

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

O.A. No. 143 of 2013

O.A. No. 190 of 2013

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
 Hon'ble Mr. Swarup Kumar Mishra, Member(J)**

O. A. No. 143 of 2013:

1. Parikshita Kumar Garnaik, aged about 52 years, S/o- Chandra Sekhar Garnaik at present working as SWA in the office of the Sub-Divisional Engineer, Brahmani Sub- Division, CWC, Rourkela, Dist-Sundergarh. Permanent resident of Vill-Sirigida, PO-Gurujang, PS-Talcher, Dist-Angul.
2. Shiva Prasad Rout, aged about 52 years, S/o-Late Daitari Rout at present working as SWA in the O/O the S.D.E., S/Rekha Sub-Division, CWC, Balasore, Permanent resident of Vill-Tentuligaon, PS-Badasahi, Dist-Mayurbhanj.
3. Bibhuti Bhusan Thumb, aged about 54 years, S/O-Late Raghunath Thumb at present working as SWA in the G & D wireless Station CWC, Alutuma, Dhenkanal. Permanent resident of Vill/PO-Badakamar, PS-Parjang, Dist- Dhenkanal.
4. T. Subba rao, aged about 55 years, S/O-Late T. Narayana Swami at present working as SWA in the C.F.F. Wireless Station, CWC, Madhabarida(Gobara), Ganjam. Permanent resident of Vill/PO-Sriram Chandrapur Agraram, PS-Chhatrapur, Dist-Ganjam.
5. Satyanaryan Dakua, aged about 50 years S/O-Late Muralidhar Dakua at present working as SWA in the G& D wireless station CWC Purushotampur No. 133, Ganjam. Permanent resident of Vill-Nuagad, PO-Hinjilicut, PS-Hinjili, Dist-Ganjam.
6. Ratnakar Sethy, aged about 56 years son of late Nath Sethy at present working as SWA in the site office of CWC, Champua(13IN) Dist-Keonjhar. Permanent resident of At/PO-Swam Patna, PS-Patana, Dist-Keonjhar, PIN-753080.
7. K.L. Rao, aged about 49 years, S/O-Late K. Barahlu, at present working as SWA at G& D wireless station, CWC, Gunupur, Dist-Rayagada. Permanent resident of Vill/PO/PS-Kashinagar, Dist-Gajapati.
8. K.S. Gudia, aged about 51 years, S/O-Late Gudia Narayan Sahoo at present working as SWA in the C.F.F. Site office, CWC, Gudari, Dist-Gajapati. Permanent resident of Vill/PO/PS-Kashinagar, Dist-Gajapati.
9. Bhagaban Rout, aged about 52 years son of singraj Rout at present working as SWA in the 131(N) site office, CWC, Champua, Dist-Keonjhar, permanent resident of At/PO-Debanbadi, PS-Sarat, Dist-Mayurbhanj.
10. Sanatan Majee, aged about 50 years S/O-Raghunath Majee at present working as SWA in the G & D site office, CWC No. 132, Muri Permanent resident of At-Pattabaria, PO-Jhumijhumi, Dist-Howrah, West Bengal.
11. R. Prakash rao, aged about 52 years, S/O-Late R. Mohan Rao at present workings as SWA in the G & D wireless station CWC, Gotabarrage Dist Srikakulam(AP). Permanent resident Vill/PO-Kittangi, PS-Kashinagar, Dist-Gajapati.

O.A. No. 190 of 2013

1. Kirtanbehari Rout, aged about 53 years, S/O-Late Baidhar Rout at present working as SWA in the C.F.F. Wireless station, CWC, Arampur, Angul. Permanent resident of Vill/PO-Binjabahal, PS-Telkoi, Dist-Keonjhar.
2. Purnna Chandra Routray, aged about 54 years S/O-Late Chintamani Routray at present working as SWA in the O/O the E.E. E.R. Division. CWC, Bhubaneswar. Permanent Resident of Vill-Hajapur, PO-Hajapur, PS-Jankia, Dist-Khurda.
3. Niranjan Sahoo, aged about 49 years, S/O-Late Utshaba Sahoo at present working as SWA in the O/O the Executive Engineer E.R. Division, CWC, BBSR. Permanent resident of Vill-Sankhari Sahi, PO-Parvatipur, PS-Biridi Road, Dist-Jagatsinghpur.
4. Kartik Moharana, aged about 51 years, S/O-Late Ananta Moharana at present working as SWA in the G& D site office, CWC, No. 133-Purushotampur, Dist-Ganjam. Permanent resident of Vill/PO-Sagargaon, PS-Bolagad, Dist-Khurda.
5. Damodar Mohanty, aged about 50 years, S/O-Satrughan Mohanty at present workings as SWA in the G&D site office CWC, (51N) Gomlai, Dist-Sundargarh. Permanent resident of Vill/PO/PS-Fategarh, Dist-Nayagarh.
6. Harmohan Rout, aged about 45 years, S/O-Late Baidhar Rout at present working as SWA in the Office of the Exe. Engineer, E.R. Division, CWC, BBSR. Permanent resident of Vill/PO-Binjabahal ,PS-Telkoi, Dist-Keonjhar.
7. Bipin Behari Perei, aged about 49 years, S/O-Nath Perei at present working as SWA in the G&D site office, CWC No. 46, Jaraikela, Sundargarh. Permanent resident of Vill/PO-Khadibili, Via-Salapada, PS-Ghasipura, Dist-Keonjhar.
8. Dambarudhar Biswal, aged about 51 years, S/O-Late Daitari Biswal at present working as SWA in the O/O the Exe. Engineer E.R. Division, CWC, BBSR. Permanent resident of Vill-Begunia, PO-N.K.S. Pur, PS-Fathegarh, Dist-Nayagarh.
9. Manguli Gajendra, aged about 48 years, S/O-Late Bhramarbar Gajendra at present working as SWA in the G&D site-46, Jaraikela, Sundargarh. Permanent resident of Vill/PO-Basantapur, Via-Kanas, PS-Gadishagoda, Dist-Puri.
10. Prafulla Kumar Sahoo, aged about 53 years, S/O-Sukadev Sahoo at present working as SWA in the G&D wireless station CWC, Tikarpada, NO-44, Angul. Permanent resident of Vill-Kantala, PO-Saida, PS-Pallahara, Dist-Angul.
11. Pramod Kumar Pal aged about 53 years son of Bhajaman Pal at present working as SWA in the site of CWC, Khandapada, Dist-Nayagarh, Permanent resident of At-Kumutisahi, PO-Manikaguda, PS-Bolagarh, Dist-Khurda.
12. Bijay Kumar Mallick, aged about 48 years, S/O-Kartik Chandra Mallick at present working as SWA in the C.F.F. site Office CWC Thethetanagar, Dist-Jashpur(Chatisgarh). Permanent Resident of Vill-Taras, PO-Taras, PS-Raj Kanika, Dist-Kendrapara, PIN-754220.
13. Abhimanyu Rana, aged about 51 years, S/O-Late Sridhar Rana at present working as SWA in the O/O the E.E.E.R. Division., CWC, BBSR. Permanent resident of Vill-Barhatipura, PO-Barhatipura, PS_Ghatgaon, Dist-Keonjhar, PIN-758027.
14. Ashok Kumar Mishra, aged about 54 years, S/O-Late Narasingha Mishra, at present working as SWA in the O/O the Executive Engineer E.R. Division, CWC, BBSR. Permanent resident of Vill/PO-Kurang Sasan, PS-Cuttack Sadar, Dist-Cuttack.
15. Mayadhar Sethy, aged about 52 years, S/O-Late Maheswar Sethi, permanent resident of At/PO-Silida PS-Turumunga, Dist-Keonjhar, PIN- 758017, At present working as SWA, G&D wireless Station CWC, Site No.44, Tikarpada, Dist-Angul.

16. Santanu Kumar Sahoo, aged about 53 years, S/o Late Nirakar Sahoo, Permanent resident of Sahupada PO/PS-Khamar, Dist-Angul, PIN-79118. At present working as SWA in the CFF Site Office, CWC, Purmanpur, Via-Kolabira, Dist-Jharsuguda, PIN-768213.
17. Narottam Pradhan, aged about 50 years, S/O Late Parasuram Pradhan at present working as SWA in the office of the Sub-Divisional Engineer, Brahmani Sub-Division, CWC, Rourkela, Dist-Sundargarh, Permanent resident of Vill-Bhetia, PO-Munduribeda, PS-Khamar, Dist-Angul.
18. Srikant Mohapatra, aged about 55 years, S/O-Late Santosh Mohapatra at present working as SWA in G&D Wireless Station CWC Jamsologhat. Permanent resident of At-Vijay Ramachadrapur, Ward No. 17, Near Gopabandhu Balashram, Baripada, PO-Bhanjapur, Dist-Mayurbhanj.
19. Lochan Pradhan, aged about 51 years, S/O-Late Hata Pradhan, at present working as SWA in the G&D Wireless station, CWC, Kurubhata, Chhatishgarh, Permanent resident of Vill-Chhakabipur, PO-Biribadi, Via- Kuhuri, PS/Tangi, Dist-Khurda.

.....Applicant

-Versus-

1. Secretary, Ministry of Water Resources, At/PO- Shram Shakti Bhawan, Rafi Marg, New Delhi-110001.
2. Chairman, Central Water Commission, 313(S), Sewa Bhawan, RK. Puram, New Delhi-110066.
3. Under Secretary, Govt. of India, CWC, Room No. 312, Sew Bhawan, R.K. Puram, New Delhi-110066.
4. The Chief Engineer, M&ERO, CWC, Mahanadi Bhawan, Plot No.-A-13 & 14, At/PO-Bhoinagar, Bhubaneswar-751022.
5. Superintending Engineer, (Hydrological Observation Circle) Govt. of India, CWC, Mahanadi Bhawan, Plot No. A 13/14, Bhoinagar, Bhubaneswar-751022.
6. Executive Engineer, Govt. of India, CWC, Eastern River Division, Plot No. A/13 and 14, At/PO- Bhoinagar, Bhubaneswar-751022.
7. Secretary, Govt. of India,, Ministry of Personnel, Public Grievance and Pensions, Dept. of Personnel and Training(CS Division), 2nd Floor, Lok Nayak Bhawan, New Delhi.

.....Respondents

For the Applicant : Mr. T. Rath (For O.A. No.143/13 & 190/13)

For the Respondents: Mr. S. Behera (For O.A. No. 143/13)
Mr. S. Mohanty(For O.A. No. 190/13)

Heard & reserved on: 31. 01.2019

Order on: 15.2.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member(A):

The facts as well as reliefs claimed and the dispute involved in both the Original Applications (in short O.A.) i.e. O.A. No. 143/2013 and O. A. No. 190/2013 are similar. Hence, both the O.As were heard together on request by learned counsels for both the parties and these are disposed of by this common order with O.A. No. 143/2018 being taken as the lead O.A.

2. The O.A. No. 143/2013 has been filed under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"Under the facts and circumstances stated above, the Hon'ble Court may kindly be pleased to admit the present O.A and upon hearing the counsel for the parties be pleased to

Direct the respondents to apply the provisions of CCS (Pension Scheme) 1972 in respect of the Applicants by declaring clause 3.i of Annexure-A/5 series as bad and illegal and quash the same.

And subsequently direct the Respondents to continue to extend the benefits under the GPF Rules to the Applicant by deducting the monthly subscription regularly and without any interruptions and hold the Annexure-A/7 not applicable to the Applicants or in the alternative quash Annexure-A/7.

Further direction may also be issued quashing the orders under Annexure-A/9, A/10 and A/12.

And further also direction may be issued commanding the Respondents to extend similar benefit to the applicant as has been granted to the applicants of the judgment of the Hon'ble Central Administrative Tribunal, Hyderabad Bench in the case of G Appa Rao and others V- Secretary, Railway Board and others (O.A. No. 492/2010 and O.A. No. 616/2010 disposed of on 31.08.2010) and other similar cases.

And pass any consequential order befitting to the facts and circumstances of the case. "

3. The O.A. No. 190/2013 has been filed for the following reliefs which are identical to the relief prayed for in the OA No. 143/2013 as quoted above.

4. The facts in brief in both the cases are that the applicants, while working as Skilled Work Assistant (in short SWA) under the Respondents No. 5 & 6 on regular basis have challenged the decision of the respondents to incorporate the clause 3.i in the order at under Annexure –A/5 series of the O.A. by which, the applicants will be eligible for the New Pension Scheme (in short NPS) applicable for the employees appointed on or after 01.01.2004. As a result, the applicants will not be eligible for the old pension scheme and according to the respondents, the applicants are to be covered under NPS since they were regularized in the service after 1.1.2004. Initially, it was decided to withdraw the applicants from the membership of the GPF scheme, although subsequently, the applicants have been allowed to be covered under the GPF.

5. The applicants were initially engaged as Casual Khalasi after being duly sponsored through employment exchange following the due process of selection, during the period from 1980 to 1984 as required by the nature of working of the respondents. Respondents No.3, through a scheme, allowed the grant of temporary status and regularisation of the Seasonal Khalasi under the work charged establishment vide the scheme dated 20.06.1997 (Annexure-A/2). In pursuance to the scheme, the applicants were allowed temporary status w.e.f. 11.12.1997 (Annexure-A/3) and they were included in the GPF contribution scheme. It is stated in the OA that even though a large number of vacancies were available under the Respondents, but their services could not be regularised. Eventually, the applicants' services were regularised only w.e.f.

08.05.2009 vide orders dated 08.05.2009 (Annexure-A/5 series), keeping the clause 3.i in the orders stating that the applicants would be covered under the NPS.

6. After regularization of service, the applicants have objected to the decision of the respondents to cover them under NPS and moved individual and joint representations for continuance of their contribution to the GPF Scheme and to extend the benefit of old pension, relying upon the decision of Hon'ble Hyderabad Bench of the Central Administrative Tribunal in O. A. No. 492/2010 and O.A. No. 616/2010, the copy of which were forwarded to the Respondent No.3 along with representations(Annexure-A/11). The respondent no. 3 decided vide order dated 07.09.2011(Annexure-A/12) that the case of SWAs including the applicants would be covered under NPS. The grievance of the applicant is that no reason has been indicated the order dated 07.09.2011 explaining why the benefit of the Tribunal's order in O. A. No. 492/2010 and 616/2010 cannot be extended to the applicants.

7. The applicants have also cited in the judgment of Hon'ble Apex Court in the case of State of Assam Vs. Kanak Chandra Dutta AIR 1967 SC 884, in which, it is held that the applicants with the temporary status are enjoying the status and protection of a holder of the civil post. It is therefore, argued that they cannot be covered under NPS ignoring their case for the old pension scheme. Applicants are also aggrieved by the order dated 26.04.2004 of the DOPT (Annexure-A/7), stating that the past service of the applicants have become redundant. The applicants have also cited the judgment of Hon'ble Supreme Court in the case of D.S.Nakara & Ors. -vs- Union of India & Ors. reported in 1983(1) SCC 305 and the case of Basheshar Nath-Vs. The Commissioner of Income Tax, Delhi & Rajasthan and Another reported in 1959 AIR 149, 1959(1) Suppl. SCR 528 to state that their right for pension cannot be taken away by the respondents.

8. At the time of consideration of the O.A. on 30.09.2014, it was stated by the respondents that pending decision of the Hon'ble Apex Court with regard to the claim of the similarly placed employees, the competent authorities had allowed deduction of GPF contribution for the applicants and that the O.A has become infructuous, which was contested by the applicants' counsel. The applicants have also filed the M. A. No. 180/13 for condoning the delay in filing the O.A. which has not been considered by the Tribunal till final hearing on 31.01.2019.

9. The counter filed by the respondents opposed the O.A. stating that the Government has right to change a scheme or introduce new scheme and can issue fresh notification and clarifications from time to time. Hence, as per the latest notification/order, the GPF is not applicable to the applicants. As per the scheme for grant of temporary status to casual workers, the

temporary status workers can be regularised is possible according to their seniority only when a post in work charged Khalasi (now SWA) is available. The applicants having entered into regular establishment in 2009 after regularization of their services, cannot get a benefit which was prior to 2009. It is further submitted that Rules and citations filed by the applicant are not applicable to the present O.A.

10. The Respondents have also filed additional counter stating that DOPT OM dated 26.04.2004 (Annexure-A/7) was challenged in a number of court cases and in the SLP (UOI Vs. Ramsaran & Ors) was filed against the decision of the Hon'ble High Court of Rajasthan quashing the OM dated 26.04.2004 (Annexure-A/7 series). It is stated that this SLP has since been dismissed. Another SLP filed by the Union of India is pending in the Hon'ble Apex Court. It was further submitted in the additional counter filed by the respondents that the seasonal Khalasis, with or without temporary status, are not treated as regular Government employees and they derive the benefits of regular service only after regularization of their services against a regular post on and if regularized after 01.01.2004, then such employee is entitled only to New Pension Scheme(NPS). After the decision in the case of Hon'ble Apex Court the case of Ramsaran & Ors (Supra), the department had allowed for resumption of deduction towards GPF in respect of the Seasonal Khalasis with temporary status including the applicants. Since the matter was pending before Hon'ble Apex Court, the M.A no. 657/2013 dated 11.09.2013 was filed by the respondents requesting to ignore the additional counter filed in the O.A, which was opposed by the applicants' counsel on the ground that additional counter has mentioned decision of higher forum in similar cases, which can be followed in the OA. Hence, it was argued by the applicant's counsel the judgments mentioned in the Additional affidavit should be taken into account.

11. The O.A.s were heard on 31.01.2019. Learned Counsel for the applicants filed a memo, enclosing a copy of the order dated 9.2.2017 of this Tribunal in O.A. No. 72/2013 in the case of Bijayananda Acharya -vs- Union of India & Ors., where similar prayer has been allowed by this Tribunal taking into consideration the guidelines of the DOPT.

12. Before proceeding further, the issue of condonation of delay in filing the OA is to be decided as per the MA No. 180/2013. The reason for delay as mentioned in the MA is delay in supply of orders at Annexure A/7, A/8, A/9 and A/10 by the respondents and that the right to pension is protected under Article 21. The reason of delay in supply of copy of the orders to applicant has not been denied by respondents. Hence, the reasons mentioned in MA are found to be satisfactory, for which, it is allowed and delay in filing the OA is condoned.

13. On perusal of the order dated 09.02.2017 in O.A. No. 72/2013, it is seen that the facts in O.A No. 72/2013 are similar to the facts in the present O.A.s since the applicants in the present O.A.s are also similarly placed in the OA No. 72/2013. It is seen that the reliefs prayed for in O.A. No. 72/2013 are similar to the reliefs in the present O.A.s. In the O.A. No. 72/2013, it was held by the Tribunal vide order dated 9.2.2017 as under:-

"4. The respondents in their counter affidavit have on the other hand argued that the Government has a right to change its rules and issue fresh notifications and under new pension scheme, applicants and similarly placed persons are not entitled to the GPF facility. The temporary status workers can be regularized according to their seniority only when a post in the work charged Khalasi establishment (under the SWA) is available, therefore no one can claim the benefits before his absorption in the regular establishment. The applicants of this O.A entered in regular establishment in the year 2008 and new pension scheme is applicable to the incumbents who entered into central Government from 01.01.2004. The regularization of the applicants being much after the introduction of the new pension scheme they should be covered by the new pension scheme and accordingly they would no be entitled to GPF facility.

5. We have heard the learned counsel for both sides. The learned counsel for applicant by placing the latest position before this Tribunal has mentioned that during the pendency of this O.A respondents by taking into consideration the judgment of the Hon'ble Apex Court in the case of Union of India and Ors. Vs. Rameshwar Singh, CC 1829/2014, Union of India and ors Vs. Ramsaran & ors SLP(C) No. 25360-25362 and a batch, Union of India etc. Vs. Ajay Kumar and Ors. SLP No. 19673 -19678 of 2009 have issued instructions vide letter dated 10.06.2016 clarifying that if a seasonal khalasi (now SWA) has been regularized as per the scheme of 1997, pension is admissible even if he is regularized after 01.01.2004. A copy of the O.M dated 10.06.2016 along with its enclosures have been annexed with the O.A as Annex A/13. Paras No.3 and 4 of the said O.M are quoted below:

'3. The position has been reviewed in the light of the court judgments in the matter in consultation with DOPT/MoWR. It has now been decided that the seasonal Khalasis who had been granted temporary status under the Scheme and have completed 3 years of continuous service after that are entitled to contribute to the GPF.

4. Further 50% of the service rendered under temporary status would be counted for the purpose of retirements benefits in respect of those seasonal Khalasis who have been regularized in term of this Commissioner letter No. A-11019-1/95-Estt.12 dated 30.06.1997 regarding scheme for grant of temporary status to the seasonal Khalasis. It is clarified that if a seasonal Khalssi(Now SWA) has been regularized as per the Scheme of 1997, pension is admissible even if he is regularized after 01.01.2004.'

.....

6. These orders of the CWC have been issued after consultation with the DOP&T. The O.M. dated 26.02.2016 of the DOPT has also been placed for perusal paras No. 5, 6. 7 of the said O.M are quoted below:

'5. The O.M. dated 26.04.2004 has been quashed by various benches of CAT/High Courts who have decided that the scheme could not be modified retrospectively. The SLPs filed in the Hon'ble Supreme Court have been dismissed by the Apex Court in UOI & Ors Vs. Rameshwar Singh, CC 1829/2014, UOI & Ors Vs. Ramsaran & Ors. SLP (C) No.

25360-25362 of 2008. SLP 17358/2008, SLP 25360/62/209, Union of India etc. Vs. Ajay Kumar & ors S.L.P No. 19673-19678/2009.

6. The position has been reviewed in the light of the court judgments in consultation with the department of expenditure. It has now been decided that the casual labourers who had been granted temporary status under the scheme and have completed 3 years of continuous service after that, are entitled to contribute to the GPF.

7. 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits in respect of those casual labourers who have been regularized in terms of para 8 of the OM dated 10.09.1993.'

7. It is quite evident from a perusal of this O.M. dated 26.02.2016 of DOP&T as well as OM dated 10.06.2016 of the CWC that the grievances of the present applicants have been redressed by the decisions taken by the competent authority. Shri A. Pradhan learned ACGSC has also made similar submissions stating that the applicants would not have any further grievance in view of the revised guidelines.

8. Having satisfied ourselves with the submissions made by the learned counsel of both sides we are of the opinion that the O.Ms as indicated above would be applicable to the present applicants and therefore, they would not be having any further grievance to be agitated in this regard before this Tribunal. The respondents are directed to confer the benefits as per their own guidelines on the applicants within a period of 90 days from the date of this order. The O.A is thus allowed with no order as to costs."

14. In view of the precedents and the factual circumstances as discussed above, we have no hesitation to hold that the present O.A.s before us are squarely covered by the judgment of the Tribunal dated 09.02.2017 in the O.A. No. 72/2013, for which, the applicants in these O.A.s are entitled for similar relief as allowed in the O.A. No. 72/2013. Accordingly, both the O.As are disposed of with a direction to the respondents to extend the benefit to the applicants as per the OM dated 26.2.2016 of DOP&T and dated 10.6.2016 of the CWC as discussed above, within a period of 90 days from the date of receipt of copy of this order.

15. Both the O.A.s are allowed in terms of the directions in paragraph 14 above with no order as to the cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

