

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 290/00352/2014

Jodhpur, this the 6th day of July, 2015

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

1. Jagdamba Singh s/o Late Radha Singh, aged about 55 years
2. Jawahar Prasad s/o Shri Khedan Prasad, aged about 53 years.
3. Nityanand Mohanti s/o Late Ram Chandra Mohanti, aged about 55 years.
4. Ram Kunwar Pal s/o Late Ram Kirat Pal, aged about 51 years
5. Sadanand s/o Late Sh. Tulsi Sharma, aged about 54 years,
6. Vidya Yadav s/o late Sh. Komal Yadav, aged about 52 years,
7. Nand Lal Malah s/o Late Sehdev Malah, aged about 53 years,
8. Ram Dulare s/o Late Sh. Shyama, aged about 47 years,
9. Smt. Prem Devi wife of Sh. Madan Lal, aged about 46 years,
10. Smt. Sita Devi w/o Shri Basti Ram, aged about 48 years,

Office Address: Presently employed as TSW, O/o Director CCBF, Suratgarh, Distt. Sriganganagar.

Residential Address: Resident of Jhuggi Chhopdi, CCBF Campus, Suratgarh, PO Bhagwansar-335804, Distt. Sriganganagar.

.....Applicants

By Advocate: Mr J.K.Mishra

Versus

1. Union of India through Secretary to the Govt. of India, Ministry of Agriculture, Department of AH, Dairying and Fisheries, Krishi Bhawan, New Delhi.

2. The Director, Central Cattle Breeding Farm Suratgarh, Distt-Srinanganagar-335804.
3. Pay and Accounts Officer (Sectt-II), Min. of Agriculture, Deptt. of Agriculture and Cooperation, Principal Pay and Accounts Office, 16-A, Akbar Road, Hutmants, Annex, New Delhi-110 011.

.....Respondents

By Advocate : Ms. K.Parveen

ORDER

At the outset itself, counsel for the applicants submitted that in the cause-title, the applicants have been erroneously shown as 'presently employed as TSW' and in the rejoinder it has been clarified and admitted that this is a typographical error. He further submitted that the applicants are presently employed as Multi Tasking Staff (MTS) and this is clear from the orders dated 24th July, 2014 (Ann.A/1) and 6th August, 2014 (Ann.A/2) of the respondent department as also from the preliminary objections raised in the reply by the respondents that the applicants are actually MTS. Counsel for the applicants, therefore, prayed that in the cause title the designation 'TSW' may be correctly read as 'MTS'. Perused the record. As the applicants are presently employed as 'MTS', therefore, the prayer of the counsel for the applicants is allowed and the term 'TSW' is allowed to be read as 'MTS' in the cause title.

2. The applicants, 10 in number, have filed this OA u/s 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

- (i) That the applicants may be permitted to pursue this joint application on behalf of ten applicants under rule 4(5) of CAT Procedure Rules 1987.
- (ii) That clause No. (iii) of the impugned order dt. 24.7.2014 (Annexure-A-1) and office order dated 6.9.2014 (Annexure A/2), may be declared illegal and the same may be quashed accordingly.
- (iii) The respondents may be directed to treat the applicants under old pension scheme in the light of order dated 17.5.2012 passed in OA No.199/2011 Shiv Ram Singh vs. UOI and Ors by this Hon'ble Tribunal and all the retiral/pensionary benefits accordingly on their retirement on attaining the age of superannuation as per old pension scheme and allow all consequential benefits.
- (iv) That any other direction, or orders may be passed in favour of 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. Brief facts of the case, as stated by the applicants, are that the applicants were initially appointed as casual/daily paid worker in the year 1977 to 1983 as mentioned in seniority list issued on dated 14.7.2014 in which their names are mentioned at Sl.Nos. 1,2,3,4,5,7,9,10 and 22 (Ann.A/3). They were granted temporary status w.e.f. 01.09.1993 as per the Casual Labour

Government of India dated 10.9.1993 (Ann.A/4). The applicants were allowed revised pay fixation as per CCS (Revised Pay) Rules, 1997 and fixed at Rs. 2550/- as basic pay as on 01.01.1996 as admissible to a Temporary Status holder casual labour. The applicants have also referred to order of this Tribunal passed in OA No.397/2012 regarding deduction of GPF, which was allowed vide order dated 29.10.2013. The applicants have further stated that they came within the consideration zone as per their seniority and DPC recommended the regularisation and accordingly, vide order dated 24.7.2014 they were offered Multi Tasking Staff post in the pay scale of Rs. 5200-20200, Grade Pay Rs. 1800. According to the applicants, they had reservations regarding unwarranted condition No.(iii) that they would be covered by new defined Contributory Pension Scheme which came into force from 01.01.2004 but the respondent No.2 insisted for and the applicants gave acceptance as desired by 2nd respondent and fulfilled the requisite conditions. The applicants have stated 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 applicants were appointed in the year 1977-1983, granted temporary status in 1993 and were regularised on 01.08.2014. They were employees of the CCBF from a much earlier period than 01.01.2004 when the

entitled to grant of benefit admissible under CCS (Pension) Rules, 1972. The applicants have also stated that relying upon the case in OA No.616/2010 G.Appa Rao and others vs. The Secretary Railway Board and others decided on 31.3.2010, this Bench has allowed the case of one similarly situated person in OA No.199/2011, Shiv Ram Singh vs. UOI and Ors. vide order dated 17.5.2012 (Ann.A/7). Further, the second respondent has now issued office order dated 06.08.2014 to all the applicants (Ann.A/2) whereby the applicants have been asked to submit application attached thereto and are said to be governed by the new restructured/defined Contribution Pension Scheme. The applicants have not submitted the aforesaid application and respondent have stopped the deduction towards GPF which was being deducted in implementation of specific order of this Tribunal in respect of applicant No.1 to 8. Therefore, aggrieved of the action of the respondents, the applicants have filed this OA praying for the reliefs as mentioned in para-1 above.

4. The respondents have filed reply to the OA and in the preliminary objection, they have stated that the applicants are not working as Temporary Status Worker (TSW) but they have been regularized and are working as Multi Tasking Staff (MTS). The respondents have further submitted that deduction of GPF was a part of DOPT's scheme dated 10.9.1993 and applicable for casual

labours with Temporary Status. The said scheme was modified by the DOPT vide OM dated 26.4.2004 on introduction of New Defined Contributory Pension (Ann.R/1). So far the question of order dated 29.10.2013 passed in OA No.397/2013-Akloo Yadav vs. UOI is concerned, the same was implemented by the respondents vide order dated 18.2.2014 and 28.7.2014 subject to the outcome of Special Leave Petitions No. 19673 to 19678 of 2009. The GPF in respect of the applicants was resumed as they were Casual Labour with Temporary Status on the date of implementation. Later on, they have been regularized to the post of Multi Tasking Staff and covered under New Pension Scheme as per clarification obtained from the DOPT vide letter dated 19.9.2014 (Ann.R/2). The respondents have further submitted that Condition No. (iii) of the offer of appointment dated 24.7.2013 (Ann.A/1) issued to the applicants, was in accordance with the existing rules and the orders of the Government of India. The respondents have further submitted that the applicants are not eligible for counting of 50% of the service rendered as the Temporary Status casual workers for the purpose of retirement benefits after regularization on the post of Multi Tasking Staff as per DOPT OM dated 26.4.2004. The New Pension Scheme is based on defined contribution, and the length of qualifying service for the purpose of retirement benefits in the case of temporary status

26.4.2004 and as per para (i) of the OM, no credit of casual service as specified in para 5(v) shall be available to the casual labourers on their regularization against Group-D post after 01.01.2004. As regards applicability of order passed in OA No.616/2010-G.Appa Rao vs. Secretary, Railway Board, it is submitted that the same is not applicable in the case of Central Civil Service employees, as the Railway Board is independent body and is guided by the Rules framed by the Ministry of Railway. Regarding applicability of order passed by this Tribunal on 17.5.2012 in OA No.199/2011, it is submitted that the same has already been challenged by filing DB Civil Writ Petition No. 1431 of 2013 before the Hon'ble Rajasthan High Court. Therefore, the respondents pray for dismissal of the OA.

5. In rejoinder to the reply filed by the respondents, while reiterating the averments made in the OA, the applicants by way of rejoinder to preliminary objections have stated that all the applicants were recently regularised and inadvertently, their designation has been typed as TSW instead of Multi Tasking Staff (MTS), which is a typographical error. The applicants have further submitted that order dated 17.5.2012 passed in OA No.199/2011-
Shiv Ram Singh vs. UOI whereby the pensionary benefits have been allowed to similarly situated persons, came to be challenged before the Hon'ble Rajasthan High Court at Jodhpur in

DBCWP No.1431/2013 by the respondents and the same has been dismissed upholding the order of the Tribunal vide judgment of the Hon'ble High Court dated 17.12.2013 (Ann.A/8).

6. So far as prayer regarding pursuing this joint application is concerned, since the applicants have approached against a common cause of action arising from same/identical orders and the relief claimed is also the same, therefore, they are allowed to pursue their remedy jointly.

7. Heard. Counsel for applicants submitted that the matter in this OA relates to grant of pension and retiral benefits under Old Pension Scheme i.e. under CCS (Pension) Rules, 1972 for those persons who have got temporary status prior to 01.01.2004 even though they may have been regularized after 01.01.2004. The present applicants were granted temporary status w.e.f. 01.09.1993 itself and have been regularized (after 01.01.2004) vide orders dated 24th July, 2014 (Ann.A/1) and 6th August, 2014 (Ann.A/2). This matter is covered by the orders of this Tribunal including that of 17.05.2012 (Annex. A/7) passed in OA No. 199/2011 which has also been upheld by the Hon'ble Rajasthan High Court vide its recent judgment dated 17.12.2014 (Annex. A/8) passed in D.B.C.W.P. No. 1431/2013. Counsel for applicants further submitted that the respondents are also implementing the Scheme as upheld by the Tribunal and Hon'ble High Court and

such similar persons are being covered under the Old pension Scheme of 1972.

8. Counsel for respondents also submitted that by virtue of the aforesaid judgment dated 17.12.2014 of Hon'ble High Court (Ann.A/8) in D.B.Civil Writ Petition No.1431/2013 upholding the order dated 17.5.2012 (Ann.A/3) in OA No.199/2011 of this Tribunal, persons who had acquired temporary status prior to 01.01.2004, though regularized on a later date are being given retiral benefits under the Old Pension Scheme i.e. CCS (Pension) Rules, 1972 and not under the OM dated 26.04.2004 regarding the New Pension Scheme (Annex. R/1).

9. Considered the aforesaid submissions and contentions and perused the record. In view of the position emerging from the order of this Tribunal in OA no.199/2011 dated 17th May, 2012 and the judgment of the Rajasthan High Court at Jodhpur in DBCWP No.1431/2012 dated 17th December, 2014 upholding the aforesaid order of this Tribunal, it is clear that the cases of the applicants who were conferred Temporary Status w.e.f. 01.09.1993 but regularised after 01.01.2014 are similar to the applicants in OA No.199/2011 who were also working in the same department i.e. under the Central Cattle Breeding Farm, Suratgarh under the Ministry of Agriculture. Therefore, the applicants are covered by the aforesaid rulings and are entitled to

receive pension and other retiral benefits under the Old Pension Scheme i.e. CCS (Pension) Rules, 1972 and have the benefit of the DOPT Scheme dated 10th September, 1993 i.e. Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993 and the withdrawal of benefit under para 5(v) of the said Scheme vide clause (i) of DOPT OM dated 26th April, 2004 (Ann.A/1) is not applicable in the case of the present applicants. The respondents are, therefore, directed to treat the applicants as covered under the Old Pension Scheme i.e. CCS (Pension) Rules, 1972 and allow all due retiral/pensionary benefits and are further directed to suitably modify clause (iii) of the offer of the appointment to the applicants all dated 24th July, 2014 (collectively Ann.A/1) as well as orders dated 6th August, 2014 issued to all the applicants (collectively Ann.A/2) making them entitled to retiral/pensionary benefits as per CCS (Pension) Rules, 1972 and any due retirement/pensionary benefits provided under para 5(v) of the DOPT OM dated 10th September, 1993 (filed as Ann.A/4). The respondents are directed to issue necessary orders as above at the earliest and preferably within three months from the date of receipt of a copy of this order.

The OA stands disposed of as above with no order as to costs.


(MEENAKSHI HOOJA)
Administrative Member

R/C
21/7/15

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D. Meeni