

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK,**

ORDER SHEET

COURT NO. : 1

09.02.2017

O.A./260/72/2013

BIJAYANANDA ACHARYA & OTHERS

-V/S-

CENTRAL WATER COMMISSION

ITEM NO:26

FOR APPLICANTS(S) Adv. :

FOR RESPONDENTS(S) Adv.:

Notes of The Registry	Order of The Tribunal
	<p>Heard Mr.T.Rath, learned counsel for the applicant and Mr.A.Pradhan, learned ACGSC. For the reasons to be recorded separately, the O.A. is disposed of. Mr.Pradhan has filed Office Memorandum dated 10.6.2016 issued by the Central Water Commission as well as OM dated 26.2.2013 issued by the DOP&T and submitted that by virtue of those Office Memoranda, applicant is entitled to relief sought for.</p> <p style="text-align: center;"><i>S.K.P.</i> (SUSHANTA KUMAR PATTNAIK) MEMBER (J)</p> <p style="text-align: center;">Bijaya</p> <p style="text-align: right;"><i>R.C.M.</i> (RAMESH CHANDRA MISRA) MEMBER (A)</p>

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CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH, CUTTACK

O.A.No.260/00072 of 2013

Date of Order : 9TH February, 2017

CORAM

HON'BLE SHRI R.C.MISRA, MEMBER(A)

HON'BLE SHRI S.K. PATTNAIK, MEMBER (J)

1) Bijayananda Acharya aged about 52 years S/o Late Shri Sachidananda Acharya at present working as SWA in the office of the Executive Engineer, E.R.Division, CWC, Bhubaneswar, permanent resident of Vill. Jahanpur, PO Khentalo PS Kishorenagar, District Cuttack.

2) Y.Krishna Rao aged about 54 years S/o Late Shri Y. Sithamma at present working as SWA in the G&D Wireless Station, CWC, Gunpur, District Rayagada.

3) Bidyadhar Dash aged about 54 years S/o Late Shri Raghunath Dash at present working as SWA 52-site office CWC, Anandpur, Dist. Keonjhar, permanent resident of At Jafarpur, Post Biripata, Via Pritipur, PS Mangalpur, Dist. Jajpur. ...**Applicants**

By the Advocate(s)- Mr. T. Rath

-V E R S U S-

- 1- Union of India represented through the Secretary, Ministry of Water Resources, At PO Shram Shakti Bhawan, Rafi Marg, New Delhi - 01.
- 2- Chairman, Central Water Commission, 313 (S), Sewa Bhavan, R.K. Puram, New Delhi - 66.
- 3- Under Secretary, Government of India, Central Water Commission, Room Number 312, Sewa Bhavan, R.K. Puram, New Delhi -66.
- 4- The Chief Engineer, M&ERO, Central Water Commission, Mahanadi Bhawan, Plot No. A- 13 & 14, At PO Bhoi Nagar, Bhubaneswar - 22.
- 5- Superintending Engineer (Hydrological Observation Circle), Government of India, Central Water Commission, Mahanadi Bhawan, Plot No. A 13/14, Bhoi Nagar, Bhubaneswar - 22.
- 6- Executive Engineer, Government of India, Central Water Commission, Eastern River Division, Plot Number A/13 and 14, At/PO Bhoi Nagar, Bhubaneswar - 22.
- 7- Secretary, Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training (CS Division), 2nd Floor, Lok Nayak Bhavan, New Delhi.

...**Respondents**

By the Advocate-Mr.A.Pradhan

ORDER (Oral)

Per R.C.MISRA, MEMBER(A):

The applicants who are working as Skilled Work Assistants (SWA) in various offices of Central Water Commission (CWC) in the State of Orissa, have filed this O.A. making the following reliefs :

"8. Direct the respondents to apply the provisions of CCS (Pension Scheme) 1972 in respect of the applicants by declaring Clause 3.i of Annexure-A/5 Series as bad and illegal and quash the same.

And consequently direct the Respondents to continue to extend the benefit under the GPF Rules to the applicant by deducting the monthly subscription regularly and without any interruptions and hold the Annexure-A/7 not applicable to the Applicants Or in the alternative quash Annexure-A/7.

Further direction may also be issued quashing the orders under Annexure - A/9, A/10 and A/12.

And further also direction may be issued commanding the Respondents to extend similar benefit to the applicant as has been granted to the applicants of the judgment of the Hon'ble Central Administrative Tribunal, Hyderabad Bench in the

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case of G. Appa Rao and others vs. Secretary, Railway board and others (OA No. 492/2010 and OA 616/2010 disposed of on 31.8.2010), to the Applicants.

And pass any consequential order befitting to the facts and circumstances of the case."

2. The facts of this O.A. briefly stated are that applicants were initially recruited as Casual Khalasi being sponsored through the Employment Exchange following the due process of selection by the respondents during the period from 1979 to 1981. The Ministry of Water Resources, Government of India by a Circular dated 20.6.1997 formulated a scheme for grant of temporary status and regularization of Seasonal Khalasis working under the work charged establishment of the CWC and the Scheme was made effective from 1.6.1997. In pursuance of the scheme, respondents No. 5 and 6 conferred temporary status on the applicants vide order dated 11.12.1997. On the basis of conferment of temporary status, they were also made eligible for GPF Scheme by an order dated 21.8.2000. Subsequently, vide order dated 29.1.2008, the services of the applicants were regularized in the pay scale of Rs. 2550-55-2660-60-3200. Therefore, on the basis of this order, applicants are now in the regular establishment of the respondent authorities. Meanwhile, the Government of India in the Ministry of Finance vide Notification dated 22.12.2003 introduced a new restructured defined contribution pension system for the new entrants of Central Government service who were appointed on or after 1.1.2004. The earlier system of defined benefit pension scheme was replaced by this new pension scheme which was made mandatory for all new recruits to the Central Government service from 1.1.2004 except the armed services. The scheme, however, did not clarify the definition of new recruit and the status of the employees covered under the temporary status scheme having a right of regularization against future vacancies with regard to the new pension scheme, was not clearly indicated. The Department of Personnel & Training, Government of India, in their letter dated 26.4.2004 clarified that as there is no provision of GPF in the new pension scheme, it will not serve any useful purpose to continue deduction towards GPF from the existing casual employees in terms of para 5 (v) of the scheme for grant of temporary status. It was also clarified that no further deductions towards GPF shall be effected from the casual labourers w.e.f. 1.1.2004 onwards and the amount lying in their GPF account including the deductions made after 1.1.2004, shall be paid to them. The CWC issued a letter dated 25.9.2007 calling information from the field offices regarding the status of GPF deductions and refund with interest made after 1.1.2004 in respect of the temporary status seasonal or casual labourers, in the light of DOP&T OM dated 26.4.2004. As a



result thereof respondents No. 4 and 6 stopped deduction of GPF contribution from the salary of the present applicants from the month of January 2008 onwards. There was protest against this arbitrary dis-continuance of the GPF deduction. But, on 16.10.2009 the CWC wrote to all the field Chief Engineers of CWC that in consultation with the Department of Pension and Pensioners Welfare, it has been decided that GPF rules are not applicable to employees who have been appointed on or after 1.1.2004 and who are covered by the new pension scheme. The GPF deductions were thus discontinued and the Chief Engineers were directed to pay back the GPF accumulations along with interest to the temporary status casual labourers. The Instructions of the CWC were reiterated by letter dated 31.3.2010 issued to various field offices. The applicants were not given intimation about these decisions of the authorities and GPF deductions were abruptly discontinued thereby giving rise to this application. The applicants thus affected made representation(s) to the authorities praying that they should be given the benefit of old pension scheme and the deductions under the GPF should also be continued. Finally, the CWC issued a letter dated 7.9.2011 by which, the representation of the applicants and similarly placed persons was disposed of. The authorities communicated by this letter that pension cases of all Skilled Work Assistants (SWA) who were regularized on or after 1.1.2004 may be examined and considered as per the new pension scheme and all representationists may also be suitably informed. The present applicants in their prayer have inter alia prayed for quashing of order dated 7.9.2011.

3. The grounds of such challenge by the applicants are that the impugned order does not indicate any reason as to why representations of the applicants were rejected and also the fact that respondents took unilateral decision without providing any opportunity to the applicants to put forth their point of view. The applicants have argued that under Rule 8 of the GPF (CS) Rules, 1960, they have a right to contribute to the GPF after conferment of temporary status. Since their contribution to the GPF has been accepted, there cannot be an abrupt decision discontinuing such contribution. By virtue of conferment of temporary status prior to their regularization, they are eligible for benefits like GPF contribution, transfer liability, minimum wages, dearness allowance, house rent allowance and city compensatory allowance and other advances at par with the regular work charged employees. The O.M. dated 26.4.2004 was made applicable to the cases of central government employees who have been appointed on or after 1.1.2004 whereas, the present applicants have been appointed prior to that date since they

were conferred temporary status by an order dated 11.12.1997 and consequent upon that they were admitted to the GPF Scheme. Once temporary status is granted to a person who is absorbed later on in the regular service, such employee carries forward his service in full as well as the leave to his credit. Half of the service rendered by him as casual labourer before getting the temporary status has to be counted towards pension. Therefore, it was not open to the authorities to decide that new pension scheme would be applicable to the present applicants. By quoting the decisions of Hon'ble Apex Court in the matter of **Deoki Nandan Prasad Vs. State of Bihar** and **Nakara** case [1983 (1)1 SCC 305] the applicants have also highlighted the clear decision of the Hon'ble Apex Court to the effect that the pension is not a bounty payable on the sweet will and pleasure of the Government but, on the other hand, it is a right vested in a Government servant.

4. The respondents in their counter affidavit have, on the other hand argued that the Government has a right to change its rules and issue fresh notifications and under new pension scheme, applicants and similarly placed persons are not entitled to the GPF facility. The temporary status workers can be regularized according to their seniority only when a post in the work charged khalasi establishment (under the SWA) is available, therefore, no one can claim the benefits before his absorption in the regular establishment. The applicants of this O.A. entered in regular establishment in the year 2008 and new pension scheme is applicable to the incumbents who entered into central Government from 1.1.2004. The regularization of the applicants being much after the introduction of the new pension scheme they should be covered by the new pension scheme and accordingly they would not be entitled to GPF facility.

5. We have heard the learned counsel for both sides. The learned counsel for applicant by placing the latest position before this Tribunal has mentioned that during the pendency of this OA respondents by taking into consideration the judgment of the Hon'ble Apex Court in the case of **Union of India & Ors. Vs. Rameshwar Singh**, CC 1829/2014, **Union of India and Ors. Vs. Ramsaran & Ors.** SLP (c) No. 25360-25362 of 2008 and a batch, **Union of India etc. Vs. Ajay Kumar and Ors.** SLP No. 19673-19678 of 2009 have issued instructions vide letter dated 10.6.2016 clarifying that if a seasonal khalasi (now SWA) has been regularized as per the Scheme of 1997, pension is admissible even if he is regularized after 1.1.2004. A copy of the O.M. dated 10.6.2016 along with its enclosures have been

annexed with the O.A. as Annex. A/13. Paras No. 3 and 4 of the said O.M. are quoted below :-

"3. The position has been reviewed in the light of the Court judgements in the matter in consultation with DOPT/MoWR. It has now been decided that the Seasonal Khalasis who had been granted temporary status under the Scheme and have completed 3 years of continuous service after that, are entitled to contribute to the General Provident Fund.

4. Further, 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits in respect of those seasonal khalasis who have been regularized in terms of this Commission's letter No. A-11019- 1/95 - Estt. 12 dtd. 30.6.97 regarding scheme for grant of temporary status to the Seasonal Khalasis. It is clarified that if a seasonal khalasi (now SWA) has been regularized as per the Scheme of 1997, pension is admissible even if he is regularized after 1.1.2004.

6. These orders of the CWC have been issued after consultation with the DOP&T. The O.M. dated 26.2.2016 of the DOP&T has also been placed for perusal. Paras No. 5, 6 and 7 of the said O.M. are quoted below :

"5. The OM dated 26th April, 2004 has been quashed by various benches of CAT/High Courts who have decided that the scheme could not be modified retrospectively. The SLPs filed in the Hon'ble Supreme Court have been dismissed by the Apex Court in UOI & Ors. vs. Rameshwar Singh, CC 1829/2014, UOI & Ors. vs. Ramsaran & Ors. SLP (C) No. 25360-25362 of 2008, SLP 17358/2008, SLP 25360/62/09, Union of India etc. vs. Ajay Kumar & Ors. SLP No. 19673-19678 / 2009.

6. The position has been reviewed in the light of the Court judgements in consultation with the Department of Expenditure. It has now been decided that the casual labourers who had been granted temporary status under the scheme, and have completed 3 years of continuous service after that, are entitled to contribute to the General Provident Fund.

7. 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits in respect of those casual labourers who have been regularized in terms of para 8 of the OM dated 10.09.1993."

7. It is quite evident from a perusal of this O.M. dated 26.02.2016 of DOP&T as well as O.M. dated 10.06.2016 of the CWC that the grievances of the present applicants have been redressed by the decisions taken by the competent authority. Shri A. Pradhan, learned ACGSC has also made similar submissions stating that the applicants would not have any further grievance in view of the revised guidelines.

8. Having satisfied ourselves with the submissions made by the learned counsel of both sides we are of the opinion that the O.Ms as indicated above would be applicable to the present applicants and, therefore, they would not be having any further grievance to be agitated in this regard before this Tribunal. The respondents are directed to confer the benefits as per their own guidelines on the applicants within a period of 90 days from the date of this order. The O.A. is thus allowed with no order as to costs.

S.K.Pattnaik
(S.K.Pattnaik)
Member (J)

R.C.Misra
(R.C.Misra)
Member (A)