

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No. 4311/2017

**Order reserved on : 12.10.2018
Order pronounced on : 22 .10.2018**

Hon'ble Sh. Pradeep Kumar, Member (A)

1. Para Medical Technical Staff Welfare Association of
MCD
Registration No. 00948NE,
Through it's General Secretary, Satish Kumar Gaur,
Age about 45 years,
Group "C" Employee,
Having Office At : Heritage Building,
Near New Doctor's Duty Room,
Hindu Rao Hospital, Delhi-110007.
2. Amit Jain,
Son of Shri S.C. Jain
Age about 39 years,
Group "D" Employee
Post : Medical Record Attendant,
Resident of : House No. 41A,
PD Block,
Pitampura,
Delhi 110 034. Applicants

(By Advocate : Ms. Akansha Kapoor)

Vs.

1. North Delhi Municipal Corporation,
Through it's Commissioner,
Office At : Fourth Floor,
Dr. Shyama Prasad Mukherjee Civic Centre,
Jawahar Lal Nehru Marg,
New Delhi 110 002. ...Respondents

(By Advocate : Sh. R.K.Jain)

ORDER

The order dated 04.10.2018 is reproduced below :-

“1.0. Ms. Akanasha Kapoor, learned counsel for the applicant appeared and brought out that the applicants were appointed as Daily Wager for 89 days on 14.12.2001. They were subsequently regularized w.e.f. 10.10.2008.

Since they were initially appointed prior to 1.1.04 when old pension scheme was in force and were regularised in continuation of such appointment without any break in service, they need to be covered by this old pension scheme. The respondents are however covering them under the new pension scheme, on the plea of their regularization being after 1.1.04. This is the grievance in present O.A.

The impugned order is stated to be the policy directives contained in DOPT OM dated 28.07.2016, which has specified the following:

"3. As the benefit of Old Pension Scheme and GPF is admissible only to those Casual workers who are covered under the Scheme of 1993, all Ministries/Department may strictly ensure that it does not lead to demand by regularly recruited fresh employees appointed on or after 1.1.2004 for similar benefit in place of NPS."

It is pleaded that clause in this OM is restricting their claim for old pension scheme.”

2.0. The respondents drew attention to this very DOPT OM Dt.28.7.16, quoted by Applicants. The full OM reads as under:

" The undersigned is directed to refer to this Department's OM of even number dated 26th February, 2016 on the above subject and to say that some references have been received in this Department from various Ministries/Departments seeking a clarification with regard to the Para 7 of the referred OM.

2. The OM was issued in consultation with Department of Expenditure and the Department of Pension ad PW. It was clarified vide that OM that this Department's OM dated 26th April, 2004 had been quashed in a series of Orders/Judgments. The OM dated 26th February, 2016 restores the provisions of the Scheme

as it existed prior to the OM dated 26th April, 2004. The benefit of GPF and Old Pension Scheme of the 10th September, 1993 even if they have been regularized on or after 01/01/2004.

3. As the benefit of Old Pension Scheme and GPF is admissible only to those Casual workers who are covered under the Scheme of 1993, all Ministries/Department may strictly ensure that it does not lead to demand by regularly recruited fresh employees appointed on or after 1.1.2004 for similar benefit in place of NPS.

4. This issues with the concurrence of Department of Expenditure vide their I.D.No.1(15)/E-V/2015 dated 27.07.2016."

2.1. Thus, the position as was obtaining as per OM dated 26.02.2016 was restored. This Office Memorandum No. 49014/2/2014 -Estt (C), Govt. of India Dt. 26.2.2016, referred in DOPT OM dated 28.07.2016 as above, was issued in respect of Casual Labourers who were to be covered under the older pension scheme (in force prior to 1.1.04). This OM specifies as under :-

"1.0.Undersigned is directed to refer to this Department's OM No. 51016/2/90-Estt (C) dated the 10th September, 1993 vide which a scheme for grant of temporary status to the casual employees was framed. The scheme applied to those casual labourers who were in employment on the date of the issue of the OM and had rendered one year of continued service in Central Government offices, which meant that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week). The scheme did not apply to Department of Telecom & Posts and Ministry of Railways.

4.0 (i) As the new pension scheme is based on defined contributions, the length of qualifying service for the purpose of retirement benefits has lost its relevance, no credit of casual service, as specified in para 5 (v), shall be available to the casual labourers on their regularisation against Group 'D' posts on or after 1.1.2004.

(ii) As there is no provision of General Provident Fund in the new pension scheme, it will not serve any useful purpose to continue deductions towards GPF from the existing casual employees, in terms of para 5 (vi) of the scheme for grant of temporary status. It is, therefore, requested that no further deduction towards General Provident Fund shall be effected from the casual labourers w.e.f. 1.1.2004 onwards and the amount lying in their General Provident Fund accounts, including deductions made after 1.1.2004, shall be paid to them.

2. The existing guidelines contained in this Department's OM No.49014/2/86-Estt.(C) dated 7.6.88 may continue to be followed in the matter of engagement of casual workers in the Central Government Offices."

3. The respondents pleaded that as per this OM dated 26.02.2016 it is now only those casual labourers who were already employed as of 10.09.1993 or earlier, and who had completed 240 days. (206 days in the case of offices observing 5 days week), can be granted the benefit of the old pension scheme as per this policy. All other casual labourers who were appointed after 10.9.1993, are to be covered by the new pension scheme only which is in force w.e.f. 01.01.2004. This cannot be changed being not permitted by the Rules.

4. The applicants submitted that the North Delhi Municipal Corporation where the applicants are working at present is one of the trifurcated body of the earlier unified Municipal Corporation of Delhi and the Municipal Corporation of Delhi has since adopted the CCS (Pension) Rules, 1972.

In support of this contention, it was brought out that these were considered by the Apex Court in another matter **MCD vs. Dharam Prakash Sharma and anr.** (Civil Appeal No.14162 of 1996 and decided on 29.07.1998) wherein Hon'ble Apex Court had observed that "Appellant MCD had adopted CCS (Pension) Rules, 1972, which covered both pension and gratuity payments."

5. In support thereof, the applicants also drew attention to the judgment passed by the Delhi High Court delivered on 17th September, 2015 in W.P.(C) No. 5830/2015 and also drew attention to the judgment passed by the CAT in OA No. 1291/2012 in the case of **Dr. Ankit Seth vs. MCD** and judgment passed by the Hon'ble High Court of Karnataka at Bengaluru on 03.11.2015 in Writ Petition No. 39725/2013. In view of foregoing, the applicants have pleaded that they should be covered under the old pension scheme as was applicable prior to 01.01.2004.

6. The respondents drew attention to the order dated 04.10.2018 which is reproduced above in para 1.0, 2.0 and 2.1 above. In view of this, respondents further pleaded that the applicants being appointed as casual labourer subsequent to 10.09.1993 are not eligible for benefit under said circular dated 28.07.2016 which is to be read with OM dated 26.02.2016 to find eligibility as to who are to be covered under the old pension

scheme which was in force prior to 1.1.2004. The applicants are not eligible as per these extent instructions.

7. Matter was heard at length. It is not in dispute that MCD is covered by CCS (Pension) Rules, 1972. However, the pension scheme itself had undergone changes in respect of those employees who had joined after 1.1.2004.

The judgments quoted by the applicants have been gone through. The judgment passed by this Tribunal in OA No. 1291/2012 is in the context of one batch of recruitment wherein all of the selected candidates had applied for recruitment together and it was prior to 31.12.2003. Some of the candidates on select panel joined prior to 31.12.2003 and were covered under old pension scheme. As against this, the others could join only after 01.01.2004 for no fault of theirs. The respondents had treated these later candidates to be covered under the new pension scheme which came into force on 01.01.2004. Thus, selected candidates from same panel were covered under two different pension rules i.e. those who joined before 31.12.2003 were covered under old pension rules or those who joined after 01.01.2004 were covered under the new pension rules. This discrimination, within the same selected panel, was not upheld. This ratio is not applicable in instant case.

The Hon'ble High Court of Karnataka' judgment dated 3.11.15 was in the context of those who were granted temporary status as on 29.11.1989. They continued as temporary status employees till 17.07.2008, when those employees assumed charge as regular Group 'D' employees and, thereafter they had retired on 31.05.2010. The High Court has observed that such employees are to be covered by the old pension rules. This ratio also does not apply in the instant case.

In respect of the judgment passed by Hon'ble High Court of Delhi dated 17.9.2015, it is not noted that the applicants were declared successful in the year 2000 as a result of recruitment examination. Thereafter, medical examination was held where they were unsuccessful. Once they underwent medical treatment, they were medically examined again and were declared fit in the year 2003. Thereafter, certain delays took place in issuing offer of appointment and they could join after 01.01.2004 when new pension scheme has come into being. This judgment held that these candidates completed the entire selection process prior to 31.12.2003 when old pension scheme was in force. Hence, those applicants will be covered by old pension scheme. This ratio does not apply in instant OA.

8. The applicants had also quoted a judgment passed by Hon'ble High Court of Punjab & Haryana, wherein it was claimed

that the temporary service was also to be counted towards pensionary benefits. This judgment is in the context that every Government department has prescribed certain minimum qualifying service, for grant of pensionary benefits. In the case of temporary employees, the substantial part of their service had occurred before they are granted regular status. This High Court Judgment was to the effect that while counting the minimum qualifying service for pensionary benefits, the full regular service and half of the temporary service is to be counted and wherever the sum of this is equal to or more than the required minimum prescribed qualifying service for pension, pensionary benefits are to be granted. That ratio is also not applicable in the instant case.

9. In view of above, the pleadings by respondents (para 6 supra) sustains. In the event, the instant OA does not succeed. This OA is, therefore, dismissed being devoid of merits. There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

sarita