

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.2043/2014
M.A.No.1744/2014

Monday, this the 27th day of February 2017

Hon'ble Mr. K.N. Shrivastava, Member (A)

1. Rohtas (Peon) Age 59 yers
s/o Lt. Mr. Raje Ram
r/o Village Ber Srai, H.No.70-A
New Delhi – 16
2. Natthoo Ram (Peon) age 57 years
s/o Mr. Birkheram
r/o Village Bajgheda
PO Palam Vihar
District Gurgaon (Haryana)
3. Nirmal Singh (Peon) age 53 years
s/o Mr. Ram Chand
r/o H.No.705 E Ward No.6
Mehroli, New Delhi – 3
4. Subodh Kumar Mandal (Peon) age 49 years
s/o Mr. Mangal Mandal
r/o D-II-347, Shiv Durga Vihar
Lakkarpur Faridabad Haryana
5. Bhulli Ram (Peon) Age 59 years
s/o late Mr. Dhanna Ram
r/o F-292 c/o Amilal Lado Sarai
New Delhi – 30
6. Jagdish Prasad (Peon) age 55
s/o Mr. Sita Ram
r/o Sector 3 Pushp Vihar
Quarter No.160 MB Road
New Delhi – 17
7. Ram Babu (Peon) Age 56 years
s/o Mr.
r/o D-1535 Jhangir Puri
Delhi - 33

..Applicants

(Ms. Anu Mehta, Advocate)

Versus

1. Union of India
Through Secretary, Ministry of Culture
Sastri Bhawan, New Delhi

2. Director General
Archaeological Survey of India
Janpath Lane
New Delhi

3. Director, Department of Personnel Public Grievances & Pension
Ministry of Personnel & Training
Govt. of India, North Block
New Delhi

..Respondents

(Mr. Rajinder Nischal, Advocate)

O R D E R (ORAL)

The applicants, seven in number, were appointed as Casual Labourers in the respondent-organization – Archaeological Survey of India (ASI). In terms of the Scheme dated 10.09.1993, they were granted temporary status w.e.f. 01.09.1993. They were allowed to subscribe to the then prevailing General Provident Fund (GPF) Scheme. Subsequently, they have been regularized on different dates between the years 2012-2014.

2. The Central Government brought into effect the New Pension Scheme (NPS) (Defined Contribution Pension System) w.e.f. 01.01.2004. The Central Government also brought out another O.M. dated 26.04.2004, according to which, all the temporary status employees were brought under the purview of the NPS. This O.M. became the bone of contention in several O.As. before different Benches of this Tribunal (Jaipur and Principal Benches). The view taken by the Tribunal was that the NPS cannot be made effective with retrospective date and as such the employees having acquired temporary status prior to 01.01.2004 could not be forced to opt for the NPS. Consequently, the O.M. dated 26.04.2004 was rendered illegal. The orders of the Tribunal were challenged before the Hon'ble High Court of Delhi by way of W.P. (C) Nos.14247, 8491, 17528-30 of 2006 & 4806 of

2007, and finally before the Hon'ble Supreme Court in SLP (C) Nos.19673-19678 of 2009 (**Union of India etc. v. Ajay Kumar & others etc.**). The view taken by the Tribunal was upheld by the Hon'ble High Court of Delhi in the aforementioned writ petitions. The SLP filed in the Hon'ble Apex Court against the order of Hon'ble High Court of Delhi was also dismissed *in limine* vide order dated 24.02.2015. Hence, the O.M. dated 26.04.2004 become non-est in the eyes of law.

3. The applicants in the earlier O.As., which were adjudicated by the Jaipur and Principal Benches of the Tribunal, have since been granted the reliefs prayed for in those O.As. The applicants in the present O.A. are seeking the same reliefs. The main reliefs prayed for in this O.A. read as under:-

“a) Quash the respondent letter dated 13.1.2014,

b) Grant the benefit of pension to the applicants under the CCS Pension Rules 1972 computing their past TS service for the purpose of pension as provided under clause 5 DOPT Scheme dated 10.9.93.”

4. I have heard the learned counsel for the parties and perused the materials placed on record.

5. In view of the fact that O.M. dated 26.04.2004 has been rendered illegal in the eyes of law, as discussed in the pre-paragraphs, these applicants, who were also the temporary status employees when the NPS came into existence w.e.f. 01.01.2004 but had acquired the temporary status much prior to that, are, therefore, entitled to get the same reliefs, as had been granted by the Jaipur and Principal Benches of this Tribunal. These Benches had permitted the applicants therein to continue

contributing to the GPF. In this regard, it is pertinent to mention that the GPF is having an umbilical link with the old Pension Scheme under the CCS (Pension) Rules, 1972, meaning thereby that all those employees, who were contributory to GPF Scheme, were automatically covered under the old Pension Scheme. Hence, considering that the O.M. dated 26.04.2004 has been rendered non-est in the eyes of law, right up to the Hon'ble Supreme Court, these applicants are entitled to get the benefits of GPF and the old Pension Scheme.

6. In the conspectus of the discussions in the pre-paragraphs, the O.A. is allowed. Respondents are directed to grant the benefits of old Pension Scheme to these applicants from their respective dates of retirement. No costs.

(K.N. Shrivastava)
Member (A)

February 27, 2017
/sunil/