

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

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(I) O.A. No.60/386/2017 Date of decision: 02.05.2019
M.A. No.60/671/2019
(II) O.A. No.60/388/2017

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CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
 HON'BLE MRS. P. GOPINATH, MEMBER (A).

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I. O.A. No.60/386/2017

Naresh Kumar S/o Shri Raj Paul, age 43 years, presently working as Senior Social Security Assistant in the office of Regional Provident Fund Commission, Employees Provident Fund Organization, SCO No.4-7, Sector 17-D, Chandigarh (Group-C).

... APPLICANT

VERSUS

1. Union of India through its Secretary, Ministry of Labour and Employment, Shram Shakti Bhavan, Rafi Marg, New Delhi-110001.
2. Employees' Provident Fund Organization, Ministry of Labour and Employment, Bhavishya Nidhi Bhavan, 14 Bhikajee Cama Place, New Delhi-110066 through its Central P.F. Commissioner.
3. Regional Provident Fund Commissioner-I (HRM), Ministry of Labour and Employment, Bhavishya Nidhi Bhavan, 14 Bhikajee Cama Place, New Delhi-110066.
4. Regional Provident Fund Commissioner, EPFO, Ministry of Labour and Employment, Bhavishya Nidhi Bhavan, SCO No.4-7, Sector 17D, Chandigarh.

... RESPONDENTS

II. O.A. No.60/388/2017

Arun Kumar Singh, S/o Late Shri Kaushal Kishore Singh, age 42 years, presently working as Senior Social Security Assistant in the office of Regional Provident Fund Commissioner, Employees Provident Fund Organization, SCO No.4-7, Sector 17-D, Chandigarh (Group-C).

... APPLICANT

VERSUS

1. Union of India through its Secretary, Ministry of Labour and Employment, Shram Shakti Bhawan, Rafi Marg, New Delhi-110001.
2. Employees' Provident Fund Organization, Ministry of Labour and Employment, Bhavishya Nidhi Bhawan, 14 Bhikajee Cama Place, New Delhi-110066 through its Commissioner.
3. Regional Provident Fund Commissioner-I (HRM), Ministry of Labour and Employment, Bhavishya Nidhi Bhawan, 14 Bhikajee Cama Place, New Delhi-110066.
4. Regional Provident Fund Commissioner, EPFO, Ministry of Labour and Employment, Bhavishya Nidhi Bhawan, SCO No.4-7, Sector 17D, Chandigarh.

... RESPONDENTS

PRESENT: Sh. D.R. Sharma, counsel for the applicants.
 Sh. Sanjay Goyal, counsel for respondent No.1.
 Sh. Rohit Sharma, counsel for respondents no.2 to 4.

ORDER (Oral)

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SANJEEV KAUSHIK, MEMBER (J):-

1. This order will dispose of the above captioned two OAs as question of law involve and relief claimed therein are identical. However, for convenience facts are being taken from the case of **Naresh Kumar**.
2. The applicant herein has impugned order dated 30.8.2016 (Annexure A-1) and order dated 8.8.2016 (Annexure-2), with a further prayer to direct the respondents to switch him to GPF and further to Old Pension Scheme by counting service rendered by him on contractual basis.
3. Facts broadly are not in dispute.
4. Respondent Labour Bureau which is under Ministry of Labour, issued advertisement for filling up 24 posts of Computer in the pay scale of Rs.900-1500 through Staff Selection Commission which was

published in Employment news for 23-29.8.1997. Applicant being eligible applied and was selected by Staff Selection Commission vide memorandum dated 27.1.1999. Name of the applicant was recommended by SSC to Director General, Labour Bureau vide letter dated 27.1.1999 but due to imposition of ban on regular appointment, applicant was offered appointment on the post of Computer on contractual basis only on the consolidated salary of Rs.4178/- initially for a period of three months. Thereafter contract was extended from time to time and he was allowed to work without there being any Break. Vide letter dated 7.8.2003 issued by respondent no.1 Employees' Provident Fund Organization (EPFO) under same Ministry i.e. Ministry of Labour and Employment, applicant was asked to give option for shifting from Labour Bureau to EPFO. He gave his consent and the respondents also send dossier of all interested candidates to SSC in pursuance to advertisement dated 23.9.1997 to office of EPFO vide letter dated 16.7.2004. Pursuant to appointment letter dated 16.7.2004, applicant was relieved on 05.1.2005 on submission of technical resignation and joined as LDC in the office of respondents no.2 to 4 as LDC on 6.1.2005. When respondent did not count his service rendered on contractual basis with the office of Labour Bureau then the applicant submitted representation to count his service towards benefit of pension and to allow him to switch to Old Pension Scheme as he was initially appointed on contractual basis after following due procedure and he was appointed in EPFO on regular basis without break, therefore, he has right to be covered under Old Pension Scheme, which was rejected.

5. In support of above plea, learned counsel for the applicants submitted that there is no break in service from the day applicant joined service with Labour Bureau as Computer till he joined new Department i.e. EPFO as LDC. Thus view taken by the respondents that past service cannot be counted be quashed and he be held to be covered under Old Pension Scheme.
6. Respondents have resisted claim of the applicants by filing written statement submitting therein that since applicant has joined new department after submitting resignation, his appointment in EPFO is to be considered as fresh appointment, therefore, earlier service rendered by him with Labour Bureau cannot be counted. Since he was appointed on a date when Old Pension Scheme was not applicable, therefore, his claim has rightly been rejected.
7. We have heard learned counsel for the parties.
8. On the previous date, learned counsel for the respondent was directed to produce record and find out whether appointment of the applicant in EPFO is a result of selection which was made in pursuance of advertisement published in 23-29.8.1997 where the respondents had notified 24 posts of Computer in the Labour Bureau, Ministry of Labour. Today, Sh. Rohit Sharma, learned counsel for respondent produced original record and submitted that his appointment is as a result of outcome of the selection which was notified by SSC in the Month of August 1997. Once the respondents have acknowledged that selection is based upon advertisement by SSC notified in 1997 and he was allowed to join department in same Ministry in the year 2005 then they cannot take his right of old GPF/Pension Scheme by not counting contractual service. It is not

disputed that after due selection applicants were offered appointment on contractual basis. Otherwise also, that post under Labour Bureau was regular in nature but instead of offering appointment on regular basis they were offered appointment on contractual basis. Later on they were offered appointment on regular basis in the year 2005 in the same Ministry on the equal post of LDC. Thus view taken by the respondents cannot be approved. Consequentially, action of the respondents is hereby quashed and set aside and they are directed to consider the case of the applicants for grant of pension under Old Pension Scheme.

9. Both the O.As along with M.A. stand disposed of in the above terms.

No order as to costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 02.05.2019.

Place: Chandigarh.

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