

**Central Administrative Tribunal
Hyderabad Bench**

OA No.915/2019

Hyderabad, this the 7th day of January, 2020

Hon'ble Mr. B. V. Sudhakar, Member (A)

E. Sulochanamma

W/o K. Jayanth Rao

Aged 60 years,

Occ: Senior Ticket Examiner (Retd), (Group C)

O/o The Chief Ticket Inspector, Ongole R.S.,

R/o H.No.12-125Q, Vani Nagar, Tangutur,

Prakasam Dist, Andhra Pradesh.

.... Applicant(s)

(By Advocate: Shri K.R.K.V.Prasad)

Vs.

1. Union of India represented by
The Secretary, Ministry of Railways
Railway Board, Rail Bhavan, New Delhi.
2. The General Manager
South Central Railway
Rail Nilayam, Secunderabad, Telangana
3. The Divisional Railway Manager
Vijayawada Division, South Central Railway
Vijayawada, Andhra Pradesh.
4. The Senior Divisional Personnel Officer
Vijayawada Division, South Central Railway
Vijayawada, Andhra Pradesh.
5. The Senior Divisional Financial Manager
Vijayawada Division, South Central Railway
Vijayawada, Andhra Pradesh. ... Respondent(s)

(By Advocate: Mr. M. Venkateswarlu, SC for Railways)

ORDER (Oral)

2. The OA is filed against the decision of the respondents in rejecting the applicant's request to grant pension under Railway Services (Pension) Rules, 1993.

3. Brief facts of the case are that the applicant was granted temporary status w.e.f. 16.04.1987 after working as Summer Water Woman for several years. Thereafter, the services of the applicant were regularized on 12.07.2004. Applicant retired on 28.02.2019. On retirement, the applicant sought pension under Railway Services (Pension) Rules, 1993, for having served in the respondents organization for 21 years. However, respondents granted pension under the New Pension Scheme (in short, as 'NPS') disregarding her request. Consequently, the present OA has been filed.

4. The contentions of the applicant are that the NPS came into effect on 01.01.2004 whereas the applicant was granted temporary service much earlier to 01.01.2004, i.e., on 16.04.1987. Further, this Tribunal in OA No.616 of 2010 has directed the respondents to count 50% of service rendered by the applicants therein on acquiring temporary status till regularization for pension as per Old Pension Scheme (in short, as 'OPS') and to grant all consequential benefits.

5. Respondents, in their reply statement, have contended that as per Railway Board's Sl. Circular No.206/2004, dated 19.11.2004 (Annexure R-2), it was clarified that the individuals who have been regularized after the introduction of NPS will be governed by the said Scheme. In regard to the applicant, as her services were regularized on 12.07.2004, her pension has to be regulated under the NPS. Besides, the temporary status is granted only for entitlement of certain benefits and not entitled to claim any undue benefits like pension.

6. Heard both the counsel and perused the pleadings on record.

7. (I) The facts of the case are that the applicant was granted temporary status on 16.04.1987 and her services were regularized on 12.07.2004 are not disputed. The respondents are banking on the Railway Board's letter dated 19.11.2004 which was circulated under Sl. Circular No.206/2004 dated 16.12.2004, wherein it was clarified as under in regard to the applicability of the NPS:

"SERIAL CIRCULAR NO.206 /2004

No.P(R)500/XIX Date: 16-12--2004

Copy of Board's letter No.2004/AC-II/21/1 dated 19.11.04 is published for information, guidance and necessary action.

Copy of Board's letter No. 2004/AC-II/21/1 dated 19.11.04(RBA no.43/04)

Sub: New Pension System.

The field offices while implementing the New Pension System (NPS) have raised a number of queries and sought clarifications on various issues. In this regard, the following clarifications are issued in consultation with Controller General of Accounts, Ministry of Finance for information and needful action:-

Sl.No.	Queries	Replies/Comments
1.	Whether New Pension System is applicable to substitutes/monthly rated casual labour unless absorbed as regular employees?	The grant of temporary status to casual employees is without reference to the availability of regular Gr. 'D' post, the casual employees on grant of temporary status do not hold any post under the Government. The individuals who have been regularized after the introduction of New Pension Scheme will be governed by the same.
2.	Whether the option for investment is to be exercised by the employee at the time of exit or joining the service?	Option for investments are not available at this stage. The option is to be exercised only on the receipt of any directions/instructions in this regard from the Government."

Based on clarification, the respondents rejected the claim of the applicant under Railway Services (Pension) Rules, 1993. A similar issue was adjudicated upon by the Hon'ble High Court of Andhra Pradesh in Writ Petition Nos.2800 and 2801 of 2011. The Hon'ble High Court has held in its Judgement dated 26.03.2014 that the NPS shall apply only to those who were recruited on or after 01.01.2004. Applicant, in the instant case, being granted temporary status prior to the cut of date, and, therefore has to be treated as having been recruited by the respondents prior to the cut of date of 01.01.2004. The relevant portion of the Judgment of the Hon'ble High Court is extracted hereunder:

“Learned counsel for the petitioners placed reliance on the clarification given by the Railway Board in Serial Circular No.206/2004, dated 16.12.2004, wherein

certain queries and clarifications were sought for. For Query No.1 as to whether New Pension System is applicable to substitutes/monthly rated casual labour unless absorbed as regular employees or not, the reply given is that the grant of temporary status to casual employees is without reference to the availability of regular Gr. 'D' post, the casual employees on grant of temporary status do not hold any post under the Government and that the individuals, who have been regularized after the introduction of New Pension Scheme, would be governed by the same. Basing on the said comments, learned counsel for the petitioners contended that since the services of the applicants have been regularized admittedly after 1.1.2004, their cases have to come within the New Pension Scheme introduced on 1.1.2004. The said clarification is contrary to the New Pension Scheme introduced on 1.1.2004, as all the Zonal Railway administrations, Production Units, Recruiting Authorities etc., are advised to incorporate these changes to the new recruits only. Admittedly, the applicants are not the new recruits though their services have been regularized after the New Pension Scheme came into force. But prior to the scheme, they were the regular railway servants of the Railways, as temporary status has been conferred on them by putting them on the regular pay scales. Therefore, the New Pension Scheme is applicable only to the new recruits. So, we do not find any error apparent on the face of the record so as to call for interference by this Court. Hence, there are no merits in these writ petitions and they are liable to be dismissed."

The aforesaid decision of the Hon'ble High Court of Andhra Pradesh was challenged in the Hon'ble Supreme Court, vide SLP (C) CC No.20367/2014 (**Secretary, Railway Board and Ors. v. G. Appa Rao and Ors.**) which was dismissed on 27.02.2015. Therefore, the matter has attained finality. The applicant who has been recruited before 01.01.2004, is thus entitled to pension as per the Railway Services (Pension) Rules, 1993.

(II) After hearing both the sides and keeping in view the Judgement of the Hon'ble High Court of Andhra Pradesh supra and the SLP filed thereupon being dismissed by the Hon'ble Supreme Court, the respondents are directed to consider granting pension under Railway Services (Pension) Rules, 1993 from the date of her retirement and the consequential benefits that flow thereupon. The time granted to implement the aforesaid direction is three months from the date of receipt of a copy of this order. The OA is accordingly disposed of with no order as to costs.

(B. V. Sudhakar)
Member (A)

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