

**Central Administrative Tribunal  
Principal Bench**

**OA No. 2859/2014**

Order Reserved on: 20.01.2016  
Order Pronounced on: 02.03.2016

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

H.V. Ashoka Kumar,  
Aged 60 years,  
R/o House No. 503,  
Naveen Kunj Society,  
Plot No.22, Pocket 6,  
Nasirpur (Dwarka Sector 1-A),  
New Delhi-110045

And Retired as:  
Personal Assistant from  
National Security Council Secretariat,  
3<sup>rd</sup> Floor, Sardar Patel Bhawan,  
Parliament Street,  
New Delhi-110001 - Applicant

(By Advocate: Ms. Jasvinder Kaur)

VERSUS

Union of India,  
Through the Secretary,  
National Security Council Secretariat,  
3<sup>rd</sup> Floor, Sardar Patel Bhawan,  
Parliament Street,  
New Delhi-110001 - Respondent

(By Advocate: Mr. Rajinder Nischal)

**O R D E R**

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

The applicant, in the instant OA filed under Section 19 of the Administrative Tribunals Act, 1985, is aggrieved with the order dated 15.03.2014 of the respondent

rejecting his appeal dated 03.02.2014 for grant of pension for his appointment with the respondent – organization.

2. The applicant has sought the following relief vide means of this OA:-

- “i) May direct the Respondent to place the applicant under the category of pensioners as he was duly absorbed in the post of a pensionable establishment as envisaged under Rule 17 of Pension Rules;
- ii) Direct the Respondents to pass an appropriate order fixing his pension as per law;
- iii) Direct the Respondents to pay the penal interest on the delayed payment of pensionary benefits;
- iv) Award exemplary cost for this Petition with a further request to pass any other order/orders or direction/directions as deemed fit in the light of the facts and circumstances of the case.”

3. The applicant has taken us through a meandering journey through his service career. However, we have only gleaned the essential facts necessary for us to arrive at a decision in the instant OA. The applicant was appointed with the respondent as Personal Assistant initially on contract basis w.e.f. 3.6.2002. He, on his own request dated 15.02.2006, was brought under the Contributory Provident Fund vide order dated 30.05.2005 which, *inter alia*, provided that he would be governed by CPF Rules as applicable to the contract employees. The applicant was absorbed in NSCS w.e.f. 3.6.2007 and was relieved from

his duties in NSCS with effect from afternoon of 28.02.2014. The applicant submitted an application dated 13.01.2014, just a month prior to his retirement, opting for pension as per Rules in lieu of CPF. A scrutiny of his application reveals that he was already in receipt of compulsory retiring pension w.e.f. 24.04.1997 and as such, his application was hit by Rule 2 and 7(1) & (2) CCS (Pension) Rules, 1972. His case was further hit by Rule 17 of CCS (Pension) Rules, 1972, as he had failed to exercise his option in the first three months of his employment. Accordingly, his appeal was rejected vide the impugned order. The applicant is here before this Tribunal challenging the same.

4. The first and the foremost ground adopted by the applicant that the respondent had failed to abide by provisions of Rule 17 of CCS (Pension) Rules, 1972, inasmuch as they failed to take the option from the applicant for pension and continue to deduct CPF even after he had been absorbed in served. In the second place, the applicant submits that after implementation of the recommendations of Sixth CPC (Para 5.1.33 of the Report of VI CPC), qualifying service is ceased to have any relevance as full pension becomes payable once minimum pensionable service is put in without any reference to

qualifying service. The applicant has put in more than 11 years and nine months service in the respondent establishment and as such, eligible for pension. In the third place, once the applicant had been absorbed on 03.06.2007, his service rendered by him on contract basis was bound to be reckoned for the purpose of pensionary benefits. In the fourth place, the applicant has relied upon the decision of the Tribunal dated 21.10.2013 passed in OA No. 2250/2012 (**Dr. S.D. Pradhan vs. Union of India & Ors.**). The applicant has further alleged hostile discrimination vis-à-vis one G.M. Pillai, who had been irregularly appointed in March, 2007 without having followed the rules. The said GM Pillai had never worked in NSCS but was paid from NSCS Fund only after absorption. The said GM Pillai is now in receipt of pension from the respondent – organization.

5. The respondent has filed a counter affidavit rebutting all the averments made by the applicant. It has been submitted by the respondent that the applicant had deliberately misrepresented at the time of his employment stating that he had taken voluntarily retirement following 21 years of service in his application form for the post of PA. This factor of experience had already been relied upon for making appointment to the applicant. However, on

later scrutiny, it transpired that the applicant had been compulsorily retired and thereby had concealed vital facts. The applicant had been appointed initially on contract basis on the basis of the recommendations of the Selection Committee w.e.f. 03.06.2002, which was subsequently extended from time to time till his absorption in the year 2007. The respondent has also strongly rebutted the contention of the applicant that he had been asked to appear in interview on 30.04.2002 with full documents, as no such letter had been issued to him and his appointment already stood approved by Deputy NSA & Secretary, NSCS on 26.04.2002. The respondent further questioned the statement of the applicant that the appointment letter had been issued to him on 30.04.2002 and submitted that the same had been issued on 01.05.2002. On 15.02.2005, the applicant had requested for deduction to CPF from the month of completion of one year of contract service. The order dated 30.05.2005 issued in this regard mentions that the applicant would continue to be governed by CPF Rules as applicable to contract employees. The respondent submits that CCS (Pension) Rules, 1972 ceased to exist from 31.12.2003 and employees joining the service after 01.01.2004 were governed by the New Pension Scheme. As the absorption of the applicant had taken place on 03.06.2007, there was

no question of him being granted pension under the new Pension Rules. As the applicant had submitted incorrect information regarding his previous employment in Special Security Questionnaire (SSQ) in respect to Para 15(g) relating to discharge/dismissal from employment, he was placed under suspension for furnishing false information at the time of his initial appointment in NSCS but not due to his filing representation on 17.04.2012, as has been alleged by him. The applicant was departmentally proceeded against and both charges were proved against him. However, as a matter of compassion, the then disciplinary authority came to the conclusion that the charges were not established and ordered his reinstatement, as submitted by learned counsel for the respondent. His application dated 13.01.2014 for grant of pension had been duly examined and rejected vide memorandum dated 28.01.2014 and his appeal had also been rejected vide the impugned order, as being barred by Rules 2, 7 and 17 of the CCS (Pension) Rules, 1972, Learned counsel for the respondent, during the course of his oral submissions, submitted that the case of Dr. S.D. Pradhan would not be applicable, as this was a case of fresh appointment and not re-employment. He also pleaded for action being taken against the applicant for

making false averments before this Tribunal in the instant OA.

6. We have carefully examined the pleadings of the parties as also the documents submitted by them and also listened oral submissions made by their respective counsels.

7. The only issue to be decided by us is that whether the applicant is entitled to pension or not.

8. We start by our inquiry by having a look at Rule 2 of CCS (Pension) Rules, which reads as follows:-

## “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 is to be noted that prior to the New Pension Scheme, it was provided that the existing CCS (Pension) Rules, 1972 would only apply to persons appointed on or before 31.12.2003. Since the applicant was absorbed on 03.06.2007, the question of granting pension to him does not arise.

9. We are also not influenced by the argument of the applicant that absorption should have been made from the date of effect of his initial appointment on contract basis on 03.06.2002, as the letter of absorption of the applicant reads as under:-

“No. 1.12024/199-Ad.  
Government of India  
National Security Council Secretariat

3<sup>rd</sup> Floor, Sardar Patel Bhawan  
Sansad Marg, New Delhi-110 001

Dated the 1<sup>st</sup> June, 2007.

#### OFFICE ORDER

Shri H.V. Ashoka Kumar working in this Secretariat as Stenographer Grade ‘C’/Personal Assistant in the scale of pay of Rs. 5,500-9,000 on contract basis w.e.f. 03.06.2002 is appointed in the same capacity in the NSCS on absorption basis w.e.f. 3<sup>rd</sup> June, 2007

Sd/  
(G.Rajeev)  
Under Secretary to the Government of India”

10. We do not find that the applicant was absorbed from the date of his initial appointment on contract basis. We

also hold that he should have challenged his appointment within a period of Limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985 and having not done so, his right to challenge the same has become extinguished. We are further swayed by the fact that the applicant has not complied with the provisions of Rule 7(1) & (2) of CCS (Pension) Rules 1972, which is being extracted hereinbelow:-

**“7. Limitations on number of pensions**

- (1) A Government servant shall not earn two pensions in the same service or post at the same time or by the same continuous service.
- (2) Except as provided in Rule 19 a Government servant who, having retired on a superannuation pension or retiring pension, is subsequently re-employed shall not be entitled to a separate pension or gratuity for the period of his re-employment.”

Rule 7(2) of the Pension Rules ibid clearly prohibits grant of pension to any person who having retired on superannuation pension or retiring pension was given to a second pension on re-employment. It is also a fact that the applicant did not exercise his option under Rule 17 of Pension Rules, which is being extracted hereinbelow:-

**“17. Counting of service on contract -**

- (1) A person who is initially engaged by the Government on a contract for a specified period and is subsequently appointed to the same or another post in a substantive capacity in a pensionable

establishment without interruption of duty, may opt either :-

- |     |  |
|-----|--|
| (a) | to retain the Government contribution in the Contributory Provident Fund with interest thereon including any other compensation for that service ; or  |
| (b) | to agree to refund to the Government the monetary benefits referred to in Clause (a) or to forgo the same if they have not been paid to him and count in lieu thereof the service for which the aforesaid monetary benefits may have been payable. |

(2) The option under sub-rule (1) shall be communicated to the Head of Office under intimation to the Accounts Officer within a period of three months from the date of issue of the order of permanent transfer to pensionable service, or if the Government servant is on leave on that day, within three months of his return from leave, whichever is later.

(3) If no communication is received by the Head of Office within the period referred to in sub-rule (2), the Government servant shall be deemed to have opted for the retention of the monetary benefits payable or paid to him on account of service rendered on contract.”

11. We hold here that it was incumbent upon the applicant to have exercised his option. Under Rule 17 of Pension Rules, stipulations are very clear that if no option is exercised by the employee within a period of three months due, the competent authority shall presume that he wishes to continue in CPF Scheme.

12. Reliance of the applicant upon the case of **Dr. S.D. Pradhan vs. Union of India & Anr.** (supra) will not hold the applicant at all, as this case was one of fresh

appointment. For the sake of greater clarity, we extract paras 12 and 13 of the order as under:-

“12. I further take note of the fact that the Punjabi University is an Autonomous Body and is governed by different sets of rules. There was no Pension scheme in the year 1991 when the applicant took voluntary retirement but the same was introduced subsequently in the year 1996 with retrospective effect. Assuming, had the Pension Scheme not been introduced or it had not been given retrospective effect, the applicant would not have received pension and would have had to remain contended with the CPF. Thus, I find substance in the argument of the applicant that his initial employment with the Ministry of Defence and subsequently with the NSCS respondent no.1 was not a re-employment but altogether a new employment in an organization having different hierarchy, different promotional rules and different establishment. Thus, this issue is answered in favour of the applicant.

13. Now I take up the second issue. It has already been covered while dealing with issue no.1. The answer is very simple in this respect that once it has been decided in respect of issue no.1 that the employment of the applicant with Ministry of Defence and subsequently with the respondent no.1 was not a case of re-employment, it is obvious that the provision of Rule 7(2) will not apply to the facts of the instant case as it is only applicable to a case of re-employment. The provision of Rule 19 of the Pension Rules will also not apply to the case of the applicant as he is not the military personnel. To the contrary, I find that the provision of Rule 17(1) will apply as the applicant fulfills the conditions laid down under these rules. The applicant was admittedly engaged by the Government on deputation in the year 1984. Subsequent to his taking voluntary retirement in the year 1991 he was engaged on contract basis. Thus it is not that the employment of the applicant with the Ministry of Defence and with respondent no.1 was something that has taken place after his voluntary retirement. It was in fact continuing well before the period of voluntary retirement. I also take into consideration the fact that during the period of contract employment, the applicant had been given several

promotions. In this respect, the contract employment was as good as the regular employment. As has already been discussed above, at the time of absorption, the applicant had not taken the monetary benefit for his contract period of employment. Under these circumstances, there is full application of Rule 17 of the Pension Rules. This question is accordingly answered in favour of the applicant.”

The facts in the instant case of the applicant are totally different because his appointment has been treated as re-employment *ab initio* in CPF establishment.

13. The applicant has further sought benefit from the case of one GM Pillai, who had been working as an officer on special duty at the level of Deputy Secretary of the personal staff of the then Hon’ble Prime Minister on co-terminus basis. He was considered for appointment as Joint/Deputy Secretary in NSCS on absorption basis. We find that as per notified Recruitment Rules for this post, the officers of Central/State Government holding analogous post were eligible for appointment on deputation/contract/absorption/re-employment basis in NSCS. Accordingly, the said GM Pillai was appointed as Joint Director in NSCS on absorption basis with the approval of the competent authority as per the existing practice. The post being analogous, the case of the applicant will not apply to the facts in respect of GM Pillai. We further find that even if some irregularities had been

committed in the case of the said GM Pillai, the applicant cannot seek advantage from that as two wrongs do not make a right.

14. In conclusion, we hold that the applicant has no case for grant of second pension after 1.1.2004 when CCS (Pension) Rules had ceased to exist in respect of fresh appointees. It is also barred by Rules 7(2) and 17 of the CCS (Pension) Rules. He can draw no parallel with Dr. S.D. Pradhan whose case was one of fresh appointment or with the said GM Pillai, who had been serving on analogous post. We have also taken note of incorrect averments made by the applicant in the body of the order and would have imposed a fine upon him for abuse of process of the court but for the consideration that he is a retired employee. The OA is, therefore, dismissed. No costs.

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

**(V. Ajay Kumar)**  
**Member (J)**

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