

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.164/12

Wednesday this the 6th day of March 2013

C O R A M :

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

1. Mohanan N.,
S/o.late Madhavan,
Group D Mail Man, Head Record Office,
RMS 'CT' Division, Kozhikode.
Residing at Nangari House,
Post Nellikkode, Kozhikode – 673 016.
2. Thankavelu V.,
S/o.late Velayudhan Poosari,
Group D Mail Man, Sub Record Office,
RMS 'CT' Division, Palakkad – 678 002.
Residing at Kozhiparamb House,
Vadakkumthara Post, Palakkad – 678 012. ...Applicants

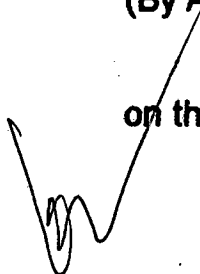
(By Advocate Mr.O.V.Radhakrishnan,Sr. with Mrs.K.Radhamani Amma)

V e r s u s

1. Superintendent of RMS,
'CT' Division, Kozhikode.
2. Postmaster General,
Northern Region, Kozhikode – 673 011.
3. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram – 695 033.
4. Director General of Posts,
Dak Bhavan, New Delhi – 110 001.
5. Union of India represented by its Secretary,
Ministry of Communications, New Delhi – 110 001.
6. Director,
Ministry of Personnel, Public Grievances and Pensions,
Department of Personnel and Training,
Government of India, New Delhi – 110 001. ...Respondents

(By Advocate Mr.Pradeep Krishna,ACGSC)

This application having been heard on 6th March 2013 this Tribunal
on the same day delivered the following :-



ORDER

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

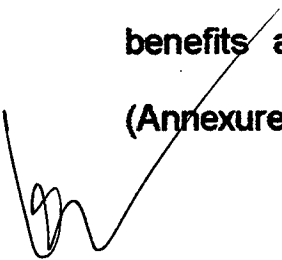
The question involved in this O.A is whether the applicants (two in number) are covered under the 1972 Pension Scheme or New Pension Scheme introduced with effect from 1.1.2004.

2. Briefly the facts of the case are as under :-

(a) The 1st applicant was engaged as casual labourer in 1984 and was granted temporary status as on 1.6.1994. With effect from 1.10.1997 he was treated at par with regular Group D employee. On 17.7.2010 the applicant's service has been regularized.

(b) The 2nd applicant was engaged in 1982 as casual labourer and was accorded temporary status with effect from 1.5.1996. From 1.5.1999 he was treated as a temporary Group D employee and from 17.7.2010 his services were regularized.

3. Provision exists for reckoning 50% of the temporary status service rendered as qualifying service. After rendering three years of continuous service with temporary status the casual labourer shall be treated at par with temporary Group D employee and would thereby be entitled to such benefits as are admissible to Group D employee on regular basis (Annexure A-11 refers).



4. The New Pension Scheme was introduced with effect from 1.1.2004 which replaced the earlier Pension Scheme as well as General Provident Fund and Contributory Provident Fund was introduced. On 26th April, 2004 the Department of Personnel, the nodal ministry, had issued the following Office Memorandum :-

Subject :- Introduction of New Pension Scheme – Modification of scheme for grant of temporary status.

The undersigned is directed to say that the scheme for grant of temporary status and regularization of casual workers in Central Govt. Offices formulated in pursuance of the judgment dated 16.2.1990 of the Central Administrative Tribunal, Principal Bench in the case of Raj Kamal & Others Vs. Union of India has been reviewed in the light of introduction of New Pension Scheme in respect of persons appointed to the Central Govt. service on or after 1.1.2004 and it has been decided to modify the scheme as under :-

(i) As the new pension scheme is based on defined contributions, the length of qualifying service for the purpose of retirement benefits has lost its relevance, 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 1.1.2004.

(ii) As there is no provision of General Provident Fund in the new pension scheme, it will not serve any useful purpose to continue deductions towards GPF from the existing casual employees, in terms of para 5 (vi) of the scheme for grant of temporary status. It is, therefore, requested that no further deductions towards General Provident Fund shall be effected from the casual labourers w.e.f 1.1.2004 onwards and the amount lying in their General Provident Fund accounts, including deductions made after 1.1.2004, shall be paid to them.

2. The existing Guidelines contained in this Department's O.M.No.49014/2/86-Estt(C) dated 7.6.1988 may continue to be followed in the matter of engagement of casual workers in the Central Government Offices.

5. In view of the above the Department has stopped recovering the General Provident Fund contribution from the applicants. But commenced

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Tribunal, Principal Bench in the case of Raj Kamal & Others

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The undersigned is directed to say that the scheme for

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Subject :- Introduction of New Pension Scheme - Modification

Office Memorandum :-

the Department of Personnel, the nodal ministry, had issued the following

Fund and Contributory Provident Fund was introduced. On 26th April, 2004

which replaced the earlier Pension Scheme as well as General Provident

4 The New Pension Scheme was introduced with effect from 1.1.2004

recovery of Contributory Provident Fund contribution. The General Provident Fund credit available with the applicants were also paid to them. The applicants were given to understand that in view of their regularization having taken place only on 2010, they will be considered for Contributory Provident Fund only and no pension shall be granted under the earlier CCS (Pension) Rules. Having exhausted their departmental remedy by way of filing representations, the applicants have approached the Tribunal seeking the following reliefs :-

1. To declare that Annexure A-17 to the extent it directs that no credit of casual service, as specified in para 5(v) of Casual Labourer (Grant of Temporary Status and Regularization) Scheme, 1993 shall be available to the casual labourers on their regularization against Group D posts on or after 1.1.2004 is clearly illegal, arbitrary, ultra vires, unconstitutional and hence unenforceable.
2. To call for the records leading to Annexure A-17 and to set aside the same.
3. To declare that the applicants having been completed three years in the newly acquired temporary status with effect from 1.6.1997 and 1.5.1999 respectively are entitled to be treated at par with temporary Group D employees and entitled to such benefits as are admissible to Group D employees on regular basis as directed in the decision reported in (1990) Supp. SCC 113 and Annexure A-12 order of the Bangalore Bench of the Hon'ble Central Administrative Tribunal.
4. To declare that the action of the respondents in treating the applicant as post 1.1.2004 employees for pensionary benefits on the ground that they were appointed as regular Group D subsequent to 1.1.2004 notwithstanding that they completed three years in the newly acquired temporary status on and from 1.6.1997 and 1.5.1999 respectively long before the coming into force of the New Contributory Pension as illegal, arbitrary and ultra vires.
5. Issue appropriate direction or order directing the 1st respondent not to recover 10% of the monthly pay of the applicants towards pension contribution and to refund the amounts illegally recovered from the applicants towards new contributory pension scheme with interest applicable to GPF expeditiously and at any rate within a time frame that may be fixed by this Hon'ble Tribunal.



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filing representations, the applicants have approached the Tribunal seeking (Pension) Rules. Having exhausted their departmental remedy by way of Provident Fund only and no pension shall be granted under the earlier CCS having taken place only on 2010, they will be considered for Contributory The applicants were given to understand that in view of their regularization Provident Fund credit available with the applicants were also paid to them. recovery of Contributory Provident Fund contribution. The General

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2. To call for the records leading to Annexure A-17 and to set aside the same.

3. To declare that the applicants having been completed three years in the newly acquired temporary status with effect from 1.6.1997 and 1.2.1999 respectively are entitled to be treated at par with temporary Group D employees and entitled to such benefits as are admissible to Group D employees on regular basis as directed in the decision reported in (1990) Supp. SCC 113 and Annexure A-12 order of the Bangalore Bench of the Hon'ble Central Administrative Tribunal.

4. To declare that the action of the respondents in treating the applicant as post 1.1.2004 employees for pensionary benefits on the ground that they were appointed as regular Group D subsequent to 1.1.2004 notwithstanding that they completed three years in the newly acquired temporary status on and from 1.6.1997 and 1.2.1999 respectively long before the coming into force of the New Contributory Pension as illegal, arbitrary and ultra vires.

5. Issue appropriate direction or order directing the respondent not to recover 10% of the monthly pay of the applicants towards pension contribution and to refund the amounts illegally recovered from the applicants towards new contributory pension scheme with interest applicable to GPF expeditiously and at any rate within a time frame that may be fixed by this Hon'ble Tribunal.

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6. To issue appropriate direction or order directing the respondents to grant pension and other retiral benefits due to the applicants admissible under CCS (Pension) Rules, 1972 reckoning their qualifying service for pension in the cadre of Group D with effect from 1.6.1997 and 1.5.1999 respectively and other benefits admissible to regular Group D employees on that basis on their respective dates of their retirement.


7. To issue appropriate direction or order directing the respondents to reckon 50% of their casual labour service with temporary status with effect from 1.6.1994 to 1.5.1996 as qualifying service for pension in the cadre of Group D and for other benefits admissible to regular Group D employees on that basis on their respective dates of their retirement.

8. To grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case.

9. To award costs to the applicants.

6. The respondents have contested the O.A. They have taken up the ground of limitation since Annexure A-17 dated 26.4.2004 is under challenge. They have also stated that since the applicants have entertained the General Provident Fund credit balance when the same was refunded to them and have, without any hesistation, accepted the fact of being covered by the Contributory Provident Fund Scheme. Therefore, their case is liable to be dismissed.

7. After exchange of pleadings the case was heard. Counsel for the applicant submitted that according to the rules, 50% of the temporary status shall be counted for pension purpose and this 50% will be only upto the completion of three years of service as beyond that they are at par with any Group D employees on temporary basis. Though the applicants' services were regularized with effect from 17.7.2010 reckoning the period of 100% from the date of conferment of temporary Group D employees till




the date of regularization and 50% for the earlier period of temporary status, the applicants' appointment date should be deemed to have been advanced. In that event the applicants become entitled to all the benefits of the pension scheme. Counsel has also invited our attention to a decision by the Bangalore Bench of the Tribunal on an identical issue (Annexure A-12).

8. Counsel for the respondents emphasized upon the limitation and acquiescence.

9. Arguments were heard and documents perused. Facts are not in dispute. The 1st applicant has put in 40 months of temporary status service followed by service which should be treated as at par with any temporary Group D employees and lastly regularized with effect from 17.7.2010. According to him, from the temporary status service half the period, namely, 20 months should be added to full period from the date of commencement of deemed temporary Group D service, till the date of regularization. Of course, period beyond that shall also qualify for pension purpose. Thus, though the 1st applicant has been regularized with effect from July, 2010 taking into account 13 years of service plus half of 40 months service, his date of commencement of service gets advanced automatically to a period well anterior to 1.1.2004. Similar is the case of 2nd applicant.

10. Annexure A-12 is specific that the period of service rendered as a temporary status Group D shall qualify for pension purposes.




11. Though counsel for the respondents is pressing for dismissal of the O.A on limitation, it could be seen from the facts that the applicants got the vested right for enjoying pension only on the date of their regularization. The same is July, 2010. If 50% of temporary service prior to deemed Group D service is added to the period of temporary Group D service, the same accounts to more than 14 and a half years in respect of 1st applicant. Thus, reckoning this period as qualifying service, the date of regularization is ante-dated to 1996 and insofar as 2nd applicant is concerned, the date of reckoning regular service shall be 1997.

12. Karnataka C.A.T has clearly dealt with the entire case which is identical in nature with the case in hand. In that case a clear order allowing the claims has been passed vide Annexure A-12.

13. The case of the applicants is squarely covered by the aforesaid order. As such, the applicants are entitled to count the service and correspondingly their date of initial appointment shall be advanced to 1996 and 1997 respectively.

14. If regular appointment is pre 1.1.2004 then General Provident Fund subscription is a must. In this case the same has been refunded. The applicants are thus under legal obligation to repay the money received by them and the same shall be paid with interest at the rate for each year specified in respect of General Provident Fund. In addition, the subscription for the period not paid should also be collected from the applicants. While so working out, the contribution made under the Contributory Provident Fund should be adjusted against the amount



payable by the applicants. The balance may be claimed from the applicants to be paid either in one lumpsum or easy installments as may be prescribed by the authorities.

15. In view of the fact that the applicants deemed date of appointment dates back to a period anterior to 1.1.2004, it is declared that the applicants are not disentitled to pension under the CCS (Pension) Rules and the New Pension Scheme is not applicable in this case. Though order dated 26.4.2004 is under challenge, we hold that insofar as the applicants are concerned, the same is not applicable. It may be applicable to cases where temporary status itself is granted after 1.1.2004.

16. In view of the above the O.A is allowed. The respondents are directed to calculate the amount of General Provident Fund due from the applicants and collect the same in one lumpsum or easy installments. The applicants shall be governed by CCS (Pension) Rules, 1972. Hence, General Provident Fund shall be recovered from them as per the rules while no subscription for Contributory Provident Fund shall be admissible. The respondents are directed to pass suitable orders within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Dated this the 6th day of March 2013)


K.NOORJEHAN
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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