

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 274/2011

Reserved on 15.9.2015

Pronounced on 30-09-2015

Hon'ble Sri Navneet Kumar, Member (J)

Hon'ble Ms. Jayati Chandra, Member (A)

Ram Kishun aged about 59 years son of late Durga Prasad r/o Ram Chaura Post Garhi Chunauti, Banthara presently posted as Peon/Farash in National Botanical Research Institute, Lucknow.

....Applicant

By Advocate: Sri S.P.Singh

VS.

1. The Director General, National Scientific and Industrial Research Council of India, New Delhi.
2. The Director, National Botanical Research Institute, Rana Pratap Marg, Lucknow.

....Respondents.

By Advocate: None

ORDER

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present O.A. was taken up for hearing. No one has put in his appearance on behalf of the respondents, as such after invoking Rule 16(1) of CAT (Procedure) Rules, 1987, heard the learned counsel for applicant and orders are reserved.

2. The present Original Application is preferred by the applicant u/s 19 of the AT Act, with the following reliefs:-

i) That this Hon'ble Tribunal may be pleased to quash and set aside the impugned order dated 6.4.2010 and 23.2.2011 contained in Annexure No.1 and 2 to this original application passed by Administrative Officer on behalf of the Director, National Botanical Research Institute, Lucknow.

ii) That the Hon'ble Tribunal may be pleased to direct the opp. Parties No. 3 to regularize the services of the applicant on the post of class IV category as peon/ farash since the date of his

juniors services were regularized and pay all consequential benefits to the applicant.

iii) That the Hon'ble Tribunal may graciously be pleased to direct the opposite parties No. 2 and 3 to allow and calculate 50 % of services rendered under temporary status for purposes of pension and retirement benefits

iv) any other order or direction which this Hon'ble Tribunal may deem just and proper in the circumstances of the case to secure the ends of justice to the applicant.

v) allow the O.A. with cost.

3. The brief facts of the case are that the applicant was appointed as daily wager in 1974 and his services were regularized in 1993. The applicant submitted representation and subsequently juniors were granted temporary status in 2006. The applicant represented for grant of temporary status which was rejected in 2010 and again he submitted representation and finally it was rejected on 23.2.2011. Learned counsel for applicant also relied upon a decision of the Principal Bench of this Tribunal passed in O.A. No. 1026/2013 and has indicated that since the applicant is also similarly situated person, as such the respondents be directed to extent the benefit of old pension scheme and similar order may be passed in respect of the applicant as well.

4. On behalf of the respondents, reply is filed and through reply, it is indicated that applicant was initially engaged as daily wage casual worker w.e.f. 1.6.1974, later on conferred with temporary status in pursuance of CSIR letter dated 27.6.1994 and thereafter applicant submitted an application for the post of Farash and he was called for interview through letter dated 13.4.2005 and was recommended by the selection committee resulting which the applicant was issued offer of appointment letter dated 9.5.2005 and applicant joined on 11.5.2005 as such, the applicant remained daily wage casual worker from

1.6.1974 to 11.1.1994, temporary status casual worker from 12.1.1994 to 10.5.2005 and Farash from 11.5.2005 to 31.10.2012. The applicant also submitted a representation which was considered and rejected on 6.4.2010. It is also indicated by the respondents that General Provident Fund of the applicant was deducted w.e.f.12.1.1997 to July 2004 only and not thereafter keeping in view the O.M. dated 26.4.2004 as made applicable to the employees of CSIR and subsequently, a sum of Rs. 36,520/- was paid to the applicant in cash towards GPF along with interest. It is also indicated by the respondents that since the applicant was appointed w.e.f. 11.5.2005 i.e. after enforcement of New Pension scheme applicable w.e.f.1.1.2004 in terms of O.M.dated 26.4.2004, as such in accordance with new pension scheme employees contribution under Tier -1 was deducted from the salary w.e.f. 11.5.2005 to 31.10.2012 keeping in view the applicant's application dated 5.8.2009. The applicant has also been paid Rs. 1,66,840/- as leave encashment after attaining the age of superannuation and it is also indicated by the respondents that applicant superannuated on 31.10.2012 and the applicant's employees contribution under Tier I along with CSIR contribution under Tier I for the period from 11.5.2005 to 31.10.2012 amounting to Rs. 1,81,712/- has been remitted to National Securities Depository Limited. In view of the aforesaid statement, it is indicated by the respondents in their counter reply that since the new pension scheme is applicable w.e.f. 1.1.2004 in terms of the O.M. dated 26.4.2004, as such, the applicant is not entitled to get the benefit of the said scheme and the O.A. is liable to be dismissed.

5. On behalf of the applicant Rejoinder Reply is filed and through Rejoinder, the averments made in the O.A. are reiterated and denied the contents of the counter reply. Learned counsel for the applicant has also indicated that since the applicant was engaged in 1974 and continuously performed his duties with full satisfaction of his superiours and he was granted temporary status by the respondents.

6. Heard the learned counsel for applicant and perused the record.

7. The applicant was initially engaged as daily wage casual worker on 1.6.1974 in Botanical Research Institute, Lucknow and later on conferred with temporary status vide letter dated 27.6.1994. The applicant submitted an application dated 21.9.2004 in terms of notification dated 3.9.2004 in the prescribed format for the post of Farash. The applicant was called for interview through letter dated 13.4.2005 and he appeared in the interview held on 28.4.2005 and was recommended by the Selection Committee resulting which the applicant was issued offer of appointment letter dated 9.5.2005 and the applicant joined on 11.5.2005. Since the date of birth of the applicant is 12.10.1952, as such after attaining the age of superannuation, the applicant retired from service on 31.10.2012. As such the applicant remained daily wage worker from 1.6.1974 to 11.1.1994, temporary status casual worker from 12.1.1994 to 10.5.2005 and Farash from 11.5.2005 to 31.10.2012. During the said period, the applicant submitted the representation on 26.2.2009 which was considered and rejected through order dated 6.4.2010. The applicant again submitted representation which was also considered and rejected. The G.P.F. of the applicant was also deducted w.e.f. 12.1.1997 to July, 2004 and the said amount of GPF along with interest was paid to the applicant in cash amounting to Rs. 36,520/-.

8. It is also to be indicated that Govt. of India has introduced a New Pension Scheme w.e.f. 1.1.2004. It is also pointed out by the applicant that since he has worked with respondents prior to the issuance of new pension scheme, he should be subjected to old pension scheme.

9. There is also a decision of Mumbai Bench of this Tribunal in the case of **Vinayak Balkrishan Keer Vs. Union of India & others**, **ATJ 2003 (3) 593** on the same issue. Again this Tribunal rendered judgment in **OA-1195/2006 Umesh Singh & others vs. Union of**

India & others, decided on 30.11.2006 following the order of the Coordinate Bench of this Tribunal in **OA-122/2005 & OA-152/2006, Giriraj Sharma and another** wherein it was held that the casual labourer with temporary status who had rendered continuous service of three years after conferment of temporary status would continue to be entitled to get benefit under that scheme and OM dated 26.4.2004 shall not be applicable to them. The order of this Tribunal In **OA-1195/2006 Umesh Kumar & others vs. Union of India & others** was challenged before the Hon'ble High Court of Delhi vide **WP (C) No.2294/2007** but the same was dismissed by order dated 30.3.2007. The issue attained finality as the respondents have implemented the directions contained in the said order/judgment.

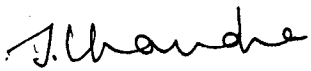
10. Learned counsel for the applicant has also relied upon the RBE No. 215/2009 and clause 3 of the said RBE reads as under:-

"The matter has been examined and it has been decided that 50% of temporary status casual labour service on absorption in regular employment may be taken into account towards the minimum service of 10,20 and 30 years for the grant of benefit under the MACP scheme on the analogy that the same is also reckoned as qualifying service for pension."

11. The bare reading of the pleadings available on record and also the decisions of the coordinate benches of this Tribunal, we have no occasion to defer with the observations of the coordinate benches. As such, the O.A. is liable to be allowed.

12. Accordingly, the O.A is allowed. The respondents are directed to treat the applicants under Old Pension scheme and accord all consequential benefits viz. pensionary benefits etc. They are also directed to continue to extent the benefits under the GPF Rules to the applicants and deduct the monthly subscription regularly and without

any interruptions. The aforesaid exercise shall be completed by passing an appropriate order within a period of 3 months and decision so taken be communicated to the applicants. There shall be no order as to costs.


(JAYATI CHANDRA)
MEMBER (A)


(NAVNEET KUMAR)
MEMBER(J)

HLS/-