

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

OA. No. 060/00670/2014

Reserved on: 16.04.2015
Pronounced on: 22.4.2015.

CORAM: HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)
HON'BLE DR. BRAHM A. AGRAWAL, MEMBER (J)

1. Rajinder Singh S/o Sh. Mahavir Singh, Telephone Attendant, working in O/o SDE (Water Supply), Municipal Corporation, Public Health Sub Division No. 10, Sector 39, Chandigarh.
2. Jaswinder Singh S/o Sh. Faqir Singh, Telephone Attendant, working in O/o SDE (Water Supply), Municipal Corporation, Public Health Sub Division No. 10, Sector 39, Chandigarh.

..... Applicants
Versus

1. Union Territory, Chandigarh Administration, through its Secretary, Department of Finance, UT Civil Secretariat, Sector 9, Chandigarh.
2. Chief Engineer, Union Territory, Chandigarh Administration, Engineering Department, UT Civil Secretariat, Sector 9, Chandigarh.
3. Municipal Corporation, Chandigarh through its Commissioner.
4. Chief Engineer, Municipal Corporation, Chandigarh.

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5. Executive Engineer, Municipal Corporation, Public Health, Division No. 1, Chandigarh.
6. Sub Divisional Engineer, Municipal Corporation, Public Health, Sub Division No. 10, Chandigarh.

...Respondents

Present: Sh. Barjesh Mittal, counsel for the applicant.
 Sh. H.S. Sullar, counsel for the respdts. 1&2.
 Sh. Arvind Moudgil, counsel for respdts. 3-6.

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER(A):-

1. This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

"(i) Direction be issued to the respondents that the new defined contributory pension scheme notified by the Punjab Government on 12.12.2006 which has been adopted by the Chandigarh Administration on 11.06.2009 which has been further adopted by Municipal Corporation, Chandigarh be not made applicable to the applicants.

(ii) Direction be issued to the respondents to continue to govern the applicants by the earlier provisions relating to old pension scheme under the Punjab Civil Service Rules in view of the law as propounded by Hon'ble Punjab & Haryana High Court in Harbans Lal's case (Annexure A-2) as well as in view of the orders dated 18.4.2013 passed by this Court in OA

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No. 585/CH/2012 titled Jagmohinder Singh & Ors. Vs. UOI & Ors. (Annexure A-3).

2. Averment has been made in the OA that the applicants were initially appointed on daily wage basis as Telephone Attendants by the authorities of the Chandigarh Administration in 1989 and they continued to work as such in the office of respondent No. 2 till May, 1996. On the formation of Municipal Corporation, Chandigarh, the services of the applicants were transferred to Municipal Corporation, Chandigarh in May, 1996 on deemed deputation basis as per their seniority in the respective cadre of Telephone Attendants by way of notification issued by Chandigarh Administration and they were posted in the office of Executive Engineer, Chandigarh. The services of applicant No. 1 were regularized vide order No. 19 dated 18.02.2010 and of applicant No. 2 vide office order No. 146 dated 28.9.2007 (Annexure A-4). The Chandigarh Administration issued notification dated 10.11.2015 (Annexure A-5) vide which the rules called the

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Conditions of Service of Union Territory, Chandigarh Employees (Amendment) Rules, 2005 were notified and these rules came into force retrospectively w.e.f. 24.05.1994. In the said amendment, it was provided that all the charges on account of retirement benefits viz. Pension, Gratuity, Provident Fund etc. to the employees transferred from Chandigarh Administration to Municipal Corporation, Chandigarh for the period the transferred employee served in the Corporation would be borne by the Chandigarh Administration. The Department of Personnel, Chandigarh Administration, issued a Circular dated 13.6.2006 (Annexure A-6) addressed to Accountant General (A&E) UT Chandigarh reiterating therein that all charges on account of retirement benefits such as pension, gratuity, Provident Fund etc. to the employees transferred from Chandigarh Administration to MC Chandigarh, for the period the transferred employees served in the Corporation, would be borne by the Chandigarh Administration and the employees who are

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retiring/have expired while working in MC Chandigarh, their pension papers should be initiated by MC authorities and thereafter be sent to concerned Drawing and Disbursing Officers of Engineering Department, UT Chandigarh. However, Commissioner, Municipal Corporation, Chandigarh had issued letter dated 14.2.2012 on the subject of New Defined Contribution Pension Scheme for the employees of MC Chandigarh and the applicants were being forced to fill the requisite proforma so that Permanent Account Number could be allotted to them under the Defined Contribution Pension Scheme. The applicants after the issue of impugned order dated 14.7.2014 (Annexure A-1) had personally met respondents No. 5 & 6 to state that they were entitled to pension under the old scheme in view of the orders passed by this Court in OA No. 164/CH/2004 dated 26.07.2004 and further upheld by the Hon'ble Apex Court vide judgement dated 03.04.2014 (Annexure A-14) and also gave them a representation dated 28.7.2014

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(Annexure A-15) which was refused to be accepted by the said authorities and thereafter the salary of the applicants has been stopped for the month of July, 2014 by the respondents in an illegal manner. Hence this OA.

3. In the grounds for relief, it has interalia been stated as follows:-

- (i) Because as per the authoritative pronouncement of Division Bench of Hon'ble Punjab and Haryana High Court in case titled Harbans Lal Vs. State of Punjab & Others, 2012(3) SCT 362(Annexure A-2), it has been categorically held that those persons who were initially appointed on daily wages prior to 01.01.2004 but their services were regularized after 01.01.2004, they shall continue to be governed by old pension rules and new defined contributory pension scheme would not be applicable to them as the initial date of appointment after regularization will be the date on which the employee takes charge of the post and once the service of daily wager is to be counted as qualifying service then his date of appointment will relegate back to his initial date of appointment and he cannot be ousted from the implementation of old pension scheme. Thus, the action of the respondents in compelling and forcing the present applicants to submit their options/PRAN forms for implementation of Defined Contributory Pension Scheme on them is illegal, arbitrary, discriminatory, unconstitutional and violative of Articles 14 and 16 of the Constitution of India.
- (ii) In OA No. 585/CH/2012 in case titled Jagmohinder Singh Vs. UOI & Ors. Vide order dated 18.04.2013, it

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was categorically held that once the services of daily wage/work charged staff is regularized, then the same will relegate to his initial date of appointment when they entered into service with the respondents and thus will be covered under the old pension rules. Thus, the present case being a fully and squarely covered matter is in the knowledge of respondents No. 2 to 6. Thus, the action of the respondents in passing the impugned order Annexure A-1 is totally illegal.

(iii) Because the Hon'ble Supreme Court of India in its judgement dated 03.04.2014 (Annexure A-14) wherein the present respondents had filed Civil Appeals against the decision of the Tribunal and Hon'ble High Court in favour of the applicants, has categorically held that the employees (respondents in Civil Appeals) who have been regularized in the regular establishment are entitled for the benefits of regular employee including pension and gratuity. Hence, since the applicants were parties in the said Civil Appeals and the decision in the said Civil Appeals is binding on both the parties including the present respondents who were appellants therein, thus, the action of respondents No. 5 and 6 in passing the impugned order Annexure A-1 dated 14.07.2014 in compelling the applicants to submit options for allotment of PRAN numbers under New Defined Contributory Pension Scheme is totally illegal, arbitrary and is liable to be quashed/set aside by this Court.

(iv) Because as per the decision taken by Chandigarh Administration vide Annexures A-5 & A-6, applicants are entitled for pension from the Chandigarh Administration wherein it was decided that all charges on account of retirement benefits of the employees transferred from Chandigarh

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Administration to the Municipal Corporation for the period transferred employee served in the Municipal Corporation would be borne by the Chandigarh Administration and since the applicants joined the respondent Chandigarh Administration way back in the year 1989 and their services were regularized in the year 2007 and 2010 respectively, thus, the benefit of such long service of more than 20 years prior to regularization cannot be done away with by the respondents, hence, on this score as well, the action of the answering respondents in applying New Defined Contributory Pension Scheme on the applicants is liable to be quashed/set aside.

4. Short reply has been filed on behalf of respondents No. 1 & 2 wherein it has been stated that services of the applicants were regularized by the Municipal Corporation, Chandigarh w.e.f. 18.02.2010 & 28.09.2007 respectively (Annexure A-4) issued by the Municipal Corporation, Chandigarh i.e. respondent No. 4. Therefore, the Chandigarh Administration cannot accept the prayer of the applicants since the applicants are the employees of the Municipal Corporation, Chandigarh i.e. respondent No.3.

5. In the short reply filed on behalf of respondents No. 3, 4, 5 & 6, the facts of the matter have not been

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disputed. It has been stated that the relief has been claimed against the Municipal Corporation whereas MC Chandigarh does not fall within the jurisdiction of the Tribunal.

6. Rejoinder has been filed on behalf of the applicant rebutting the short reply filed on behalf of respondents No. 1 & 2..

7. Arguments advanced by the learned counsel for the parties were heard when learned counsel for the applicant placed reliance on the order dated 2.12.2014 in OA No. 060/00501/2014 titled Rajinder Singh Vs. UOI and pressed that the issue regarding pension being payable by the Chandigarh Administration to daily wage/work charge and other employees who had been transferred from Chandigarh Administration to Municipal Corporation Chandigarh by Chandigarh Administration was no longer res integra. He stated that notification dated 10.11.2005 (Annexure A-5) clearly pointed to the decision of the UT Administration in this regard. 11 .

8. Learned counsel for Municipal Corporation, Chandigarh referred to the aspect of the jurisdiction, but fairly submitted that the employees who had been sent from Chandigarh Administration to Municipal Corporation, Chandigarh, were to be paid their pensions by the Chandigarh Administration.

9. We have given our thoughtful consideration to the matter. The claim of the applicants for pension as per the old pension scheme appears to be borne out from the fact that the applicants were employed as Telephone Attendants in 1989 on daily wage basis and their services were regularized in 2010/2007. Harbans Lal Vs. State of Punjab & Others, 2012(3) SCT 362(Annexure A-2) applies in this case. Order dated 18.4.2013 in OA No. 585/CH/2012 and order dated 8.4.2015 in OA No. 222/CH/2012 titled Tripta Devi Vs. UOI & Ors are also relevant to the matter.

10. In view of the foregoing discussion, this OA is allowed and the applicants may be treated as covered by

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pension scheme in force prior to 1.1.2004 and not compelled to join the Defined Contributory Pension Scheme. No costs.

(RAJWANT SANDHU)
MEMBER(A)

(DR. BRAHM A.AGRAWAL)
MEMBER(J)

Dated: 22.4.2015

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