

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO.232/2008

Dated this the 22nd day of July, 2010

C O R A M

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

G. Saramma W/o K. Velayudhan
Group-D Non test category
Office of the Director of Accounts
Kerala Circle, Thiruvananthapuram-1
residing at Thalikadu Veedu
Parottukonam, Nalanchira PO
Ulloor Village, Thiruvananthapuram....

Applicant

By Advocate Mr. Vishnu S. Chempazhanthiyil

Vs.

- 1 Director of Accounts Postal
Kerala Circle, GPO Complex
Thiruvananthapuram.
- 2 Chief Postmaster General
Kerala Circle,
Thiruvananthapuram.
- 3 The Director General
Department of Posts
Ministry of Communications
New Delhi.
- 4 Union of India represented by
its Secretary
Ministry of Personnel, Public Grievances
& Pensions, New Delhi.

Respondents

By Advocate Mr. Sunil Jacob Jose, SCGSC

The Application having been heard on 10.6.2010 the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant, entered service as a casual labourer in the RMS TV Division, Thiruvananthapuram in 1981, was conferred with temporary status w.e.f. 23.9.1997 and treated as a temporary Government servant w.e.f. 23.9.2000. While so, she was appointed as Group-D in non-test category in the office of the 1st respondent w.e.f. 30.10.2006 (A-5) and her pay was fixed at the minimum of the scale of pay of Rs. 2550-55-2660-60-3200 despite the fact that she was drawing the scale and increments w.e.f. 23.9.2000. She was also served with an application form requiring her to join the new pension scheme introduced by the Central Government w.e.f. 1.1.2004. The grievance of the applicant is that as she was enjoying the status of a temporary Group-D since 23.9.2000, she cannot be brought on to the new pension scheme merely because her service has been regularised w.e.f. 30.10.2006. According to her on continuation in the old pension scheme half of her service w.e.f. 23.9.2000 would be counted as qualifying service for pension. In the new scheme there is no provision for pension. Therefore, the new scheme is not beneficial to her. She also challenges the alteration of the temporary status scheme at Annexure A-8 as illegal and arbitrary as far as she is concerned. Therefore she filed this O.A to direct the respondents not to compel her to join the new pension scheme and for a declaration to regulate her service in terms of the pension scheme that existed prior to 1.1.2004.

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2 The respondents opposed the O.A by filing reply statement. They denied the contention of the applicant that she was appointed as Group-D w.e.f. 23.9.2000. They asserted that she was appointed as Group-D only w.e.f. 30.10.2006. However, they admitted that she was treated at par with temporary Group-D official on completion of three years of service after attainment of temporary status i.e. w.e.f. 23.9.2000. They further stated that the scheme for Grant of Temporary Status has been modified on introduction of new Pension Scheme by DOPT, produced as OM No. 49014/1/2004-Estt.(C) dated 26th April, 2004 (Annexure R-3). The relevant portion is extracted below:

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 regularisation of casual workers in Central Government 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 services 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 regularisation against Group-D post 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 reductions towards General Provident Fund shall be effected from the casual labourers with effect from 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.

The new Pension Scheme is applicable to those who have been appointed to Central Government Service on or after 1.1.2004 and that the applicant was regularly appointed much later i.e only from 30.10.2006 and hence she cannot be governed by CCS (Pension) Rules, 1972. The respondents have also produced the seniority list of Casual Labourers issued on 17.6.1999 to show that she was not appointed as temporary Group-D prior to 30.10.2006.

3 The applicant filed M.A. 160 and 161 of 2009 for production of documents and the respondents filed reply to the M.A.

4 We have heard learned counsel on either side.

5 The question that comes up for consideration is whether the applicant is entitled to say that she may not be compelled to join the new pension scheme introduced by the Central Government w.e.f. 1.1.2004 in spite of the fact that she was regularly appointed to the Group-D post only on 30.10.2006. The case of the applicant is that she was granted temporary status in 1997 and that she was treated as a temporary Government servant w.e.f. 23.9.2000. The respondents have produced the seniority list of Temporary Status Casual Labourers issued on 17.6.1999. It does not show that the applicant was working against a temporary Group-D post. There is no document to show that

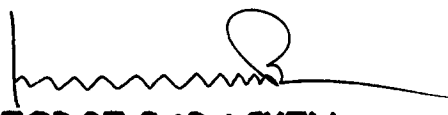
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the applicant was appointed as a Group-D before 1.1.2004 i.e the date of introduction of the new Pension scheme. The submission of the applicant is that the new pension scheme is not beneficial to her while under the old pension scheme half of the service as temporary status attained casual labourer would be taken for counting the qualifying service and she would get monthly pension on the basis of her pay drawn at the time of retirement. In the new Pension scheme there is no provision for monthly pension and her service as temporary status attained Casual labourer and temporary Group-D employee have no effect.

6 Admittedly, the new Pension Scheme was introduced w.e.f. 1.1.2004. As per the new scheme, those who are appointed on or after 1.1.2004 would be governed by the new rules. They have no choice to opt out of the new scheme. Therefore, we declare that the applicant who was appointed as a Group-D only on 30.10.2006 is governed by the new scheme, she has no choice to opt out of the scheme, Therefore, we do not find any merit in the O.A, it is dismissed. No costs.

Dated 22nd July, 2010


K. NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
O.A. NO.232/2008.

Dated this the 26th March, 2013

C O R A M

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

G.Saramma, W/o K.Velayudhan, Group-D Non test category,
O/o the Director of Accounts, Kerala Circle, Thiruvananthapuram
residing at Thalikadu Veedu, Parottukonam, Nalanchira P.O,
Ulloor Village, Thiruvananthapuram.

..Applicant

By Advocate Mr.Vishnu S.Chempazhanthiyil

Vs

- 1 Director of Accounts, Postal, Kerala Circle, GPO Complex,
Thiruvananthapuram.
- 2 The Chief Postmaster General, Kerala Circle, Trivandrum.
- 3 The Director General, Deptt of Posts, Ministry of
Communications, New Delhi.
- 4 Union of India represented by its Secretary
Ministry of Personnel, Public Grievances & Pensions,
New Delhi - 110001.

...Respondents

By Advocate Mr. Sunil Jacob Jose, SCGSC

The Application having been heard on 26.3.2013 the Tribunal on the same
day delivered the following:

O R D E R

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant who is working as Group-D under the 1st respondent, is
aggrieved by the inaction of the respondents to place him under the old pension
scheme and the benefits flowing therefrom.

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2 Brief facts of the case as stated by the applicant are that she entered the service of the respondent as a casual labourer in the year 1981 and was conferred temporary status on 23.9.1997. She was treated as a temporary government servant w.e.f 23.9.2000. While so, she was appointed as Group-D in non-test category in the office of the 1st respondent on 30.10.2006 and her pay was fixed at the minimum of scale of pay Rs. 2550-3200 despite the fact that she was drawing the scale and annual increments from 23.9.2000. It is submitted that the Govt of India introduced New Pension Scheme for those Central Govt employees w.e.f 1.1.2004, by virtue of it those who are appointed on or after 1.1.2004 shall be covered under the New Contributory Pension Scheme. The applicant was informed that she had to join the new pension scheme introduced by the Govt of India w.e.f 1.1.2004. The applicant avers that since she was enjoying the status of a temporary Group-D from 23.9.2000, she should not be brought under the new pension scheme which was introduced later. According to her continuing in the old pension scheme would be beneficial and advantageous to her as half of her temporary service from 23.9.1997 would be counted as qualifying service for pension and other pensionary benefits. Therefore she prays to direct the respondents not to compel her to join the new pension scheme and regulate her service in terms of the pension scheme that existed prior to 1.1.2004.

3 The respondents contested the O.A by filing their reply statement. It is admitted that the applicant was conferred with temporary status of Group-D on 23.9.1997 and on completion of three years from the date of conferment, she is treated as a temporary Group-D. She was regularised as Group-D w.e.f 30.10.2006. It is further submitted that w.e.f 1.1.2004, the Govt has introduced the New Pension Scheme and the said scheme is applicable in respect of all the employees who joined the service on or after 1.1.2004. Therefore, the applicant who was regularly appointed much later in Group-D cadre after 1.1.2004 was included in the New Pension Scheme.

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4 Heard the learned counsel for the parties and perused the record.

5 The learned counsel for the applicant has drawn our attention to 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, and submitted that this applies in toto to the facts of the present O.A. The counsel contended 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 is prior to 1.1.2004 and hence the new pension scheme cannot be applied and subject to fulfillment of minimum qualifying service, the applicants would be governed by the CCS(Pension) Rules, 1972.

6 The learned counsel for the applicant brought to our notice the documents produced and argued that the O.A is covered by the judgment of the Hon'ble High Court of New Delhi upholding the order of the Principal Bench in TA 444/09 and the order dated 23.08.2011 of the Coordinate Bench of this Tribunal in O.A No. 517/2011 and the decision therein is squarely applicable to this case. The order of this Tribunal was implemented by the respondents.

7 The sole issue that comes up for consideration in this O.A. is whether the applicant is entitled to be granted the benefit of the order of the Coordinate Bench of this Tribunal in OA No.517/2011. We have gone through the decision of the Tribunal in O.A No.517/2011. The operative portion of the order is extracted below:

"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

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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 and 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 During the final hearing, the counsel for the applicant has cited the order of Bangalore Bench of the Tribunal in O.A No.397/09, dealing with an identical issue, wherein the relevant portion from the judgment of the Hon'ble Supreme Court in Jagrit Mazdoor Union (Regd.) & Ors vs. Mahanagar Telephone Nigam Limited & Anr , 1990 (1) SLR 839 was extracted. The apex court directed in para 12 as follows:

"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".

Admittedly, the applicant who was granted temporary status on 23.9.1997 and completed three years as on 23.9.2000. She was due for regular appointment from 1997 onwards against vacancy in Group D cadre. However, as per rules she is treated at par with a temporary Group D employee from 23.9.2000 onwards. As per the Rules for Temporary Government employees, full service will be reckoned for pension.

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9 In view of the above, the O.A is allowed. It is declared that the applicant is entitled to be governed by the Pension Scheme in force prior to 1.1.2004 and the respondents are directed to grant all the benefits flowing from CCS (Pension) Rules, 1972. The respondents will ensure that the Pension Payment Order is issued and other eligible terminal benefits paid within a period of four months from the date of communication of this order. No costs.


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(Dr K.B.S.RAJAN)
JUDICIAL MEMBER

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