

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

RESERVED

Dated: This the 21st day of Aug 2009

Original Application No. 1091 of 2007

Hon'ble Mr. S.N. Shukla, Member (A)

Manoj Kumar Jaiswal, S/o late Sri Shiv Kumar Jaiswal, R/o
Qr. No. T-8-B, Varanasi City, Railway Colony, Varanasi.

. . . Applicant

By Adv: Shri Naveen Srivastava

V E R S U S

1. Union of India through the Secretary Railways (Rail Bhawan), New Delhi.
2. The Divisional Railway Manager, North East Railway, Varanasi.
3. The Senior Divisional Personnel Officer, North East Railway, Varanasi.

. . . Respondents

By Adv: Shri P.N. Rai

O R D E R

This OA has been filed seeking the following reliefs:-

- i. to issue a direction to the respondents to treat the applicant for the Old Pension Scheme and not to force him to submit Form or to give consent to New Pension Scheme.
 - ii. to direct the respondents concerned to consider the case of the applicant and to pass appropriate order accordingly without being biased.
 - iii. to issue any other suitable direction that this Hon'ble Tribunal may deem fit and proper on the facts and circumstance of the case."
2. It is submitted that the applicant was initially appointed as substituted in the respondents' department on 20.01.1999. He was given temporary status after 04 months

service as on 21.05.1999 (Annexure 1). The applicant believes that his services stand regularized as on 21.05.1999 as per his interpretation of reading of letter dated 08.07.1999 (Annexure 1 to the OA). On 13.09.2007 the applicant received a letter from the office of the respondent No. 2 requiring him to submit a form under the New Pension Scheme (Annexure 3).

3. It is submitted that earlier the applicant had received a letter on 21.09.2007 whereby he was asked to submit the aforesaid form under the New Pension Scheme which provides for no pension to the substitutes. Although there was no provision to start the deduction of Provident Fund from the salary of the substitute, when the applicant represented his case the authorities started deducting Provident Fund from this salary and continued to do so till July 2001. Since August 2001 the deduction of Provident Fund amount has been stopped and the salary of the applicant being paid through the hand bill.

4. Through an intimation dated 21.02.2007 the applicant was asked to submit his option for the New Pension Scheme. He represented through letter dated 06.03.2007 (Annexure 4 to the OA). In this representation it was stated that some similarly placed employees whose screening was done alongwith the applicant are allowed to continued under the Old Pension Scheme and thereby applicant has been discriminated. A similar representation is stated to have been submitted on 06.03.2007 (Annexure 5 to the OA).

507

is stated to have been submitted on 06.03.2007 (Annexure 5 to the OA).

5. It is also contended on behalf of the applicant that on the issue of service benefit there is settled law which states that the service of substitutes will count for pensionary benefits from the date of completion of four months continuous service provided it is followed up by absorption on regular Group 'C' or Group 'D' service without break and that the absorption of a substitute in regular service there is a mandatory provision that substitutes should have acquired a temporary status and should be screened by a Screening Committee. The applicant has been appointed according to all these provisions. According to the applicant the New Pension Scheme does not have retrospective effect and it is applicable in the case of Government Service who joined the Government Service on or after 01.01.2004 and that the applicant must not be compelled to opt for this Scheme.

6. It seems that the applicant's case is that after completion of four months service as substitute he was given temporary status as on 21.05.1999 and accordingly when he was finally screened and appointed on regularization of his services in the year 2005 his date of regular appointment should be reckoned from this initial appointment as on 20.10.1999 and that the pension scheme applicable to the regular appointees of the period prior to 2004 should be made applicable.

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7. The respondents on the other hand in their counter affidavit submitted that the screening test of the applicant was conducted on 02.12.2004 and thereafter he was given regular appointment w.e.f. 05.01.2005. As per the instructions of the Railway Board those who regularly appointed after 01.01.2004 will be covered by the New Pension Scheme (Annexure 1 to the CA).

8. The relevant instruction dated 17.04.2007 reads as under: -

"Please refer to your Railway's letter ibid. The matter has been examined and it is clarified that grant of temporary status is without reference to permanent post under the Government. Therefore substitutes will be covered under NPS, if they are regularized on or after 1.1.04"

9. It is further submitted that as per the extant rules any substitute who has completed four months service may be given temporary status, but that does not mean that he has been regularized. Regularization against a permanent post is made after screening of a substitute by a Screening Committee and his services are regularized only if recommended by the Screening Committee. In the case of the applicant he was found fit for appointment by the Screening Committee against a regular post only on 05.01.2005. It is also submitted that circular annexed as Annexure 2 to the OA is applicable to Group 'C' post and not Group 'D' to which the applicant belongs. In any event it has no relevance to the subject matter of this OA.

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11. It has to be noted here that while the allegation of some similarly and identically placed persons having been screened on 03.11.2004 and having been excluded from the New Pension Scheme have been made in the rejoinder affidavit, but no such names have been mentioned. Similarly no such names are found to have been mentioned in the OA. This Tribunal therefore, does not take any cognizance about the allegations without the specifics. In the rejoinder affidavit in para 14 some names have been pointed out who are alleged to be junior to the applicant, but were screened earlier than the applicant and thereby, escaped the provision of New Pension Scheme. The applicant has alleged that Screening Test was delayed and if it was not to be so delayed he would have been regularized prior to 01.01.2004 and in that case he would be eligible to be continue in the Old Pension Scheme. Delay in screening is not his fault and he should not be suffer for no fault of his.

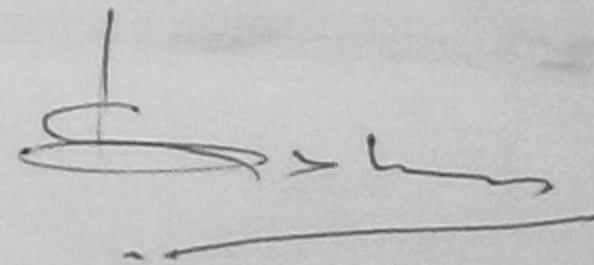
12. The pleadings on record have been perused and the parties counsel have been heard. The basic difference between the arguments of two parties is that the applicant stands regularized for all purposes w.e.f. the date he was granted temporary status. The respondents on the other hand have taken a stand that the applicant was regularized only after his screening in the year 2005. As per the clarification from the Railway Board (Annexure 1 to the CA) dated 17.04.2007 there is no ambiguity that the grant

1

clarification from the Railway Board (Annexure 1 to the CA) dated 17.04.2007 there is no ambiguity that the grant of temporary status is without reference to the permanent post under the Government therefore substitutes should be covered under New Pension Scheme, if they are regularized on or after 01.01.2004. The case of the applicant is squarely covered by the clarification of the Railway Board and hence he has to be necessarily covered under the New Pension Scheme.

13. As regards the allegation that some similarly placed persons may have been favourably discriminated, though such allegations are not clearly borne out from the OA this Tribunal is of the view that if at all a mistake has been committed in one case, it can not be allowed to perpetuate. It is for the administration to make appropriate correction in such matters.

14. In view of the above discussion this Tribunal is of the view that no case is made out warranting interference. The OA is accordingly dismissed. No cost.



Member (A)

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