

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.1332/2015

Order Reserved on: 20.09.2016
Order pronounced on 30.09.2016

Hon'ble Shri V. Ajay Kumar, Member (J)

Nandi Devi
[Widow of Diwan Singh
posted as Driver (Ad-hoc)(Group C) Age 48 years]
House No.68, Khasra No-12/10
Gali No.-03, Uttrakhand Colony
Nathu Pura
Burari, Delhi – 110 084. ... Applicant

(By Advocate: Shri Sachin Kumar Jain)

Versus

1. Central Pollution Control Board
Through its Principal Secretary
Parivesh Bhawan
East Arjun Nagar
Delhi – 110 032.
2. Ministry of Environment, Forest & Climate Change
Through its Principal Secretary
Indira Prayavaran Bhawan
Jor Bagh Road
Aliganj
New Delhi – 110 003. ... Respondents

(By Advocate: Mr. Raj Kmar and Mr. Ashok Kumar)

ORDER

The applicant is the wife of Late Shri Diwan Singh, who died in harness on 06.12.2012 while working as Driver on ad hoc basis under the 1st Respondent-Central Pollution Control Board (in short, CPCB), filed the OA seeking a direction to the respondents to pay the amount of employers contribution of the Contributory Provident Fund and the amount of Gratuity, with interest.

2. It is submitted on behalf of the applicant that her husband was employed as Driver on ad hoc basis w.e.f. 06.11.1995 and worked as such till his death on 06.12.2012, under the 1st Respondent. The deceased husband of the applicant was made applicable with the Central Provident Fund Scheme and accordingly various amounts have been deducted from his monthly Salary and that the employers share was also deposited corresponding to the contribution of Late Shri Diwan Singh, as evidenced by the Annexure A1, copy of the CPF Pass Book. The applicant being the nominee of Late Shri Diwan Singh, claimed the CPF and Gratuity amounts, and that Respondent No.1 vide letter dated 09.12.2013 (Annexure A2), enclosing a Cheque No.675260 dated 06.12.2013 paid an amount of Rs.98619/- only, being the contribution made by the deceased husband of the applicant. The representations of the applicant for payment

of balance amount of CPF, i.e., the share of the employer of the deceased and the Gratuity amount were unanswered.

3. Heard Mr. Sachin Kumar Jain, the learned counsel for the applicant and Mr. Raj Kumar and Mr. Ashok Kumar, the learned counsel for the respondents, and perused the pleadings on record.

4. The learned counsel for the applicant would contend that the respondents have paid the Leave Encashment amount and the CPF share of the deceased husband but illegally denied the payment of employers contribution of CPF and Gratuity. The respondent having contributed its share of CPF amount to the fund cannot deny the payment of the same to the applicant. It is further submitted that since the applicant's husband worked from 06.11.1995 till his death on 06.12.2012, i.e., more than 17 years, and accordingly the applicant is entitled for payment of Gratuity amount of her husband.

5. Per contra, the 1st Respondent, vide their counter submitted that Late Diwan Singh was engaged on daily wage basis w.e.f. 06.11.1995 and thereafter he was conferred with temporary status w.e.f. 01.01.1997 and subsequently as per his Annexure R1 request dated 07.01.2001, he was offered for appointment as Driver on ad hoc basis vide Annexure R2 dated 20.12.2001, and accordingly he was appointed initially for a period of 6 months under a plan project, i.e., Lab Management, vide Annexure R3

dated 31.12.2001. His ad hoc appointment was extended from time to time and continued till his death, i.e., 06.12.2012. It is further submitted that he was never regularized or confirmed to the post of Driver.

6. The respondents further submitted that the GPF/CPF Rules are applicable to those Central Government Employees, who have been appointed on or before 31.12.2003 and the temporary Government servants after continuing services of one year shall subscribe GPF/CPF compulsorily and the temporary Government servants may subscribe the GPF/CPF even before the completion of one year service voluntarily. The appointment on ad hoc basis was a sort of contract which could be terminated at any time and as such he was not covered under CPF Scheme. The deceased was not holding any lien on any of the post and hence he was not covered under CPF Scheme and accordingly not entitled for matching contribution towards CPF. Since the deceased was not holding any regular post, he was not entitled for payment of Gratuity.

7. Admittedly, the applicant was conferred with the temporary status w.e.f. 01.01.1997 and later was appointed as Driver on ad hoc basis w.e.f. 21.12.2001 initially for a period of 6 months, however, which was continued till his death, i.e., 06.12.2012.

8. As per Rule 5(vi) of the Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of

India, 1993, issued by Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training), which came into force w.e.f. 01.09.1993, a casual employee after rendering three years continuous service after conferment of temporary status, would be treated on par with temporary Group 'D' employee for the purpose of contribution to the GPF on the same conditions as are applicable to temporary Group 'D' employees, provided they furnish two sureties from permanent Government servants of their department. As per Rule 6 of the said Scheme, no benefits other than those specified in the Scheme will be admissible to Casual Labourers with temporary status.

9. The Annexure-I, i.e., the CPF Pass Book of the applicant discloses that the respondent allowed the applicant to become a member of the CPF Scheme and deducted the contribution from the Salary of the applicant w.e.f. April, 2003, i.e., after conversion of the deceased's services from temporary status Driver to ad hoc Driver, and continued till his death, i.e., 06.12.2012. It further discloses that the 1st Respondent – Board has also contributed its share to the Fund, for the entire said period. Neither the Annexure R2 – Offer of appointment letter as Driver (ad hoc) dated 20.12.2001 nor the Annexure R3 Order of appointment as Driver (ad hoc), dated 31.12.2001, indicate anywhere that the applicant on his appointment as Driver (ad hoc) is not entitled for contribution of Provident Fund. The respondents failed to state if the applicant while working as

Driver (ad hoc) is not eligible for Provident Fund Scheme, why they have contributed their share of Provident Fund, after 21.12.2001, i.e., after the deceased was appointed as Driver on ad hoc basis.

10. Though the applicant claimed for payment of Gratuity also but failed to show any valid reason in support of the said claim.

11. In the circumstances and for the aforesaid reasons, the OA is partly allowed and the respondents are directed to pay the employers share of the Provident Fund contribution to the applicant along with GPF rate of interest, w.e.f. 01.04.2015, i.e., the date of filing of the OA till the actual date of payment, within 90 days from the date of receipt of a copy of this order. No costs.

(V. Ajay Kumar)
Member (J)

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