

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

O.A./O50/00817/2016

Orders Reserved on : 16.01. 2018

Date of orders : 28th March, 2018

CORAM

HON'BLE MRs. BIDISHA BANERJEE, MEMBER (J)

Hakim [Mrs.] Najmus Sehar, wife of Sri Azam Siddiqui, Research Officer [UNANI, SL-III], Regional Research Institute of UNANI Medicine under Central Council for Research in UNANI Medicine, Ministry of Ayush, Guzri Bazar, Patna City – 800008 [Bihar].

.....applicant

By Advocate : Shri M.P.Dixit

Versus

1. The Union of India through the Secretary, Ministry of Ayush, Government of India, Ayush, Bhawan, B-Block, GPO Complex, INA, New Delhi – 110023.
2. The Director General, Central Council for Research in Unani Medicine [CCRUM], under Ministry of Ayush, Govt. of India, JLNBCHA Bhawan, 61-65, Institutional Area, Opposite D-Block, Janakpuri, New Delhi – 110058.
3. The Dy. Director, Regional Research Institute of Unani Medicine under Central Council for Research in Unani Medicine [CCRUM], Guzri Bazar, Patna City, Patna – 800008 [Bihar].
4. The Assistant Director [Admn.], Office of the Director General, Central Council of Research in Unani Medicine, Ministry of Ayush, Govt. of India, JLNBCHA Bhawan, 61-65, Institutional Area, Opposite D-Block, Janakpuri, New Delhi – 110058.
5. The Administrative Officer, Central Council of Research in Unani Medicine, Ministry of Ayush, Govt. of India, JLNBCHA Bhawan, 61-65, Institutional Area, Opposite D-Block, Janakpuri, New Delhi – 110058.

..... Respondents.

By Advocates: Mr. H.P.Singh.

O R D E R

Per Bidisha Banjerjee, Member [J]:- The matter is dealt with in a Single Bench in terms of Appendix VIII, Rule 154 of CAT Rules of Practice, since no complicated question of law is involved and with consent of both the sides.

2. The applicant has filed the present OA seeking the following reliefs :

“8[1] That your Lordships may graciously be pleased to quash and set aside the order dated 09.06.2016 as contained in Annexure-A/11 together with any other adverse order in this regard.

8[2] That Your Lordships may further be pleased to direct/command the respondents to treat the applicant under Old Pension Scheme instead of New Pension Scheme and they may be directed to deduct the GPF amount up to date without any further delay.

8[3] Any other relief or reliefs including the cost of proceeding may be allowed in favour of the applicant.

8[4] That Your Lordship may be pleased to quash and set aside the order dated 13.12.2016 and 15.01.2017 issued by the Respondents as contained in Annexure-A/13 and A/14, as unjust, illegal, unconstitutional, bad in law and contrary to the various judicial pronouncements, upheld by Hon’ble Supreme Court of India.”

3. The case of the applicant in a nutshell is as under :-

The applicant was initially appointed as Assistant Research Officer [Unani] in the pay scale of Rs. 2000-60-2300-EB-75-3200-100-3500 w.e.f. 26.7.1996 [F.N.] Vide Office order dated 19.11.1996 [Annexure-A/2], on the recommendations of the Selection Committee, against a reserved post purely on adhoc basis till further orders or till a regularly selected candidate joined the post, whichever was earlier. The applicant’s services were regularized in the URIUM, Patna with effect from 03.02.2004 on the terms and conditions prescribed in CCS, temporary service rules. She was kept on probation for a period of two years and therefore, the learned counsel for the applicant would strenuously plead that the applicant could not be treated as a new entrant post 01.01.2004 and be governed by New Pension Scheme [NPS in short]. The learned counsel would further plead that the NPS was applicable only with such persons who have been appointed in service on or after 01.01.2004 whereas the applicant was appointed prior to 01.01.2004

and her services ought to have been treated under General Provident Fund Scheme entitling her Pension under Old Pension Scheme. The learned counsel would further submit that altogether 61 persons were approved for appointment against the said post on 24.06.1996 including the applicant and some of them have been extended the benefit of Old Pension Scheme whereas the applicant is being deprived illegally. The applicant submitted an application for deduction of GPF in prescribed format on 24.07.2000, which was duly forwarded by Respondent No.3 on 29.07.2000 but to no avail. In the meantime, New Pension Scheme came into effect with effect from 01.01.2004. The respondents thereafter issued a general letter on 13.12.2006 regarding deduction under New Pension Scheme. The applicant was registered under New Pension Scheme which she protested, vide representation dated 27.09.2016 but no order has been passed on the same, aggrieved she has filed this OA.

4. The respondents in their written statement have submitted that the instant OA has been filed challenging the letter dated 09.06.2016 [Annexure-A/11] whereby and whereunder the applicant was asked to submit a filled in format to come under New Pension Scheme [NPS] consequent upon regularization of her adhoc services vide orders dated 28.12.2004 w.e.f. 03.02.2004. The respondents have claimed that the applicant became a regular employee after 01.01.2004 and thus got covered under the New Pension Scheme and not under the Old Pension Scheme. They have averred that adhoc service would not bestow any right upon the applicant and as per Central Council of Research in Unani Medicine Pension Rules, adhoc services are not to count for Pension, therefore, the applicant cannot be covered under the GPF Scheme. Moreover, as per GPF Rules, only regular employees are to be covered under the same and therefore, the

applicant did not fall within the ambit of GPF Scheme. The respondents further invited attention of this Tribunal to appointment letter dated 18.07.1996 wherein terms and conditions of appointment have been specified. The respondents have drawn attention to para 2 [ii] of the memorandum which stipulated that DCR, Gratuity-cum-Pension Scheme, Benefits of GPF and Group Insurance Scheme were available to the Regular employees of the Council. The respondents have alleged that the applicant never represented against regularization order dated 28.12.2004 and that asking an employee who entered into regular service after 01.01.2004 to submit requisite forms for registration under NPS can by no stretch of imagination be termed as unjust, unconstitutional, arbitrary, discriminating, condemnable, punitive and in colourable exercise of power and contrary to provisions of Article 14, 16 and 21 of the Constitution of India as alleged by the applicant. The respondents also pleaded that the OA has been filed after a lapse of more than thirteen years from the date of cause of action i.e. the date of regularization, therefore, the OA was hopelessly barred by limitation.

5. The learned counsels were heard and the materials on record were perused.

6. The limited issue that fell for consideration in the OA was whether the applicant was rightly treated as a new entrant, post 01.01.2004, to be governed by NPS or be governed by Old Pension Scheme.

7. Admittedly and indubitably, she was in service prior to 01.01.2004 but she was regularized post 01.01.2004.

8. Learned counsel in course of hearing had placed several decisions of this Tribunal as well as Hon'ble High Court of Patna where such employees, who had entered service prior to 01.01.2004 but got regularized in service

post 01.01.2004 have been allowed to be treated as a beneficiary of Old Pension Scheme including GPF, such decisions are listed infra :-

- [i] Civil Writ Jurisdiction Case No.17204 of 2015, Union of India through the Secretary, Ministry of Communication, Department of Post, Sanchar Bhawan, New Delhi and Ors vs. Mukti Prasad Yadav and Ors, decided on 15.12.2015.
- [ii] The extract of Govt. of India, Ministry of Personnel, P.G. & Pensions vide No.49014/2/2014 – Estt.[C] dated 28th July, 2016.
- [iii] Writ Petition No.11679 of 2011 [S-CAT], The Senior Superintendent of Post Offices Bangalore, South Division, Bangalore & Ors. vs . Anthony Steven.
- [iv] CWP No.2371 of 2010, Harbans Lal vs. The State of Punjab and Ors. decided on 31.08.2010.
- [v] OA No. 523 of 2005 with OA 825/05, OA 68/06 & OA 104/06, decided by CAT, Patna Bench, on 9th July, 2010
- [vi] OA 517/2011, P. Janaki & Ors. vs. UOI & Ors. decided by CAT Ernakulum Bench, on 23.08.2011

9. A bare perusal of the decisions supra would make it crystal clear that it is no more res integra that the daily wagers or casual labours on temporary status enjoying benefits on a par with temporary Group-'D', appointed prior to 01.01.2004 but regularized post 01.01.2004 were to be treated as beneficiary of old pension scheme and GPF.

10. In view of such, even by phantasmagorical thoughts, respondents' attempt to treat the applicant as a new entrant for the purpose of NPS could neither be comprehended nor countenanced. The applicant being appointed on adhoc basis on a regular scale, prior to 01.01.2004 but regularized after 01.01.2004 for parity of reasons, would deserve similar treatment. She was

not required to challenge her regularization order to get the benefit of GPF to which she had already subscribed on 24.01.2000 [Annexure-A/3].

11. Accordingly, I quash the letters contained in Annexure-A/11, A/14 and A/16 and allow this OA with a direction to the respondents to treat the applicant as a beneficiary of Old Pension Scheme and GPF in accordance with the decisions cited supra.

12. Accordingly orders be issued within two months. No costs.

Sd/-

[Bidisha Banerjee]
Member (Judicial)

mps/-