

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION No. 85/2010

Date of Order : 24-5-2012

(Reserved on 08.02.2012)

**HON'BLE MR. SUDHIR KUMAR, MEMBER (A)
HON'BLE MR. V. AJAY KUMAR, MEMBER (J)**

Ganeshi Lal
Son of Shri Ram Kishore,
Civilian Chokidar in 375 Coy ASC (Supp)
Type C, Bikaner, r/o Amedkar Colony,
Gali No. 7, Bikaner.

-Applicant

(By Advocate: Mr. Vijay Mehta)

Versus

1. Union of India, through the
Secretary, Ministry of Defence,
Raksha Bhawan, New Delhi.

2. Commanding Office, 375 Coy ASC (Supp)
Type C, Bikaner.

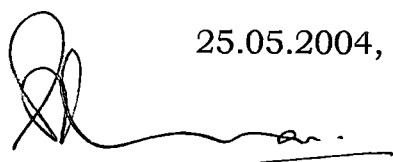
-Respondents

(By Advocate: Mr. Amar Mathur for
Mr. Vinit Kumar Mathur)

ORDER

Mr. Sudhir Kumar, Member (A)

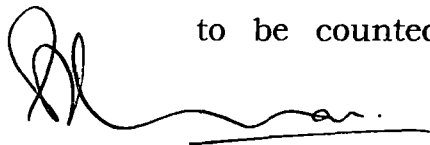
The applicant was working as a casual labour civilian employee under the respondents, and in accordance with the Scheme for Grant of Temporary Status and Regularization of Casual Workers notified on 10.09.1993, he was granted the status of a "Temporary Status Casual Labourer" through Annexure A-1 dated 10.09.1996. Later, he was substantively appointed against a sanctioned vacant post as a Civilian Chowkidar, through Annexure A-3 dated 25.10.2004, to fill up the vacancy in the unit as per the permission of Army Headquarters AG's Branch dated 25.05.2004, and the Selection Board held thereafter on 27.07.2004



in the scale of pay of Rs.2550-3200, with two years' probation from the date of joining, and other related conditions. The applicant is before us pleading that, from the date of his being treated as a Temporary Status Casual Labourer w.e.f. 10.09.1996 through Annexure A-1, he had become entitled to contribute to General Provident Fund (GPF). In this connection, he has cited Para-5 (vi) of the G.O. dated 10.09.1993, which states as follows:-

“(vi) After rendering three years' continuous service after conferment of temporary status, the casual labourers would be treated on par with temporary Group 'D' employees for the purpose of contribution to the General Provident Fund, and would also further be eligible for the grant of Festival Advance, Flood Advance on the same conditions as are applicable to temporary Group 'D' employees, provided they furnish two sureties from permanent Government servants of their Department”.

2. After his obtaining temporary status on 10.09.1996, the applicant completed three years as temporary status employee on 10.09.1999. However, it appears that he never became a subscriber to the GPF, and only after his substantive appointment through Annexure A-3 dated 25.10.2004, he was admitted to the New Pension Scheme. In support of his contention, the applicant has produced the monthly pay slip of June 2004 as Annexure A-4 with no GPF subscription recovery, and the pay slip of July 2009 as Annexure A-5 and Annexure A-6 with GPF subscription of 848. The applicant then represented through Annexure A-8 dated 23.12.2009, stating that since his appointment was before coming into force of the New Pension Scheme, and, therefore, his case should be included in the earlier GPF-cum-Pension Scheme, by adding his services prior to his re-classification. His contention is that since, as a temporary status employee, 50% of his service was to be counted for the purposes of retirement benefits after



regularization, and he became a Government employee on 10.09.1996, he is entitled to get pensionary benefits as contained in CCS (Pension) Rules, 1972, and that a right had accrued in his favour for deductions to be made from his salary towards GPF contribution, which the respondents have not done, and they have thus deprived him of a right of pensionary benefits under old CCS (Pension) Rules, 1972. In the result, the applicant has framed his prayer for relief as follows:-

"8. The applicants pray that the respondents may kindly be directed to forthwith start deduction of GPF contributions from the salary of the applicant from the month he completed three years of temporary status service in accordance with the provisions made in Scheme Annexure A-2 and continue to make these deductions and be further directed to treat the applicant an employee appointed before 1.1.2004 and allow him pensionary benefits as per the Rules of 1972. Any other order, as deemed fit giving relief to the applicants may kindly be passed. Costs may also be awarded to the applicants".

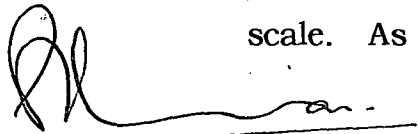
3. The respondents filed their reply written statement on 16.08.2010, and submitted that the PF contribution from the salary of the applicant was for the first time deducted for the month of December, 2004 only, and that the proposal for the contribution of the applicant towards PF had been taken up with CDA (Funds), Meerut Cantt. It was further submitted that since the substantive appointment of the applicant was only w.e.f. 1.11.2004 and, therefore, the New Pension Scheme, which became applicable w.e.f. 01.01.2004 to all the persons who were substantively appointed on or after that date, will be made applicable in his case. However, a clarification in this regard has already been sought from CDA, Meerut Cantt.



4. The applicant filed a rejoinder and pointed out that the respondents have failed to make deductions towards his GPF from 10.09.1999 onwards, the date on which the applicant completed three years of services as a temporary status employee, and that the respondents are, therefore, responsible for violating the mandatory provisions of the Scheme for Regulation of Casual Workers and Temporary Status Employees, as well as the GPF Rules.

5. Heard. We have given our anxious consideration to the facts of the case. As has been noted above also, the applicant completed three years' period as a Temporary Status Casual Worker on 10.09.1999. However, as is apparent from his own pleadings, as well as the reply written statement of the respondents, neither had the respondents started the deductions of GPF from his salary as such a Temporary Status Casual Worker under Para-5 (vi) of the Scheme dated 10.09.1993 as cited above, nor was he assigned a GPF Account number, and nor did the applicant ever press for such deductions to be started to be made from his emoluments as a Temporary Status Casual Worker. The applicant has not produced any record to show that he had ever even made such a request after completion of period of three years as temporary status workers.

6. The applicant's substantive appointment was only as a result of Annexure A-3 dated 25.10.2004, in response to which with effect from 01.11.2004, he came to occupy substantively the sanctioned vacant post of Civilian Chowkidar in a prescribed pay scale. As is apparent from Annexure A-4, the pay slip of June

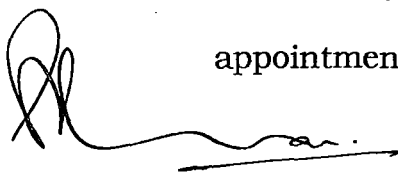


2004 filed by the applicant till the period just before his substantive appointment, no GPF subscription was being recovered from his salary and no GPF Account number had been allotted to him. It is too late in the day for the applicant to now plead that GPF ought to have been deducted from his salary from 10.09.1999 till 31.10.2004, prior to his assuming charge as a substantive appointee on a permanent basis w.e.f. 1.11.2004.

7. It is apparent from Annexure A-6, the pay slip for the month of July 2009 produced by the applicant, that some amount towards PF subscription has been deducted from his salary, but this alone cannot be proof that a GPF account had been created in his favour, and that he had become a regular subscriber to the GPF w.e.f. 01.11.2004.

8. In fact, vide the Govt. of India Ministry of Finance Notification No. 5/7/2003-ECB & PR, dated 22.12.2003, which was Gazette notified on the same date, joining the New Pension Scheme was mandatory for all new recruits to the Central Government service w.e.f. 1.1.2004. Neither the applicant has denied the fact of his substantive appointment after 1.1.2004, w.e.f. 1.11.2004, nor has he been able to make out a case as to why and how his case would not fall within the purview of the New Pension Scheme introduced for all Civilian Defence Employees also w.e.f. 1.1.2004.

9. In case a GPF account had been created for the applicant on completion of three years of his temporary service on 10.09.1999, or at any time thereafter, prior to his substantive appointment w.e.f. 1.11.2004, the applicant may perhaps have had



a case to plead and argue, but in this case he has failed to agitate in time his rights in terms of the Scheme dated 10.09.1993 cited above. Therefore, he cannot now be allowed to agitate that right, which had accrued to him, but he failed to agitate the matter against the denial of the creation of a GPF Account in his name for 11 years.

10. Also, any benefit conferred by the said Regularization Scheme dated 10.09.1993 was only transitory in nature, and had undergone a change on the date when the applicant acquired the status of a permanent appointee in substantive capacity against a sanctioned post, which has happened on 01.11.2004 only. Therefore, in our opinion it is clear that the applicant cannot escape the applicability of the provisions of New Pension Scheme to him, and that his claim for being covered under the earlier CCS (Pension) Rules, 1972, cannot now be sustained.

11. In the result, the OA is rejected, but there shall be no order as to costs.

V-2 Kumar
(V. AJAY KUMAR)
MEMBER (J)

[Signature]
(SUDHIR KUMAR)
MEMBER (A)

cc.

RCM
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