

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 517/ 2011

Tuesday, this, the 23rd day of August, 2011.

CORAM

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

1. P.Janaki,
Working as Group D,
O/o Postmaster General,
Northern Region, Calicut-673 001.
2. T.P.Kuttimalu,
Working as Group D (Multi Tasking Staff),
O/o Postmaster General,
Northern Region, Calicut-673 001.Applicants

(By Advocate Mr M.R.Hariraj)

v.

1. Union of India represented by
Secretary to Government of India,
Department of Posts,
Ministry of Communications,
New Delhi-110 001.
2. Chief Postmaster General,
Kerala Circle,
Thiruvananthapuram-695 033.
3. Postmaster General,
Northern Region, Calicut-673 001.
4. Accounts Officer,
Postmaster General's Office,
Northern Region, Calicut-673 001.Respondents

(By Advocate Mr Pradeep Krishna, ACGSC)

This application having been finally heard on 23.8.2011, the Tribunal on delivered the following:

ORDER

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

The question involved in this case is as to whether the two applicants in this O.A are governed by the new Pension Rules or the earlier CCS(Pension)

Rules, 1972.

2. The admitted facts of the case are as under:

(a) The two applicants commenced service as Part Time Casual Labourers in 1980s and on introduction of Casual Labourers (Grant of Temporary Status and Regularisation) Scheme vide the D.G. Posts letter dated 12.4.1991, temporary status was to be conferred on the casual labourers in employment as on 29.11.1989 and who continue to be currently employed and have rendered continuous service of at least one year provided that during the year they must have been engaged for a period of 240 days. The applicants were accordingly conferred with temporary status with effect from 1.12.1995 vide Annexure A-3 order dated 22.2.1996. According to para 5 thereof 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after regularisation as a Group D official. On completion of 3 years of continuous service as temporary status casual labourers, applicants became eligible to be treated at par with temporary Group'D' employees and accordingly, by Annexure A-4 order dated 12.2.1999 such a status was afforded to the applicants with effect from 1.12.1998.

(b) Despite the grant of temporary status and having treated at par with temporary Group'D' employee, the services of the applicants were not regularised for a substantial period and consequently, the applicants moved O.A.895/2003 and the same was allowed vide order 29.10.2004 at Annexure A-5. By this order, the respondents were directed to consider the applicants for regularisation against the existing vacancy under the 3rd respondent (Post Master General, Northern Region, Calicut-11). Writ Petition challenging the aforesaid order vide W.P.(C)

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No.6006/2005(S) was dismissed vide Annexure A-6 judgment dated 17.10.2005.

(c) With the rejection of the Writ Petition, the respondents were to consider the case of the applicants for regularization and vide order dated 11.10.2006 in M.A.183/2006, the respondents were directed to consider the case of the applicants for posting though not from 29.10.2004, the initial date of order in O.A.895/2003 at least with effect from the date from which certain vacancies were diverted.

(d) In compliance of the above order of the Tribunal, respondents had issued necessary orders of appointment as Group'D' with effect from 24.5.2006 vide Annexure A-8.

(e) The Government had introduced Contributory Pension Scheme in respect of persons appointed in the Central Government with effect from 1.1.2004. Thus, in respect of those whose appointments are subsequent to 1.1.2004, the earlier CCS(Pension) Rules, 1972 would not apply and the new Contributory Pension Scheme alone would apply. This, however, involved compulsory recovery, from the pay of the individuals so appointed, their contribution towards that pension. Incidentally such a recovery was not effected in respect of the applicants herein.

(f) First applicant retired in June 2011 while the second applicant continues to be in service.

(g) With the retirement of the 1st applicant, the question arose about the entitlement of the applicant to pension and it is at this juncture the respondents vide Annexure A-1 dated nil May, 2011 stated that the 1st applicant was not eligible for CCS(Pension) Rules, 1972 and that she would come under the new pension scheme only in view of the fact that the said applicant joined the Central service on regular basis only from 24.5.2006 (posterior to 1.1.2004).



3. Aggrieved by the above Annexure A-1 order, the applicants have moved this Tribunal seeking the following reliefs:

- i) To quash Annexure A-1;
- ii) To declare that the applicants are entitled to be granted pension as per the CCS (Pension) Rules, 1972;
- iii) To declare that the applicants are entitled to have half the period of their service as full time casual labourers, and half the period of service as temporary status casual labourers, and the entire period they were treated on par with temporary Group D employees reckoned as qualifying for determining their qualifying service for the purpose of fixation of pension and other pensionary benefits;
- iv) To direct the respondents to fix, draw and disburse the pension and other consequential benefits of the applicants accordingly and to pay the applicants monetary benefits flowing therefrom including arrears of pension and pensionary benefits with interest @12% per annum.

4. Respondents have contested the O.A. According to them, as the applicants had joined the Central Government on regular basis only on 24.5.2006, CCS (Pension) Rules, 1972 were not applicable in their cases. Para 4 and 5 refer.

5. The applicant has filed rejoinder stating that the Principal bench of the Tribunal in T.A.No.444/2009 in the matter of **Dalip Kumar v. Union of India and another** held that employees who were granted temporary status prior to 1.1.2004 and regularised after introduction of the new pension scheme are to be governed by the CCS(Pension) Rules, 1972. The order of the Tribunal was challenged in Writ Petition © No.12690/2009 before the Hon'ble High Court of Delhi which upheld the decision of the Tribunal and dismissed the Writ Petition



vide Annexure A-10 judgment dated 27.1.2010.

6. 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 has argued 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. Counsel for the respondents fairly stated that the facts in the case of **Dalip Kumar (supra)** are identical to that of the applicants in this O.A.

8. Arguments were heard and documents perused. 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 ad 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.

11. No costs.



Dr K.B.S.RAJAN
JUDICIAL MEMBER

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