

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

**OA No.349/2016**

Reserved on: 27.10.2017  
Pronounced on: 01.11.2017

**Hon'ble Mr. Uday Kumar Varma, Member (A)**

Vasudev, Age 59 Years  
S/o Shri Amardev  
R/o 48, Rampuri,  
Kalkaji, New Delhi-110019 ... Applicant

(By Advocate : Mr. Khushal Singh )

**VERSUS**

1. Union of India through:  
The Secretary  
Govt. of India, Ministry of Personnel,  
Public Grievances and Pensions  
(Department of Personnel and Training),  
New Delhi.
2. Directorate General of Works  
Central Public Works Department  
Nirman Bhawan, New Delhi.
3. Dy. Director (Coordinator) Northern Area  
Central Public Works Department  
Eastern Division-1, Floor 7<sup>th</sup>  
R. K. Puram, New Delhi-110066
4. The Superintending Engineer,  
Delhi Central Circle-II  
C.P.W.D., Pushpa Bhawan,  
Pushp Vihar, New Delhi-110062
5. Executive Engineer  
V.Division, CPWD, A-106/110,  
Sarojini Nagar, New Delhi-23 ... Respondents

( By Advocate: Mr. Subhash Gosain )

**O R D E R**

The present OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking a direction or order declaring that clause/condition no. 17 of OM dated 18.11.2014 issued by respondent no. 4 is illegal, arbitrary, discriminatory and violative of Articles 14, 16 and 21 of the Constitution of India and to grant pension to the applicant as per the provisions of CCS (Pension) Rules, 1972 along with all

consequential benefits by giving him benefit of services rendered by him w.e.f. 4.2.1985 onwards.

2. The brief facts of the case are that the applicant was initially engaged as Mason on hand receipt/muster roll basis by the respondents w.e.f. 4.02.1985. He was conferred temporary status w.e.f. 01.09.1993 but was not given the status of regular employee. He had filed earlier OA bearing No. 2410/1997 which was disposed of vide order dated 17.08.1998 with a direction to the respondents to consider the claim of the applicant for regularization in the post of Mason from the date he had completed 240 days continuous service on casual or work-charge basis. Against the aforesaid order, Review Application no.256/1998 was filed by the respondents, which was dismissed vide order dated 12.05.1999. Against the Tribunal's order, the respondents preferred a Writ Petition (C) No.5107/1999 before the High Court of Delhi, which was also dismissed vide judgement dated 15.07.2010. Consequently, the applicant was regularized on the post of Mason vide order dated 18.11.2014 w.e.f.11.12.2006 and his services were directed to be governed under the new pension scheme, which was introduced vide OM dated 26.04.2004 providing that length of qualifying service for the purpose of retirement benefits has lost its relevance, no credit of casual service shall be available to the casual labourers on their regularization against Group "D" posts on or after 01.01.2004. Resultantly, he will not be entitled for the pension as he was regularized w.e.f. 11.12.2006 whereas the contention of the applicant is that since he has been granted temporary status w.e.f. 01.09.1993 and regular status was delayed by the respondents, which ultimately was offered to him in compliance

of the Tribunal's decision in OA No.2410/1997 decided on 17.08.1998, he cannot be deprived of pensionary benefits under the garb of new pension scheme. In support of his claim, the applicant has relied upon the decision of the Hon'ble Apex Court in the case of ***State of Punjab & Ors. vs. Jagjit Singh & Ors.*** [2016 (10) SCALE 447]. He, therefore, submits that the instant OA deserves to be allowed.

3. Per contra, the respondents have filed their counter reply and have taken a preliminary objection that the statement of the applicant regarding being given temporary status w.e.f. 01.09.1993 was false and misleading as he had never been given temporary status as per records available in the office. They also submitted that the Govt. of India formulated a Scheme under which the persons who were employed after 01.01.2004 were not entitled for pension. The applicant was appointed as a regular Mason w.e.f. 11.12.2006 under new Pension Scheme. They have further submitted that the applicant had already been paid gratuity taking into account his regular service w.e.f 11.12.2006 to 30.04.2016 and revised pension considering 50% of the hand receipt period has been sent to PAO (FZ) under CCS (Pension) Rules, 1972.

4. I have carefully gone through the pleadings of the case and have given thoughtful consideration to the arguments put forth by the counsels for both the parties.

5. The key issue in this OA is based on the argument of the applicant that his regularization w.e.f. 2006 pre-supposes his being granted temporary status by operation of law. The learned counsel for the applicant placed before me a judgment of the Tribunal, which he claimed was upheld up to the Supreme Court

in the case of **Rameshwar Singh Vs. Union of India through the Secretary, Ministry of Defence and Ors.**(OA No.2332/2010). It was his contention that in this OA the applicant Rameshwar Singh was granted temporary status by operation of law w.e.f. 1.9.1993. At the time of argument, Shri V.P.S.Tyagi, Advocate, who was present then, intervened at this stage and submitted that he was the counsel for applicant in the case of Rameshwar Singh and he clarified that Rameshwar Singh was granted temporary status on the directions of the Court, namely, Apex Court.

6. On being asked pointedly whether such directions to give temporary status to the applicant in the current OA has been given by any of the Courts, the reply coming forward was that such was not the necessity because the applicant ought to have been given temporary status by operation of law. It was admitted by the applicant's counsel that all along, the representations made by the applicant were with regard to regularization and not with regard to grant of temporary status.

7. The respondents, on the other hand, have based their arguments on the basic fact that at no stage in his career the applicant was granted temporary status. They have pointed out that both the OMs dated 26<sup>th</sup> April, 2004 which was subsequently quashed and the revised OM dated 26<sup>th</sup> Feb, 2016 deal with the case of grant of benefit of Pension Scheme to Casual Workers who were given the temporary status and subsequently were granted regularization. He drew my attention to another OM No.49014/2/2014-Estt(C) dated 28.07.2016 of Government of India, Ministry of Personnel, P.G. & Pensions (Department of

Personnel & Training). He read out paragraph 2 of this OM, which is reproduced below:

*"The OM was issued in consultation with Department of Expenditure and the Department of Pension and PW. It was clarified vide that OM that this Department's O.M. dated 26<sup>th</sup> April, 2004 had been quashed in a series of Orders/Judgments. The OM dated 26<sup>th</sup> February, 2016 restores the provisions of the Scheme as it existed prior to the OM dated 26<sup>th</sup> April, 2004. The benefit of GPF and Old Pension Scheme is applicable to all those casual labourers who are covered under the Scheme of the 10<sup>th</sup> September, 1993 even if they have been regularized on or after 01/01/2004."*

The counsel for the respondents argued that it is clear from paragraph 2 of this OM that the benefit of GPF and Old Pension Scheme is applicable to only those casual labourers who were covered under the Scheme of 10<sup>th</sup> September, 1993 even if they have been regularized on or after 01.01.2004. He has clarified that 10.09.1993 Scheme is with regard to granting of temporary status and regularization of casual workers. Since the applicant was never conferred the status of temporary employee on the Scheme of September, 1993, his case cannot be deemed to be covered under either the OM of February 2016 or July 2016.

8. After carefully considering the whole matter, I am inclined to agree with the arguments advanced by the respondents. First of all, this case cannot be treated as similar to the case of Rameshwar Singh's (supra) where it was held that Rameshwar Singh was granted temporary status by operation of law w.e.f. 1.09.1993. It is so because essentially Rameshwar Singh was indeed explicitly granted temporary status on the directions of the Court. This is not the case of the present applicant. The applicant had never applied for grant of temporary status under the Scheme of 1993 nor the respondents have any stage granted him temporary status. The argument of the applicant's counsel that since the Scheme is in operation, therefore, it was the

responsibility of the respondents to grant him temporary status is problematic. It is expected that the employees will be vigilant enough to claim their legitimate right, particularly when several other persons in same Department were given temporary status under the Scheme of 1993. Even otherwise he cannot claim that his temporary status should be deemed as having been given after such a long period of time. Admittedly, the applicant was only concerned about regularization which has taken place w.e.f. 2006. There is no OM or Circular of the Government which provides that if regularization is taken place after 2004, the regularized employees would be entitled to the benefit of Old Pension Scheme except in cases where the casual labourer was covered under the Scheme of September, 1993.

9. It may be worthwhile to closely study the Scheme of 10.09.2013 upon which hinges the validity of applicant's claim in prayer. The subject of the Scheme, as mentioned in the Circular, is 'Grant of temporary status and regularization of casual workers'. The Scheme primarily deals with the mechanism for granting temporary status to casual workers, which is contained in paragraphs 4, 5, 6 & 7. However, the Scheme also talks about regularization in paragraph 8, relevant portion of which is reproduced below:-

**"8. Procedure for filling up of Group 'D' posts.**

*(i) Two out of every three vacancies in Group 'D' cadres in respective offices where the casual labourers have been working would be filled up as per extant recruitment rules and in accordance with the instructions issued by Department of Personnel and Training from amongst casual workers with temporary status..."*

Further in paragraph 9, it is stated that on regularization of casual worker with temporary status, no substitute in his place will be appointed as he was not holding any post. Violation of this should be viewed very seriously and attention of the

appropriate authorities should be drawn to such cases for suitable disciplinary action against the officers violating these instructions.

10. The study of this Scheme clearly indicates that the process of regularization under this Scheme is a follow up process after grant of temporary status. In other words, for regularization under this Scheme, grant of temporary status appears to be a pre-requisite. In the light of this, it is clear that the applicant was not granted temporary status under the Scheme of 1993 either because of non-consideration or on account of his being ineligible on consideration, but this fact cannot be disputed that he was never granted temporary status. The argument of the counsel for the applicant that the applicant had obtained the temporary status by operation of law does not convince me, in any measure.

11. Since under the old Pension Scheme, two out of every three vacancies in Group "D" cadres to be filled up from amongst casual workers with temporary status even if they were regularized on or after 01.01.2004, the applicant, who has never been granted temporary status, very clearly is not covered under this provision of the DOP&T Circular dated 28.07.2016.

12. I have also gone through the judgment of Hon'ble Apex Court in ***State of Punjab & Ors. vs. Jagjit Singh & Ors.*** (supra) which relates to entitlement of minim wages to be drawn by temporary employees at par with regular employees and does not relate to the pensionary benefits. Moreover, this judgement is in personam and not in rem, hence, the same is not applicable to the facts and circumstances of the present case. For the sake

of clarity, operative part of the judgment is reproduced hereunder:-

*"58. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding, that all the concerned temporary employees, in the present bunch of cases, would be entitled to draw wages at the minimum of the pay-scale (-at the lowest grade, in the regular pay-scale), extended to regular employees, holding the same post."* (Emphasis added)

13. Clearly, the applicant cannot claim that he should be deemed as given temporary status once he was regularized in 2006. Such claim would be contrary to the existing regulations and instructions in this matter.

14. Given the above facts, I am of the considered view that the applicant's claim for benefit of Old Pension Scheme is not supported by the law or logic in this regard. The respondents have rightly denied him the advantage of Old Pension Scheme.

15. The OA, therefore, is deficient in matter and deserves to be dismissed and is accordingly dismissed.

**(UDAY KUMAR VARMA)  
MEMBER (A)**

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