

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 1541/2015

M.A. No.1390/2015

M.A. No.1391/2015

Reserved on : 11.01.2017

Pronounced on : 23.01.2017

HON'BLE MR. V. AJAY KUMAR, MEMBER (J)

HON'BLE MR. P.K. BASU, MEMBER (A)

1. Association of Qualified & Trained Technologists
AIIMS, Ansari Nagar,
New Delhi-110029.
2. Shri Bhim Bisht,
S/o Sh. M.S. Bisht
R/o H.No.83, Type-III,
A.V. Nagar, New Delhi.
Technician, Aged 42 years.
3. Sh. Jeevan Bisht
S/o Sh. H.S. Bisht
R/o 343, Sector-5,
Mohan Meakin Society,
Vasundhara, Ghaziabad (U.P.)
Technician, Aged 45 years.
4. Sh. Mahavir Singh
S/o Sh. Surjit Singh
R/o Village & Post Jaurasi
District Gurgaon, Haryana.
Technician, Aged 42 years.
5. Ms. Savita Prabha
D/o Sh. Om Prakash
R/o 165, Nehru Colony,
Badarpur, New Delhi-110044
Technician, Aged 44 years.
6. Sh. Manish Mittal
S/o Sh. B.L. Mittal
R/o A-1/3, Sector-5,
Rohini, Delhi-110 085
Technician, Aged 40 years.
7. Sh. Surender Singh
S/o Sh. Dharam Pal Singh
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Nazafgarh, New Delhi-110043
Technician, Aged 42 years.

8. Sh. Santosh Kumar
S/o Late Sh. Ram Swaroop
R/o H-1st -125, Sector-IV,
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Technician, Aged 50 years.
9. Sh. Rahul
S/o Sh. Nand Lal
R/o Block R-72A,
Dilshad Garden, Delhi.
Technician, Aged 44 years.
10. Sh. Upendra Singh
S/o Sh. Karan Singh
R/o B-142, Chattarpur Enclave,
Phase-II, New Delhi.
Technician, Aged 41 years.
11. Sh. Raj Kumar
S/o Sh. Raja Ram
R/o H. No. 270, Street No.4,
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Technician, Aged 44 years.
12. Ms. Monica Tiwari
D/o Sh. Sanjay Kumar Tiwari
R/o C-510, Kidwai Nagar (East)
New Delhi-110023
Technician, Aged 40 years.
13. Sh. Vijay Prakash
S/o Sh. Ram Dev Kushwaha
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West Sagar Pur, New Delhi-110046
Technician, Aged 42 years.
14. Mrs. Shalini Singhal (Nee Agarwal)
D/o Sh. S.L. Agarwal
R/o A-290, Surya Nagar,
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Technician, Aged 38 years.
15. Sh. Rajendra Kumar
S/o Late Sh. Kishori Lal
R/o A-281, North Block,

Gali No.6, West Vinod Nagar, Delhi.
Technician, Aged 48 years.

16. Ms. Reena Philip
D/o Sh. Joseph Philip
R/o G-11, AIIMS Campus,
Ansari Nagar, New Delhi-110 029
Technician, Aged 44 years.
17. Mrs. Veena Balooni (Nee Kumari)
D/o Sh. Shalig Ram
R/o A-14, Palika Niwas,
Lodhi Road,
New Delhi-110003.
Technician, Aged 40 years.
18. Sh. Shekhar Chandra
S/o Late Sh. Rewa Dhar
R/o 58, Pocket-Q,
Dilshad Garden, Delhi.
Technician, Aged 44 years.
19. Sh. Pankaj Kumar
S/o Late Sh. S.K. Jain
R/o 497, C&D Block,
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Delhi-110088
Technician, Aged 43 years.
20. Sh. Naveen Nischal Sharma
S/o Sh. Somdatt Sharma
R/o D-1120, Gali No. 7,
Ashok Nagar, Shahdara,
Delhi-110093
Technician, Aged 44 years.
21. Sh. Lakhpatt Tanwar
S/o Sh. Raghu Raj Singh Tanwar
R/o Vasant Vihar,
Behind ITI Campus, Palwal
Technician, Aged 46 years.
22. Sh. Kirpal Singh Bisht
S/o Sh. M.S. Bisht
R/o B-248, A.V. Nagar,
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Technician, Aged 38 years.

23. Sh. Rajender Singh
S/o Sh. Salek Chand
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F-Block, Ansari Nagar,
New Delhi-110029
Technician, Aged 37 years.
24. Sh. Manoj Kumar Gupta
S/o Sh. Sushil Kumar
R/o H. No.1630
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Ajmeri Gate, Delhi.
Technician, Aged 42 years.
25. Sh. Vineet Sharma
S/o Late Shri J.S. Sharma
R/o B-31, Arjun Mohalla,
Maujpur, Delhi
Technician, Aged 43 years.
26. Ms. Om Vati Vats (Nee Sharma)
D/o Sh. J.L. Sharma
R/o H. No.T-31, Kh.No.429/135,
Sarai Pipal Tahal Ext.,
Adarsh Nagar, Delhi-110033
Technician, Aged 38 years.
27. Sh. Rajiv Kumar
S/o Sh. Anand Kumar Das
R/o 17-C, Sarai Julena,
Okhla Road, New Delhi-110025
Technician, Aged 38 years.
28. Ms. Kamlesh Tharkoti
D/o Sh. Kalyan Singh
R/o RZ-2001, C/C,
Street No.-24, Tughlakabad Extn.,
New Delhi-110 019.
Technician, Aged 38 years.
29. Sh. Aash Mohammad
S/o Sh. Sharafat Ali
R/o Vill. Dhabarsi,
P.O. Jindal Nagar,
Ghaziabad (U.P.)
Technician, Aged 52 years.
30. Sh. Anupam Jackson Lall
S/o Sh. J.S. Lall

R/o Methodist Mission Compound,
Sonipat (Haryana)
Technician, Aged 44 years.

31. Sh. Vikas Sachdeva
S/o Sh. B.R. Sachdeva
R/o 79A, Angad Nagar,
Laxmi Nagar, Delhi-110092
Technician, Aged 40 years.
32. Sh. Harish Chander Singh Rana
S/o Sh. Bhim Singh Rana
R/o G-80, Ansari Nagar,
AIIMS Campus, New Delhi-110029
Technician, Aged 40 years.
33. Ms. Sangita Joshi
D/o Sh. K.N. Joshi
R/o 615, Four Storey Flats,
Near Vishal Enclave, New Delhi-110027
Technician, Aged 40 years.
34. Sh. Rakesh Chawla
S/o Sh. Krishan Lal Chawla
C/o Mr. J.C. Sethi
R/o A-47, Kanti Nagar,
Main Road, Delhi-110051
Technician, Aged 42 years.
35. Mrs. Anjoo Kher (Nee Misri)
D/o Sh. Chaman Lal Misri
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Technician, Aged 44 years.
36. Sh. Sanjay Tiwari
S/o Sh. Hem Chandra Tiwari
R/o B-26/13A, Sector-19, Noida.
Technician, Aged 38 years.
37. Ms. Sushma Singh
D/o Sh. Gopal Singh
R/o N-11D, Gali No.1,
Vijay Vihar, Uttam Nagar,
New Delhi-110059
Technician, Aged 38 years.
38. Sh. Hargovind Singh Jeena
S/o Late Sh. Bhadur Singh Jeena

R/o S-45, Pandav Nagar,
Opposite Mother Dairy, Delhi-110092
Technician, Aged 45 years.

39. Mrs. Esther Phillip
W/o Sh. Phillip Deva Raj
D/o Sh. A. Benchaman
R/o A-5, NDMC Quarter,
Palika Kunj, Karbla,
New Delhi-110003
Technician, Aged 51 years.
40. Sh. Mohan Lal Sharma
S/o Sh. Jag Roop Sharma
R/o Vill. Chhaprawat
P.O. Gulawati,
Distt. Bulandshehar, (U.P.)
Technician, Aged 40 years.
41. Sh. Keshav Dev
S/o Sh. Mahesh Chandra Sharma,
R/o H.No.28, Raj Bagh Colony,
Sahibabad, Ghaziabad (U.P.)
Technician, Aged 39 years.
42. Sh. Omander Kumar
S/o Sh. Dal Chand Sharma
R/o 9/1, Garima Garden,
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Technician, Aged 38 years.
43. Ms. Yogita Dixit
D/o Sh. Brijesh Dixit
R/o H-94, Sector-41,
Noida (U.P.)
Technician, Aged 36 years.
44. Sh. Jitender Kumar Sharma
S/o Sh. Rajeshwar Prasad Sharma
R/o C-4/2, Gali No.7,
Arjun Mohalla, Maujpur,
Delhi-110053.
Technician, Aged 39 years.
45. Sh. Jitender Kumar
S/o Sh. K.P. Singh
R/o 219, LIG Flats, Pocket-3,
Paschim Puri, New Delhi
Technician, Aged 46 years.

46. Sh. Mukesh Kumar
S/o Sh. Amar Singh
R/o Village Dhanpur
Post-Tofapur, Distt. Meerut (U.P.)
Technician, Aged 39 years.
47. Ms. Talat Shaheen
W/o Sh. Shorab Khan
R/o A-1, Abulfazal Enclave,
Jamia Nagar, Okhla,
New Delhi.
Technician, Aged 41 years.
48. Ms. Pooja Rani
D/o Sh. Vishwanath
R/o D-6/139, Sector-5,
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Technician, Aged 36 years.
49. Mohd. Iftekhhar Alam
S/o Mohd, Iliyas Alam
R/o N-37, 3rd Floor,
Flat No. 102, Abul Fazal Enclave,
Jamia Nagar, Okhla,
New Delhi.
Technician, Aged 40 years.
50. Ms. Rekha Rani
D/o Sh. Jagdish Sharan
R/o 198 D/18C, Shri Ram,
Shahdara, Delhi-110032
Technician, Aged 39 years.
51. Ms. Amarjeet Kaur
D/o Late Sh. S.S. Narula
R/o 21-27, NIT,
Faridabad, Haryana.
Technician, Aged 42 years.
52. Mrs. Anjana Kushwaha (Nee Rawal)
W/o Late Dr. Rahul Kushwaha
D/o Col. D.P.S. Rawal
R/o F-62, AIIMS Campus,
Ansari Nagar, New Delhi-110029
53. Sh. Pankaj Kumar
S/o Sh. Ram Lata Thakur
R/o P.O. Nargan, Via-Parihar

Distt. Sitamarhi, Bihar-843324
Technician, Aged 42 years.

54. Mrs. Archana Bansal
D/o Late Sh. J.K. Gupta
R/o 1543, Sector-10A,
Gurgaon, Haryana.
Technician, Aged 46 years.
55. Mrs. Saroj Rana
W/o Sh. Mahavir Singh
D/o Sh. Lal Singh
R/o H.No. 552A, V.P.O. Bijwasan,
New Delhi-110061
Technician, Aged 50 years.
56. Sh. Mukesh Prasad Nayak
S/o Late Sh. Dhanu Lal Nayak
R/o E-214, Kidwai Nagar,
New Delhi-110 023.
Technician, Aged 41 years.
57. Mrs. Pooja Sharma
W/o Sh. Pramod Sharma
R/o D-4, Subhash Park,
Uttam Nagar, New Delhi.
Technician, Aged 35 years.
58. Sh. Amit Yadav
S/o Sh. Prakash Yadav
R/o E-29, Laxmi Park,
Nangloi, New Delhi-110041.
Technician, Aged 37 years.

.. Applicants

(By Advocate: Shri D.S. Chaudhary)

Versus

1. Union of India
Through the Secretary,
Ministry of Finance,
Central Secretariat,
New Delhi-110001
2. The Secretary
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi-110011

3. All India Institute of Medical Sciences
Through its Director,
Ansari Nagar, New Delhi-110029

4. The President
All India Institute of Medical Sciences
Ansari Nagar, New Delhi-110029.

.. Respondents

(By Advocate: Shri Acharya Santosh Prasad Chaurasiya for R-1&2
Shri R.K. Gupta, for R-3&4)

ORDER

By Mr. P.K. Basu

MA 1391/2015 filed for seeking permission to file single application is allowed.

2. The Applicants No.2 to 58 were initially appointed as Laboratory Technicians on ad hoc basis between the years 1993 to 2003 and they were regularised in the year 2004. The applicants through this O.A. are claiming the benefit of Old Pension Scheme from the date of their initial appointment and not to be treated under the New Pension Scheme which was introduced w.e.f. 01.01.2004 on the ground that they have been regularised in the service after 01.01.2004.

3. When the applicants were regularised in service in 2004, the amount of deduction towards GPF upto 31.12.2003 was refunded and the respondents stopped deduction of GPF w.e.f. 01.01.2004 as, according to the respondents, the applicants being regularised post 01.01.2004 are to be governed by the New Pension Scheme.

4. The applicants are aggrieved by this decision of the respondents and have filed this O.A. with the following prayer:

- “(1) The impugned order dated 09.07.2013 (Annexure A/2) be quashed. The impugned order dated 20.11.2004 (Annexure A/1), so far as it relates to the applicants, be also quashed; in the result, the applicants No.2 to 58 be covered under old pension scheme.
- (2) The applicants No.2 to 58 be declared as regular employees (Laboratory Technicians) with effect from the date of their initial appointment on ad-hoc basis or in alternative their seniority in the grade of Laboratory Technician be reckoned from the date of their initial appointment on ad-hoc basis.”

5. Memorandum dated 20.11.2004 was issued by the respondents - All India Institute of Medical Sciences (AIIMS) instructing all concerned about introduction of New Pension Scheme and discontinuation of Old Pension Scheme in respect of persons working on ad-hoc basis. Order dated 09.07.2013 is the order issued by the respondents in compliance of order dated 08.10.2012 in O.A. 4289/2010, in which the Tribunal had passed the following order:

“Accordingly, we dispose this OA by directing the respondent No.3 i.e. Director, AIIMS to consider the representation dated 16.06.2010 (Annex A/6 (Colly)) and pass a speaking and reasoned order. Before passing the order the applicant No.1 may also be given an opportunity for personal hearing. Further, if in the course of consideration, the order of any of the other respondents are felt necessary, this direction would also cover them. A final order in this respect is to be passed within a period of two months from the date of receipt of a copy of our order. We also hereby make it clear that while giving the above directions, we have not examined the merit of the case and the direction given would not affect the right of the applicants. No costs.”

6. The O.A. had been filed by the applicants to declare them regular employees of AIIMS from the date of their initial

appointment on ad-hoc basis and to cover them under Old Pension Scheme. By this order, their request had been rejected as they were found not eligible for Old Pension Scheme, but to be covered under New Pension Scheme.

7. The grounds on which the applicants have claimed New Pension Scheme are the following:

(i) The respondents had allowed their annual increments on time and deducted the GPF contribution during the period of their being ad-hoc. At the time of regularisation, their pay had been fixed in the grade of Laboratory Technician by granting all the annual increments already drawn by them.

(ii) Their ad-hoc appointment is followed by their regular appointment without any break in service.

(iii) Normally, ad-hoc appointments are made for stop gap arrangement, but in the case of the applicants it continued for years and, therefore, it cannot be categorised as ad-hoc appointment.

(iv) The respondents had followed the same method for selection for appointment on ad-hoc basis which is followed by them in regular appointment.

(v) In accordance with the provisions of Rule 13 of CCS (Pension) Rules, 1972, the qualifying service of an employee commences from the date of his joining the service to a post to which he is first

appointed either substantively or in an officiating or temporary capacity. Therefore, it is argued that the rules also provide counting of service under temporary capacity for the purpose of qualifying service for the purpose of Pension.

(vi) The Hon'ble Delhi High Court has held in a batch of petitions, decided on 04.07.2008 in WP(C) No. 14247/2006 along with connected writs that casual employees who were given temporary status by way of administrative order were entitled to the benefit of Old Pension Scheme.

(vii) In O.A. 1125/1989, this Tribunal has reiterated the legal position that long and uninterrupted period of service in ad-hoc capacity, which is not a stop-gap arrangement, is also liable to be regularised and the entire period to be counted towards seniority of the employee.

(viii) Hon'ble Supreme Court in **N.C. Singal vs. Director General, Armed Forces, Medical Services, New Delhi & anr.**, AIR 1972 SC 628, has also held as under:

“The condition of service cannot be altered to the disadvantage of an employee with retrospective effect.”

(ix) The applicants have received information under R.T.I. Act that respondent No.3 had appointed 152 Assistant Professors on ad-hoc basis and subsequently appointed them on regular basis. When these Assistant Professors were promoted to the post of Associate

Professors, the period spent by them as ad-hoc service was also counted towards regular service.

8. The respondents initially raised the following preliminary objections:

(a) The applicants are claiming seniority over the candidates who have been already regularised in service prior to 2004, but they are not impleaded as party in the present O.A. In this regard, they rely on judgment of the Hon'ble Supreme Court dated 19.10.1962 in **Udit Narayan Singh Malpaharia vs. Additional Member, Board of Revenue, Bihar** and, thus, claimed that the O.A. is not maintainable in law.

(b) There has been a considerable delay by the applicants in filing this O.A. as almost 11 years have passed since the impugned order dated 20.11.2004 had been passed by the respondents. It is, therefore, argued that the present O.A. is hit by limitation as per Section 21 of Administrative Tribunals Act, 1985.

(c) The applicants have, on the one hand, sought counting of their service rendered on ad-hoc basis and also their inclusion in Old Pension Scheme, i.e. plural remedies have been sought, which is not maintainable in view of Rule 10 of CAT (Procedure) Rules, 1987.

9. The respondents in their reply have also stated that the New Pension Scheme has come into effect from 01.01.2004 and any

Govt. employee, who has been appointed on regular basis after that date has to be governed by New Pension Scheme and not by the Old Pension Scheme. As regards, the case of the Assistant Professors cited by the applicants, it is affirmed that as per the decision of the General Body of AIIMS, the period rendered by these Assistant Professors on ad-hoc basis was decided to be counted for the purpose of promotion as Associate Professors of the Institute. It is stated that this has no relevance with pensionary benefits and this has been raised primarily to mislead the Tribunal.

10. Heard the learned counsel for both the sides and perused the pleadings and judgments.

11. In view of **M.R. Gupta vs Union Of India & Ors.**, 1995 SCC (5) 628, since pension is a continuous cause of action, therefore, the question of limitation would not apply. Moreover, the applicants have filed MA 1390/2015 seeking condonation of delay. In any case, the applicants had to wait till the order dated 09.07.2013 has been passed in compliance of order of this Tribunal in O.A. 4289/2010 and in order to challenge this order dated 08.10.2012, they have to challenge the memo dated 20.11.2004. Thus, the question of limitation would not apply in this case and this preliminary objection is rejected.

12. As regards multiple relief being sought, we are not persuaded by the arguments of the respondents' counsel as the two issues are

linked. Only if the ad-hoc service is counted, will the applicant be eligible for Old Pension Scheme. This preliminary objection of the respondents is also, therefore, rejected.

13. As regards non-joinder of parties, we find that the applicants' prayer in para 8.2 is that they be declared as regular employees with effect from the date of their initial appointment on ad-hoc basis or their seniority in the grade of Laboratory Technician be reckoned from the date of their initial appointment on ad-hoc basis and the prayer of inclusion under the Old Pension Scheme flows from this prayer. Those employees, who have been regularised prior to 01.01.2004, therefore, will be put on a disadvantage vis-a-vis the applicants and, to this extent, we accept the argument of the respondents' counsel that they would have been made a party. For example, if there is an ad-hoc employee who has been regularised in the year 2003 and has been counted on regular establishment from that year will find himself junior to the applicants in either situation of the applicants being declared regular employees from the initial appointment on ad-hoc basis or in the alternative, their seniority to be counted from the date of initial appointment on ad-hoc basis. Surely, the judgment of the Hon'ble Supreme Court in **Udit Naraian Singh Malpaharia** (surpa) would apply and such people have to be made party by the applicants, which has not been done. Therefore, this O.A. is not maintainable on the ground of non-joinder of parties.

14. The New Pension Scheme came into effect from 01.01.2004. Therefore, any employee who has been appointed after that date would have to be covered under the New Pension Scheme. Secondly, the learned counsel for the applicant has not been able to point out that an employee, who has been appointed on ad-hoc basis, is entitled to pension under the Old Pension Scheme. The applicants have spent their ad-hoc period before 2004 and in the absence of any rule stating that ad-hoc employees are also entitled to pension under the Old Pension Scheme, there is no question of granting benefits under the Old Pension Scheme to the applicants.

15. The applicants have relied on Rule 13 of the Old Pension Scheme, which states as follows:

“13. Commencement of qualifying service

Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity :

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post.”

There is no mention of the word ‘ad-hoc’. ‘Ad-hoc’ and ‘temporary’ do not mean the same thing which we need not elaborate. In any case, this Rules comes into effect only if we treat them eligible as per Old Pension Scheme.

16. The question raised by the applicants of Assistant Professors ad-hoc period counted for the purpose of promotion as Associate Professors is not relevant because it does not speak of pensionary benefits. In fact, the order dated 04.06.2003 annexed by the applicants to the O.A. pertaining to one Dr. Madhu Bajpayee states that condition of service such as benefit of pension, GPF, Leave etc. will be as provided for in the rules, the regulations etc. of the institute, as amended from time to time. Nothing beyond this has been stated.

17. In view of the above, it is clear that the applicants will not qualify under the Old Pension Scheme, but only under the New Pension Scheme and there has been no discrimination vis-a-vis the case of the Assistant Professors.

18. Thus, both on the grounds of maintainability as well as merits, the O.A. does not succeed and is, therefore, dismissed. No order as to costs.

(P.K. BASU)
Member (A)

(V. AJAY KUMAR)
Member (J)

/Jyoti/