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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 40/2013

Jodhpur this the 27th day of August, 2013.

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Judl. Member

Sugreev s/o Shri Mohar,
Aged about 61 years,
Resident of C/o Shri Shiv Bachan Bhagat,
CCBF, Suratgarh, PO_Bhagwansar,
Distt. Sriganganagar, last employed on
The post of Cattle Assistant (redesignated as MTS)
In Central Cattle Breeding Farm, Suratgarh,
Distt. Sriganganagar.

.....Applicant

(Through Advocate: Mr J.K.Mishra)

Versus

1. Union of India through the Secretary to Govt. of India,
Ministry of Agriculture,
Department of Agriculture and Cooperation,
Krishi Bhawan,
New Delhi.
2. The Director,
Central Cattle Breeding Farm, Suratgarh,
Distt. Sriganganagar.
3. Pay and Accounts Officer (Sectt-II),
Min. of Agriculture,
Department of Agriculture and Cooperation,
Principal Pay and Accounts Office,
16-a, Akbar Road,
Hutments Annexe,
New Delhi- 110 011.

.....Respondents

**(Through Advocate: Mr. Shahnawaj Khan on behalf of Smt.
K.Parveen)**

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ORDER (Oral)

The present OA is directed against the impugned order dated 11.10.2012 (Ann.A/1) by which the applicant and other similarly situated persons have been provided the withdrawal form No.101-GS (page 1-6) and 401-A (Page 1-2) for claim of accumulated pension wealth on superannuation for Government employees with the direction that the same may be duly filled in all respect and submit in the office personally at the earliest alongwith the desired documents mentioned in the forms for further action. The applicant has prayed that the order dated 11.10.2012 may be declared illegal and the same may be quashed accordingly. Further, the respondents may be directed to grant pension and other retiral benefits to the applicant under the old scheme and allow all consequential benefits including arrears thereof alongwith interest.

2. Brief facts, as culled out from the pleadings of the applicant, are that the applicant was initially engaged as Daily Paid Worker in the year 1971 and was paid at the rate of 1/30th of the pay plus Dearness Allowance of a Group-D post for work of eight hours. The applicant was granted temporary status w.e.f. 1.9.1993 as per Casual Labour (Grant of Temporary Status and Regulation) Scheme of Government of India dated 10.9.1993. He was allowed revised pay fixation as per CCS (Revised Pay) Rules 1997 and was put to officiate on adhoc basis on the vacant post of Milker cum Cattle Attendant for 89 days each at four occasions. Further, the applicant was regularized on Group-D post vide order dated 26.3.2009 as Cattle Attendant in the pay scale of Rs. 4440-7440, Grade Pay Rs. 1400 and he joined on the same on 30.3.2009. After

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recommendation of the 6th Central Pay Commission, the pay of the applicant was fixed at Rs. 5840 plus grade pay of Rs. 1300 as on 1.1.2006 and Rs. 1800 w.e.f. 30.3.2009. The applicant retired on attaining the age of superannuation on 31.12.2011.

3. The applicant averred that as per para 5(v) of the scheme dated 10.9.1993, 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after their regularization. The applicant has rendered temporary status service from 1.10.1993 to 30.3.2009 i.e. 15 years, 5 months and 25 days out of which he worked on adhoc basis for $89 \times 4 = 356$ (Approx. one year). Half of the Temporary status period comes to about 7 years and 2 months and he has rendered regular qualifying service from 26.3.2009 to 31.12.2011 i.e. 2 years, 9 months and 5 days. Thus he has rendered total 10 years 11 months i.e. 11 years service which would be reckoned towards pensionary benefits, as according to old pension scheme, one is entitled for pension after rendering 10 years of qualifying service.

4. Further, submitted that the issue came to be adjudicated and settled by a Coordinate Bench of this Tribunal at Hyderabad in OA No.616/2010, G.Appa Rao and others vs. The Secretary Railway Board vide order dated 31.3.2010 and this Bench relying on the same has allowed the case of one similarly situated person belonging to same office in OA No.199/2011, Shiv Ram Singh vs. Union of India and ors. vide order dated 17.5.2012.

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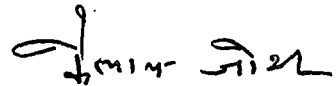
5. Per contra, the respondents by way of filing reply have denied the right of the applicant and submitted that the applicant was Casual Labour with temporary status w.e.f. 1.9.1993 to 29.3.2009 and services rendered as Casual Labour with temporary status is not countable as per OM dated 26.4.2004. Therefore, the applicant is not entitled for the benefits under CCS (Pension) Rules, 1972. The applicant is only entitled for the benefits available under the New Defined Contributory Pension Scheme for which he has been advised to furnish the requisite forms vide letter dated 11.10.2012 for withdrawal of accumulated pension wealth. So far as allowing OA No.199/2011 by this Bench vide order dated 17.5.2012 is concerned, it is stated that the same has already been challenged before the Hon'ble High Court at Jodhpur, therefore, the order dated 17.5.2012 is subject to outcome of the said Writ Petition No.1431/2013. It is further submitted that SLP No.19673-19678, Union of India vs. Ajay Kumar and others filed by the Ministry of Home Affairs, Ministry of Health and Family Welfare and Ministry of Social Justice on the similar issue is also pending before the Hon'ble Supreme Court.

6. I have heard the rival submissions of the parties and perused the material available on record. Since the Coordinate Bench of this Tribunal has already dealt with the issue in a similar matter and there is no reason to take a different view, therefore, the present OA is also decided in terms of the order dated 17th May, 2012 passed by this Tribunal in OA No.199/2011, Shiv Ram Singh vs. Union of India and others and the applicant is also entitled to have the following reliefs:-

- (i) The impugned order dated 11.10.2012 (Ann.A/1) to the extent proposing grant of pension and other

retiral benefits under the New Pension Scheme is set aside.

- (ii) The respondents are directed to reckon 50% of the qualifying service as per the provisions of Para 5(v) of OM No.51016/2/90-Estt (C) dated 10th September 1993 and allow grant of pension and all retiral and consequential benefits under CCS (Pension) Rules, 1972.
- (iii) The order should be carried out within a period of three months from the date of receipt.
- (iv) In the case a clarification is received from the Ministry of Finance, otherwise, the respondents are free to come up for review of this order.
- (v) There shall be no order as to costs.



(JUSTICE K.C.JOSHI)
Judicial Member

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