

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**Original Application No. 176 of 2013
with
Original Application No. 594/2013**

Thursday, this the 03rd day of October, 2013

CORAM:

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. O.A. No.. 176/2013

1. V.M. Ramachandran,
S/o. Madhavan Pillai,
Aged 47 years, Group-D,
Railway Mail Division,
O/o. SSRM Ernakulam,
Residing at Valom Thodathu House,
Maradu, Ernakulam.
2. V.P. Surendran, S/o. V.P. Menon,
Aged 47 years, Group-D,
Head Post Office, Vaikom,
Kottayam Postal Division,
Residing at H.No. 8/996 F Chithira,
Koovapadom, Cochin – 682 002
3. P.M. Nazeer, S/o. K.M.Moosa,
Aged 47 years, Group-D,
O/o. Senior Superintendent,
Ernakulam Postal Division, Ernakulam,
Residing at Pootheypadam House,
Nettoor P.O., Ernakulam District.
4. V.P. Vijaya Kumar, S/o. U.P.Menon,
Aged 52 years, Group-D,
Mattancherri Post Office,
Ernakulam Postal Division,
Residing at House No. 8/1639,
A.K. Road, Cochin – 682 002
5. T.B. Vincent, S/o. T.B. Barnad,
Aged 52 years, Group-D,
O/o. Superintendent, Ernakulam Mails Dn.,
Residing at Thundathil House,
V.V.K. Valath Road, Cheranalloor P.O.,
Cochin – 682 034

... Applicants.



(By Advocate Mr. V. Sajith Kumar)

v e r s u s

1. Union of India represented by
Secretary to the Government,
Department of Posts,
Government of India, New Delhi – 110 001
2. The Chief Postmaster General,
Kerala Circle, Trivandrum – 695 001
3. The Senior Superintendent of Post Offices,
Ernakulam Postal Division – 682 011
4. Senior Superintendent of Post Offices,
Kottayam Postal Division, Kottayam.
5. The Superintendent,
Railway Mails Division, Ernakulam – 682 011 ... Respondents.

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

2. O.A. No. 594/2013

S. Vijayan, S/o. Sreenivasan,
Aged 58 years, MTS,
Mattanchery P.O., Kochi – 682 002,
Residing at H.No. 8/677, Koovapadam,
Murukkum Thara Parambu, Kochi – 682 002 ... Applicant.

(By Advocate Mr. V. Sajith Kumar)

1. Union of India represented by
Secretary to the Government,
Department of Posts,
Government of India, New Delhi – 110 001
2. The Chief Postmaster General,
Kerala Circle, Trivandrum – 695 001
3. The Senior Superintendent of Post Offices,
Ernakulam Postal Division – 682 011 ... Respondents.

(By Advocate Mr. Varghese P. Thomas, ACGSC)

These Original Applications having been heard on 03.10.2013, the
Tribunal on the same day delivered the following :

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ORDER**HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Having common facts and same legal issue involved in these O.As, they were heard together and are disposed of by this common order.

2. All the applicants entered into service of the respondents as casual mazdoors and were granted temporary status with effect from 29.11.1989 or 01.04.1991, as the case may be. All of them are now regularised as regular Group-D. While working as temporary status mazdoors, the respondents were recovering GPF as per the scheme upto 2002-2003. Upon regularisation as Group-D after 01.01.2004, the respondents have started recovery in regard to new pension scheme. They had submitted representations to the respondents seeking to include them in the statutory pension scheme. But no positive result came up. Aggrieved, they have filed these O.As for the following reliefs :

- (i)To declare that the applicants are entitled to be included in the statutory provision scheme in view of their decades by service as temporary Group-D prior to 01.01.2004;
- (ii)To direct the respondents to include the applicants into statutory pension scheme existed prior to 01.01.2004 given due weightage to their temporary service, eligible as qualifying service under CCS (Pension) Rules, and grant them all consequential benefits;
- (iii)Grant such other reliefs as may be prayed for and as the Court may deem fit to grant, and
- (iv)Grant the cost of this Original Application.

3. The applicants contended that they are entitled to be treated on par with Group-D employees for service benefits. As per Annexure A-1 Casual



Labourers (Grant of Temporary Status and Regularisation) Scheme, 1991, 50% of the service rendered under temporary status is to be counted for the purpose of retirement benefits after regularisation as Group-D official. There is no reason to ignore the pensionable service and for including them into the new pension scheme. As per Rule 13 of the CCS (Pension) Rules, 1972, qualifying service commences from the date of commencement of the temporary service if it results in regularisation of the official at a later point of time. When they are entitled to statutory pension and consequential benefits, there is no need to make recovery from the salary every month towards new pension scheme. This Tribunal in O.A. Nos. 418/2012 and 517/2011 had declared that the applicants therein were entitled to be governed by the pension scheme in force prior to 01.01.2004 and directed to grant pension as per CCS (Pension) Rules, 1972. The applicants herein are similarly placed and therefore, covered by the aforesaid orders of this Tribunal.

4. The respondents in their reply statement submitted that these O.As are barred by limitation. There is no provision to count the service rendered as temporary status Group-D prior to their regularisation for computation of pension as per the extant rules. Although there is a provision in the Annexure A-1 order for counting 50% of the service of the casual workers who were granted temporary status after rendering 03 years continuous service for the purpose of contribution of GPF, this benefit is not available to them after introduction of the new pension scheme with effect from 01.01.2004. The benefit of counting of service rendered after 03 years as temporary status casual labourer for the purpose of pension and terminal benefits will be available to those who were appointed and regularised prior to 01.01.2004



only. The applicants were admittedly appointed after 01.01.2004, hence they are governed by the new pension scheme. Temporary status casual laboures are treated on par with temporary Group-D employees, but they are not borne on the regular establishment of the respondent department.

5. In the rejoinder filed by the applicants, it was submitted that the reliefs prayed for are of recurring course of action and the applicants have approached this Tribunal within a short time of their placement in new pension scheme. They are yet to retire from service. On completion of 03 years temporary status mazdoor service, the applicants were treated on par with Group-D employees for all service benefits including provident fund and increment. The entire issues have been considered by this Tribunal in O.A. Nos. 418/2012 and 517/2011. After elaborately considering various directions as well as the decision of the Principal Bench in T.A. No. 444/2009, as upheld by the Hon'ble High Court of Delhi in W.P.(C) 12690/2009, this Tribunal decided in favour of employees like applicants. The judgement of Hon'ble High Court in the aforesaid Writ Petition has become final. It was also understood that the challenge against the judgement of Hon'ble Delhi High Court was also dismissed by the Apex Court.

6. I have heard Mr. Sajith Kumar, learned counsel for the applicants and Mr. Sunil Jacob Jose, learned SCGSC appearing for the respondents in OA No. 176/13 and Mr. Varghese P. Thomas, learned counsel appearing for the respondents in O.A. No. 594/12 and perused the records.

7. As rightly contended by the learned counsel for the applicants, these

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O.As are not hit by limitation as recovery on account of new pension scheme is of recurring nature and the applicants have not yet retired from service. It is not disputed that the applicants have been conferred with the temporary status long before the introduction of the new pension scheme with effect from 01.01.2004. Para 6 of the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1991 reads as under:

“6. 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after regularisation as Group-D official.”

The contention of the respondents is that with the introduction of the new pension scheme from 01.01.2004 vide O.M. No. 49014/1/2004-Estt(C) dated 26.04.2004, the scheme for grant of temporary status and regularisation of casual workers in Central Government offices has been modified to make the above provision irrelevant. The applicants have been given regular appointment as Group-D after 01.01.2004. As such, there is no case for them to make the CCS (Pension) Rules, 1972 applicable. This issue was considered in O.A. No. 517/2011 as under.:

“8. 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."

8. Bangalore Bench of this Tribunal in O.A. No. 397/2009, which is identical to this case, relied on para 12 of the judgement of the Hon'ble Supreme Court in ***Jagrit Mazdoor Union (Regd.) and Others vs. Mahanagar Telephone Nigam Limited and Another***, which reads as under:

"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".

9. The applicants were due for regular appointment upon completion of 03 years as temporary status mazdoors. As per rules, they are to be treated at par with temporary Group-D employees. The benefit of counting of 50% service as provided in the Casual Labourers (Grant of Temporary Status and



Regularisation) Scheme, 1991, cannot be nullified by an executive order. Further, as per Annexure R-1, the new pension scheme applies to new entrants to the Central Government service, except to Armed Forces, in the first stage. The applicants are not the new recruits after 31.03.2003. From the date the applicants completed 03 years of service after conferment of temporary status, they were entitled to count 50% of service rendered under temporary status for the purpose of retirement benefits upon regularisation as Group-D employees. Hence for the purpose of retirement benefits upon their regularisation, their entry into service should be counted from the mid point of their service as temporary status mazdoors.

10. In the result, I declare that the applicants are entitled to be included in the statutory pension scheme in force prior to 01.01.2004 in view of their service as temporary Group-D. Accordingly, the O.As are allowed as under.

11. The respondents are directed to grant pension as per CCS (Pension) Rules, 1972, to the applicants giving due weightage to their temporary service and grant them all consequential benefits within 60 days from the date of receipt of a copy of this order. No costs.

(Dated, the 03rd October, 2013)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

CVR.