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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR.**

Original Application. Nos. 313/2005

Date of order: 23rd. September, 2008

Hon'ble Mr. K.V.Sachidanandan, Vice chairman.

Hon'ble Mr. Tarsem Lal, Administrative Member.

Kishna Ram, s/o Sh Tana Ram ji, aged about 41 years, R/o Behind Hazi Market, Khaturia Colony, Bikaner, Distt. Bikaner. (Rajasthan)

Kishan Kumar, s/o shri Moti Lal Ji, aged about 40 years, R/o Near Mahila Jagriti School, Sadul Gunj, Bikaner. Distt. Bikaner, (Rajasthan)

Satish Meena, s/o Sh. Kalyan Sahay Meena Ji, aged about 35 years, R/o House, No. 59, RICCO, Colony, Bichhwal, Industrial Area, Bikaner, Distt. Bikaner, (Rajasthan).

At present all the applicant are working on the post of Casual Laboaurleras (Temporary Status) in the office of National Research Center on Camels, Jorbeer, Post Bag No. 7, Bikaner, Distt. Bikaner, (Rajasthan).

: applicants.

Rep. By Mr. S.K. Malik.: Counsel for the applicants.

VERSUS

1. Indian Council 'of Agricultural Research through its Secretary, Krishi Bhawan, new Delhi.
- 2: The Director, National Research Center on Camels, Jorbeer, Post Bag No. 7 Bikaner, Distt. Bikaner (Rajasthan).
3. The Secretary, Government of India, Ministry of Personnel, Public Grievances, and Pension, Department of Personnel and Training, New Delhi 110 011.

: Respondents.

Rep. By Nitin Trivedi proxy counsel
For Mr. S.N. Trivedi, : Counsel for the respondents.

ORDER.

Per Mr. Tarsem Lal, Administrative Member

Kishna Ram and two others have filed O.A. NO. 313/2005, and prayed for the following reliefs:

8 (b) By an appropriate order, writ or direction, impugned order dated 17th October 2005 (Annex. A/1), impugned OM dated 26.04.2004 (Annex. A/2) and impugned OM dated 23. July 2004 (annex. A/3) wherein respondents have stopped the deduction of GPF, amount from the pay of the applicants with immediate effect, be declared illegal and be quashed and set aside as if same were never passed against the applicants.

8 (c) By an appropriate order, writ or directions respondents may be directed to continue deduction of the amount of GPF from the salary of the applicant as per rules.

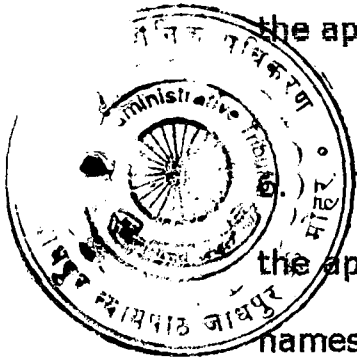
2. The brief facts of the case are that the applicants were initially appointed as casual labour through the Employment Exchange in the years 1989/1990, after due selection by the Selection Committee. The Government of India, Ministry of Personnel, P.G and Pensions, Department of Personnel and Training, vide their OM dated 10.09.1993, issued a Scheme called as "Grant of Temporary Status and Regularisation Scheme 1993" (A/4) (herein after referred to as the Scheme). As per the said scheme the applicants were granted temporary status with effect from 01.09.93. The respondents vide office order dated 03.02.2004, (A/6) prepared the seniority list of casual labourers with temporary status.

3. According to the above Scheme the respondents were deducting GPF amount from the salary of the applicants from the date of grant of temporary status i.e. from 01.09.93 till September 2005. Vide impugned order dated 17.10.2005, (A/1), the respondents have ordered to stop the deduction of GPF subscription from the salary of the applicants. The above order dated 17.10.2005 was issued on the basis of DOPT's OM dated 26.04.2004 (Annex. A/2) and 23.07.2004 (Annex. A/3).

4. Aggrieved by the impugned orders the applicants submitted representation dated 21.10.2005 (A/7) to respondent No. 2 requesting

him to continue the deduction of GPF subscription from their salary, as the deduction towards GPF subscription cannot be stopped since they were duly selected candidates and have been granted temporary status w.e.f. 01.09.93, and also requested that the stopping of their deduction towards GPF Subscription would deprive them the benefit of pensionary benefits and other benefits as admissible to them.

5. The applicants along with others have already filed O.A. No. 111/2005, Rajesh Kumar and ors. Vs. Union of India and ors. for regularization of their services from the date of their initial appointment. The applicants have stated that Temporary Status employees are entitled for pension in accordance with the Rules and this Hon'ble Tribunal has already taken the view in many cases for extending the pensionary benefits to persons holding temporary status. Aggrieved by the impugned orders issued by the respondents, the applicants have filed the instant O.A.



The respondents have filed a brief reply inter alia pleading that the applicants were initially employed on casual basis after calling their names from the employment exchange. They were engaged purely for temporary work at the rate of pay of 1/30 of the pay of the minimum stage of pay scale applicable to supporting staff i.e. Rs. 750-940. The selection date mentioned in A/6 is the date of employment and not any selection date as they were not having the temporary status even as they were only employed as a casual worker. As per the scheme there is no provision to make any seniority list of casual labourers

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[Temporary Status] for their regularization in Group D unless they are selected through regular selection process.

7. The respondents have explained that the DOPT, vide their order dated 10.09.93, has formulated the Scheme for grant of Temporary status and regularization of casual workers in pursuance of judgement dated 16.02.90 issued by the Principal Bench, CAT, New Delhi, in the case of Raj Kamal and ors. Vs. Union of India, in which it has been made clear that the Scheme will come into force w.e.f. 01.09.93. According to para 11 of the Scheme, the DOPT has power to make amendment or relax any of the provisions of the Scheme which they may consider necessary from time to time and service conditions of the employees who are governed by the scheme, will be governed by the amended provisions of this Scheme even after regularisation or in the case of persons appointed to Central Govt. services on or after 01.01.2004, a new scheme called New Pension Scheme will be applicable. Therefore in view of the provisions of the new Scheme the DOPT has amended the old scheme and the applicants will be governed by this new scheme. The respondents have pleaded that the applicants have not made clear that by which rules they are entitled to pension and they have also not mentioned by which decision of the Tribunal, persons with temporary status are entitled to pension. Therefore the respondents have claimed that there is no illegality or arbitrariness in the impugned orders issued by the respondents.

We have heard Mr. S.K. Malik, learned counsel for the applicants and Mr. Nitin Trivedi, for respondents. They have reiterated their



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arguments already given in their respective pleadings. They have made us to traverse through various documents placed on record.

9. The learned counsel for the applicant explained with reference to Annex. A/6, the applicants were initially interviewed on 02.02.89, 26.08.89 and 6.7.90 and they have joined duties on 06.02.89, 01.09.89 and 26.07.90. However, all of them have been granted Temporary Status w.e.f. 01.01.93, as per the DOPT OM dated 10.09.93 (A/4).

The learned counsel for the applicants strenuously pleaded that the issue relating to deduction of subscription towards GPF in respect of Casual Labourers with Temporary Status does not remain res integra, and the same has been settled by this Hon'ble Tribunal vide its order dated 15.09.2006 in O.A. NO. 71/2005.

10. Learned counsel for the respondents emphatically pleaded that as per para 11 of the Scheme, the Department of Personnel & Training will have the power to make amendments or relax any of the provisions in the Scheme that may be considered necessary from time to time. Therefore, he pleaded that the Government of India, Ministry of Finance, Department of Expenditure vide its OM dated 07.01.2004 (R/3), have introduced a new Defined Contribution Pension Scheme replacing the existing system of defined benefit Pension System and the said OM has been issued in modification of the original Scheme issued by the DOPT on 10.09.93. He further relied on para (i) and (ii) of OM dated 26.04.2004, (A/2) issued by the Ministry of Personnel,

Public Grievances and Pensions, DOPT, New Delhi which reads as under:



- (i) As the new pension scheme is based on defined contributions, the length of qualifying service for the purpose of retirement benefits has lost its relevance, no credit of casual service, as specified in para 5 (v), shall be available to the casual labourers on their regularization against Group D posts on or after 01.01.2004.
- (ii) As there is no provision of General Provident Fund in the new pension Scheme, it will not serve any useful purpose to continue deductions towards GPF from the existing casual employees, in terms of para 5 (vi) of the scheme for grant of temporary status. It is, therefore, requested that no further deductions towards General Provident Fund accounts, including deductions made after 01.01.2004, shall be paid to them.

The learned counsel for the respondents also pleaded that DB (Civil) Writ Petition has been preferred by the Respondents in O.A. No. 71/2005, decided on 15.09.2006. When a query is made to the learned counsel for the respondents, he confirmed that till date neither any notice has been issued nor any stay has been granted by the Hon'ble High Court against the order dated 15.09.2006 passed in O.A. No. 71/2005 in the above said DB (Civil) Writ Petition

11. We have considered the case carefully and perused the documents placed on record. The plea of the respondents that OM dated 07.01.2004 (Annex. R/3-1) relating to introduction of New Pension Scheme has been issued as per para 11 of the OM dated 10.09.93 issued by the DOPT, is not sustainable as the same is applicable to all Central Government employees working in different Ministries and departments. The said OM has been issued by the Ministry of Finance, Department of Expenditure, on 07.01.2004 and is applicable w.e.f. 01.01.2004 only. In para 1 it has been stated that the new pension scheme comes into operation with effect from 01.01.2004 and is applicable to all new entrants to Central service, except to Armed Forces, joining Government service on

or after 01.01.2004. It is therefore amply clear that the new Pension Scheme would be applicable to all new entrants to Central Government service, i.e. who joined on or after 01.01.2004, whereas the applicants in this case have already joined service on 06.02.89, 01.09.89 & 26.07.90. They have already been granted temporary status w.e.f. 01.09.93. They have been regularly contributing to GPF w.e.f. 01.09.93 onwards.

12. As regards the applicability of para (ii) of OM dated 26.04.2004,(A/2) we are of the view that the same relates to casual labourers and not to employees who have been granted temporary status and joined government service much before 01.01.2004.

A similar case was adjudicated on 15.09.2006 by this Bench in O.A. No.71/2005, and para 8 of the judgement reads as under:

" 8. The upshot of the afore said discussion is we reach to an inescapable conclusion that there is ample force in this O.A and the same deserves to be accepted and stands allowed. Accordingly, the respondents are directed to continue to make the deductions towards GPF from the salaries of the members of the applicant union in particular and other similarly situated employees in general as was being done earlier to the issuance of Annex. .1 letter/order dated 21.02.2005. The rule issued earlier is made absolute. However, the parties are directed to bear their own costs. "

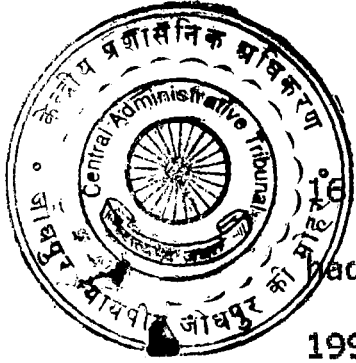
14. It is also seen that in the DB Civil Writ Petition preferred by the respondent department, against order of this Tribunal dated 15.09.2006 in O.A. No. 71/2005, no notice has been issued nor any stay has been obtained.

15. It is seen from the records that the following interim order has been passed by this Tribunal vide its order dated 24.10.2005. It reads as under:




" The grievance of the applicants is that the applicants entered into service since 1989 and are contributing towards GPF which has been suddenly stopped vide impugned order Annex. A/1 under the garb of Introduction of New Pension Scheme - Modification of scheme for grant of temporary status. The learned counsel for the applicants submits that in similar matter (O.A. No. 71/2005) this Bench of the Tribunal has already granted the interim relief and has directed the respondents to continue to deduct the contribution towards GPF as before.

Keeping in view of the same I direct that the status quo in respect of contributing towards GPF to continue with regard to all the applicants in this O.A till the next date ."



In view of the above discussion, it is clear that the applicants had joined service under the respondents during the year 1989 and 1990 and they have already been granted temporary status w.e.f. 01.09.93. Subscription towards GPF subscription was started from 01.09.93, whereas the new pension scheme is applicable to central Government employees, who have joined their service on or after 01.01.2004. Therefore, the applicants are entitled to subscribe towards GPF and also eligible, if they are otherwise fit, to the pensionary benefits as admissible as on 01.09.93. However, the above decision is subject to outcome of the D.B. Civil Writ Petition, if any filed, before the Hon'ble High Court of Judicature for Rajasthan at Jodhpur against the order dated 15.09.2006 passed by this Bench of the Tribunal in O.A. No. 71/2005.


17. In view of the above, the O.A is allowed. The interim order dated 24.10.2005, is made absolute.

18. No order as to costs.


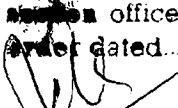
Tarsem Lal
[Tarsem Lal]
Administrative Member.

jsv.


[K.V.Sachidanandan]
Vice Chairman.

Rec

S. I. Malibe
Adv
25/9/08

No 91.
Dt: 24.12.08

Part II and III destroyed
in my presence on 
under the supervision of
notion officer () as per
order dated 19/8/2014

Section officer (Record)