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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.546 of 2011
Cuttack this the 19th day of August, 2011

CORAM
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)
AND
THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.)
.....

Sri Prafulla Kumar Barik, aged about 51 years, UDC, Regional Institute of Education, At/Po-Bhubaneswar, Dist.Khurda.

...Applicant
By legal practitioner: M/s.Chitra Padhi, M.Devi, Counsel
-Versus-

1. Secretary, National Council of Educational Research and Training, New Delhi represented through its Secretary, Sri Aurobindo Marg, New Delhi-110 016.
2. Principal, Regional Institute of Education, Bhubaneswar, Unit IX, Khurda, Orissa.
3. Administrative Officer, Regional Institute of Education, Unit-IX, At/Po-Bhubaneswar, Dist. Khurda.

...Respondents
By legal practitioner : Mr.B.K.Mohapatra, ASC.

ORDER

Per-MR.C.R.MOHAPATRA, MEMBER (ADMN.):-

In this Original Application the prayer of the applicant is to direct the Respondents to antedate the regular appointment of the Applicant to the year when vacancies arose along with all consequential service benefits. The next prayer of the Applicant is to quash the order under Annexure-A/7 dated 15/17th March, 2011 with direction to the Respondents not to stop the

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contribution towards GPD subscription treating the applicant as a new entrant. The order under Annexure-A/7 was issued by the Under Secretary, National Council of Education Research and Training, New Delhi dealing with adoption of new Pension Scheme 2004 in respect of Casual Labourers (Temporary Status) on their regular appointment after 01-01-2004 in which it was directed that as per DoPT OM No. 49014/1/2004-Estt.(C) dated 26.4.2004 there is no provision of GPF in new Pension Scheme. Deductions made towards GPF contribution from the existing casual employee in terms of para (5) (vi) of the scheme for grant of Temporary Status including the deductions made after 1.1.2004 onwards shall be refunded to such employees and no further deduction shall be made from him towards GPF contributions. Further it was directed therein to stop recovery of GPF subscription forthwith and start recovering contribution for new Pension Scheme and new pension scheme contribution may also be calculated from the date of regular appointment. The name of the applicant finds place in the said letter as he was initially appointed on casual basis, thereafter conferred with temporary status and appointed on regular basis after 01-01-2004.

2. The contention of the Applicant is that the applicant entered to the department as a daily wager on 08.11.1982

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conferred with temporary status on 20.09.1996 and subsequently got regular status after 01-01-2004. After the temporary status was conferred upon him he has been enjoying the status of a regular employee in all respect and as such the new Pension Rule having come into effect afterwards, has no application to the applicant. Hence, the Respondents should not have treated the applicant as a new entrant and stop the GPF contribution, in lieu, thereof directing recovery of contribution for New Pension Scheme. In support of his stand, Learned Counsel for the Applicant has placed into service copy of the order of the Hon'ble High Court of Delhi dated 27-01-2010 in WP (C) No. 12690/2009 & CM No. 13359/2009 (Union of India and Another V Dalip Kumar). For the purpose of clarity and convenience, full text of the order of the Hon'ble High Court in the above case is extracted herein below:

The petitioner, Union of India through Secretary, Ministry of Health & Family Welfare, challenges the order dated 7th July, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in TA No.444 of 2009 titled Dalip Kumar v. Union of India and another directing the petitioner to treat the respondent covered under CCRS Pension Scheme.

The respondent had filed a petition seeking grant of pension as per the pension scheme in vogue when he acquired temporary status in 1997. Much after the grant of temporary status and continuing on the said post in Group "D".

This is not disputed that petitioner was appointed to the substantive post on 29th June, 2004 and by that time another scheme referred to as "New Defined Contribution Pension Scheme" had been introduced from 1st January, 2004.

The Tribunal has relied on statutory rule like Rule 13 of the CCS (Pension) Rule, 1972 which categorically

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stipulates that qualifying service of a government servant commences from the date he is asked to charge on a temporary capacity provided that this temporary service is followed without interruption by substantive appointment in the same or in another service or post. The Tribunal noticed that the respondent was granted temporary status which continued and he was appointed in substantive post in Group D and, therefore, under Rule 13 his qualifying service would commence from the date of grant of temporary status.

Learned counsel for the petitioner relying on Central Civil Service (Pension) Rules, 1972 has contended that the rule is applied to government servants appointed on or before 31st day of December, 2003 and it will not be applicable to the respondent as he was appointed to the substantive post on 29th June, 2004. If Rule 13 of the CCS (Pension) Rule, 1972 obligates commencing of qualifying service from the date an employee takes charges of the post, on 29th June, 2004 on appointment after continuous service on the temporary post, it will relate back to 1997 when the temporary status was granted to the respondent. Though new pension scheme was introduced from 1st January, 2004, however, Rule 13 of CCS(Pension) Rules, 1972 has not been abrogated by the new pension scheme salient features which are as under:-

"Introduction of New Pension Scheme

Government of India have introduced a New Defined Contribution Pension Scheme replacing the existing system of Defined Benefit Pension System vide Government of India, Ministry of Finance, Department of Economic Affairs Notification, dated 22-12-2003 (copy enclosed). The New Pension Scheme comes into operation with effect from 1-1-2004 and is applicable to all new entrants to Central Government service, except to Armed force, joining Government service or order after 1-1-2004.

The salient features of the New Pension Scheme are as follows:-

1. The New Pension Scheme will work on defined contribution basis and will have two tiers - Tier-I and II. Contribution to Tier-I is mandatory for all Government servants joining Government service on or after 1-1-2004, whereas Tier-II will be operational and at the discretion of Government servants.

2. In Tier-I, Government servants will have to make a contribution of 10% of his Basic Pay plus DA, which will be deducted from his salary bill every month by the PAO concerned. The Government will make an equal matching contribution.

3. Tier-I contributions (and the investment returns) will be kept in a non-withdrawable Pension Tier-I Account. Tier-II contributions will be kept in a separate account that will be withdrawable at the option of the

Government servant. Government will not make any contribution to Tier-II account.

4. The existing provisions of Defined Benefit Pension and GPF would not be available to new Government servants joining Government service on or after 1-1-2004."

The scheme is applicable to all new entrants to the Government service, however, it does not take away the rights of old entrants prior of 31.12.2003. In the facts and circumstances, on the plea of the petitioner, the order of the Tribunal directing the petitioner to treat the applicant covered under CCRS Pension Scheme cannot be faulted. There is no illegality or irregularity in the order of the Tribunal dated 7th July, 2009 requiring any interference by this Court. The writ petition is, therefore, dismissed."

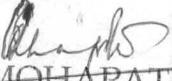
3. Learned Counsel for the Applicant submits that being aggrieved by the decision in Annexure-A/7, applicant submitted representation under Annexure-A/8 dated 13.07.2011. But no decision has been communicated to him in the said representation and on the other hand the Respondents are on the way of taking action in furtherance to the order under Annexure-A/7. Learned ASC appearing for the Respondents has submitted that as copy of the OA has been received by him recently he has hardly any scope to take instruction about the action taken on Annexure-A/7. In the above circumstances, as it is the specific case of the applicant that he is covered by the decision of the Hon'ble High Court of Delhi, quoted above and the representation of the applicant is still pending with the authority, this OA is disposed of with direction to the Respondents; especially Respondent No.2 to examine the representation of the applicant with reference to the law laid down

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by the Hon'ble High Court of Delhi in the case of Dalip Kumar (Supra) and pass a reasoned order thereon within a period of 60(sixty) days from the date of receipt of copy of this order and till a decision is taken, as directed above, the order under Annexure-A/7 shall not be given effect to in so far as the Applicant is concerned.

4. Applicant is free to serve copy of this order along with copy of OA if he so wishes through Registry at his own cost.


(A.K.PATNAIK)
Member (Judl.)


(C.R.MOHAPATRA)
Member (Admn.)