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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.2131/2004

M.A.No.1806/2004

Hon'ble Shri Justice B. Panigrahi, Chairman
Hon'ble Shri A.K. Agarwal, Vice-Chairman (A)

New Delhi, this the 16th day of December, 2005

Sh. Ajay Kumar and 123 others ... Applicants

(By Advocate: Sh. M.K. Bhardwaj)

Vs.

Union of India & Ors. through

1. The Secretary
Ministry of Home Affairs
Govt. of India
North Block
New Delhi.
2. Joint Secretary
Govt. of India
Ministry of Home Affairs
North Block
New Delhi.
3. Under Secretary
Govt. of India
Ministry of Home Affairs
North Block
New Delhi.
4. Secretary
Ministry of Personnel Public Grievances & Pensions
Department of Personnel & Training. ... Respondents

(By Advocate: Sh. Madhav Panikar)



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ORDER

By Justice B. Panigrahi, Chairman

In this case, a Group of Casual Labourers have challenged the arbitrary, whimsical and casual attitude of the respondents in not regularizing their services against Group 'D' posts. It is stated that they have been engaged as Casual Labourers for more than a decade ago and have been continuously discharging the same nature of duties as performed by the other regular Group 'D' employees. They have questioned the propriety of DoPT's OM dated 26/4/2004 by which the Director, DoPT has issued the following guidelines, which pertain to the introduction of New Pension Scheme – Modification of Scheme for grant of temporary status:

"The undersigned is directed to say that the scheme for grant of temporary status and regularization of casual workers in Central Govt. Offices formulated in pursuance of the judgement dated 16.2.90 of the Central Administrative Tribunal Principal Bench in the case of Raj Kamal & Others vs. Union of India has been reviewed in the light of introduction of New Pension Scheme in respect of persons appointed to the Central Govt. service on or after 1.1.2004 and it has been decided to modify the scheme as under:-

- (i) As the new pension scheme is based on defined contributions, the length of qualifying service for the purpose of retirement benefits has lost its relevance, no credit of casual service, as specified in para 5(v), shall be available to the casual labourers on their regularization against Group 'D' posts on or after 1.1.2004.
- (ii) As there is no provision of General Provident Fund in the new pension scheme, it will not serve any useful purpose to continue deductions towards GPF from the existing casual employees, in terms of para 5 (vi) of the scheme for grant of temporary status. It is, therefore, requested that no further directions towards General Provident Fund shall be effected from the casual labourers w.e.f. 1.1.2004 onwards and the amount lying in their General Provident Fund accounts, including deductions made after 1.1.2004, shall be paid to them.

2. The existing Guidelines contained in this Department's OM No.49014/2/86-Estt(C) dated 7.6.88

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may continue to be followed in the matter of engagement of casual workers in the Central Government Offices."

2. There is no dispute that these applicants have been engaged as Casual Labourers, after examining their suitability and eligibility, in terms of the Recruitment Rules. In the past, these applicants have claimed about the grant of temporary status, which was unreasonably denied by the respondents-authorities. Therefore, they had filed a case being OA No.96/1999 and this Tribunal vide its order dated 7.5.1999, directed the respondents-authorities to consider the applicants' case for grant of temporary status and regularization in terms of the Scheme formulated vide OM dated 10.9.1993. The Tribunal's order was, however, challenged before the Hon'ble High Court as well as before the Hon'ble Supreme Court but the Hon'ble Supreme Court had upheld the order passed by the Tribunal. Therefore, there was no other way left to the respondents except to follow the directions of the Tribunal.

3. The applicants are being paid DA, HRA and CCA. It is relevant to note that in terms of DoPT's OM, the contribution towards the GPF is also being deducted on completion of three years continuous service as it is followed in case of regular Group 'D' employees. The applicants have been granted all kinds of leave as admissible to temporary employees, Holidays are also being admissible to these employees, so also counting of service for the purpose of pension, Central Government Employees Insurance Scheme, GPF, Medical Aid, LTC and all advances admissible to Group 'D' employees.

4. The respondents have abruptly passed an order by issuing a New Pension Scheme whereby it was decided that their General Provident Fund shall not be deducted after 1.1.2004 from their salary. That is why the applicants have filed the present case.

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5. Respondents-authorities, in their reply, have stated that it is not an ongoing Scheme to regularize the service of the casual labourers engaged on or after 1.1.1993. It is only a one-time benefit. It has been confined to the Casual Labourers who were on roll within a year preceding the date of passing of the OM. Therefore, even if the applicants might have been enjoying such facilities, it shall not offer them an unfettered right to claim all the benefits which are being given to the regular Group 'D' employees.

6. The learned counsel for the respondents, Sh. Madhav Panikar, has submitted that under the Scheme, power has been conferred to the DoPT to issue certain executive instructions while implementing the Scheme. It is true that some powers have been conferred upon the DoPT but nowhere it is expressly stated that the Department of Personnel & Training was authorized to issue such instructions by giving retrospective effect. The benefit prevailing which has been accorded to the employees cannot be curtailed by issuing the executive instructions by giving retrospective operation. Such issue has also been settled by the Jaipur Bench of this Tribunal in OA No.284/2004, vide its order dated 25.5.2005. It is needless to mention that the respondents-authorities have not brought to our notice that whether they have filed any petition under Article 227 of the Constitution of India challenging the orders passed by the Jaipur Bench. On the contrary, it seems that they have complied with the directions.

7. We cannot avoid to note of another striking feature appearing in the case of Union of India and Anr. vs. Mohan Pal, etc., JT 2002 (Supp.1) SC 312 wherein the Hon'ble Supreme Court had also not approved the action of the respondents, who had taken steps not to deduct the GPF Contribution from the salary of the casual labourers.



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8. Be it noted that the applicants are enjoying the benefits whatever provided to the regular Group 'D' employees. In that view of the matter, following the observations of the Division Bench orders passed by the Jaipur Bench and Chandigarh Bench in OA No.284/2004 and OA No.60/2002 respectively and also the mandate of the Supreme Court in **Mohan Lal's case (supra)**, we cannot agree with the action taken by the DoPT in issuing the impugned order dated 26.4.2004 by which the deduction of contribution towards the GPF amount has been withdrawn. Accordingly, the order dated 26.4.2004 is hereby quashed and the authorities are directed to follow the practice whatever prevalent before issuing of the abovesaid impugned order.


(A.K. AGARWAL)
Vice-Chairman (A)


(B. PANIGRAHI)
Chairman

/Rao/