

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
O.A. NO. 418/2012

Dated this the 23rd day of January, 2013

C O R A M

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

HON'BLE Mrs. K. NOORJEHAN, ADMINISTRATIVE MEMBER

V.Sasikumar, Multi Task Employee
Director of Accounts (Postal), GPO Trivandrum-695001.
R/o TC 24/714, Usha Mandiram,
Thycaud, Trivandrum - 695014.

..... Applicant

(By Advocate Mr. Vishnu S.Chempazhanthiyil)

Vs.

- 1 The Director of Accounts, Postal, Kerala Circle
GPO Complex, Thiruvananthapuram.
- 2 The Chief Postmaster General
Kerala Circle, Trivandrum-695033.
- 3 The Union of India
Represented by the Director General &
Secretary Department of Posts, Dak Bhavan New Delhi-110001.

.... Respondents

(By Advocate Mr S Jamal, ACGSC)

The Application having been heard on 23.1.2013 the Tribunal delivered the following:

ORDER

HON'BLE Mrs. K NOORJEHAN, ADMINISTRATIVE MEMBER

The brief facts of the case as stated by the applicant are that he entered service under the respondents as Casual Labourer. He was conferred with temporary status on 1.1.1991. It is submitted that by Annx.A2 order issued by the 3rd respondent, the casual labourers with temporary status on completion of 3 years are treated on par with temporary Group-D employees and they are eligible for all the benefits as admissible to a Group-D employee. It further provides that on regularisation they are eligible for pension and other retiral benefits as admissible to a Group-D employee. It is submitted that as per the provisions of Annx.A2, the applicant had become eligible for the benefits as admissible to a temporary Group-D

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employee on 1.1.1994. While so, by Annx.A3, he was appointed as a Group-D on 2.6.2006. According to the applicant he was due for regularisation in Group-D Cadre against a vacancy of 2002 or 2003 but the respondents have not granted the same prior to 2.6.2006. The Govt of India introduced a New Pension Scheme for the Central Govt employees w.e.f 1.1.2004, by virtue of it those who are appointed on or after 1.1.2004 shall be covered under the New Contributory Pension Scheme. According to the applicant he was granted temporary status from 1.1.1991 and as per Annx.A2 on completion of 3 years he would become eligible for all the benefits flowing there from as a temporary employee appointed on a regular basis, as such he is entitled to be governed by the pension scheme prior to 1.1.2004 and bringing him under the new pension scheme from 1.1.2004 is illegal and arbitrary. The contention of the applicant is that the qualifying service of a government servant commences from the date he is charged under temporary capacity provided that this is followed without interruption by a substantive appointment. In the case of the applicant he was conferred with temporary status on 1.1.1991, he completed 3 years on 1.1.1994 to become eligible for the benefits as admissible to a temporary Group-D employee and he was appointed as a Group-D on 2.6.2006, therefore his qualifying service commences from 1.1.1994 which entitled him to be governed by the pension scheme prior to 1.1.2004.

2 The respondents contested the O.A by filing their reply statement. It is admitted that the applicant was conferred with temporary status as casual labourer w.e.f 1.1.91 and thereafter he was appointed as temporary Group-D on 2.6.2006 against a sanctioned post. He retired on 30.4.2012 on attaining the age of 60 years. Regarding other averments that he should be treated under the old Pension Scheme (CCS Pension Rules 1972) and that he is entitled for the half the period of his service as full time casual labourer reckoned as qualifying service for determining pension and other pensionary benefits, it is submitted by the respondents that conferring temporary status was in accordance with Annx.R1 of the notification. They further submitted that the contributory pension scheme was introduced w.e.f 1.1.2004 which is applicable to those who appointed on or after 1.1.2004 and those who are appointed on or before 31.12.2003 were covered under the CCS Pension Rules, 1972. It is submitted that 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after regularisation as a regular Gr.D

74

official. It is further submitted that after rendering 3 years continuous service after conferment of temporary status, the casual labours would be treated at par with temporary Group-D employees for the purpose of contribution of General Provident Fund and there is no provision for counting the entire service after completion of 3 years from conferring temporary status for the purpose of retirement benefits.

3 The applicant filed MA No.1126/2012 to produce Annx.A9 and submitted that this order does not apply to the applicant who is governed by a separate scheme.

4 The respondents in reply to the MA denied that the casual labourers with temporary status on completion of 3 years are treated at par with temporary Group-D employees and they are eligible for all the benefits as admissible to a Group-D employee. They added that the benefit would accrue only after appointment on a regular basis and not on completion of 3 years from the date of attaining temporary status casual labourer.

5 Heard learned counsel for the parties and perused the documents produced before us.

6 The Counsel for the applicant argued that the decision of the Principal Bench in T.A.No.444/2009 (Dalip Kumar's case) as upheld by the Hon'ble High Court of Delhi applies in toto to the facts of the present O.A. The counsel contended that when a part of the temporary status is treated as qualifying service for the purpose of terminal benefits and if the period to be so treated is anterior to 1.1.2004, naturally the commencement of qualifying service dates back prior to 1.1.2004 and hence the new pension scheme cannot be applied and subject to fulfilment of minimum qualifying service, the applicants would be governed by the CCS(Pension) Rules, 1972.

7 The learned counsel for the applicant drew my attention to the documents produced and argued that the O.A is covered by the judgment of the Hon'ble High Court of New Delhi upholding the order of the Principal Bench in TA 444/09 and the order dated 23.08.2011 of the Coordinate Bench of this Tribunal in O.A No. 517/2011 and the decision therein is squarely applicable to this case. The order of this Tribunal was implemented by the respondents.

8 The sole issue that comes up for consideration in this O.A. is whether the applicant is entitled to be granted the benefit of the order of the Coordinate Bench



of this Tribunal in OA No.517/2011. I have gone through the decision of the Tribunal in O.A No.517/2011. The operative portion of the order is extracted below:

"Pension under the CCS (Pension) Rules, 1972 is applicable subject to fulfilment of minimum qualifying service. If the new pension rule has to apply, then, the commencement of qualifying service should be posterior to 1.1.2004. Where the commencement of qualifying service is anterior to 1.1.2004, it is the old CCS (Pension) Rules, 1972 which would apply and for being eligible to draw pension, conditions of minimum qualifying service as prescribed should be fulfilled. In the instant case, admittedly, both the applicants were granted temporary status as early as December 1995 and the period of temporary status is reckoned from that date till their regular appointment on 24.5.2006. Thus, half the temporary service, viz, 5 years and 3 months were to add to the period of regular service and thus for purpose of entitlement to terminal benefits, the date of regular service in this case should be deemed from February 2001 itself (5 years 3 months prior to 24.5.2006). As such, both the applicants are entitled to pension subject to fulfilment of their qualifying service under the CCS (Pension) Rules, 1972.

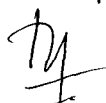
9. In view of the above, the O.A is allowed. Annexure A-1 order is quashed and set aside. Respondents are directed to verify the records of the 1st applicant and work out his qualifying service and subject to fulfillment of minimum qualifying service for the purpose of grant of pension, she shall be paid the pension and other terminal benefits on the basis of CCS(Pension), Rules, 1972.

10. Subject to fulfillment of the conditions prescribed in the pension rules, necessary action to issue PPO etc should be undertaken on priority basis and suitable orders shall be passed and pension granted to the 1st applicant within a period of three months from the date of communication of this order. The entitlement of pension shall be from the date of the 1st application's superannuation. As regards the 2nd applicant, as and when the said applicant superannuates, his case for pension shall be considered in accordance with CCS (Pension) Rules, 1972".

9. During the final hearing, the applicant produced a copy of the order of Bangalore Bench of the Tribunal in O.A No.397/09, dealing with an identical issue, wherein the judgement of the Hon'ble Supreme Court in Jagrit Mazdoor Union (Regd.) & Ors vs. Mahanagar Telephone Nigam Limited & Anr , 1990 (1) SLR 839 was cited. The apex court directed in para 12 as follows:

"12. after rendering three years of continuous service with temporary status, the casual labourers shall be treated at par with temporary Grade D employees of the Department of Posts and would thereby be entitled to such benefits as are admissible to Group D employees on regular basis".

Admittedly, the applicant who was granted temporary status on 01.01.1991, completed three years as on 1.1.1994. He was due for regular appointment from 1994 onwards against 2/3 quota of vacancy in Group D cadre. However, as per rules he is



treated at par with a temporary Group D employee from 01.01.1994 onwards.

10 In view of the above, the O.A is allowed. It is declared that the applicant is entitled to be governed by the Pension Scheme in force prior to 1.1.2004 and direct the respondents to grant pension as per CCS (Pension) Rules, 1972. The respondents are directed to verify the records of the applicant and work out his qualifying service in terms of the directions of this Tribunal in O.A 517/2011 for the purpose of grant of pension and he shall be paid the pension and other terminal benefits on the basis of CCS(Pension) Rules, 1972.

11 Subject to fulfillment of the conditions prescribed in the pension rules, necessary action to issue PPO etc should be undertaken on priority basis and suitable orders shall be passed and pension granted to the applicant from the date of entitlement within a period of three months from the date of communication of this order. No costs.



(K. NOORJEHAN)
ADMINISTRATIVE MEMBER



(Dr K.B.S. RAJAN)
JUDICIAL MEMBER

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