

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A. No.060/01047/14

Decided on : 26.05.2015

1. Baldev Singh s/o Sh. Wadhawa Singh
2. Ajay Kumar s/o Sh. Baijnath
3. Jugraj Singh s/o Sh. Harbhajan Singh
4. Gurmeet Singh s/o Sh. Balak Singh
5. Jasbir Singh s/o Sh. Kuldeep Singh
6. Dalbir Singh s/o Sh. Sohan Singh

(All are working as Motor Lorry Driver (Regular) in the office of Executive Engineer, BFD-v, CPWD, SHQ, BSF Campus, Moga Road, Ferozepur Cantt.

.....Applicants

BY ADVOCATE: SH. D.R. SHARMA

VERSUS

1. Union of India through the Secretary to Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, North Block, New Delhi.
2. Directorate General of Works, Central Public Works Department, Nirman Bhawan, New Delhi.
3. Chief Engineer, Border Fencing Zone, CPWD, New Delhi.
4. The Superintending Engineer, BFC-II, CPWD, Jaisalmer, Rajasthan.
5. Executive Engineer, Border Fencing Division, CPWD-SHQ, BSF Campus, Moga Road, Ferozepur Cantt, Punjab.

...Respondents

BY ADVOCATE: SH. R.L. GUPTA

As —

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) That the impugned order dated 16.9.2014 (Annexure A-1) be quashed and set aside.
- (ii) That the respondents be directed to switch over the applicants to GPF, and further switch over them to the provisions of Old Pension Scheme, CCS Pension Rules, 1972 along with all consequential benefits.
- (iii) That it be declared that the applicants are entitled to all the benefits under Old Pension Scheme i.e. CCS (Pension) Rules, 1972.
- (iv) That the action of the respondents in applying the New Pension Scheme be declared illegal and arbitrary and against the law.
- (v) That the applicants be extended benefit of judgements Annexures A-5 to A-7.”

2. Averment has been made in the OA that the applicants were initially appointed as Motor Lorry Driver (Muster Roll basis, Work Charge) under the respondent No. 5 against the sanctioned posts on:-

a.	Baldev Singh	28.12.1990
b.	Ajay Kumar	15.10.1990
c.	Jugraj Singh	26.11.1990
d.	Gurmeet Singh	21.07.1994
e.	Jasbir Singh	27.09.1993
f.	Dalbir Singh	07.12.1990

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Applicants were granted minimum of pay scale plus DA from their initial date of appointment. The services of the applicants were regularized by the respondents on the post of Motor Trolley Drivers w.e.f. 11.12.2006 vide orders dated 27.7.2011. (Annexure A-2 colly.). After regularizing the services of the applicants, the respondents started deducting the CPF from salary of applicants under the New Pension Scheme in terms of Government of India DOPT letter No. 49014/1/2004-Estt (C) dated 26.04.2004 (Annexure A-3). Since the applicants were appointed between 1990 to 1994, therefore, they were required to be governed under CCS (Pension) Rules, 1972 and they are entitled to subscribe to GPF under Old Pension Scheme. The applicants submitted a representation in this regard but the same has remained without any response.

3. It is further averred that when the applicants did not find any response to their representations, the applicants served a Legal Notice dated 01.08.2014 (Annexure A-4) upon the respondents to switch over them to the Old Pension Scheme and grant them all the benefits under Old Pension Scheme like subscription of GPF etc. In reply to this Legal Notice, the respondent No. 5 vide letter dated 16.9.2014 (Annexure A-1) has rejected the case of the applicants for switch over to the Old Pension Scheme on the ground that the services of the applicants were regularized after introduction of New Pension Scheme dated

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1.1.2004 and therefore, they are not entitled to the benefit of Old Pension Scheme. 13

Hence this OA.

4. In the written statement filed on behalf of the respondents, facts of the matter have not been disputed. It has further been stated, however, that since the applicants were appointed between 1990 to 1994, but regularized on the basis of fresh joining report, medical check-up, Character Certificate, Qualification, Caste and Birth Certificate, all the staff will be covered under New Pension Scheme vide Ministry of Finance order dated 22.12.2013. Moreover, vide order of Ministry of Personnel, Public Grievances and Pension (Department of Personnel & Training) OM No. 49014/1/2004-Estt (C) dated 26.4.2004, it was decided that under the new pension scheme based on defined contributions, the length of qualifying service for the purpose of retirement benefits has lost 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 (Annexure R-3). So, they cannot be taken in old pension scheme in reference to DOPT letter No. 49014/1/2004-Ess (C) dated 26.04.2004.

5. When the matter came up for consideration today, learned counsel for the applicants stated that he placed reliance on the following judgements:-

- (i) OA No. 585/CH/2012 titled Jagmohinder Singh & Ors. Vs. UOI & Ors. decided on 18.4.2013 (Annexure A-5).

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- (ii) CWP No. 2371 of 2010 titled Harbans Lal Vs. The State of Punjab and Ors. decided on 31.08.2010 (Annexure A-6)
 - (iii) OA No. 2332/2010 titled Rameshwar Singh Vs. UOI decided on 02.12.2011 (Annexure A-7) and
 - (iv) OA No. 4147/2012 titled Birendra Singh & Anr. Vs. UOI decided on 28.5.2014 (Annexure A-8).

6. Learned counsel for the respondents does not object to the submissions made by the learned counsel for the applicant.

7. Considering the ad idem between the parties, this OA is allowed. The impugned order dated 16.9.2014 stands quashed and the respondents are directed to take into account the period of service rendered by the applicants from their dates of appointment as indicated in para 2 of this order for grant of pension and they shall be covered under the Old Pension Scheme. No costs.


(RAJWANT SANDHU)
MEMBER (A)

Dated: 26.05.2015

NQ*