

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.184/12

Tuesday this the 12th day of June 2012

C O R A M :

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

1. Ramlat P,
W/o.Abdul Nazeer MK,
Residing at Shafi Vihar,
Thazhe Kottani Paramba, Kozhikode.
Lower Division Clerk, Passport Office,
Kozhikode.
2. Radhakrishnan EK,
S/o.Embichikutty EK,
Residing at Mankuni Kuzhiyil,
PO Peringalam, Kozhikode – 673 571.
Lower Division Clerk, Passport Office,
Kozhikode.
3. Krishnanandan KP,
S/o.Gopalan KP,
Residing at Kudal Purakkal,
PO Mannur, Kozhikode – 673 328.
Lower Division Clerk, Passport Office,
Kozhikode.
4. Ambujakshy AP,
W/o.Unnikrishnan PV,
Mekkodi, PO Parannur,
Narikkuni, Kozhikode.
Office Assistant, Passport Office, Kozhikode.
5. Ambika C,
D/o.Chidambaram Pillai,
Maniloa Veedu, Kozhikode PO,
Cherutty Road, Kozhikode – 673 001.
Office Assistant, Passport Office, Kozhikode.

...Applicants

(By Advocate Mr.P.Ramakrishnan)

Versus

1. Union of India represented by Secretary to Government,
Ministry of External Affairs, New Delhi – 110 001:



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2. Union of India, represented by Secretary to Government, Ministry of Finance, New Delhi – 110 001.
3. The Joint Secretary (CPV) and Chief Passport Officer, Ministry of External Affairs, New Delhi – 110 001.
4. The Passport Officer,
Passport Office, Kozhikode – 673 006. ... Respondents

(By Advocate Mr. George Joseph, ACGSC)

This application having been heard on 12th June 2012 this Tribunal on the same day delivered the following :-

ORDER

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

This application has been filed seeking following reliefs :-

1. Declare that the applicants are entitled to be governed by the provisions of the CCS (Pension) Rules 1972 with regard to payment of pension.
2. Declare that the action taken to bring the applicants within the new pension scheme is illegal and unsustainable.
3. Such other orders and directions as are deemed fit in the facts and circumstances of the case.

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

All the applicants in this OA were earlier engaged as casual labourers followed by grant of temporary status, with effect from 01-09-1993 vide Annexure A-3. Subsequently they were also regularized in group D posts where-after they have also been promoted to certain next higher posts. Their regularisation, which were sometime in 2007 followed their temporary status uninterruptedly. This is the admitted position. Under the existing rules, half the temporary status period qualified to be added as qualifying service for the purpose of pension and other terminal benefits.

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3. The CCS Pension Rules, 1972 are applicable to those regular employees who were inducted into the service prior to January 1, 2004. With effect from January 1, 2004 a new scheme was introduced in respect of pension. According to the applicants they were covered by the earlier 1972 rules since half the period of temporary status when added to the regular service, would advance the qualifying service from a period anterior to January 1, 2004. However, according to the respondents, it is only the new rules of pension that would be applicable as, their period of regularisation was posterior to January 1, 2004. Hence this OA seeking the reliefs as extracted above.

4. The question that arises for consideration is as to whether the applicants are entitled to that claim of the applicants.

5. Respondents have contested the OA. After the pleadings are compete, the case was heard.

6. Counsel for the applicants submitted that the issue in question stands resolved by certain earlier decisions. In this regard he has invited our attention to Annexure A-8 of the OA whereby it has been held that if on taking into account the period of temporary service for the purpose of pension as qualifying period to the extent admissible under the existing rules, the same would advance the period of regular appointments, and if on such advancement the commencement of regular appointment would be anterior to January 1, 2004, the individual should be covered by the 1972 pension rules. Counsel for the applicants submitted that the decision

in Annexure A-8 is supported by an earlier decision of the Principal Bench as also of the High Court of Delhi. As such, the counsel for the applicants has submitted that following the judicial discipline, it is appropriate that the precedent is adopted.

7. Counsel for the respondents did not deny the fact of the existence of Annexure A-8 order, which also relates to certain employees of their own organisation. He has however submitted that as regularisation took place after 2004, the applicants would be covered by the new pension rules.

8. Arguments were heard and documents perused. The order referred to by the applicants' counsel in O.A.No.918 of 2011 decided on 13-02-2012 inter alia reads as under :-

"3. Respondents have contested the O.A. According to them, there has been a conscious decision not to include the period prior to regularization for the purpose of ascertaining the entitlement to new or old pension scheme. In this regard, they have annexed a copy of the O.M. dated 26-04-2004 which inter alia reads as under :-

"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 Government 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."

4. Counsel for the applicant submitted that the issue is no longer res-integra as the Principal Bench has in TA No.444/2009 in the case of Dalip Kumar vs Union of India had held that though the regular appointment of such persons be posterior to 01-01-2004, if the same is preceded by temporary status would be entitled to the pension scheme as per the CCS (Pension) Rules, 1972. This order of the Tribunal was challenged before the High Court of Delhi in W.P. (C) No.12690/2009 and the High Court had dismissed the writ petition. On the strength of the same, this Tribunal in OA No.517 of 2011 had allowed the OA in which the facts of the case are exactly identical to that of the instant case.

5. Counsel for the respondents has not disputed the factual position as contended by the counsel for the applicants and also about the precedents cited above.

6. Arguments were heard and documents perused. In the writ petition No.12690 of 2009, the High Court of Delhi has held as under :-

" The petitioner, Union of India through Secretary, Ministry of Health & Family Welfare, challenges the order dated 7th July, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in T.A.No.444 of 2009 titled Dalip Kumar v. Union of India and another directing the petitioner to treat the respondent covered under CCRS Pension Scheme.

The respondent had filed a petition seeking grant of pension as per the pension scheme in vogue when he acquired temporary status in 1997. Much after the grant of temporary status and continuing on the said post in Group D.

This is not disputed that petitioner was appointed to the substantive post on 29th June, 2004 and by that time another scheme referred to as "New Defined Contribution Pension Scheme" had been introduced from 1st January, 2004.

The Tribunal has relied on statutory rule like Rule 13 of the CCS (Pension) Rule, 1972 which categorically stipulates that qualifying service of a government servant commences from the date he is asked to charge on a temporary capacity provided that this temporary service is followed without interruption by substantive appointment in the same or in another service or post. The Tribunal noticed that the respondent was granted temporary status which continued and he was appointed in substantive

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post in Group D and, therefore, under Rule 13 his qualifying service would commence from the date of grant of temporary status.

Learned counsel for the petitioner relying on Central Civil Service (Pension) Rules, 1972 has contended that the rule is applied to government servants appointed on or before 31st day of December, 2003 and it will not be applicable to the respondent as he was appointed to the substantive post on 29th June, 2004. If Rule 13 of the CCS (Pension) Rule, 1972 obligates commencing of qualifying service from the date an employee takes charges of the post, on 29th June, 2004 on appointment after continuous service on the temporary post, it will relate back to 1997 when the temporary status was granted to the respondent. Though new pension scheme was introduced from 1st January, 2004, however, Rule 13 of CCS (Pension) Rules, 1972 has not been abrogated by the new pension scheme salient features which are as under :-

"Introduction of New Pension Scheme

Government of India have introduced a New Defined Contribution Pension Scheme replacing the existing system of Defined Benefit Pension System vide Government of India, Ministry of Finance, Department of Economic Affairs Notification, dated 22.12.2003 (copy enclosed). The New Pension Scheme comes into operation with effect from 1.1.2004 and is applicable to all new entrants to Central Government service, except to Armed Force, joining Government service or order after 1.1.2004.

The salient features of the New Pension Scheme are as follows :-

The New Pension Scheme will work on defined contribution basis and will have two tiers – Tier-I and II. Contribution to Tier-I is mandatory for all Government servants joining Government service on or after 1.1.2004, whereas Tier-II will be operational and at the discretion of Government servants.

In Tier-I, Government servants will have to make a contribution of 10% of his Basic Pay plus DA, which will be deducted from his salary bill every month by the PAO concerned. The Government will make an equal matching contribution.

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Tier-I contributions (and the investment returns) will be kept in a non-withdrawable Pension (Tier-I Account. Tier-II contributions will be kept in a separate account that will be withdrawable at the option of the Government servant. Government will not make any contribution to Tier-II account.

The existing provisions of Defined Benefit Pension and GPF would not be available to new Government servants joining Government service on or after 1.1.2004."

The scheme is applicable to all new entrants to the Government service, however, it does not take away the rights of old entrants prior of 31.12.2003. In the facts and circumstances, on the plea of the petitioner, the order of the Tribunal directing the petitioner to treat the applicant covered under CCRS Pension Scheme cannot be faulted. There is no illegality or irregularity in the order of the Tribunal dated 7th July, 2009 requiring any interference by this Court. The writ petition is, therefore, dismissed."

7. In the case of the applicant in OA No.517 of 2011, this Bench has, vide order dated 23-08-2011, held as under :-

"8. Arguments were heard and documents perused. Pension under the CCS (Pension) Rules, 1972 is applicable subject to fulfillment 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 fulfillment 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 applicant'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. In view of the above, adopting the above mentioned order, this OA is allowed. It is declared that the applicants shall be covered by the CCS(Pension) Rules, 1972 and not by the new pension scheme. Consequently, their cases be processed accordingly. Subscription under the new pension scheme shall not be recovered by the respondents from the applicants and if any such amount has in the past been recovered, the same shall be refunded to the applicants within two months from the date of receipt of copy of this order."

9. The above order applies in all the four squares to the facts of this case. Further the aforesaid order does pertain to the respondents organisation only. In fact a like order had been passed in respect of postal departments as well as could be seen from Annexure A-7.

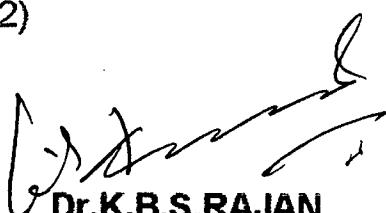
10. Though the aforesaid orders were passed by a single bench (one of us), since the aforesaid orders were based on the judgment of the High Court of Delhi, we have absolutely no hesitation to follow the aforesaid orders in respect of the instant case as well.



11. Accordingly, the O.A is allowed. It is declared that the applicants are covered by CCS (Pension) Rules, 1972 and not by the new pension scheme. Consequently their cases be processed accordingly. Subscription under the new pension scheme shall not be recovered by the respondents and if any such amount has in the past been recovered, the same shall be refunded to the applicants within two months from the date of receipt of this order.

12. Under the above circumstances there shall be no orders as to costs.

(Dated this the 12th day of June 2012)



Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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