



4.1/1/2020

CENTRAL ADMINISTRATIVE TRIBUNAL

KOLKATA BENCH

Original Application No.350/66/AN/ 2016

HON'BLE MRS MANJULA DAS, JUDICIAL MEMBER

HON'BLE MR.N.NEHSIAL, ADMINISTRATIVE MEMBER



Sri D.C.Subramanyam

Son of Late D Nageshwar Rao, aged about 40 years residing at Pongychang, near K.V.No.1 School, Port Blair-744101 and working to the post of Mazdoor in regular pay scale of Rs.2550-3200 (Pre-revised) in the Faorests Department, Andaman & Nicobar Administration, Port Blair.

2. **Rajender Prakash,**

Son of late Shiv Prakash aged about 40 years residing at near ssurya Chakra Power Plant. Bambooflat, South Andaman-744107 and working to the post of Mazdoor in regular pay scale of Rs.2550-3200(pre-revised) in the Forest Department., Andaman & Nicobar Administration, Port Blair

3. **T.Neelaiah, Son of T.Ramaswamy**

Aged about 38 years, residing at Ward No.1, Medical Basthi, Haddo, Port Blair 744102 and working to the post of Mazdoor in regular pay scale of Rs.2550-3200 (pre-revised) in the Forests Department,

Andaman & Nicobar Administration, Port Blair

4. B.Venga Prasad, Son of B.Vengaiah
Aged about 38 years , residing at Ward No.1, Krishna Nagar, Port Blair-744102 and working to the post of Mazdoor in regular pay scale of Rs. 2550-3200 (pre-revised) in the Forests Department, Andaman & Nicobar Administration, Port Blair
5. Harjeet Narayan, son of Late Sxreenarayan, aged about 45 years, residing at Village, Haddipur, Post Office-Tushnabad, Farargunj, South Andaman 744103 and working to the post of Mazdoor in regular pay scale of Rs. 2550-3200(Pre-revised) in the Forests Department, Andaman & Nicobar Administration, Port Blair.
6. Bhan Murty, son of D.Ganapathi Rao, aged about 46 years, residing at Subhas Nagar, Sadipur, South Andaman, Port Blair-744102 and working to the post of Mazdoor in regular pay scale of Rs. 2550-3200(pre-revised) in the Forest Department, Andaman & Nocobar Administration, Port Blair
7. T.Rama Rao, son of Simadri, aged about 48 years, residing at Haddo, Lillyour, Ward No.2, Port Blair, Soudth Andaman-744102 and working to the post of Mazddoor in regular pay scale of Rs.2550-3200(Pre-revised) in the Forests Department, Andaman & Nicobar Administration, Port Blair.
8. Santosh Chander Majhi, son of Nopal Majhi, aged about 45 years, residing at Village-Bird Line, Post Office-Calicut, Port Blair, South Andaman-744103 and working to the



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post of Mazdoor in regular pay scale of Rs.2550-3200 (pre-revised) in the Forests Department, Andaman & Nicobar Administration, Port Blair

9. M.Abdul, Aziz, son of Enu, aged about 41 years, residing at Stawartgunj, Farrargunj, South Andaman, Port Blair 744102 and working to the post of Mazdoor in regular pay scale of Rs.2550-3200 (pre-revised) in the Forests Department, Andaman & Nicobar Administration, Port Blair.

10. CH, Madhava Rao, son of Late Ch. Jogulu, aged about 40 years, residing at Haddo, Fish Ring Colony, Ward No2. South Andaman, Port Blair-744102 and working to the post of Mazdoor in regular pay scale of Rs.2550-3200 (pre-revised) in the Forests Department,



11. Hermon Mini, son of Stanislas Minj, aged about 50 years, residing at Bambooflat, Ward No.2, Port Blair-744102 and working to the post of Mazdoor in regular pay scale of Rs.2550-3200 (pre-revised) in the Forests Department, Andaman & Nicobar Administration, Port Blair.

12. R.Kodhanda Rao, son of Late R. Ramaiah, aged about 43 years, residing at Haddo, Ward No.2, Port Blair-744102 and working to the post of Mazdoor in regular pay scale of Rs.2550-3200 (pre-revised) in the Forests Department, Andaman & Nicobar Administration, Port Blair.

13. R. Bhaskar Rao, son of Late R. Ramaiah, aged about 48 years, residing at Haddo, Ward No.2, Port Blair-744102 and working to the post of Mazdoor in regular pay scale of Rs.2550-3200 (pre-revised) in the Forests Department, Andaman & Nicobar Administration, Port Blair.

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14. K.Appalaswamy, son of K.Suryanarayana, aged about 39 years, residing at Haddo, Ward No.1, near Forest Labolur Club, J.N.Road, opposite Ganesh Temple, Port Blair- and working to the post of Mazdoor in regular pay scale of Rs.2550-3200 (pre-revised) in the Forests Department, Andaman & Nicobar Administration, Port Blair.



15. M.Kama Raju, son of Late M.Lachanna, aged about 42 years, residing at Sunder Colony, No.Haddo, Port Blair 744102 and working to the post of Mazdoor in regular pay scale of Rs. 2550-3200 (pre-revised) in the Forests Department, Andaman & Nicobar Administration, Port Blair.

16. M.Ramanamma, wife of M.Akhleshwar, Rao aged about 39 y744102 and working to the post of Mazdoor in regular pay scale of Rs. 2550-3200 (pre-revised) in the Forests Department, Andaman & Nicobar Administration, Port Blair, residing at Anarkali Basti, Ward No.5, Port Blair-

17. T.Lakshman Rao, son of late Simadri Aged about 42 years, residing at Madrasi Barrack, quarter No.12, Ward No.1 Haddo, Port Blair-744102 and working to the post of Mazdoor in regular pay scale of Rs. 2550-3200 (pre-revised) in the Forests Department, Andaman & Nicobar

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Administration, Port Blair., residing at
Anarkali Basti, Ward No.5, Port Blair-
By Advocate: Mr.P.C.Das
Ms.T.Maity

-Vs-

1. Union of India, service through the
Secretary, Government of India, Ministry of
Environment & forest Department,
Parvayaran Bhawan, New Delhi-110003



2. The Lieutenant Governor, Andaman &
Nicobar Island, Raj Niwas, Port Blair-744101

3. The Chief Secretary, Andaman &
Nicobar Administration, Secretariat
Complex, Port Blair-744101

4. The Principal Chief conservator of
Forests
Andaman & Nicobar Administration,
Haddo, Portblair-744102

5. The Deputy Conservator of Forests,
Andaman & Nicobar Administration, Mill
Division, Chatham
Port Blair-744102.
Respondents

By Advocate: Mr.P.K.Das

ORDER

**Per Hon'ble Mr.N.Neihial, Administrative
Member:**

This is second round of litigation

2. The applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act 1985, with the following reliefs:



" (a) Leave may be granted to the applicants to file this application jointly under Rule 4(5)(a) of the Central Administrative Tribunal 9(Procedure) Rules 1987 as the applicants have a common grievance.

b) To quash and/or set aside the impugned speaking order being No.D/249 dated 18th May, 2016 issued by the Deputy Conservator of Forests, Mill Division, Chatham by which the case of the applicants has been rejected by not following the judgment passed by the Hon'ble Supreme court in the case of Union of India & Ors,-Vs- Sarju being Annexure A-13 of the original application.

c) To pass an appropriate order directing upon the respondent authority to give effect of regularization of the services of the applicants to the post of Mazdoor with effect from the initial date of appointment from which they are continuing in the services without any break and the entire period is to be taken up as qualifying service and further directed the respondents to govern all the applicants by Old Pension Scheme and to give all consequential benefits to the applicant after giving effect to their regularization from the date of their initial appointment.

d) To pass an appropriate order directing upon the respondent authority to give extension of benefit of the decisions as decided by this Hon'ble Tribunal, Circuit Bench at Port Blair on 26.04.2012 in O.A.No.104/AN/2010 and in the light of the order passed by the Division Bench of the Hon'ble High Court at Calcutta Circuit Bench at Port Blair on

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dated 9th April, 2009 in W.P.C.T.No.97 of 2008 and also the decision passed by the Hon'ble Supreme Court in the case of Union of India & Ors -Vs- Sarju and to give the date of effect of their regularization to the post of Mazdoor with effect from the initial date of appointment and the entire period from the date of initial appointment to the date of regularization be taken as on service and to give all consequential benefits and to declare that the applicants are entitled to govern under the Old pension Scheme and the entire period may be taken as on service of each and every applicant with effect from the respective date of their initial appointment."



Learned counsel for the applicant prays for

orders with legal provisions as under:-

" That all the applicants in his original application , they were inikially appointed as Mazddoors in the forests Department of Andaman & Nicobar Administration with effect from 1984-95. From the date of initial engagement each and every applicants till regularization worked continuously without any break. The office orders dated 16th May, 1995, 29th March, 1995 and 19th October, 1995 clearly prove that they were appointed against a sanctioned post to the post of Mazdoor with effect from 1994-95 and their services were continuing by the orders of the Administration.

II. That vide office order being No.D/497 dated 15th July, 2004 and dated 24th December, 2004, four applicants have been regularized in regular pay scale of Rs.2550-3200 with effect from 2004 to the post of Mazdoor and vide office order dated 1st March, 2005 on of the applicant has been regularized to the post of Mazddoor in the regular pay scale of Rs.2550-3200

III. that the remaining applicants were not regularized with effect from that date but their services were continuing vide office dated 9th March, 2006 and in the said order in Column No.3 it is clearly stated that your applicants are

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working continuously with effect from 1994-95 and 1996. Vide subsequent order No.D/1304 dated 11th January, 2007, the remaining applicants services have continued by the Administration.

iv) For that thereafter, vide office order No.D/101 dated 21st April 2008 and vide office order No.D/1611 dated 7th December, 2010 remaining applicants are regularized to the post of mazdoor in the regular pay scale of Rs.2550-3200. The grievances of the applicants are although they are working with effect from 1994 -95 but their regularization has given effect to with a current date.. The entire period which they have served in the Administration has totally been ignored by the respondent authority and they are not taking into consideration the date of initial appointment to the date of regularization as taken on qualifying service and all the applicants for that by the order of the Administration government by the New Pension Scheme.



V. That the applicants got information under Right to Information Act, 2005 which has been supplied with by the Forests Department, Andaman & Nicobar Administration vide letter dated 4th June, 2011 that there were sanctioned vacancies in the year 1994-95, 1995-96, 1996-97. Despite such number of vacancies, the cases of the applicants were not considered for regularization at that point of time and they were continuing in the said post without any regularization.

VI. That being highly aggrieved, all of your applicants made a joint representation before the respondent authority on 14th July, 2014 with a copy to all concerned that their regularization should be given effect to with effect from the date of the initial engagement of each and every applicant and date of initial engagement till the date of regularization, the remaining period should be taken into consideration as qualifying service and they should be governed under Old pension Scheme and not under New pension Scheme.

VII. That an identical issue has been decided by this Hon'ble Tribunal Circuit Bench at Port Blair in O.A.No.97/AN/2007 in the case of R.Velumurugan-Vs-Union of India & Ors,

Noted by

whereby this Hon'ble Tribunal has held that the applicant should be governed by the Old Pension Scheme and not by New Pension Scheme and the casual service should be taken into consideration as qualifying service. That order has challenged by the Union of India before the Hon'ble High Court at Calcutta Circuit Bench at Port Blair by filing an application being W. P.C.T No.97 of 2008 whereby the Hon'ble High Court at Calcutta Circuit Bench At Port Blair upheld the order passed by this Hon'ble Tribunal and held that the applicant is entitled to get regularization with effect from the date of casual service i.e with effect from September 26, 1994 and not only that the Hon'ble High Court at Calcutta Circuit Bench at Port Blair also held that R.Velumurugan is entitled for pensionary benefit under the Old Pension Scheme not new pension Scheme.



VIII That this Hon'ble Tribunal, circuit Bench at Port Blair in a latest order dated 26.04.2012 in O.A.No.104/AN/2010 in the case of B.Shyam Sundar-Vs-Andaman & Nicobar Administration (Defence) whereby this Hon'ble Tribunal by relying upon the decision of R.Velumurugan held that the applicants B.Shyam Sundar and others are entitled for pensionary benefit under Old pension Scheme and not only they are entitled with effect from 4.11.1995 with effect from the date of initial engagement as casual service. The applicants case are exactly identical in nature in respect of the above decision held by this Hon'ble Circuit Bench at Port Blair as well as Hon'ble High Court at Calcutta, Circuit Bench at Port Blair in this particular case all the applicants were initially appointed to the post of Mazdoor in the Forests Department with effect from 1994, 1995 and 1996 and they are continuing in service in the in the forests Department without any break. Till their regularization to the post of Mazdoor which will be proved by the office order dated 9th March, 2006 and subsequent order passed by the Andaman & Nicobar Administration Forests Department but when by the order of Administration they are regularized their regularization has been given effect to from a subsequent current date. The entire period of service from the date of initial engagement till the regularization has not been

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counted as 'qualifying service'. The grievances of the applicants is that their regularization should be given effect to with effect from the date of initial appointment to the post of Mazdoor and they should be governed by the Old Pension Scheme in the light of the aforesaid decisions of this Hon'ble Tribunal, Circuit Bench at Port Blair as well as the Hon'ble High Court at Calcutta, Circuit Bench at Port Blair.



IX That being highly aggrieved and/or dissatisfied with the act and activities on the part of the respondents authority by not giving effect to in respect of date of regularization with effect from initial date of appointment and also not counting the qualifying service because of not given the effect of regularization with effect from the initial date of appointment and governed the applicants under New pension Scheme against the orders passed by this Hon'ble Tribunal on 26.04.2012 in P.A.No.104/AN/2010 as well as the order dated 9th April, 2009 passed by the Hon'ble High Court at Calcutta in W.P.C.T No.97 of 2008. Your applicants moved an original application being O.A.No.351/00122of 2015in earlier occasion before this Hon'ble Tribunal and the nsaid matter was disposed by this Hon'ble Tribunal vide order dated 07.12.2015 which is inter alia as follows:-

"The respondents have dispelled the claim on the ground that the applicants have belatedly approached the Tribunal seeking regularization with effect from the date of initial appointment as Daily Rated Mazdoors and to govern their service under Old pension Scheme. However, in regard to the decision rendered in the case of o.A.97/AN/07 (Velumurugan -Vs- UOI & Ors.) as cited by the applicant in order to claim benefit under Old pension Scheme, the reply is conspicuously silent why the applicant would not be entitled to similar benefits i.e to be governed by the Old Pension Schemes.

Therefore, in the interest of justice the O.A. is disposed of with a direction upon the respondents to consider the claim of the present applicants in the light of the decision cited by the applicants and pass appropriate reasoned and speaking orders in accordance

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with law within two months from the date of communication of this order."

After the said order passed by this Hon'ble Tribunal, a copy of the same has duly communicated to the respondents by the learned advocate of the applicants vide his letter dated 14.03.2016.



For that after receipt of such order, the respondent department vide office order No.D/249 dated 18th May, 2016 rejected the claim of the applicants although they have admitted that all the candidates are on the roll for Daily Wages before regularization but they did not consider the claim of the applicants for counting their past services which they have rendered with effect from 1994-95. The present applicants are continuously working for the year 1994-95 till regularization and the respondent authority cannot ignore the same. The law of the land in respect of this issue is very clear in the case of Union of India & Ors- Vs- Sarju wherein the Hon'ble Supreme Court had held that as per the direction of the Hon'ble Tribunal upheld by the Hon'ble High Court regarding counting the past services of the employees for the purpose of retiral benefits did not suffer any illegality or infirmity and the Hon'ble Supreme Court specifically directed the authority concerned to count their services and also rate of interest has been fixed in case of retired persons at the rate of 12% per annum. Despite the decision of the Hon'ble Supreme Court 30th September, 2011, the respondent authority by passed the said decision which has been quoted by the Hon'ble Tribunal at the time of delivering the decision and rejected the claim of the present applicants which is absolutely bad in law and illegal. Since all your applicants are working with effect from 1994-95 without any break before regularization, the period of such services has to be counted for purpose of giving pensionary benefit and naturally if that service is counted all the applicants will govern under the Old Pension Scheme as decided by the Hon'ble High Court and Hon'ble Supreme Court, therefore, the impugned speaking order dated 18th May, 2016 is wholly unjustified, bad in law and illegal and cannot be sustainable in the eyes of law."

4. The respondent authorities filed their written statement/reply on 01.09.2016. They have stated that the 17 applicants were engaged as Daily rated Mazdoors in Mill Division, Chatham under the Department of Environment and Forests and continued in the service as DRMs since 1994-1995 vide office



Order No. D/2270 dated 29.03.1995, D/225 dated 05.1995 and D/1250 dated 13.11.1995 and subsequently regularized as Regular Mazdoors w.e.f.

2004, 2005 and 2007. They further contested that after a lapse of around ten years they have approached the Department with the request to give effect to their regularization w.e.f. their date of initial appointment as Daily Rated Mazdoors and to govern their service under old Pension Scheme. But the department has not considered their request which is not permissible under the rule and they have been regularized as the vacancies arise and on the basis of seniority from their date of engagement as Daily Rated Mazdoors in the

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Department. In the previous O.A. No.351/000122/2015

the Hon'ble Tribunal was directed as under:-

" In the interest of justice, the O.A. is disposed with the direction upon the Respondent to consider the claim of the present Applicants in the light of the decision cited by the Applicants and pass appropriate reasoned and speaking order in accordance with law within two months from the date of communication of this order."

This has been complied with by the respondent



authorities by issuing a speaking order No.D/249 dated 18.05.2016, wherein the respondent authorities have not extended the benefit of Old Pension Scheme to the applicants. The respondents also pointed out that the case of the applicant are not applicable wherein the Hon'ble Supreme Court has passed the Judgment in respect of SLP© No.20041/2008 (Union of India & Ors – Vs- Sarju) as the case was relating to giving the benefits of service w.e.f. the date of granting of the applicants' temporary status whereas in case of the 17 applicants are not entitled to and they have never been granted the temporary status.

Ms. [Signature]



Hon'ble Supreme Court. This is indeed correct that this is a case wherein the service benefits have been granted to the applicants w.e.f. the date of granting the temporary status and not from the date of initial appointment. Since the applicants have never been granted temporary status, this order of the Hon'ble Supreme Court is not found to be applicable to them.

6. As regards to the judgment of the Hon'ble Tribunal of Calcutta Bench in **O.A.No.97(AN) of 2007 in respect of Shri R.Velmurugan -Vs-Union of India & Ors.,**

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the case is similar though the facts are slightly different.

In that case, the applicant was initially engaged as Chowkider on temporary basis vide order dated 26.9.1994. He continued to be employed on casual basis till 21st January, 2005 with intermittent breaks.

Consequent Upon his regularization in 2005 he was



declared to be entitled to the old Pension by O.A.No.104/AN/2010 dated 10.2.2005. However, this was subsequently withdrawn, the date of regularization being

Jan, 2005. The Tribunal after examining the issue, declared that the action of the respondents in cancelling the eligibility of the applicant for the Old Pension Scheme 'arbitrary and illegal.' The O.A. was allowed. This was further confirmed by the Hon'ble High Court of Calcutta, in WPCT No.097/2009. Similarly the Hon'ble CAT, Calcutta Bench and in another O.A.No.104/AN/2010 dated 26.4.2012 passed a judgment in favour of Shri B.Shyam Sundar Rao & Ors., -Vs- A&N Administration (Defence) taking the same analogy in O.A.No.97(AN) of 2007 in respect of Shri R.Velmurugan -Vs-Union of India

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& Ors. giving the Old Pension Scheme w.e.f. the date of initial engagement.

7. In this case, the respondent authorities are taking a stand that though they have been engaged initially w.e.f. 1995, they are given regular appointment on the basis of available vacancies in the year 2004, 2005



and 2007. As such, the above case is not applicable to the applicants, particularly for giving the Old Pension Scheme from the date of their initial engagement as Daily Rated Mazdoor. However, the applicants submitted information obtained through the RTI, wherein the vacancy position of Mazdoor has been indicated by Dy.CE vide letter No.D/161/ dated 4th June/July, 2011 as under:-

Name of Post	Year	Vacancy
Mazddoor	1994-1995	25
-do-	1995-1996	13
-do-	1996-1997	37
-do-	1997-1998	69
-do-	1998-1999	82
-do-	1999-2000	91
-do-	2000-2001	30
-do-	2001-2002	34
-do-	2002-2003	18
-do-	2003-2004	26
-do-	2004-2005	02
-do-	2005-2006	06

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8. Keeping in view of the above, the respondent authorities are hereby directed once again to examine each and every case of the 17 applicants, against the above yearwise vacancies as shown by the above letter. If vacancies were available as indicated, each applicant shall be accommodated against the vacancies in the order of seniority of their engagement and the benefits



Pension Scheme shall be extended to each of them separately with revised appointment order. In case, any applicant or the applicants cannot be accommodated for to want of vacancy, prior to the date of the present regular appointment, details speaking order shall be issued by them. Accordingly, Speaking Order No.D/249 dated 18th May 2016 is hereby set aside and quashed.

9. To the above extent, the O.A. is allowed.

There is no order as to costs.

(N.NEHSIAL)
MEMBER (A)

((MANJULA DAS)
MEMBER(J)

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