

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

Original Application No.397/2012

Jodhpur, this the 29th day of October, 2013

CORAM

HON'BLE MR. JUSTICE K.C. JOSHI, MEMBER (J)
HON'BLE MS. MEENAKSHI HOOJA, MEMBER (A)

1. Akaloo Yadav s/o Late. Sh. Jamuna Yadav, aged about 42 years
2. Indel s/o Late Sh. Lalai, aged about 43 years
3. Ram Dulare s/o Sh. Shyama, aged about 46 years
4. Birendra Singh s/o Sh. Gulab Singh, aged about 52 years,
5. Jagdamba Singh s/o Sh. Radha Singh, aged about 52 years,
6. Sukh Dev s/o Sh. Jageshwar Mehto, aged about 47 years,
7. Munna Ram s/o Sh. Panchu Rami, aged about 44 years,
8. Phool Badan Tiwari s/o Sh. Kapil Dev Tiwari, aged about 52 years,
9. Vijay Tiwari s/o Sh. Kapil Dev Tiwari, aged about 46 years,
10. Upendra Mehto s/o Sh. Bhukhal Mehta, aged about 45 years,
11. Joginder Shah s/o Sh. Tileshwar Shah, aged about 42 years,
12. Dur Vijay Pal s/o Sh. Shyam Lal Pal, aged about 50 years,
13. Chhatanku Prasad s/o Sh. Mithai Prasad, aged about 41 years,
14. Bahadur Ram s/o Sh. Ram Dhani Ram, aged about 44 years,
15. Nand Lal Malah s/o Sh. Sehdev Malah, aged about 53 years,
16. Moti Lal Pal s/o Late Sh. Yadunath Pal, aged about 49 years,
17. Ram Vilas Singh s/o Sh. Tak Narayan Singh, aged about 48 years
18. Lalan s/o late Sh. Bishvanath, aged about 48 years
19. Lalji Prasad s/o Sh. Khedan Prasad, aged about 45 years
20. Ram Nath Pal s/o Late Sh. Balmukand Pal, aged about 51 years,
21. Ram Kunwar Pal s/o Late Sh. Ram Kirat Pal, aged about 51 years
22. Kaleshwer Pal s/o Late. Sh. Sukh Bashi Lal Pal, aged about 50 years
23. Shiv Shankar Pal s/o late Sh. Nuna Pal, aged about 49 years,
24. Suresh Mehto s/o Late Sh. Mahindra Mehta, aged about 46 years,
25. Ram Narayan s/o late Sh. Ram Dulare, aged about 48 years,
26. Shyam Narayan s/o late Sh. Shiv Nath Bind, aged about 43 years,
27. Jawahar Pal s/o late Sh. Ram Janam Pal, aged about 46 years,

28. Jokaan Prasad s/o late Sh. Vidadhari Chaudhary, aged about 53 years,
29. Ram Swaroop s/o Sh. Jassu Ram, aged about 47 years,
30. Nityanand Mohanti s/o late Sh. Ram Chandra Mohanti, aged about 54 years,
31. Ram Iqbal s/o Sh. Sone Lal, aged about 46 years,
32. Vidya Yadav s/o late Sh. Komal Yadav, aged about 51 years,
33. Jogeshwar Dayal s/o Sh. Mishri Lal, aged about 47 years,
34. Sukh Raj s/o Sh. Chedi Lal, aged about 47 years,
35. Ram Ashrya Pal s/o late Sh. Radha Pal, aged about 47 years,
36. Ram Hari s/o Sh. Ram Nath, aged about 49 years,
37. Banna Ram s/o Sh. Taru Nath, aged about 48 years
38. Jawahar Prasad s/o sh. Khedan Prasad, aged about 52 years
39. Ram Bilash s/o Sh. Sukhai, aged about 52 years,
40. Sadanand s/o Sh. Tulsi Sharma, aged about 53 years,
41. Bhagwan Singh s/o Sh. Akhey Singh, aged about 55 years,
42. Ram Surat s/o Sh. Gangu Ram, aged about 55 years

Official Address: TSW, O/o Director CCBF, Suratgarh, Distt. Sriganganagar.

Residential Address: Resident of CCBF Campus, Suratgarh, PO. Bhagwansar, Distt. Sriganganagar.

.....Applicants

Mr. J.K.Mishra, counsel for applicants

Vs.

1. Union of India through Secretary to Government of India, Ministry of Agriculture, Department of AH, Dairying and Fisheries, Krishi Bhawan, New Delhi.
2. The Director, Central Cattle Breeding Farm Suratgarh, Distt-Sriganganagar-335804

...Respondents

Ms. K.Parveen, counsel for respondents

ORDER (Oral)

Per Justice Kailash Chandra Joshi, Member (J)

The applicants are allowed to pursue this matter jointly as common relief has been sought by the applicants.

2. This joint application has been filed by the applicants Shri Akloo Yadav & Ors challenging the legality of the DoPTs Office Memorandum (OM) dated 26.04.2004 (Annex. A/3) which pertain to 'Introduction of New Pension Scheme-Modification of scheme for grant of temporary status' and sought following relief(s):

- “(i) That the applicants may be permitted to pursue this joint application on behalf of forty two applicants under rule 4(5) of CAT Procedure Rule, 1987.
- (ii) That respondents may be directed to deduct the GPF amount from the monthly wages/salaries of the applicant as per the GPF Scheme, as a part of old pension scheme as envisaged under Original Scheme of 10.09.1993, as per the verdict of Hon'ble Delhi High Court in Union of India vs Ajay Kumar & Ors WP © No. 14247/2006 dated 04.07.2008 (Annex. A/1), forthwith.
- (iii) That the respondents may be further directed to deposit the due amounts (i.e. both contribution of employees and employers) along with interest thereof towards GPF for the period from 01.01.2004 till date of filing of this OA, in their respective GPF accounts.
- (iv) That any other direction, or orders may be passed in favour of the applicants, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (v) That the costs of this application may be awarded.”

3. The necessary facts summarized for adjudication of this OA are that the Central Govt. formulated a Scheme dated 10.09.1993 for grant of temporary status to daily wagers and this Scheme inter-alia stipulates that a daily wager who worked for 240 days in two years shall be conferred temporary status, which would be without reference to the creation/availability of the regular Group D post and engagement will be on daily rates pay on need basis. The question involved in this OA is not for conferring the temporary status but is regarding the applicability of GPF Scheme. The applicants have been granted temporary status under the said scheme in terms of above DoPT OM and the contribution towards GPF was also being deducted on completion of 3 years' continuous service, as is done in the case of Group D employees, They were also given all kinds of leave and holidays as admissible to temporary employees. They were also given the benefit of counting of service for the purpose of pension, CGEIS, GPF, Medical Aid, LTC and all allowances admissible to Group D employees. All the applicants were treated as temporary employees in Group D with regular pay scale and all the benefits which are admissible to such employees. They were also contributing towards GPF and para No. 5 attached to the said scheme is relevant to refer and reads 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 at least 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 regularisation. 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 regularisation.

(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.

(vii) Until they are regularized, they would be entitled to Productivity Linked Bonus/ Adhoc bonus only at the rates as applicable to casual labourers"

However, the DoPT issued another OM dated 26.04.2004 which pertains to the introduction of 'New Pension Scheme-Modification

of Scheme for Grant of Temporary Status'. The relevant portion of the Scheme read 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 regularisation against Group ‘D’ posts on or after 1.1.2004.

(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 deduction towards General Provident Fund shall be effected from the casual labourers w. e. f. 1.1.2004 onwards and the amount lying in their General Provident Fund accounts, including deductions made after 1.1.2004, shall be paid to them.”

4. Heard both the parties.

5. Counsel for the applicant contended that in any scheme which is prevailing, any retrospective modification to that scheme cannot be made. The counsel for the applicant while relying upon the judgment dated 25.05.2005 passed by the Jaipur Bench of the CAT in OA No. 284/2004 also contended that the Jaipur Bench while relying upon the judgment of Apex Court quashed the modified notification with respect to GPF contribution. He further contended that Chandigarh Bench in OA No. 60/2003 and Jaipur

Bench in the similar OA allowed the deduction of the contribution of GPF amount in respect of the existing employees.

6. Per contra counsel for the respondents contended that by any executive order such retrospective operation can be effected and the Union of India was within its domain to issue the modified scheme and this scheme cannot be set aside in respect of the deduction towards contribution of GPF amount.

7. Considered rival contentions and also perused the relevant record and judgment cited by the counsel for the applicant.

8. The Hon'ble Delhi High Court in writ petitions (Civil) No. 14247, 8491, 17528-30 of 2006 and 4806 of 2007 while deciding these petitions took the similar view as taken by the CAT Jaipur Bench and confirmed the order of Jaipur Bench to set aside the modified OM dated 26.04.2004 in respect of contribution of the GPF amount. The CAT Jaipur Bench in the similar matter bearing No. 284/2004 passed the order which is reproduced as under :

“A perusal of the Scheme extracted above, particularly para 5(vi) thereof, will go to show that it not only entitles the temporary status employees with certain monetary benefits but it also elevates status of temporary employees. Reading of para 5(vi) would go to show that after an employee is conferred with temporary status, and continuously renders 3 years of service after conferment of temporary status his status further elevates at par

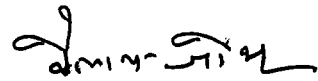
with temporary Group D employees for the purpose of contribution to GPF Scheme as part of earlier pension scheme. Thus, an employee who has rendered particularly 3 years of service, he attains the status of temporary government employee. Meaning thereby that he holds a civil post under the Government of India, though as a temporary employee and from this very scheme itself, it is also clear that if the service temporary status employees are to be dispensed with then one month's notice is required to be served on the casual employees with temporary status which is par-passu with the provisions existing in the CCS (Temporary Service) Rules, applicable to the temporary government servants. Further para 5(v) of the Scheme also shows that 50% of the service rendered as temporary status is also to be counted for the purpose of retiral benefits. In a way, after a person is conferred with temporary status, he becomes entitled to certain benefits with regard to the counting of service for the purpose of retiral benefits, obviously under the old Scheme. However, if he has rendered further 3 years of service with temporary status, he is further elevated as a temporary employee and he gains in status. So, such employees like applicants would be covered under the old Scheme of the Government of India and not under the new Scheme of Pension introduced by letter dated 07.01.2004. Letter dated 26.04.2004 shows that only casual employees are not to be asked to pay contribution towards GPF but it does not apply to those employees who have attained the status of temporary employees though by virtue of Scheme of 01.09.1993. Thus, the interpretation of the Scheme of 07.01.2004 and as amplified letter dated 26.04.2004 does not govern the employees who have been conferred with temporary status and by virtue of clause (vi), they have further attained the status of temporary Group D employees. Thus, we find that there is sufficient merit in the O.A. and the respondents cannot invoke the instructions dated 26.04.2004 against these applicants. Though the title of the letter dated 26.04.2004 shows that there is modification of the scheme of grant of temporary status but by this letter, the Government cannot modify Scheme to the detriment of the employees who have already earned the vested right under the old rules and those vested right cannot be taken away by retrospective

operation of the Scheme by issuance of administrative instructions by the DoPT. It is well settled that the administrative instructions which have the effect of modifying the original scheme cannot be allowed to stand. Hence we are of the considered view that these instructions as contained in the letter dated 26.04.2004 are not applicable in the case of the applicants. The applicants are entitled to contribute towards the GPF Scheme, part of the Old Pension Scheme, as envisaged under the Original Scheme of 1.09.1993."

9. We are, after considering rival contentions of both the parties, of the view that the applicants shall be allowed to contribute in the GPF Scheme as part of the Old Pension Scheme. Accordingly, the OA is allowed and we hold that the instructions contained in respect of GPF contribution in the Modified Scheme of 26.04.2004 are not applicable in the case of the applicants. The applicants are entitled to contribute in the GPF as admissible under the Scheme of 01.09.1993 and respondents are directed to deposit the due amount towards the GPF of the applicants, within 6 months from the date of receipt of this order. There shall be no order as to costs.



(MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER



(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER