

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/21/781/2017

HYDERABAD, this the 2nd day of December, 2020

Hon'ble Mr. Ashish Kalia, Judl. Member

Hon'ble Mr. B.V. Sudhakar, Admn. Member



1. T. Pandu, S/o. Tulsidass,
Occ: Mil Farm Hand,
Aged about 47 years,
H.No.8-7-61/4,
Rama Raj Nagar, Old Bowenpally,
Secunderabad – 500 011.
2. Sathaiah, S/o. Late Pochaiah,
Occ: Mil Farm Hand,
Aged about 44 years,
H.No.8-4-61, Old Bowenpally,
Secunderabad – 500 011.
3. Kunwar Singh, S/o. Rajaram,
Occ: Mil Farm Hand,
Aged about 44 years,
H.No.1-24-33, MDF Quarters,
Bowenpally, Secunderabad – 500 011.
4. A. Raju, S/o. Late Durgaiah,
Occ: Mil Farm Hand,
Aged about 46 years,
H.No.31-245, Indra Nagar, Khanajiguda,
Trimalgherry, Secunderabad – 500 015.
5. Survender Singh Chouhan,
S/o. Lakhan Singh Chouhan,
Occ: Mil Farm Hand,
Aged about 48 years, Plot No. 15
Rama Raj Nagar, Near Hi-Tech School,
Old Bowenpally, Secunderabad – 500 011.
6. Kalicharan, S/o. Late Ramthirath,
Occ: Mil Farm Hand,
Aged about 43 years,
H.No.1-24-33, MDF Quarters,
Bowenpally, Secunderabad – 500 011.

7. Gopal, S/o. Mallaiah,
Occ: Mil Farm Hand,
Aged about 42 years,
Occ: Casual Labour, R/o. 1-9-59B,
Kamsri Bazar, New Bowenpally,
Hyderabad.

...Applicants



(By Advocate : Smt. Rachna Kumari)

Vs.

1. Union of India rep. by
The Director General of Military Farms,
QMG Branch, Army Head Quarters,
West Block, R.K. Puram, New Delhi.
2. The Deputy Director General of Military Farms,
Quartermaster General's Branch,
Integrated HQ of Ministry of Defence (Army),
West Block, R.K. Puram, New Delhi.
3. The Director of Military Farms,
Head Quarters, Southern Command,
Kirkee, Pune.
4. The Officer-In-Charge,
Military Farms, Bowenpally,
Secunderabad.
5. The Controller of Defence Accounts No.1,
Staff Road, Opposite Secunderabad Club,
Secunderabad – 500 009.

....Respondents

(By Advocate : Sri R.V. Mallikarjuna Rao, Sr. PC for CG)

ORAL ORDER
(As per Hon'ble Mr. B.V. Sudhakar, Administrative Member)

Through Video Conferencing:



2. The OA is filed challenging the inaction of the respondents in regard to fixing appropriate pay, granting MACP benefits, continuing under old pension scheme and reckoning of casual labour services for fixing pension.

3. Brief facts are that the applicants joined the respondents organisation as casual labour from 1988 to 1992 and were granted temporary status on 1.9.1993. Applicants were provided quarters with nominal rent to be paid. On 29.10.1999, when the applicants were retrenched, the matter was reconciled by the Conciliation Officer by a settlement whereby applicants were being engaged on the basis of work requirement. For regularisation of their services, applicants approached this Tribunal and their services were regularised in Group D grade with GP of Rs.1300 vide orders dated 2.3.2011 and 31.10.2014. However, applicants have not been paid regular pay/ MACP from the date of conferring temporary status and are not included in the old pension scheme by considering the services rendered as casual labour as well with temporary status. Therefore, the OA.

4. The contentions of the applicants are that the guidelines contained in DOPT memo dated 10.9.1993 have not been followed in regularising the services of all the applicants. For applicants whose services were regularised, lesser grade pay of Rs.1300 was granted violating Articles 14, 16 and 21 of the Constitution. MACP has to be granted by taking into

consideration the length of service rendered from the date of joining as casual labour and at least from the date of conferring temporary status.

5. Respondents claim that they came out with a system of maintaining seniority list of casual labour who received favourable orders from the courts in regard to regularising their services. Accordingly, the services of 7 out of the 16 applicants were regularised. The rest were retrenched due to a policy decision to reduce casual labour strength w.e.f. 1.9.1998. The retrenched applicants were paid one month salary and compensation. Services of no casual labour were regularised after the retrenchment decision except those who had favourable orders. Applicants whose services were regularised, the regular pay scale was granted from the date of regularisation and arrears paid. MACP benefits are to be granted for regular service rendered and old pension scheme will be applied as per rules on the subject.

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

7. It is not under dispute that the applicants were engaged as casual labour in the years 1988 to 1992. When their services were retrenched by the mediation of the Conciliation Officer, a settlement was arrived at by which the applicants were engaged based on the availability of work. Respondents took a policy decision to reduce the casual labour staff strength and in the process 9 of the applicants were retrenched and were paid one month salary along with eligible compensation. The 9 applicants accepted the same and hence these applicants will not have any right for



regularisation. In respect of the other applicants, whose services have been regularised due to the orders of this Tribunal, the reliefs sought are multifold although interrelated. We have examined each one of them and our observations are hereunder:



- a. Primarily applicants have sought MACP benefits by considering the service rendered from the date of joining as casual labour. This is impermissible since MACP benefits are granted based on the regular service rendered from the date they have been regularised. Respondents need to follow the DOPT guidelines on MACP and accordingly grant financial up gradations due to the applicants from the dates their services have been regularised. Recently, DOPT has reaffirmed at para 3 of its letter dated 19.10.2019 that the G.O.I, while accepting the recommendations of the 7th CPC, has decided to continue the MACP scheme introduced in 6th CPC with the same conditions that the benefit of financial up gradations under the scheme will not be available to casual labour, temporary status casual labour, contract employees and adhoc employees. It is to be extended to employees who have been regularly appointed in Group A, B, C cadres excepting to those from the organised Group 'A' cadre.

The Hon'ble Supreme Court has also held in *State of Haryana vs Haryana Veterinary & AHTS Association and another*, (2000) 8 SCC 4 that only regular service has to be considered in granting financial upgradation under MACP, as under:



"7. Coming to the circular dated 2-6-1989, issued by the Financial Commissioner and Secretary to the Government of Haryana, Finance Department, it appears that the aforesaid circular had been issued for removal of anomalies in the pay scale of Doctors, Deputy Superintendents and Engineers, and so far as Engineers are concerned, which are in Class I and Class II, it was unequivocally indicated that the revised pay scale of Rs.3000 to Rs.4500 can be given after completion of 5 years of regular service and Rs.4100 to Rs.5300 after completion of 12 years of regular service. The said Financial Commissioner had issued yet another circular dated 16-5-1990, in view of certain demands made by officers of different departments. The aforesaid circular was issued after reconsideration by the Government modifying to some extent the earlier circular of 2-6-1989, and even in this circular it was categorically indicated that so far as Engineers are concerned, they would get Rs.3000 to 4500 after 5 years of regular and satisfactory service and selection grade in the scale of pay of Rs.4100 to Rs.5300, which is limited to the extent of 20% of the cadre post should be given after 12 years of regular and satisfactory service.

The aforesaid two circulars are unambiguous and unequivocally indicate that a government servant would be entitled to the higher scale indicated therein only on completion of 5 years or 12 years of regular service and further the number of persons to be entitled to Patna High Court CWJC No.3071 of 2016 dt.08-08-2016 get the selection grade is limited to 20% of the cadre post. This being the position, we fail to understand how services rendered by Rakesh Kumar from 1980 to 1982, which was purely on ad hoc basis, and was not in accordance with the statutory rules can be taken into account for computation of the period of 12 years indicated in the circular. The majority judgment of the High Court committed serious error by equating expression "regular service" with "continuous service". In our considered opinion under the terms and conditions of the circulars dated 2-6-1989 and 16-5-1990, the respondent Rakesh Kumar would be entitled for being considered to have the selection grade on completion of 12 years from 29-1-1982 on which date he was duly appointed against a temporary post of Assistant Engineer on being selected by the Public Service Commission and not from any earlier point of time. The conclusion of the majority judgment in favour of Rakesh Kumar, therefore, cannot be sustained."

In view of the rules governing MACP and the legal principle laid down by the Hon'ble Supreme as at above, applicants will not be eligible for MACP from the date of joining as casual labour or from the date of conferring temporary status but from the date on which their services have been regularised.

b. Secondly, they sought to be included in the old pension scheme instead of New Pension scheme. As seen from the records, applicants have been granted temporary status on 1.9.1993 i.e. prior to the introduction of New pension scheme in 2004. Therefore, they have to be covered by the old pension scheme and the same is supported by the verdict of the Hon'ble



Calcutta High Court (Appellate Side) in **Union Of India & Ors vs Purnendu Prakash Das & Ors** on 4 March, 2015, W.P.C.T. 46 of 2015, as

under:

"The concerned authorities namely, the petitioners herein challenged the aforesaid decision of the learned Tribunal on the ground that a new pension scheme has already been introduced in respect of the persons appointed on or after 1st January, 2004 and there is no provision of General Provident Fund in the new pension scheme and therefore, deduction towards GPF from the existing casual labourers cannot be continued. The identical issue was earlier considered by the Patna Bench of the Central Administrative Tribunal and since the learned Judges differed in their opinion, the matter was referred to a third member and the learned third member passed an order on 9th July, 2010 in the application being O.A. 523 of 2005 upholding the views of the Member (Judicial) and held as hereunder:

" 4. *** *** **

6. From perusal of the judgment of the Hon'ble Member (J) it appears that the finding of the Hon'ble Member (J) is based on the decision of the Lucknow Bench of CAT dated 09.09.2009, passed in OA 44 of 2006, with several other OAs. It appears that before the Lucknow Bench also several OAs were filed to quash the DOPT OM dated 26.04.2004 on the ground that the New Pension Scheme cannot apply on those casual labourers having temporary status who have been appointed earlier than 01.01.2004. I am also of the view that the instant OAs are fully covered by the judgment of Lucknow Bench, passed in OA 44 of 2006, and there is no reasonable ground for passing a dissenting judgment differing with the view taken by the Lucknow Bench. This is also against the judicial norms. Moreover, perusal of the Scheme dated 26.04.2004, read with the letter no. 4-28/2003-Pen Govt. of India, Ministry of Communication, Department of Posts, Dak Bhavan, Sansad Marg, New Delhi dated 17.12.2004 shows that the New Pension Scheme is applicable to those employees who were appointed on or after 01.01.2004. Admittedly, the applicants have acquired temporary status much before 01.01.2004.

7. Thus, if both the paragraphs are read together it will establish no right to be appointed as regular group 'D' employee within

any fixed time but they are entitled to be treated at par with Group 'D' employee for the purpose of contribution to General Provident Fund, etc. and this right cannot be taken away by any subsequent change and, therefore, I hold that the view taken by Member (J) is correct.

8. On the basis of the discussions made above, I fully agree with the view taken by the Hon'ble Member (J) and hold that she has rightly allowed the applications [except the application of applicant, Pawan Kumar]. Accordingly, this reference is decided."



The Central Administrative Tribunal, Calcutta Bench while deciding the Original Application herein followed the aforesaid Larger Bench decision and held in favour of the respondent-casual labourers herein and directed the authorities to continue with the recovery of GPF contributions in respect of the said respondents.

From the records we find that the applicants before the learned Tribunal namely, the respondents herein were appointed as casual labourers and had acquired temporary status in terms of the earlier DOPT scheme and were allowed the GPF benefits w.e.f. 1st September, 1996. The new pension scheme cannot apply on the respondents herein since they undisputedly, acquired temporary status being appointed long before 1st January, 2004. The new pension scheme also made it clear that the same applies in respect of the persons appointed to the Central Government service on or after 1st January, 2004."

c. Tertiary relief claim sought was that the 50% of the length of service rendered as casual labour as well as temporary status casual labour has to be counted for the purpose of fixing of pension and pensionary benefits. This is permitted under law as per the judgment of the Hon'ble Supreme Court in **Union Of India & Ors vs Rakesh Kumar & Ors** on 24 March, 2017 in Civil Appeal No. 3938 of 2017 (Arising out of SLP (C) No. 23723 of 2015, as under:

"55. In view of foregoing discussion, we hold :

i) the casual worker after obtaining temporary status is entitled to reckon 50% of his services till he is regularised on a regular/temporary post for the purposes of calculation of pension.

ii) the casual worker before obtaining the temporary status is also entitled to reckon 50% of casual service for purposes of pension.

iii) Those casual workers who are appointed to any post either substantively or in officiating or in temporary capacity are entitled to reckon the entire period from date of taking charge to such post as per Rule 20 of Rules, 1993.”

d. Lastly, applicants sought fixation of regular pay from the date of grant of temporary status in the grade pay of Rs.1800. As per rules, applicants are eligible for grade pay of Rs.1800/1300 as per the educational qualifications possessed by them and that too, from the date they have been regularised and not from the date of granting temporary status. This has to be examined by the respondents in terms by the extent rules and decide.



II. Thus, in the light of the observations made in sub paras (a) to (d) and the judgments of the superior judicial fora, respondents are directed to consider granting of the reliefs sought.

III. With the above direction the OA is disposed with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/al/evr