was brought under Old Pension Scheme(OPS) with his entitlement for the benefit of GPF and Old Pension Scheme to casual labours covered under Scheme of 10.9.1993 and he was shifted from NPS to OPS w.e.f. 1.5.2017 as per letter dtd.10.2.2017(Annexure-R2). Thereafter, his fund was transferred from NPS to GPF vide letter dtd.13.12.2017(Annexure-R5) which operated from 1.5.2017 to 31.12.2018. Further he was again reverted to New Pension Scheme from 1.1.2019. It was clarified in letter dtd.12.9.2018 that the details based on which the applicant was shifted from NPS to OPS was only applicable to the Casual Labour with Temporary Status Scheme, 1993 and not for the SAML Scheme of IAF 1997. The benefit of Old Pension Scheme and GPF is admissible only to those Casual Labourers who are covered under the Scheme of 10.9.1993 as clarified vide DoPT OM dtd.28.7.2016(Annexure-R6) and reiterated by AIR HQ vide letter dtd.14.12.2016(Annexure-R7). As per OM dtd.28.7.2016, 'the benefit of Old Pension Scheme and GPF is admissible only to those Casual workers who are covered under the Scheme of 1993, all Ministries/Departments may strictly ensure that it does not lead to demand by regularly recruited fresh employees appointed on or after 1.1.2004 for similar benefit in place of NPS'. In the instant case, the applicant has been appointed under the Seasonal Anti

Malaria Lascars (Grant of Temporary status & Regularisation) scheme of IAF 1997 and was not casual labour, thereby he is not eligible to be placed under Old Pension Scheme as per GOI instructions. It is an admitted position that the employees(SAML) were erroneously placed under Old Pension Scheme. On discovery of inadvertent error, the administration took steps to correct the same. The action taken by the department to correct the error has not caused any prejudice to the employees. The applicant is not legally entitled for Old Pension Scheme. The conversion from NPS to OPS was applicable only to the casual labourers regularized under the Scheme of GOI 1993 and not SAML Scheme of IAF 1997. The applicant was regularized as per SAML of IAF, 1997. 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 contention of the applicant that he was appointed much earlier to introduction of NPS and he is covered under the 1993 Casual Labourers Scheme is totally false and baseless. Though he was initially engaged as casual labourer in 1994 but discontinued within a short span of time. Thereafter, he was engaged w.e.f. 2000 as casual employee and his service was continued till he was regularised in the year 2006. In fact the applicant had filed OA.882-886/2013 seeking direction to regularize him in the post of Anti Malaria Lascar from the date he completed 4 years regular service continuously from his initial engagement during 1995 to 1999 etc. But the Tribunal had dismissed the same vide order dtd.24.6.2014(Annexure-R9 in OA.No.553/2019). Therefore, the applicant is not covered under the 1993 scheme and also he is not entitled for OPS. The applicant is not in continuous engagement as there was break in service. Hence, he is not eligible for regularization in the post of AML from the date he completed his four years service continuously in 1994, 2000, 2001 and 2002. Admittedly, he

was not engaged in 1995 to 1999 and hence he cannot ask for regularization as requested in his representation. The scheme does not provide for regularization to the persons engaged with break in service. He has no legal right for regularization from 1994 for the reason that there is a break in service.

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-R6 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-R6, 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-R6 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 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.170/00556/2019

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: Letter dtd.11.01.2006

Annexure-R2: Letter dtd.10.2.2017

Annexure-R3: Letter dtd.12.9.2018

Annexure-R4: Letter dtd.27.3.2017

Annexure-R5: Letter dtd.13.12.2017
Annexure-R6: DoP&T OM dtd.28.7.2016
Annexure-R7: Letter dtd.14.12.2016
Annexure-R8: Letter dtd.5.9.2017

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 Feb 2019

Annexures with additional reply statement:

-NIL-
