

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH**

O.A.NO.060/00074/2017

Orders pronounced on: 02.11.2018

(Orders reserved on: 31.10.2018)

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)**

Rakesh Kumar

Son of Sh. T.R. Verma,

Aged 44 years, Group D,

R/o # 5453/2, M.C. Dhanas,

Chandigarh.

.... **Applicant****(BY: RAMAN SHARMA, ADVOCATE)**

Versus

Post Graduate Institute of Medical Education and Research

(PGIMER),

Sector 12,

Chandigarh

through

Director

....

Respondents

(BY: MR. VIKRAN SHARMA, ADVOCATE)

ORDER
SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application (OA) under section 19 of the Administrative Tribunals Act, 1985, for quashing the order dated 20.10.2016 and 12.12.2016 (Annexure A-5 and A-7 respectively), vide which the claim of the applicant for counting past service for pensionary benefits has been rejected.

2. The bare minimum facts, which impelled filing of this O.A. are that initially he was engaged by respondents as Class IV/Parking Attendant on daily wage basis w.e.f. 24.2.1992 and worked till 31.8.1992. His services were terminated which was impugned in a demand notice dated 24.8.1993 and in pursuance of conciliation proceedings under Industrial Dispute Act, 1947, he was taken back in service w.e.f. 7.9.1994. He was marked absent from duty w.e.f. 10.6.1998 and not allowed to join duties, which resulted into filing of another case under I.D. Act and his services were terminated on 3.2.1999. The case was decided by Labour Court vide Award dated 28.4.2004, declaring the termination of applicant as illegal. He submitted his joining report on 9.1.2006. He claimed regularization and other benefits from back date by filing O.A.No.527-CH-2012, which was disposed of vide order dated 1.4.2014 with a direction to the respondents to consider the case of the applicant for regularization w.e.f. 2007 onwards. His claim for regularization was rejected vide order dated 9.10.2014, which was challenged by applicant in O.A. No. 060/00046/2015, which was allowed holding that based upon award dated 28.4.2014 given by labour court regarding continuity of service, service of applicant was to be considered for regularization at least w.e.f. 2007 onwards, in terms of policy and by counting 240 days from that date. Thus, impugned order was quashed and set aside and

matter was remitted back to the respondents to issue an order of regularization in favour of the applicant from the date when he completed 240 days after 2007 in earlier round of litigation. Pursuant thereto, the respondents passed order dated 19.3.2016/7.5.2016 regularising the service of the applicant w.e.f. 28.8.2007 as Hospital Attendant Grade III in pay scale of Rs.5200-20200 + G.P.Rs.1800/-.

3. That now the short and crisp claim of the applicant in this O.A. is that prior to 1.1.2004, Central Civil Services (Pension) Rules, 1972 were in operation for persons who were appointed on or before 1.1.2004. However, it was replaced with New Structured Defined Contribution Pension System, 2004 and is applicable and mandatory for all newly entrants to Central Government service with effect from 1.1.2004. The claim of the applicant is that since he had worked on daily wage basis w.e.f. 24.2.1992 to 27.8.2007, so he should be governed under the old pension Scheme. The representation filed by the applicant was rejected vide order dated 12.12.2016 (Annexure A-6), hence the O.A. The applicant has also filed written submissions on similar lines claiming benefit of sub rule (ii) of rule 3.17 of the Punjab Civil Service Rules including certain judgments that even work charged service is liable to be counted for retiral dues. Reliance in this regard is placed on **KESAR CHAND VS.STATE OF PUNJAB**, 1998 (2) PLR 223.

4. The stand of the respondents is that since the applicant joined service on regular basis only in 2007, the question of his being governed under the Old Pension Scheme of 1972 does not arise.

5. We have heard the learned counsel for the parties at length and examined the material on file.

6. Learned counsel for the applicant vehemently argued that since the applicant has rendered service on daily wage basis for a substantial time including during 2004 also, prior to his regularization w.e.f. 2007, so the applicant is governed under the Old Pension Scheme. On the contrary, learned counsel for the respondents urged, and with some amount of vehemence, that since applicant entered the service on regular basis only in 2007, so he would be governed under New Pension Scheme.

7. We have considered the submissions on both sides and have gone through the material on file minutely, with the able assistance of the learned counsel for the parties.

8. It is not in dispute that this Tribunal had disposed of the earlier O.A. filed by the applicant with a specific direction that the services of the applicant be regularized w.e.f. 2007. After termination of his services in 1999, he was allowed to join his duties as a daily wager on 9.1.2006, consequent upon direction in conciliation proceedings under Industrial Dispute Act, 1947. He was regularized w.e.f. 2007, in pursuance of directions issued by this Tribunal in that regard in two O.As, indicated above. In other words, it is more than clear that the regular appointment of the applicant is only w.e.f. 2007. That being the undisputed position, he cannot be allowed to claim that his regularization should relate back to a period prior to 2004, so as to make him eligible to claim benefits under the old Pension Scheme. The counting of daily wage service, as claimed by applicant for retiral dues, can also not be accepted for the reasons that indicated provision and decisions relate to the Old Pension Scheme and would have no application to the provisions of New Pension Scheme. The claim of the applicant that he is entitled to benefit in the same terms as has been

granted to certain individuals granted temporary status and regularized under OM dated 10.9.1993, is also not tenable. It is not in dispute that regularization was claimed but that was not allowed in terms of 1993 Scheme and the applicant was granted benefit of regularization w.e.f. 2007 only. Thus, he cannot compare his case with daily wagers, granted temporary status and then regularized in service.

9. In the wake of aforesaid discussion, the O.A. turns out to be bereft of any merit and is dismissed. The parties are left to bear their own costs.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

PLACE : CHANDIGARH.
DATED: NOVEMBER____, 2018

HC*

