

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.4167/2014

Reserved on: 02.11.2016
Pronounced on: 04.11.2016

Hon'ble Dr. B. K. Sinha, Member (A)

1. Sunil Kumar Das, MTS
S/o Sh. Ram Pukar Das,
R/o H.No. 898, Sector 7,
R.K. Puram, New Delhi.
2. Kuldeep Singh, MTS
s/o Sh. Prem Singh,
R/o H.No. 621, Sector 7,
R.K. Puram, New Delhi.
3. Pushkar Singh, MTS
S/o Sh. Amar Singh,
R/o H.No. 640, Sector, 7,
R.K. Puram, New Delhi.
4. Atin Sharma, MTS
S/o Sh. Data Ram,
R/o H.No. 886/23, Khandsa Road,
Gurgaon (Haryana).
5. Shankar Pd. Mohanty, MTS
S/o Sh. Aditya Kumar Mohanty,
R/o Qtr. No.1932, Sector-III,
Pushp Vihar, M.B. Road,
New Delhi.
6. Anil Kumar, MTS
S/o Sh. Brim Singh,
R/o Qtr. No.1479, Sector-5,
R.K. Puram, New Delhi.
7. Joginder Singh, MTS
S/o Sh. Jaipal Singh,
R/o PO & Village Jatiakala,
Distt. Sonapat, Haryana.
8. Budh Sen, MTS
S/o Sh. Hari Das
R/o H-151, Nanak Pura,
New Delhi -21.

9. Sushma Rani Pal, MTS
D/o Sh. Puranchand Mal,
R/o Qtr. No.31/11, Sector-1,
Pushp Vihar, New Delhi. ...Applicants

(By Advocate: Sh. M.K. Bhardwaj)

Versus

1. Union of India through
Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
2. The Registrar,
Customs, Excise & Gold (Control),
Appellate Tribunal, West Block-2,
R.K. Puram, New Delhi. ...Respondents

(By Advocate: Sh. H.K. Gangwani)

O R D E R

The applicants (nine in numbers) have filed the instant Original Application under Section 19 of the Administrative Tribunals Act, 1985 being aggrieved with the inaction of the respondents in not continuing the deduction of GPF contribution as per OM dated 10.09.1993 and the decisions of superior courts.

2. The facts of the case, in very brief, are that the applicants were appointed as Casual Labourers between the years 1996 and 1998. They were granted temporary status vide orders dated 19.06.2001. However, on 23.08.2001, the temporary status granted to the applicants was withdrawn which was subsequently restored in compliance of the Tribunal's order dated 27.11.2001 passed in OA No.2197/2001. In December, 2001, process for deduction of

GPF recovery from the regular pay of the applicants was commenced, which was withdrawn as a consequence of DOP&T OM dated 26.04.2004 introducing a new Scheme of Pension providing that the employees who came into service on or after 01.01.2004 would be governed under the new scheme of pension while the deductions were being made under the DOP&T earlier OM dated 10.09.1993 which *inter alia* provided that 50% of the services rendered under temporary status would be reckoned for the purpose of retirement benefits after regularization. As a consequence of issuance of the Circular dated 26.04.2004, the deduction towards GPF contribution was stopped after 01.01.2004. Aggrieved, some of the similarly placed persons approached the Coordinate Bench of this Tribunal at Jaipur which quashed and set aside the DOP&T OM dated 26.04.2004 in OA No. 60/2002. The respondents filed Writ Petition against the aforesaid order of the Jaipur Bench of this Tribunal before the Hon'ble High Court of Jaipur, which also came to be dismissed. Based upon this, the applicants submit, this Tribunal allowed a number of OAs in respect of similarly placed persons one of which being in case of *Ajay Kumar & 123 Others vs. Union of India & Ors.* [OA No.2131/2004 decided on 16.12.2005] and the said decision has been upheld by the Hon'ble High Court of Delhi in Writ Petition (C) No.14247/06 etc. decided on 04.07.2008. It is further

submitted that the SLP filed against the order of the High Court of Rajasthan at Jaipur also came to be dismissed by the Hon'ble Supreme Court vide order dated 09.12.2011 (page 70 of the paper book), relevant portion whereof is being extracted hereunder:-

*“Delay condoned in SLP(C) Nos. 25360-25362/2009.
No ground is made out with the impugned judgment(s).
The special leave petitions are dismissed accordingly.”*

3. The applicants state that they have submitted several representations before the respondents but they failed to restore status quo ante. Finally, the DOP&T issued OM dated 26.02.2016 providing clarification regarding contribution to GPF and Pension under the old pension scheme. The applicants have, therefore, filed the instant application for the following relief(s):-

- “(i) To direct the respondents to extend the benefits of order dated 25.05.2005 passed in OA No.284/2004 (Jaipur Bench) and order dated 16.12.2005 in OA No.2131/2004 (Principal Bench).*
- (ii) To direct the respondents to deduct contribution towards the GPF amount as per OM dated 10.0-9.1993 and follow the practice which was prevalent before issuing OM dated 26.04.2004.*
- (iii) To direct the respondents to continue the deduction of GPF of applicants and treat their case under Old Pension Scheme.*
- (iv) To allow the OA with exemplary cost.*
- (v) To pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper i the existing facts and circumstances of the case.”*

4. The learned counsel for the respondents Sh. H.K. Gangwani drew my attention to the counter reply and submitted that the new pension scheme introduced vide OM dated 26.04.2004 had already been in force provided that who had joined the service after 01.01.2004 would be governed under this scheme and not under the old GPF Pension Scheme. Since the applicants have been appointed in June, 2006, the orders/decisions of the Tribunal/Courts cited by the applicants and the OM dated 26.02.2016 relied upon by them were inapplicable.

5. I have carefully gone through the pleadings of the parties as also the documents so adduced, and the law citations relied upon. I have also patiently heard the oral submissions made on either side by their respective learned counsels.

6. The only question to be decided in this case is that as to whether the applicants would be governed under the terms of OM dated 26.02.2016. In this regard, it is necessary to extract the relevant paras of the afore OM, which read thus:-

“5. The OM dated 26th April, 2004 has been quashed by various benches of CAT /High Courts who have decided that the scheme could not be modified retrospectively. The SLPs filed in the Hon'ble Supreme Court have been dismissed by the Apex Court in UOI & Ors v Rameshwar Singh, CC 1829/2014, UOI & Ors v Ramsaran & Ors, SLP (C) No. 25360-25362 of 2008,

SLP 17358/2008, SLP 25360-62/09, Union of India etc v Ajay Kumar & Ors, SLP No.19673-19678/2009.

6. The position has been reviewed in the light of the Court judgements in consultation with the Department of Expenditure. It has now been decided that the casual labourers who had been granted temporary status under the scheme, and have completed 3 years of continuous service after that, are entitled to contribute to the General Provident Fund.

7. 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits in respect of those casual labourers who have been regularised in terms of para 8 of the OM dated 10.09.1993.

8. It is emphasised that the benefit of temporary status is available only to those casual labourers who were in employment on the date of the issue of the OM dated 10th September, 1993 and were otherwise eligible for it. No grant of temporary status is permissible after that date. The employees erroneously granted temporary status between 10.09.1993 and the date of Hon'ble Supreme Court judgement in Union Of India And Anr vs Mohan Pal, 2002 (3) SCR 613, delivered on 29 April, 2002, will however be deemed to have been covered under the scheme of 10.09.93."

7. From the above, it is evident that the appointment of the applicants is not a new appointment but rather regularization of their temporary services as they had admittedly been appointed between the years 1996 and 1998. Therefore, the applicants are squarely covered under OM dated 26.02.2016. Besides, the decision of the Tribunal in OA No.2131/2004, provides as under:-

"7. We cannot avoid to note of another striking feature appearing in the case of Union of India and Anr. vs. Mohan Pal, etc., JT 2002 (Supp.1) SC 312 wherein the Hon'ble Supreme Court had also not approved the action of the respondents, who had taken steps not to deduct the GPF Contribution from the salary of the casual labourers.

8. *Be it noted that the applicants are enjoying the benefits whatever provided to the regular Group 'D' employees. In that view of the matter, following the observations of the Division Bench orders passed by the Jaipur Bench and Chandigarh Bench in OA No.284/2004 and OA No.60/2002 respectively and also the mandate of the Supreme Court in Mohan Lal's case (supra), we cannot agree with the action taken by the DPT in issuing the impugned order dated 26.4.2004 by which the deduction of contribution towards the GPF amount has been withdrawn. Accordingly, the order dated 26.4.2004 is hereby quashed and the authorities are directed to follow the practice whatever prevalent before issuing of the aforesaid impugned order."*

The above decision has since been upheld by the Hon'ble High Court of Delhi vide order dated 045.07.2008 in WP(C) No.14247/2006 etc.

8. In view of the narration of facts and discussion of law, referred to above, I am of the considered opinion that the instant Original Application has merit and deserves to be allowed. I allow the same in the following terms:-

- (i) The respondents are directed to extend the benefit of the orders dated 25.05.2005 and 16.12.2005 of the Jaipur and Principal Bench of this Tribunal passed in OA No.284/2004 and 2131/2004 respectively to the applicants.
- (ii) The respondents are further directed to follow the practice of deduction of contribution towards GPF in accordance with the DOP&T OM dated

10.09.1993, which was prevalent before issuing of OM dated 26.04.2004 which has already been quashed.

- (iii) The exercise, as ordained above, be completed within a period of three months from the date of receipt of a certified copy of this order.
- (iv) There shall be no order as to costs.

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

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