

**Central Administrative Tribunal
Principal Bench**

OA No. 959/2016

Order reserved on: 31.07.2018
Order pronounced on : 07.08.2018

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

Dr. Souvik Maiti, Age 44 years,
(Principal Scientist),
S/o Shri Sukumar Maiti,
C-601, Antriksh Green, F-7,
Sector-50, Noida U.P.

... Applicant

(By Advocate: Sh. Vijay Kumar Pandey)

Versus

1. Union of India,,
Through
Controller of Administration,
Institute of Genomics & Integrative Biology,
(Council of Scientific & Industrial Research),
Mall Road, Delhi-110007.

2. Secretary,
Ministry of Personnel, Public Grievances
& Pensions (Department of Personnel &
Training), Lok Nayak Bhawan,
Khan Market, New Delhi-110003.

... Respondents

(By Advocate: Sh. D.S.Mahendru)

ORDER

Heard the learned counsel for applicant and the learned
counsel for respondents.

2. The case of the applicant is that he was appointed as Scientist on contract basis vide order dated 12.08.2002 by the CSIR under Quick Hire Scheme (QHS). Applicant had joined this post on 11.11.2002. Thereafter, without any break, his services were regularised vide order dated 28.01.2004 and he has been absorbed on the permanent post on 26.03.2004. In the meanwhile, one new pension scheme had come into force for all new employees w.e.f. 01.01.2004. The respondents have treated the applicant as a new employee, since his services were regularised after 01.01.2004, and have granted him the benefit of this new pension scheme.

The plea of the applicant is that since he joined on 11.11.2002 and his services were regularised without any break, he should be treated under old pension scheme. Since his representations in this regard were not agreed to, this has resulted into a grievance and the present OA.

3. The applicant brought out that the appointment letter issued to him on 12.08.2002 indicated the following provision:

“I am pleased to inform you that you have been selected as “Scientist Fellow” on a consolidated amount of Rs.14,400/- plus 30% HRA per month. I welcome you to join CBT to pursue your future research. This appointment, however, is contingent upon the terms and conditions as per annexure. I look forward to your accepting this offer at the earliest date. If you need any clarification, you contact me at this telephone No.7667806 or email SKB@cbt.res.in.”

4. Various clauses were also added to this appointment letter as per terms and conditions. Following provision was made as per para 3 of these terms and conditions:

“3. You will be subject to the operation of the CCS (conduct) Rules, 1964, CCS (CCA) Rules 1965 as made applicable to other employees of CSIR and subject to other rules & regulations of CSIR in force.”

5. The applicants further brought out that as per CSIR extant Rules following provisions are also applicable:

“(23) Pension Rules

Introduction of Pension Scheme in CSIR

(23.1.1) The Governing Body of the CSIR, has been pleased to decide that the Government of India Pension Rules, as liberalised and amended or clarified from time to time, shall apply.

(a) to all regular Council servants other than contract officers, re-employed pensioners and purely temporary and daily wages staff, who enter service on or after the date of issue of this letter, and

(b) to all Council servant who were in service on 5.11.60 and who opt for these benefits in preference to their existing retirement benefits.

1. Council servants referred to in para 1 (b) above shall, on or before 31.7.1961, exercise an unconditional and unambiguous option on the prescribed form, electing the pensionary benefits or retaining their existing retirement benefits under the CSIR Contributory Provident Fund Rules as the case may be. Any such employee from whom an option form showing the employee's option is not received within the above mentioned time limit or whose option is incomplete or conditional or ambiguous, shall be deemed to have opted for the pensionary benefits. Where, however, any employee has died on or after 5.11.1960 without exercising any option for the pensionary scheme, he will be deemed to have continued on the CPF system.

2. In the case of an employee who opts for pensionary benefits the Council contribution and interest thereon credited to his CPF account will revert to Council immediately the option is exercised, and the account shall be converted into a non-contributory Provident Fund account from the date the account was opened. The existing CSIR CPF rules except to the extent they relate to the crediting of council's Contribution to the Fund will continue to be in force irrespective of the fact that the employee has opted for pensionary benefits and the employee will continue to make compulsory contribution to the Fund under those rules. All service of the employee opting for pension shall be deemed to have been in the pensionable establishment from the commencement of the employee's service, irrespective of the period of service for which the employee might have subscribed to the CSIR CPF Fund, and shall count for pension in the manner and to the extent provided for in the pension rules of the Government.

3. The option once exercised will be final and irrevocable.

4. In the case of officers appointed on contract they will be entitled to the CSIR Contributory Provident Fund benefits till they are confirmed against a permanent post. On their confirmation, they will be allowed an option for pensionary benefits, to be exercised within a period of three months from the date of issue of the orders of their confirmation. In these cases also the option once exercised will be final and irrevocable.

(Ref-CSIR Office No.291 & letter No.5/96/60-PC, dated the 24th Mar., 1961)

(23.1.2) Introduction of pensionary benefits in the CSIR-Confirmation of contract officers

Office Order No.291 forwarded vide No. 5/96/60-PC, dated the 24th Mar., 1961 (Para 23.1.1), provides that the officers appointed on contract will be entitled to the CSIR Contributory Provident Fund benefits till they are confirmed against a permanent post when they will have the right to exercise option for pensionary benefits. It has been decided to consider the cases of contract officers for confirmation after they have completed five years of service and before they complete 10 years of service. I am to request you to forward the necessary recommendations in respect of contract officers serving in your Laboratory/Institute at an early date.

(CSIR letter No.16(9)/61-E.I. dated the 30th march, 1961)

(23.1.3) Counting of service rendered under the CSIR scheme towards pension.

In continuation of office Order No.291, dated 24.3.1961 (Para 23.1.1), it has been decided that the service rendered under the C.S.I.R. schemes will count towards pension in the Council on the absorption of such staff in regular establishment without any break in service and on their subsequent confirmation against permanent posts. The Council's contribution with interest thereon credited to their C.P.F. Fund account during scheme service will revert to the Council.

(Ref OM No. 1/10/61-Pen, dated the 29th Nov., 1961)"

6. The applicant had certain apprehensions, based on the general talk in the department, that they are likely to be covered under the New Pension Scheme and accordingly he made a representation on 21.03.2013 quoting these rules, with a request to treat him under the Old Pension Scheme. However, the same was not accepted by the respondents vide their order dated 22.05.2014.

7. Subsequently, the applicant came to know of a decision by the Hon'ble High Court of Chennai in WP No. 2110/2014 wherein judgment was delivered on 19.03.2014. The relevant part of this judgment is contained in para 10, 25 and 26 thereof, are reproduced below:

"10. The only issue arises for consideration in this writ petition is as to whether new pension scheme, which came into force from 01.01.2004, is applicable to persons, who were already in employment either on daily wages or as temporary employees and whether, they are entitled to get pension under CCS (Pension) Rules, 1972

on being absorbed in permanent establishment after 1.1.2004.

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25. Considering the overall aspects in the matter as well as undisputed fact that the respondents 1 to 16 have been appointed as casual labourers and subsequently conferred temporary status from 31.12.1999, merely because they have been absorbed permanently in the year 2005 in Group 'D' service, they cannot be denied of their statutory right. The Tribunal has approached the issue in a proper perspective and we confirm the said findings of the Tribunal.

26. In the result, the writ petition is dismissed. No costs. Consequently, M.P. No.1 of 2014 is closed."

8. In view of this judgment by Hon'ble High Court of Chennai, another representation was made by the applicant on 02.09.2014. However, this was also rejected by the respondents vide their orders dated 13.02.2015 and thereafter the applicant filed the present OA.

9. The applicant also relied on the decision of the Hon'ble High Court of Punjab and Haryana in CWP No.2371/2010 decided on 31.08.2010 wherein the Hon'ble High Court held as under:

"From the above discussion, we have come to the conclusion that the entire daily wage service of the petitioner from 1988 till the date of his regularization is to be counted as qualifying service for the purpose of pension. He will be deemed to be in govt. service prior to 1.1.2004. The new Re-structured Defined Contribution Pension Scheme (Annexure P-1) has been introduced for the new entrants in the Punjab Government Service w.e.f. 01.01.2004, will not be applicable to the petitioner. The amendment made vide Annexure P-2 amending the Punjab Civil Services Rules, cannot be further amended by issuing clarification/instructions dated 30.5.2008 (Annexure P-3). The petitioner will continue to be

governed by the GPF Scheme and is held entitled to receive pensionary benefits as applicable to the employees recruited in the Punjab Govt. Services prior to 1.1.2004.”

9.1. The respondents in this case had approached Hon’ble Supreme Court through SLP (C) No.11570/2012 also wherein the decision of Hon’ble High Court was finally upheld vide order dated 30.07.2012. The respondents approached Hon’ble Supreme Court again through Review Petition No.2038/2013 wherein again the decision of Hon’ble High Court was upheld vide order dated 04.11.2015.

10. The applicant also brought out that after he was appointed on contract basis, the CSIR had issued an advertisement no. IGIB/2/2003 in the year 2003 to fill following vacancies on regular basis:

- “(i) Post No.1 : Scientist F Group IV (5): 2 posts
- (ii) Post No.2: Scientist EII Group IV (4): 3 posts
- (iii) Post No.3: Scientist EI Group IV (3): 3 posts
- (iv) Post No.4: Scientist C Group IV (2): 6 posts
- (v) Post No.5: Scientist B Group IV (1): one post

As per the Advertisement, the completed applications in all respects supported by attested copies of certificate of educational qualification cum experience certificate, community certificate (in case of SC/ST/OBC) etc. was to be sent to Administrative Officer, Institute of Genomics and Integrative Biology, Delhi University Campus, Mall Road, Delhi on or before 21st November 2003.”

Out of these, the selection in respect of first three items was completed before 31.12.2013 and they were appointed. However, in respect of item (iv), under which the applicant was considered, the selection process and the issue of appointment letter took place after 01.01.2004. Thus, on this basis, the respondents are treating all those persons appointed against the vacancies at Sl. No.(i) to (iii) under the Old Pension Scheme and the person appointed against the vacancy at Sl. No.(iv) under the New Pension Scheme.

10.1 This is discriminatory and this is not permissible in terms of the decision of Hon'ble High Court of Delhi in WP (C) No.2810/2016 wherein the decision was given on 27.03.2017. The observations made by the Hon'ble High Court in this judgment vide para 18 are reproduced below:

“18. In our view, basic terms and conditions of service, such as the right to receive pension upon superannuation, as applicable at the time of notification of the posts, cannot later be altered to the prejudice of the incumbents to the post, after commencement of the selection process.”

The applicant pleaded that in his case the selection process had started prior to 1.1.2004 and hence he needs to be considered under the Old Pension Scheme as applicable on 31.12.2003.

11. In view of foregoing, the applicants pleaded that he needs to be covered under the Old Pension Scheme.

12. The respondents pleaded that there are two respondents in this case. Respondent no.1 are CSIR and they had raised two objections in their counter as under:

“4. That it is respectfully submitted that the applicant is aggrieved by the fact that his representation for considering him under Old Pension Scheme taking into consideration his past service rendered as Quick Hire Fellow has been rejected. It is respectfully submitted that applicant’s past service rendered as Quick Hire Fellow as per the terms and conditions of appointment and guidelines of Scientist under the QHS Scheme is purely temporary and co-terminus with the project and does not find for pension or other service benefits in CSIR except for adding one year service rendered as QHS for assessment purpose in event of regularization without break. It is further submitted that there is no concept of CPF contribution in the QHS Scheme. Hence, for the aforesaid reason, the request and representation of the applicant was rejected. The copy of the terms and conditions of appointment and guidelines of Scientist under the QHS Scheme is marked hereto as ANNEXURE R-1.”

13. The respondent No.2 are the Ministry of Personnel, Public Grievances and Pensions. Respondent No.2 has pleaded in their counter as under:

“10. That Department of Pension and Pensioners’ Welfare is not at all concerned with the said scheme of CSIR. The provisions of this scheme are applicable to the employees of CSIR only and are not relevant to the employees of other Departments of the Central Government.

11. Since, the applicant has claimed the benefit of pension in accordance with the Rules and instructions of the CSIR which had the limited applicability to the employees of that organization, it is for the CSIR and its administrative Ministry i.e. Ministry of Science and

Technology to take an appropriate decision on the prayers made in the OA. The claim made by the Applicant does not come within the jurisdiction of this Respondent.

12. That this Department is not a necessary party in this case.”

14. In view of the foregoing, matter has been carefully considered. The instant case is one where applicant was appointed as a contract employee before 31.12.2013 and his services were subsequently regularised without any break. Moreover, the vacancy notice which is the basis for regularisation of applicant, was also issued prior to 31.12.2013 and where the last date specified for application, was before the New Pension Scheme kicked in. The rules in force by CSIR, as quoted in para 5 above, also indicate that applicant is to be covered under Old Pension Scheme. The appointment letter of the applicant referred in para 4 above, also indicate that he is to be covered under Old Pension Scheme. Various Court judgments quoted in para 9 above also indicate that the applicant is required to be covered under Old Pension Scheme. Further, the employees regularised against the same vacancy notification cannot be discriminated against on account of delay in selection process. (Please refer para 10.1 above).

In view of this entire gamut of rules and judgements, the contention of respondents to treat the applicant under New Pension

Scheme cannot be sustained. Applicant is required to be covered under the Old Pension Scheme as was prevalent on 12.08.2002, when he was initially appointed. In the event, OA is allowed. No order as to costs.

(Pradeep Kumar)
Member (A)

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