

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.456/2012

Wednesday, this the 12th day of June, 2013.

CORAM

Hon'ble Dr.K.B.S.Rajan, Judicial Member

Hon'ble Mr.K.George Joseph, Administrative Member

1. P. Joseph, age 53 years
S/o P.P.George
Mali, INS Venduruthy
Southern Naval Command
Kochi-682 004.
Residing at Palliparambu House,
Konthuruthy, Thevara P.O., Kochi.
2. C.M.Syed Muhammed, age 50 years
S/o Mamu
Mali, INS Venduruthy
Southern Naval Command
Kochi-682 004.
Residing at Chembankalath House,
Maradu, -682 304.
3. T.Y.Job, age 54 years
S/o Yohannan
Mali, INS Venduruthy
Southern Naval Command
Kochi-682 004.
Residing at Thekkekalathingal House
Azhikkagam, Kumbalanghi P.O., Kochi.
4. A.B.Muhammedkunju, age 52 years
S/o Bava
Mali, INS Venduruthy
Southern Naval Command
Kochi-682 004.
Residing at Ayathu House,
West Vengola P.O. Perumbavoor.
5. A.M.Akbar, age 50 years
S/o Mamma
Mali, INS Venduruthy
Southern Naval Command
Kochi-682 004.
Residing at Koonamparambil, Thangal Nagar
Palluruthy, Kochi.
6. V.K.Thrivikraman, age 50 years
S/o V.A.Kumaran
Mali, INS Venduruthy
Southern Naval Command
Kochi-682 004.

Residing at Vattathara House,
Kumbalanghi South P.O.
Kochi.

Applicants

(By Advocate: Mr.Ashok B.Shenoy)

Versus

1. Union of India represented by the
Secretary to Government
Ministry of Defence. South Block
New Delhi-110 001.
2. The Flag Officer Commanding-in-Chief
Southern Naval Command
Headquarters, Naval Base, Kochi-4.

Respondents

(By Advocate: Mr.Sunil Jacob Jose, SCGSC)

This Original Application having been heard on 12th June, 2013, the Tribunal on the same day delivered the following:

ORDER

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

The admitted facts of the case are that the applicants joined the respondents' organization on the following dates as casual labourers and their date of temporary status as also the date of regularization are also indicated in the table:-

<i>S.No.</i>	<i>Date of initial engagement as casual labourer</i>	<i>Date of conferring temporary status</i>	<i>Date of regularisation</i>
1 st Applicant	18-11-1976	03-11-2000	24.10.2005
2 nd Applicant	05-05-1981	18.04.2001	24.10.2005
3 rd Applicant	10-07.1978	24.05.2001	24.10.2005
4 th Applicant	16.01.1986	23.10.2000	06-.02-.2006

2. New pension scheme had been introduced w.e.f. 01-01-2004 and the applicants were contributing to the same as their date of regularization is posterior to 01-01-2004. The claim of the applicants is that since half of the temporary status shall have to be counted as qualifying service, if the same is taken into account, the applicant's date of commencement of qualifying service would be advanced anterior to 01-01-2004 in the event of which they would be entitled to be governed by the earlier Pension Rules, 1972. Representation submitted having yielded no desired result, the applicants have filed this OA seeking the following reliefs:-

- a) Declare that applicants are governed by and entitled to pensionary benefits under the old pension scheme applicable to employees who entered in service prior to 1.1.2004 in terms of Central Civil Services (Pension) Rules, 1972;
- b) Declare that applicants are entitled to count 50% of service rendered

by them on acquiring temporary status till regularization, for pension, in addition to their regular services;

c) Direct the respondents to categorise the applicants and regulate their services as employees governed by and entitled to pensionary benefits under the old pension scheme applicable to employees who entered in service prior to 1.1.2004 in terms of Central Civil Services (Pension) Rules, 1972 and grant them all due benefits accordingly; and

d) Grant such other and further reliefs as are deemed just and necessary in the facts and circumstances of the case including costs of this proceeding.

3. Respondents have contested the O.A. They have stated that as per DOPT order dated 26th April, 2004, the length of qualifying service for the purpose of retirement benefits has lost its relevance and hence, no credit of casual service as specified in para 5(v) shall be available to the casual labourers on their regularization against Group D posts on or after 01-01-2004. Annexure A-1 refers. As such, they have prayed for dismissal of the O.A.

4. Counsel for the applicants argued that since the period of temporary status service to the extent of half the total period of Temporary Status service would count for qualifying service, if the same is reckoned, the same would result in the date of qualifying service being advanced as under:-

	<i>Temporary status</i>	<i>Regularization</i>	<i>Half the Period of temp. status</i>	<i>Date- of advancement-of regularization</i>
App. 1	03/11/00	24-10-2005	2y 5 m 13 days	01/05/03
App.2	18-04-2001	24-10-2005	2Y 3 m 3 days	21-07-2003
App 3	24-05-2001	24-10-2005	2Y 2 m 15 days	09/08/03
App 4	23-10-2000	06-02--06	2Y 09 m 13 dys	23-4-2003

5. Counsel for the respondents submitted that order dated 26th April, 2004 is specific in regard to non counting of the casual labour service period and hence, the applicants are not entitled to any benefit of their past services.

6. Arguments were heard and documents perused. This case is identical to the one decided recently in OA 722 of 2012, wherein the Tribunal has held as under:-

"6. Arguments were heard and documents perused. The decision in OA No. 2332 of 2010 clinches the issue. Therein in the facts of the case are that the applicant therein was engaged as Casual labour in 1991 and he was regularized as Group D in June, 2007. Since the date of regularization is posterior to 01-01-2004, respondents therein had rejected the claim of the applicant for treating his service as one coming under the old Pension Rules. While so rejecting the case of the applicant therein, respondents have relied upon the OM dated 26-04-2004 (which is the same as relied upon by the respondents in this OA). Thus, in para 4 the Bench referred to the main grievance stating, "His main grievance was with regard to applicability of OM dated 26-04-2004." After discussing the entire case, the Principal Bench has stated in para 9 and 10 held as under:-
"The counsel thus submitted that even in respect of those covered under that

scheme for with OM dated 26th April, 2004 is applicable, the said OM is not applicable under similar circumstances, and as such, applicability of the provisions of the order dated 26th April, 2004 to the applicant who is covered under an entirely different scheme does not arise." Counsel for the applicant has further relied upon the decisions of this Bench as contained in the Annexure to the Rejoinder, already referred to above.

7. *Counsel for the respondents relied only upon the said OM dated 26th April, 2004.*

8. *Arguments were heard and documents perused. The facts are admitted. If 50% of the Temporary Service is taken into account, then the applicant's deemed date of regularization dates anterior to 31-12-2003. As such, as in other cases, he is entitled to count his 50% of temporary service consequent to which, his date of regularization is deemed to be advanced to a date of 01-01-2001 (i.e. 7 years prior to his actual date of regularization). This enables the applicant to claim the benefits available under the earlier Pension Rules, 1972.*

9. *Thus, the application succeeds. It is declared that the provisions of OM dated 26th April, 2004 is not applicable to the scheme framed by the Postal Department in 1991, which covers the case of the applicant. As held in various cases referred to in the OA, the applicant is entitled to count his regular service by reckoning half the years of temporary service prior to regularization. Accordingly, he would be governed by that Pension Rules, which was in vogue at the time of his deemed regularization.*

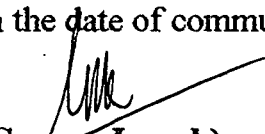
10. *Respondents are, therefore, directed to proceed further with grant of pension to the applicant on the basis of his last pay drawn and in accordance with the extant rules, work out the amount of pension due, also calculate the extent of arrears arising out of the same and make the payment. This order shall be complied with, within a period of four months.*

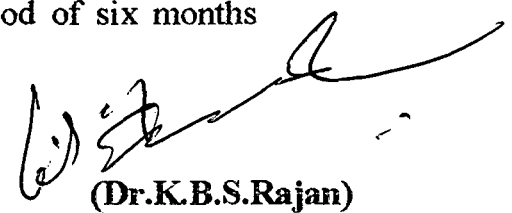
11. *No orders as to costs."*

7. In view of the above, the OA is allowed. It is declared that taking into account half the temporary service as provided for in para 5(v) of the order dated 10-09-1993, the applicants' date of initial appointment would be deemed to be advanced to a period anterior to 01-01-2004 as stated in para 4 above. Respondents are therefore, directed to pass suitable orders -

- (a) with reference to the entitlement of the applicants for pension under the CCS(Pension) Rules, 1972;
- (b) adjust the amount of CPF recovered from the applicants towards the GPF contributions;
- (c) GPF Contributions be recovered for the future period till their superannuation.

8. This order shall be complied with, within a period of six months from the date of communication of this order. No costs.


(K. George Joseph)
Administrative Member


(Dr. K. B. S. Rajan)
Judicial Member