

**OPEN COURT**

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH  
ALLAHABAD**

This is the 06<sup>th</sup> day of August 2021

**ORIGINAL APPLICATION No. 292 of 2020**

**HON'BLE MR. TARUN SHRIDHAR, MEMBER (A)**

Anand Mohan age about 62 years, (Senior Citizen) son of Late Hriday Narayan Pandey R/o House No. A-52, Brij Enclave Colony, Sunderpur, District Varanasi, UP.

.....Applicant.

Advocates for the Applicant : Mr. P.K. Mishra/Shri Rajesh Kumar

**VERSUS**

1. Union of India through General Manager, East Central Railway, Headquarters office, Subedarganj, Allahabad.
2. Divisional Railway Manager, North Central Railway, Nawab Yusuf Road, Allahabad.
3. Senior Divisional Engineer, North Central Railway, Nawab Yusuf Road, Allahabad.
4. Divisional Engineer, North Central Railway, Chunar District Mirzapur.

.....Respondents

Advocate for the Respondents : Shri Navin Chandra Srivastava

**ORDER**

The applicant seeks to be covered under the Old Pension Scheme and is aggrieved by the order passed by Senior Divisional Engineer, North Central Railway bearing No. E/Settlement/Anand Mohan/2018 dated 19.11.2018 wherein his claim for Old Pension scheme is rejected and he has been directed to submit his documents

for sanction under the New Pension Scheme. To this effect, he has sought the following reliefs:-

- “(a) Issue an order or direction in the nature of certiorari to quash and set aside the impugned order dated 19.11.2018 (Annexure A-1).*
- (b) Issue an order or direction in the nature of mandamus directing respondents to treat the applicant under the old Pension Scheme i.e. CCS (Pension) Rule 1972 and further directed that half the service rendered by the applicant as casual labour with temporary status along with services rendered after regularization be counted full for the purpose of determining his total qualifying service for grant of pension and pensionary benefits to the applicant under Old Pension Scheme.*
- b-1 Issue an order or direction to the Respondent No.2 to decide the pending representation dated 26.11.2018 (An-7) within some stipulated period on this Hon’ble Tribunal deem fit and proper in the facts of the case.*
- c. Issue an order or direction to the respondents for payment of 12% interest on the arrear of pension and pensionary benefits from the date it became due to the date of actual payment.*
- d. Issue any further orders, which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case.*
- e. Issue an order or direction to impose the suitable cost upon the Railway respondents for unnecessary litigation and harassment of the old age senior citizen applicant.*
- f. Award the costs of the case in favour of the applicant”.*

2. The applicant claims that after 22 years of continuous service, he was regularized on 15.5.2007 along with 13 others. He further mentions that prior to regularization, he was working in a regular pay scale and as a proof he has submitted photocopy of the pay slip. Accordingly, he was also allotted a regular Provident Fund Account numbering 04824167. He is aggrieved that just prior to his superannuation on 30.11.2018, the applicant was informed that he shall be covered under the New Pension Scheme. Accordingly, he was directed to submit all the relevant documents.

3. Learned counsel for the applicant argues that the applicant was never a part of New Pension Scheme and he was a regular member of the State Railway Provident Fund (SRPF) throughout his service career. The provisions of the New Pension Scheme envisaged deduction from the salary towards the contribution of the New Pension Scheme and no such deduction was ever made from the salary of the applicant.

4. Learned counsel for the applicant also draws attention to the relevant circulars and rules governing the Old Pension Scheme, which holds that such employees as have attained temporary status prior to 1.1.2004 but regularized after 1.1.2004 shall be covered under the Old Pension Scheme. Since the applicant had attained temporary status much prior to the cut-off date of 1.1.2004, he is entitled to the retirement benefits under the provisions of Old Pension Scheme. To further establish his claim, the learned counsel for the applicant relies upon the following judgments, which are reproduced below:-

- (i) *N.R. Sajan Vs. UOI and Ors. decided by CAT, Ernakulam in OA No. 180/00214/2016 on 23.03.2017.*
- (ii) *Suresh Dutt Tiwari Vs. Union of India and others decided by Central Administrative Tribunal, Lucknow Bench in OA No. 315/2013 on 08.05.2015.*
- (iii) *The Union of India and others Vs. Puranmal Sharma decided by Hon'ble Rajasthan High Court in DB Civil Writ Petition No. 11348/2017 on 29.08.2019.*
- (iv) *Gajraj Dohre Vs. State of U.P and 3 others decided by Hon'ble Supreme Court in Special Appeal Defective No. 242 of 2015 on 31.3.2015.*

According to the learned counsel for the applicant, there is no further scope to reopen the issues qua the applicant and his case is squarely covered by all these judgments.

5. Learned counsel for the applicant would further find support from the judgment of the Hon'ble High Court of Rajasthan in the case of Puranmal Sharma (supra), as also the DOPT memorandum No. 49014/2/2014-Estt (C) dated 28.07.2016, which unambiguously hold that the benefit of Old Pension Scheme and General Provident Fund is admissible to casual workers under the scheme of 1993 even if they have been regularized after 1.1.2004.

6. Learned counsel for the respondents would contend that the benefit of Old Pension Scheme would be admissible only if it is established that the applicant had attained temporary status prior to 1.1.2004 and this fact has not so far been admitted. He draws attention to disciplinary proceedings against the applicant which are set to have met with removal from service. However, he also informs that subsequent to an appeal, this punishment was reduced to a lower stage in time scale. This statement itself indicates that the applicant was drawing a regular pay scale prior to 1.1.2004, hence he had attained temporary status.

7. Learned counsel for the respondents agrees that in case the vacancy against which the applicant was regularized, had accrued prior to 1.1.2004 and the applicant had attained temporary status, there is a merit in re-examining the case and re-ascertaining the facts. Hence

being a question of fact the case could be reviewed by the respondents if the facts point to that direction.

8. Having heard learned counsel for the parties, I am of the view that the applicant has established his case for coverage under the Old Pension Scheme as documents on record prove that he had attained the temporary status prior to 1.1.2004; was in receipt of a regular pay scale; had subscribed to General Provident Fund and hence meets all the requirements to be awarded benefits of Old Pension Scheme. In addition, a catena of judgments passed by different Benches of CAT and the Hon'ble High Court of Rajasthan amply establish the case of the applicant to be covered under the Old Pension Scheme.

9. In view of the detailed position obtained above, this O.A. is allowed and the respondents are directed to pass appropriate order granting the benefits of Old Pension Scheme to the applicant within a period of eight weeks from the date of receipt of a certified copy of this order. Accordingly, the impugned order dated 19.11.2018 (Annexure A-1) stands quashed. No order as to costs.

**(TARUN SHRIDHAR)**  
**Member (A)**

Manish/-