

Central Administrative Tribunal
Principal Bench, New Delhi

**OA No. 60/2013
With
OA No.459/2013**

Order Reserved on: 30.08.2016
Order Pronounced on: 04.10.2016

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)**

OA No. 60/2013

Rajkaran Singh,
Back side ware house,
MC Colony, Ward No.1, Charkhi Dadri,
District Bhiwani, Haryana - Applicant

(By Advocate: Mr. Padma Kumar S.)

VERSUS

1. Union of India through
The Special Secretary,
Cabinet Secretariat,
CGO Complex, New Delhi
2. Director General (R)
Cabinet Secretariat,
East Block V, R.K. Puram,
New Delhi-66
3. Inspect General SFF
Office of the IG SFF
East Block V, R.K. Puram,
New Delhi-66
4. Secretary,
DoP&T,
North Block, New Delhi-1
5. Secretary,
Department of Expenditure,
Ministry of Finance,
North Block, New Delhi-1 - Respondents

(By Advocate: Mr. Manjeet Singh Reen)

OA No. 459/2013

1. Rajkaran Singh,
Backside ware house,
MC Colony, Ward No.1,

Charkhi Dadri,
District Bhiwani,
Haryana

2. Jagat Ram Joshi,
Mehuwala Khalsa,
PO Ambari,
TEH. Vikas Nagar,
Distt. Dehradun,
U.K. 248125
3. V.D. Tripathi,
New Colony, Saharanpur Road,
Herbertpur, Distt. Dehradun,
Uttarakhand
4. H.K. Naithani,
D-366, Rajender Nagar, Roorkee,
Distt. Haridwar, Uttarakhand
5. Shiv Kumar,
A-16, First Floor,
Dayandant Colony,
Lajpat Nagar, New Delhi

- Applicants

(By Advocate: Mr. Padma Kumar S.)

VERSUS

1. Union of India through
The Special Secretary,
Cabinet Secretariat,
CGO Complex, New Delhi
2. Director General (R)
Cabinet Secretariat,
East Block V, Level 4,
R.K. Puram, New Delhi-66
3. Inspect General SFF
Office of the IG SFF
East Block V, Level 4,
R.K. Puram, New Delhi-66
4. Secretary,
DoP&T
North Block, New Delhi
5. Secretary,
Department of Expenditure,
Ministry of Finance,
North Block, New Delhi-1

- Respondents

(By Advocate: Mr. Manjeet Singh Reen)

ORDER

Dr. B.K. Sinha, Member (A):

The instant two OAs relate to a common subject and have been argued together. As such, they are being disposed of by means of this common order. The OA No. 60/2013 has been adopted as the lead case for the sake of convenience. In this OA, the applicant is aggrieved by the order dated 15.10.2012 rejecting his application dated 03.09.2012 for grant of pension under CCS (Pension) Rules 1972 on having superannuated w.e.f. 31.08.2012 after having rendered 37 years and 8 months of service. In OA No. 459/2013, there are total of five applicants, who are aggrieved with the order dated 28.08.2012 of the respondents, rejecting their representation for grant of 6th CPC on the ground that they are being paid out of the Saving Scheme Deposit (SSD), a Welfare Scheme through the personal contribution made by the troops of Special Frontier Force and as such, the applicants are not Government servants.

2. The applicants have prayed the following reliefs in the two cases:-

O.A. No. 60/2013

- (a) Quash and set aside Order dated 15.10.2012 and declare that the services of the applicant as regular or deemed regular and was to be treated at par with other government employees and he is entitled to get the pensionary benefits under the CCS (Pension) Rules, 1972.
- (b) Direct the respondents to grant the benefits of pension to the applicant from the date they attained superannuation/retirement.
- (c) Direct the respondents to grant the consequential benefits including arrears of the above from the due dates.
- (d) Any other relief which this Hon'ble Tribunal may be pleased to allow under the facts and circumstances of the case.

OA No. 459/2013

(a) Quash and set aside the order dated 28.8.2012 and declare that the applicants are entitled to get the benefits of the replacement scales given in the Revised Pay Rules 2008 issued in pursuance of the 6th Central Pay Commission report with effect from 1.1.2006 and direct the respondents to release the same with arrears of pay from 1.1.2006.

(b) Any other relief which this Hon'ble Tribunal may be pleased to allow.

3. The facts of the case, in very brief, are that they were appointed on running pay scales and were granted increment of scale, promotion, ACP benefits, revised pay scale of the 3rd , 4th and 5th CPC benefits as applicable, which they claim is akin to GPF; they were appointed against posts duly created under authorization of the Cabinet Secretariat following the due process. The applicant no. 1 superannuated on completion of the age of 60 years, but his claim for pension has been declined as mentioned earlier. The applicants have also not been granted the benefits of 6th CPC and instead, an ad hoc amount of Rs. 3,000 per month has been given. The applicants further claim that there was no provision in GPF in SSD and, therefore, they were governed by SSD. The pensionary benefits have been extended w.e.f. 01.01.2009. The applicant no.1 had filed representation dated 28.07.2011 for grant of pension followed it up by reminders with OA No. 286/2012, which was disposed of vide order dated 31.08.2012 allowing the applicant to withdraw the OA with liberty to make representation to the respondents (Annexure A/5 page 30 of the paper book). The applicant had made another representation dated 03.09.2012, which had been rejected vide the impugned order dated 15.10.2012 (Annexure A/1).

4. The applicants have relied upon the following grounds for the success of his OA:-

- (i) The applicants were appointed against the posts duly created and following due process;
- (ii) All the employees fulfill and meet the attributes of regular Government servants in the sense that they were appointed to a regular pay scale, they were being granted increments and promotions in the scale at par with the other Government employees in due course; and they were enjoying leave and other benefits and were also granted the benefits of ACP, though the applicant no.1 did not avail ACP, as he was granted promotion within 12 and 24 years.
- (iii) The impugned order of the respondents rejects their case on the ground that they were appointed as temporary Government servants whose service could be terminated at will. However, the applicants could not have remained temporary Government servants after having rendered 37 years and 10 months of service.
- (iv) The applicants have also relied upon the decision of the Hon'ble Supreme Court in the **State of Karnataka & ors. Vs. M.L. Kesari & Ors.** decided on 03.08.2010 wherein the Hon'ble Supreme Court has cast the responsibility upon the respondents to devise a suitable scheme for the regularization of the employees, who had served period of more than 10 years. The applicants, in support of their OAs, have further relied upon the observation of the Hon'ble Allahabad High Court in the **Board of**

Revenue vs. Prasidh Narain Upadhyay, which read as under:-

“...The contention of the appellants that the petitioner-respondent was a Seasonal Collection Peon and his engagement and post was extended from time to time by the Commissioner is totally unsubstantiated, as nothing has been brought on record to substantiate this plea. Even otherwise the continuous working of the petitioner-respondent for more than 37 years cannot be ignored on the basis of a vague and unsubstantiated plea sought to be raised by the appellants. The statutory right of the petitioner-respondent flowing by rendering service for such a long service, cannot be brushed aside light...”

- (v) The applicants have further rejected the ground adopted by the respondents for grant of pension in the impugned order that they were not appointed by a rigorous process of selection and that CCS (Conduct) Rules have not been made applicable to them, assailing the decision as arbitrarily. The applicants have submitted that they have been appointed under due process of selection. Since they were no statutory recruitment rules, the applicant were appointed under rules of the Cabinet Secretariat. Thus, the appointment of the applicants was not by any stretch of imagination could be considered to be illegal.
- (vi) The applicants finally submit that moiré than three decades of the service cannot be wiped out by denying pensionary benefits to the applicants.

5. The applicants have also filed an additional affidavit in which they have relied upon the case of **D.S. Nakara & Ors. vs. Union of**

India (1983) 1 SCC 305, wherein the Hon'ble Supreme Court observed as under:-

"In the course of transformation of society from feudal to welfare and as socialistic thinking acquired respectability, State obligation to provide security in old age, an escape from unreserved want was recognized and as a first steps pension was treated not only as reward for past service but with a view to helping the employee to avoid destitution in old age. The quid pro quo was that when the employee was physically and mentally alert, he rendered unto the master the best, expecting him to look after him in the fall of life..."

They have further relied upon **Yeshwant Hari Kakar vs. Union of India & Ors**, 1995 AIR SCW 380 to contend that a person, who was not made permanent even after 18 years of service amounts to travesty of justice.

6. The respondents have filed a counter affidavit wherein they have rebutted all the averments of the applicants, except so far as they relate to the factual matrix. The principal arguments of the learned counsel for the respondents are in the following order:-

- (i) The applicants were not Government employees and were not appointed following any recruitment rules. They were employees of the SSD fund. Therefore, they cannot be said to be holding a civil post. Hence the provisions of CCS (Pension) Rules, 1972 are not attracted to the facts of this case.
- (ii) During the service, the applicants were not governed by CCS (CCA) Rules or by the CCS (Conduct). As per Pension Scheme introduced by the Government and as per the law laid down in **General Manager, North West Railway & Ors. vs. Chand Devi**, (2008) 2 SCC 108, pension is not applicable to the casual labour with the

temporary status. While considering the payment of increment, promotions, LTC and other benefits, the respondents submit that they are purely on humanitarian grounds. Moreover, Pension Rules under which the Railway employees are granted pension" are granted pension do not apply to the casual employees. The payment of the applicants is subject to the availability of the funds. It was on account of the requirements of the fund that the benefits of 6th CPC have not been extended to the applicant and instead the benefit of Rs. 8000 per month has been extended to them. There are no rules governing the services conditions of SSD (Funds). The recruitment of the applicant had also been made under any recruitment rules. There were no posts sanctioned for the applicants nor listed in establishment/cadre notification as existing for all other employees of the JFF. No advertisement for recruitment was published nor any competitive departmental; no statutory service and other rules etc. were applicable to the applicant as applicable to other employees; the annual performance of the applicant is not being assessed and there are no rules guiding the promotion, leave and other services conditions of the applicant.

The learned counsel for the respondents, therefore, vehemently pleaded for the OA to be dismissed.

7. We have considered the pleadings of rival parties as also the documents adduced and the citations relied upon on either side and

have patiently heard the arguments advanced by the learned counsels for the parties.

8. The only issue to be considered by us is that whether the applicants are entitled to be treated at par with other Government employees and is, therefore, entitled to benefits under the CCS (Pension) Rules, 1972.

9. Rule 2 of CCS (Pension) Rules lays down to whom these rules will be applicable in the following manner:-

“2. Application

Save as otherwise provided in these rules, these rules shall apply to Government servants appointed on or before 31st day of December, 2003 including civilian Government servants in the Defence Services appointed substantively to civil services and posts in connection with the affairs of the Union which are borne on pensionable establishments, but shall not apply to -

(a)	railway servants ;
(b)	persons in casual and daily rated employment ;
(c)	persons paid from contingencies ;
(d)	persons entitled to the benefit of a Contributory Provident Fund ;
(e)	members of the All India Services ;
(f)	persons locally recruited for service in diplomatic, consular or other Indian establishments in foreign countries ;
(g)	persons employed on contract except when the contract provides otherwise ; and
(h)	persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law for the time being in force.

It would be noticeable from the above that persons in casual and daily rated employment or persons paid from contingencies or persons employed on contract, have been excluded from the

pensionable establishment. It also boils down to the question that who are the Government employees?

10. In a case decided by the Hon'ble Supreme Court in **Union of India & Anr. vs. Chotelal** ,1999(1) SCC 554, it was held that Dhobis in National Defence Academy were not Government servants, particularly, because their salary are not being paid out of Consolidated Fund of India. Here, it is an admitted fact that the applicants are not being paid from either Consolidated Fund of India or the Contingent Fund or Public Accounts Funds.

11. In **Parimal Chandra Raha & Ors. vs. Life Insurance Corporation of India & Ors.** 1995 Supp. (2) SCC 611, the employees of different canteens in different offices of the Life Insurance Corporation preferred the claim that they were employees of the Corporation itself. The Hon'ble Supreme Court evolved four principles, which are being reproduced hereunder:-

- (i) Canteens maintained under obligatory provisions of the Factories act for the use of the employees became a part of the establishment and the workers employed in such canteens are employees of the management.
- (ii) Even if there is a non-statutory obligation to provide a canteen, the position is the same as in the case of statutory canteens. However, if there is a mere obligation to provide facilities to run a canteen, the canteen does not become part of the establishment.
- (iii) The obligation to provide canteen may be explicit or implicit. Whether the provision for canteen services has become a part of the service conditions or not, is a question of fact to be determined on the facts and circumstances in each case.
- (iv) Whether a particular facility or service has become implicitly a part of the service conditions of the employees or not, will depend, among others, on the nature of the service/facility, the contribution the service in question makes to the efficiency of the employees and the establishment, whether the service is available as a matter of right to all the employees in their capacity as employees and nothing more, the employees who avail of the service, the length of time for which the service has been continuously available, the hours during which it is

available, the nature and character of management, the interest taken by the employer in providing, maintaining, supervising and controlling the service, the contribution made by the management in the form of infrastructure and funds for making the service available etc.”

12. Here, there are no rules governing the service conditions of the applicants; there are no recruitment rules; their recruitment was not made under an advertisement issued where people at large were given opportunity of appearing; there is no question of obligation under Factories Act for running SSD, as it is not covered under the definition of factory; and the service performed is not a statutory service but SSD is a voluntary contribution made by SSF employees. Therefore, applying these principles to the facts of the present case, it is difficult to conceive that how the employees working in the SSD become Government employees. It is true that the unit officers have all persuasive control over the employees. However, this is not subject to rules or any statutory obligations. It is all *ad hoc* in nature. It is also true that master-servant relationship exists between the employees and the unit officers but that does not extend to the Government and is more akin to implying private persons. We are guided here in fact that a similar issue had cropped up in respect of Unit Run Canteens in Armed Forces whose employees were recruited under executive instructions and were having regular promotion, benefit of leave etc.

13. In **Union of India & Ors. vs. Mohd. Aslam & Ors.**, Appeal (Crl.) 1039-1040 of 1999, the Hon'ble Supreme Court directed that the employees of Unit Run Canteens would draw the minimum of regular scale of pay available to their counterparts in CSDs and respondents would frame rules for the same. However, this was set aside in another case, namely, **R.R. Pillai (Dead) through L.Rs vs.**

Commanding Office Hq. SAC (U) & Ors. in Civil Appeal No.3495/2005, decided on 28.04.2009 where the Hon'ble Supreme Court took the following view:-

“8. In the case of Aslam’s case (supra) a Bench of this court proceeded on incorrect factual premises inasmuch as after noticing that the URCs are not funded from the Consolidated Fund of India, it went wrong in concluding that the URCs are funded by CSD as well as the articles were supplied by the CSD. Unfortunately, it did not notice that no such funding is made by the CSD. Further, only refundable loans can be granted by the CSD to URCs at the rate of interest laid down by it from time to time upon the application of URCs seeking financial assistance. URCs can also take from other Non-Public Funds. Further observation regarding supply is not correct. URCs and CSDs is that of buyer and seller and not of principal and the agent. This Court further went wrong on holding that URCs are parts of CSDs when it has been clearly stated that URCs are purely private ventures and their employees are by no stretch of imagination employees of the Government or CSD. Additionally, in Aslam’s case (supra) reference was made to Chandra Raha and Ors. V. Life Insurance Corporation of India [1995 Supp (2) SCC 611]. The Bench hearing the matter unfortunately did not notice that there was no statutory obligation on the part of the Central Government to provide canteen services to its employees. The profits generated from the URCs are not credited to the Consolidated Funds, but are distributed to the Non Public Funds which are used by the units for the welfare of the troops. As per para 1454 of the Regulations for the Air Force, 1964 the losses incurred by the non public funds are not to be borne by the State.”

14. It is to be noted that the case of the employees of Unit Run Canteens were on more firm footing as compared to the case of the applicants in the instant case.

15. Therefore, we find that there is absolutely no ground on the basis of which the applicants can be treated as Government employees in Pensionable Establishment. The OAs are, therefore, dismissed without costs.

(Dr. B.K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)