CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O. A. Nos. 596, 597, 598, 599 and 604 of 2011 with
MA Nos. 215/2011 (OA 598/2011) and 216/2011(OA 599/2011)

Date of decision: 31 .08.2012

CORAM :
HON'BLE MR. B.K.SINHA, ADMINISTRATIVE MEMBER.

Smt. Chandrawati Devi W/o Late Shri Dhoodh Nath aged about 55 years, by caste Chauhan, resident of CCBF Colony, Sardargarh, Tehsil Suratgarh, District Sriganganagar.

Applicant in OA No. 596/2011

Vs

1. Union of India through the Secretary,
Ministry of Agriculture,
Department of Animal Husbandry, Dairying & Fisheries,
New Delhi.

2. The Director, Central Cattle Breeding Farm,
Suratgarh, District Sriganganagar.

3. The Regional Provident Fund Commissioner,
Jodhpur.

: Respondents

Smt. Laxmi W/o Late Shri Banke Lal aged about 45 years, by caste Pal, resident of Near Rajiv Swami's Shop, Ward No. 3, Suratgarh, Tehsil Suratgarh, District Sriganganagar (Applicant's husband Late Sh. Banke Lal was working as Group 'D' employee under respondent No. 2).

Applicant in OA No. 597/2011

Vs.

1. Union of India through the Secretary,
Ministry of Agriculture,
Department of Animal Husbandry, Dairying & Fisheries,
New Delhi.

2. The Director, Central Cattle Breeding Farm,
Suratgarh, District Sriganganagar.

3. The Regional Provident Fund Commissioner,
Jodhpur.

: Respondents

Umesh S/o Late Shri Banke Lal aged about 32 years, by Caste Pal, resident of Near Rajiv Swami's Slhop, Ward No. 3, Suratgarh, Tehsil Suratgarh, District Sriganganagar (Applicant's father Late Shri Banke Lal was working as Group 'D' employee under respondent No.2).

Applicant in OA No. 598/2011 & MA No. 215/2011.

Vs.

1 Union of India through the Secretary,

-10

Ministry of Agriculture,
Department of Animal Husbandry, Dairying & Fisheries,
New Delhi.

2. The Director, Central Cattle Breeding Farm,
Suratgarh, District Sriganganagar.

: Respondents

Ram Ashish S/o Late Shri Dhoodh Nath aged about 30 years, by caste Chauhan, resident of CCBF Colony, Sardargarh, Tehsil Suratgarh, District Sriganganagar (father of applicant late Sh. Dhoodh Nath was working as Group 'D' employee under respondent No. 2 at the time of death).

Applicant in OA No. 599/2011 & MA No. 216/2011.

Vs.

1. Union of India through the Secretary,
Ministry of Agriculture,
Department of Animal Husbandry, Dairying & Fisheries,
New Delhi.

2. The Director, Central Cattle Breeding Farm,
Suratgarh, District Sriganganagar.

Guddi Devi W/o Late Sh. Chandu Ram aged about 50 years, By Caste Meghwal resident of VPO Bhagwansar, Tehsil Suratgarh, District Sriganganagar (Applicant's husband late Shri Chandu Ram wass working as Group 'D' employee under respondent No. 2).

Applicant in OA No. 604/2011

Vs.

1. Union of India through the Secretary,
Ministry of Agriculture,
Department of Animal Husbandry, Dairying & Fisheries,
New Delhi.

2. The Director, Central Cattle Breeding Farm,
Suratgarh, District Sriganganagar.

3. The Regional Provident Fund Commissioner,
Jodhpur.

:Respondents

[Mr. Vinit Mathur, ASG along with Mr. Ankur Mathur, Advocate]

O R D E R

This case is identical in contents to the OA Nos. 596, 597, 599 and 604 of 2011 listed today and since the reliefs prayed for in all these matters are similar, they are being disposed of by this common order.

2. The learned counsel for the applicants has remained absent consistently on the last four dates i.e. 29.3.2012,25.4.2012, 4.7.2012 and today the 27.08.2012. It, hence, appears that the applicants have lost interest in the same. However, considering the fact that the cause which they have represents is a weighty one and deserves consideration the case is being decided on the basis of the pleadings available on record, of course, without any prejudice to the case of the applicants under Rule 16 of the Central Administrative Tribunal (Procedure) Rules.

3. I take OA No. 599/2011 as a leading case, wherein, the applicant is son of late Dhoodh Nath, who expired on 1.3.2009. The deceased employee was appointed under respondent No. 2 as a daily wage employee in March 1979 and later, he was conferred temporary status in the pay scale of Rs. 750-12-870-EB-14-940 w.e.f. 1.9.1993 vide order dated 26.12.1994. The applicant submitted that he had gained temporary status after having completed 1 year/240 days service carrying benefits of payment of salary along with allowances and increment(s) time to time, to Group 'D' post. Further, having rendered three years of service regularly as temporary employee, he was likely to be treated as a Group 'D' employee for the purpose of GPF and to various facilities and in so far as service conditions are concerned, there being no difference between the two grades- regular Group 'D' employee and a temporary status worker. The deceased employee has given 18 years service on the day of coming into force the scheme therefore, temporary status was granted to her and he became a member of GPF w.e.f. 1.9.1993, the day on which deceased employee was declared permanent. The deductions were regularly made from his salary. The applicant claims that the deceased employee had also became entitled to receive pension as applicable to a regular Group 'D'

employee as applicable under the CCS Pension rules. The applicant submits that after the death of his father on 6.4.2009, gratuity of Rs. 1, 19,585/- was paid to him but it was less then Rs. 129640/- which the applicant deserves to have been paid. Upon the death of the applicant's father, the applicant made a request for grant of compassionate appointment on 22.04.2009, and subsequently repeated the request and when no reply was forthcoming, he issued a legal notice dated 07.12.2011 and has subsequently come in this OA before this Tribunal. The main ground as stated in the OA is that the term Casual Worker needs to work temporary for a short period as per spot requirement and likewise temporary employee is one who is carrying on employment for a limited period. In this case after having served the department for more than two decades he cannot be termed a temporary employee. The application has also deduction of GPF was being made per contra since 1.1.2004, but was suddenly stopped from 1.1.2004. The applicant questioned that since the employee was already making deduction and was covered by the old pension scheme this could not have been stopped. The result of this order was that the employee was brought-out from the old pension scheme into the new pension scheme. The applicant also questions justification for denial of pension to his father on the ground that he was temporary in status and was not borne on a pensionable establishment after 1.1.2004. The action of the respondents is contrary to the rights of livelihood and Article 21 of the Constitution of India.

4. The respondents have contested the case of the applicant in their counter affidavit. They have stated that the father of the applicant was recruited as a daily wage worker and was conferred temporary status on 1.09.1993 as a consequence of this, he was conferred all benefits admissible to him as a temporary worker till the introduction of the new

pension scheme on 1.1.2004 by the Government of India. Under the condition of earlier Grant of Temporary Status and Regularisation Scheme of Government of India of 1993, the husband of the applicant was contributing to General Provident Fund but, it was discontinued from 1.1.2004 and the contribution of the deceased employee amounting to Rs. 1,49,583/- were repaid to the nominee Smt. Chandravati, wife of the applicant, vide order dated 4.1.2000. Having once accepted the repayment of the fund, the applicant at this stage, cannot question the validity of the act after a lapse of 7 years.

5. The respondents have further submitted that the application is barred by the law of limitation as the cause of action had arisen in the year 2004. The deceased employee had never questioned the same during his life time and now his son is barred by the law of limitation to raise the issue after such an ordinate delay.

6. The learned counsel for the respondents have strongly emphasized that the applicant is not entitled to get any pension under the pension rules; and that the husband of the applicant was a temporary employee who had not been regularized and, therefore, he was not entitled for pension.

7. Having heard the learned counsel for the respondents and having carefully gone through the pleadings of both the parties, the following facts in issue are generated:

i) ***Whether the status of the applicant for grant of temporary status make the job of the husband of the applicant pensionable or not ?***

ii) ***Whether the applicant is entitled to pension under the Pension Rules***

iii) ***What relief can be granted to the applicant, if any?***

Whether the status of the applicant for grant of temporary status make the job of the husband of the applicant pensionable or not ?

8. In so far as the first issue is concerned, the O.M. of the Ministry of Personnel, Public Grievances and Pension, communicated on 10.09.1993 for the grant of Temporary Status and Regularization of Casual Workers on formulation of a Scheme for Grant of Pension, provides as under :-

> ***"i) Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this O.M. and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week)."***

The Scheme further deals with the entitlements which will flow to such persons, as under :-

> ***"i) Wages at daily rates with reference to the minimum of the pay scale for a corresponding regular Group 'D' official including DA, HRA and CCA.***
>
> ***ii) Benefits of increments at the same rate as applicable to a Group D employee would be taken into account for calculating pro-rata wages for every one year of service subject to performance of duty for atleast 240 days (206 days in administrative offices observing 5 days week) in the year from the date of conferment of temporary status.***
>
> ***iii) Leave entitlement will be on a pro-rata basis at the rate of one day for every 10 days of work, casual or any other kind of leave, except maternity leave, will not be admissible. They will also be allowed to carry forward the leave at their credit on their regularization. They will not be entitled to the benefits of encashment of leave on termination of service for any reason or on their quitting service.***
>
> ***iv) Maternity leave to lady casual labourers as admissible to regular Group D employees will be allowed.***
>
> ***v)50% of the service rendered under Temporary Status would be counted for the purpose of retirement benefits after their regularization."***

9. It is to be noted that after rendering the three years continuous service after conferment of temporary status, the casual labour is treated at par with a temporary Group 'D' employee. The OM dated 1oth September 1993 goes ahead to provide: "However, this parity is confined to the payment of contribution to the G.P.F. and to grant Festival Advance / Flood Advance on the same conditions as are applicable to temporary Group 'D' employees subject to their furnishing two sureties from permanent Government service from their department. The Scheme further provides as under :-

> ***"6. No benefits other than those specified above will be admissible to casual labourers with temporary status. However, if any additional benefits are admissible to casual workers working in Industrial establishments in view of provisions of Industrial Disputes Act, they shall continue to be admissible to such casual labourers."***

In other words, the Scheme limits the benefit to what has been provided in Clause (6) above and to none others.

10- The grant of pension to the applicant covered under the CCS (Pension) Rules, came in force in 1.6.1972. Section 2 of these rules shows that as to whom these rules will apply, which reads thus :

> ***"2. No distinction between permanent and temporary employees in the application of pension Rules.-***
>
> ***(i) Confirmation will be made only once in the service of an official which will be in the entry grade.***
>
> ***(ii) Confirmation is delinked from the availability of permanent vacancy in the grade. In other words, an officer who has successfully completed the probation may be considered for confirmation.***
>
> ***(iii) Since all the persons who complete probation in the first appointment will be declared as permanent, the present, the present distinction between permanent and temporary employees for grant of pension and other pensionary benefits will cease to exist."***

However, reading constructively with provisions of the Scheme for conferment of temporary status and regular casual worker, the benefits

as noted above, given to a temporary worker or to a worker regularized under Clause (6) does not include pension. On the other hand, it is clear from a reading of Section 2 of the CCS (Pension) Rules that it is only applicable to Government servants including civilian Government servants who are born on pensionable establishments. It must be clearly mentioned that the at no time has the applicant claimed regularization. The OM dated 10th September 1993 has provided the mechanism vide which a worker having temporary status at par with a Group D employee is regularised through a recruitment process:

> ***"Two out of every three vacancies in Group 'D' cadres in respective offices where the casual labourers have been working would be filled up as per extant recruitment rules and in accordance with the instructions issued by Department of Personnel & Training from amongst casual workers with temporary status. However, regular Group 'D' staff rendered surplus for any reason will have prior claim for absorption against existing / future vacancies. In case of illiterate casual labours or those who fail to fulfill the minimum qualification prescribed for post, regularization will be considered only against those posts in respect of which literacy or lack of minimum qualification will not be a requisite qualification. They would be allowed age relaxation equivalent to the period for which they have worked continuously as casual labourer."***

As seen above, the applicant was clearly not on pensionable establishment.

9. With the introduction of new Pension Scheme on 1.1.2004, the situation has dramatically changed. Now, there is no qualifying service and the pension is given as per the contribution made to the contributory pension fund. Under Rule 4 of the Rules, Condition of eligibility has been prescribed which is as under :-

> ***"4. Conditions of eligibility***
>
> ***(1) These rules shall apply to every non-pensionable servant of Government belonging to any of the services under the control of the President who –***

(i) has been admitted before these rules came into force to the benefits of the Contributory Provident Fund (India); or
(ii) may be admitted by Government to the Fund after these rules come in to force:

Provided that these rules shall not apply to any such servant between whom and Government an agreement subsists in respect of a provident fund other than an agreement providing for the application to him of these rules, and, in the case of an agreement so providing, shall apply subject to the terms of such agreement.

(2) Every servant of Government to whom these rules apply shall be subscriber to the Fund.

(3) If a Government servant admitted to the benefit of the Fund was previously a subscriber to any other contributory or non-contributory provident fund of the Central Government, the amount of his subscriptions and Government contributions in the other Contributory Provident Fund or the amount of his subscriptions in the non-Contributory Fund, as the case may be, together with interest thereon, shall be transferred to his credit in the Fund.

(4) If a Government servant admitted to the benefit of the Fund was previously a subscriber to any other Government Contributory Provident Fund or non-Contributory Provident Fund, the amount of his subscriptions and the Government contributions in the Contributory Provident Fund or the amount of his subscriptions in the non-Contributory Provident Fund, as the case may be, together with interest thereon, shall be transferred to his credit in the Fund, with the consent of the other Government."

These Rules have been made non-applicable to those persons who have not been admitted to the Scheme. GPF being contributed by the father of the applicant has been refunded admittedly on the introduction of the new Scheme. It is also significant to note that the father of the applicant at the time of introduction of the new pension scheme did not raise any objection nor did he claim regularisation against a permanent post. Under such circumstances, the claim of the applicant has become dead on account of operation of limitation. Further, he did not raise the issue at that point of time which amounts to its acquiescence and, therefore, he is estopped from raising this issue at this point of time. To this extent, I am in agreement with the

learned counsel for the respondents. The M.A. Nos. 215/2011 in OA 598/2011 and 216/2011 in OA 599/2011 are, however, allowed in view of the fact that the O.A. has been considered and disposed of on merits.

12. In view of the consideration of the facts above, I hold that despite the absence of the learned counsel for the applicant, the case has been considered on its merits and on the basis of the pleadings. I find that the O.A. is not sustainable and, therefore, it is dis-allowed without there being any order as to costs.

—Sd—

(B.K.Sinha)
Administrative Member

COMPARED & CHECKED

jrm

CERTIFIED TRUE COPY
Dated 7.9.2012

अनुभाग अधिकारी (न्याय.)
Section Officer (Judl.)
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
जोधपुर न्यायपीठ, जोधपुर
Jodhpur Bench, Jodhpur