

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 25th day of May 2012.

HON'BLE MS. JAYATI CHANDRA, MEMBER -A

ORIGINAL APPLICATION NO. 444 OF 2006

1. Krishna Bhushan son of Sri Damodar Sharma, Resident of M-95/P Medical Colony, Izzatnagar, Bareilly (U.P)
2. Smt. Sushila Devi W/o Late Ghanshyam, Resident of 421 Civil Line, near Deep Mala Hospital, Chanpola, Bareilly (U.P)

.....Applicants

VER S U S

1. Union of India through Secretary, Ministry of Personal Public Grievances Pension Department of Personal and Training Govt. of India New Delhi.
2. Union of India through General Manager, N.E. Railway, Head Quarter, Gorakhpur.
3. The Divisional Railway Manager (D.R.M) N.E. Railway, Izzatnagar, Bareilly.
4. The Sr. Divisional Personal Officer (S.D.P.O) N.E. Railway, Izzatnagar, Bareilly.
5. The Chief Medical Superintendent (C.M.S) N.E. Railway Divisional Hospital, Izzatnagar, Bareilly.

.....Respondents

Advocate for the applicant: Shri R.C. Pathak

Advocate for the Respondents : Shri D. Awasthi

Reserved on 01.5.2012.

ORDER

The instant O.A. has been instituted by the applicants under section 19 of Administrative Tribunals Act 1985 seeking quashing of impugned orders dated 26.4.2004 and 16.8.2005 (Annexure A-1 and A-2).

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2. Applicant No.2 was appointed as a Substitute Worker by order dated 18.10.1995 (Annexure A-3) and applicant No.1, was also appointed as Substitute Worker from 24.07.2000. They were given the same benefits as are given to temporary workers under Rule 1513 (ii) (b). This provision includes that of contributing to the GPF. Accordingly, G.P.F. was deducted from September 2002 to March 2006 in the case of the applicant No.1 and from November 1997 to March 2006 from the salary of the applicant No.2.

3. The New Pension Scheme dated 26.04.2004 (Annexure A-1) as available by the order of the respondent No.1 were made applicable on the applicants vide order of respondents dated 16.8.2005 (Annexure A-2). Accordingly, GPF deduction was stopped from their salaries.

4. The applicants have stated that New Pension Scheme is not to be implemented on them as they had joined prior to 1.1.2004 which is the date on which the New Pension Scheme comes into effect.

5. Learned counsel for the applicant further cited Rulings of Central Administrative Tribunal, Lucknow Bench passed in O.A. NO. 44/2006 along with 10 connected OAs., as well as decision given in the case of **Babu Lal Vs. Union of India and Ors in O.A. NO. 658 of 2005 decided on 23.8.2005**. He has also cited the decision of **Raj Kamal and Ors. Vs. Union of India and Ors (1990) 13 Administrative Tribunals Cases 478**.

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6. In the counter affidavit, respondents have stated that applicant No.1 was engaged vide order dated 24.7.2000 as Substitute Hospital Attendant in scale of Rs.2550-3200 and applicant No.2 was engaged vide order dated 25.10.1995 as Substitute in scale of Rs.750-940. They were both finally screened and appointed on regular basis on 17.8.2005. The services of the applicants prior to the date of appointment on regular basis i.e. 17.8.2005 cannot be added to the length of service as the same is in contravention of several judgments of Apex Court. Moreover, New Pension Scheme is applicable on the applicants as per Railway Board's Order dated 17.9.2004 (Annexure CA-1). The applicants were asked to fill up the option for New Pension Scheme but they avoided to filling up of the option and instead have been given various representations, which have been replied to by them on 18.5.2005 and 22.11.2005 (para 4 of the CA) They have also stated that order in O.A. No. 658/05 cited by the applicant has been stayed by the Hon'ble High Court, Allahabad Bench in writ petition No. 13422/06.

7. In the rejoinder affidavit, apart from reiterating the earlier averments, the applicant have expressed doubts as to the statement made regarding stay order received. No copy of the said order has been filed by the respondents.

8. I have heard both the counsel for the parties and gone through the file.

9. The material facts to note are that both the parties accept that applicants have put in a few years as Substitute. Moreover, under

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Indian Railway Establishment Manual, they were eligible for the benefit of GPF scheme and certain amounts were regularly deducted from their salaries upto 2006.

10. The differences start with the respondents treating the date of regularization (18.5.2005) as the date of appointment and therefore being covered by D.O.P.T order dated 24.4.2004 and Railway Board's order dated 17.09.2004 while applicants claim that they retain the rights which have been conferred on them by virtue of their services as temporary/substitute employee for 4 and 8 years respectively.

11 The decision in the case of **Raj Kamal** (supra) passed by Central Administrative Tribunal, Principal Bench, New Delhi does not appear to much relevance in this case as it deals with regularization of casual labour and their right thereon. The case of the applicant is that he was engaged as Substitute Worker with full right of temporary workers and they were appointed on regular basis w.e.f. 17.8.2005 as per Department Rules relevant to such regularization. It was held by the C.A.T Allahabad Bench in the case of Babu Lal (supra) that:-

“(b) That the entire period spent as temporary status as substitute followed by the regularization as a Group ‘D’ employee would count for pension purposes.

(c) Just because the regularization had taken place posterior to the date of introduction of new pension system, the applicant cannot be deprived of the

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above period of qualifying service for working out pension”.

12. The respondents while having mentioned that this order has been stayed, have not provided any proof in support of their claims. Further, reliance is being placed in the order passed in O.A. NO. 44/2006 along with 10 connected OAs. In the O.As under reference the Lucknow Bench had referred to an identical situation where temporary status had been given to the applicants for a period earlier to introduction of New Pension Scheme. In the present O.A., the applicants have raised the grievance that their right which had been given to them on their joining their service have been altered by the New Pension Scheme. They were contributing towards GPF under Service Rules. They had reasonable expectation of enjoying the benefit as available to them at the time of joining the service. The Lucknow Bench of the C.A.T has also dealt with the question of reasonable expectations in the OA No 44/2006 in paras 5 and 6, which are quoted as below:-

- “5. The applicants have raised a grievance that their rights have been altered that they have been deprived of benefits of contributing towards GPF which has been permitted by the decision maker and which they have enjoyed for over ten years in the past; that they could legitimately expect to be permitted to continue to enjoy the said benefits.
6. Thus, the inference from their pleadings is that they want to invoke the doctrine of legitimate expectation. The Apex Court has dealt with the doctrine of ‘Legitimate Expectation’ in three cases (i) *Navjyoti Co-operative Group Housing Society and ors Vs. UOI* 1992 (4) SCC 477 (ii) *Food Corporation of India Vs. M/s Kamdhenu Cattle Feed Industries* 1993 (1) SCC 71 and (iii) *National Buildings Constructions Corporation Vs. S.P. Singh and Ors.* 1998 SCC (17S) 1770. It has been held therein that the essence of doctrine of legitimate expectation is fair play in administrative action. The State cannot unfairly disregard its policy statements. The existence of legitimate expectation may have number of different consequences and one of such consequences is that the authority ought not to act to defeat the legitimate expectation.....”.

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13. The present controversy is squarely covered by the decision of the Lucknow Bench of the C.A.T. Moreover, the respondents have also stated in their counter affidavit that the applicants were asked to fill up their option form. Where is the question of 'option' if the outcome is pre-determined?. Looking into all factors, the New Pension Scheme is not applicable to the applicants and order dated 16.8.2005 by which GPF deduction has been stopped is not applicable to the applicant. The instruction in the said order not to deduct the GPF amount from the salary of the applicants are hereby quashed.

14. In view of the above, O.A is allowed. No costs

J. Chandra
Member (A)

Manish/-