

RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH ALLAHABAD

This is the 12th day of September 2018.

ORIGINAL APPLICATION NO. 193 of 2012.

Present:

HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J).

HON'BLE MR. MOHD. JAMSHED, MEMBER (A)

1. Shri Ram Narayan Prajapti S/o Late Jhoori, B 34/37, AP-1, Sukulpura, Sarainandan, Varanasi.
2. Shri Gyanesh Chandra Pandey, S/o Late Sita Ram Pandey Village Faridpur, P.O. Sarnath, District Varanasi.
.....Applicants.

By Advocate: Shri Amitabh Trivedi

VERSUS

1. The Union of India through Secretary, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi.
2. The Director, National Centre for Disease Control, (Formerly National Institute of Communicable Diseases), 22, Sham Nath Marg, Delhi 110 054.
3. The Administrative Officer, National Centre for Disease Control, (Formerly National Institute of Communicable Diseases), 22, Sham Nath Marg, Delhi 110 054.
.....Respondent

By Advocate : Shri S.C. Mishra

O R D E R

BY HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J).

1. The present Original Application has been filed by the applicants under section 19 of Administrative Tribunals Act, 1985 seeking following reliefs-

"(i) to issue a writ, order or direction in the nature of mandamus directing the respondent No.2, Director NCDC, to provide the applicant No.1 & 2 pensionary & other incidental benefits under "Old Pension Scheme" as given to similarly placed employees by counting their past service as qualifying service prior to absorption by order dated 29.6.2011.

(ii) to issue a writ, order or direction in the nature of mandamus directing the respondent No.2, Director NCDC, to ensure equal treatment with applicants in the manner the treatment have been given to equally & similarly placed employees in the matter of counting their past services as qualifying service for the purposes of giving pensionary & other incidental benefits like Old Pension Scheme, Modified Assured Career Progression & Gratuity etc.

(iii) To issue any other suitable writ, order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case".

2. Applicants' case is that they were appointed by respondent No. 2 in Multi Centric Clinical Evaluation of Traditional Remedies "Shakotaka" as field worker in Group - C in ICMR Scheme in 1985-86 till the date of absorption on 08.03.2007. Like the applicants, similarly placed persons were also appointed by respondent No. 2 and 3 in different ICMR Project as Group - C post. By office order dated 29.06.2011 (annexure- A3) past service in different ICMR projects prior to absorption of the similarly placed employees have been counted by respondents No. 2 and 3 for pensionary benefits, payable to similarly placed employees who have been given pensionary and other incidental benefits under Old Pension Scheme. Similar benefit of counting past service have been given to 21 employees in Group 'C' and 'D' for regularizing their services.

3. Applicants' case is that they are not been given the benefit of past service prior to their absorption on 08.03.2007 and without considering their past service, they have been placed in less beneficial New pension Scheme while similarly placed employees have been placed in more beneficial Old Pension Scheme wherein the said employees past service prior to their absorption has been counted for pensionary benefits.

4. Hence, the present O.A. for a direction to the respondent No. 2 to provide the applicants pensionary and other incidental benefits under the Old Pension Scheme as given to similarly placed Employees by counting their past service as qualifying service prior to absorption by order dated 29.06.2011.
5. It would be pertinent to note that there are two sets of employees who were given regularization, one set of six employees as mentioned in annexure No. 3 of the O.A. and para No. 4 (iv) of the O.A. and other set of 21 employees regularized as per orders of the Courts.
6. In reply, respondents in their counter affidavit have averred that the applicants were absorbed in NICD (now NCDC) from ICMR Project, as per, direction of Hon'ble High Court Allahabad in Writ Petition No. 15155/99 against the posts of LDC w.e.f. 08.03.2007 vide respondent order dated 31.07.2007. The further case of respondents is that the Government had introduced New Pension Scheme effective 01.04.2004 i.e. prior to regularization of the services of applicant and since they were not working in regular establishment, the applicants were not governed by any service rules and therefore not covered by Old Pension Scheme.
7. As per the respondents, the case of applicants for giving them the benefit of Old pension scheme given to other employees cannot be accepted for the reason that the services of the employees prior to 01.03.1988 was counted for pensionary benefit in compliance to the directions of the Central Administrative Tribunal, Jabalpur in O.A. No. 855/2009 in view of the directions of the Hon'ble Apex Court.
8. In the rejoinder affidavit, applicants while reiterating their pleas taken in the O.A. have taken the plea of hostile discrimination viz. similarly placed employees and who have been placed in the Old pension Scheme which has been denied to the applicants.

9. The annexure dated 28.11.1995 placed on record with the rejoinder affidavit filed on 01.02.2013, which is the Office Order of respondent lays down that the employees with whom applicant claim parity were absorbed and regularized from their initial date of appointment i.e. 01.03.1988 as per the Judgment of Hon'ble Apex Court. The above order placed on record by applicants speaks of the regularization of said employees from their initial date of appointment i.e. 01.03.1988 as per directions of Hon'ble Apex Court. So, the services of said employees are counted from 01.03.1988 as per the directions of the Hon'ble Apex Court.
10. The batch of 21 employees is covered by decisions of the Courts as mentioned in all the documents attached to the file. However, the case of the 6 employees seems to stand on different footing from that of the 21 employees. In all the documents pertaining to these 6 employees, there is no mention that the action regarding their pensionary benefits etc are being carried out, as per, the directions of the Courts. Even so, looking to the facts of the case as projected in the pleadings of the parties, it is to be seen whether the applicants are entitled to the relief sought for, by them.
11. In the present case, as per para 4 (iv) of the O.A., the date of absorption of the 6 employees is given as 01.03.1989 and the date of absorption of the applicants is 08.03.2007.
12. It is settled law that normally, in the matter of appointment, extension of service benefits and regularization of service as against the sanctioned post, the persons who are working on temporary, adhoc or in any other means, their services would be counted from the date of their absorption unless it is otherwise.
13. So, in the instant case, the service of the 6 employees would be counted from 01.03.1989 (date of their absorption) and therefore, they would be governed by the Old Pension Scheme whereas in case of applicants, the

service would be counted from 08.03.2007 and would fall within the New Pension Scheme effective 01.04.2004. No doubt, the past service of 6 applicants would be considered for pensionary benefit only as is clear from the impugned order dated 29.06.2011.

14. Perusal of the orders pertaining to the applicants would show that they were appointed on adhoc basis and have been absorbed/regularized w.e.f. 08.03.2007 and is subject to fulfillment of number of conditions laid down in the order dated 20.08.2007 (Annexure 6 and 7). Therefore, the applicants would be governed by the New Pension Scheme though of course their past services would be counted for pensionary benefits. Looking to the difference in the service conditions of the applicants and the 6 employees, it is apparent that no case of discrimination is made out against the applicants viz.-a-viz. the 6 employees.
15. In view of the facts and circumstances of the case, the O.A. being meritless, is dismissed. No order as to costs.

(Mohd. Jamshed)
Member (A)

(Rakesh Sagar Jain)
Member (J)

Manish/-