

**CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH**

OA 310/01316/2014

Dated Tuesday the 11th day of December Two Thousand Eighteen

P R E S E N T

Hon'ble Mr. R.Ramanujam, Member(A)

1. Adibady
2. Bezawada Thirumurthlu
3. C.R. Renilraj
4. V.K. Pradeepan
5. Sambattou
6. Ayyanar
7. Vinayagam
8. Devaraj Colon
9. Arjunan
10. Pavadaisamy
11. Selvam
12. Rajesh
13. K.P. Sanil Kumar
14. Anbazhagan
15. Segar
16. Djearamane
17. Anbalagan
18. Francis
19. Raman
20. Suresh
21. Kalidass
22. Assirpadame
23. Sankar

... Applicants

By Advocate M/s. V. Ajayakumar

Vs.

1. Secretary to Government for Home Department
Chief Secretariat, Puducherry.

2. Chief Superintendent of Jail, Puducherry.

... Respondents

By Advocate Mr. R. Syed Mustafa

ORAL ORDER

Pronounced by Hon'ble Mr. R. Ramanujam, Member(A)

Heard. The applicants have filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

“To direct the respondents to regularise the services of the applicants with effect from the date of their initial appointment as Daily Rated Male Warder with all consequential benefits, in the alternative to direct the respondents to count 50% of the Daily Rated Services rendered by the applicants along with their date of regularisation so as to get the benefit of Old Pension Scheme and to pass such other or further orders in the interest of justice and thus render justice.”

2. It is submitted that the applicants were appointed as Male Warder on daily rated basis against regular vacancies in the year 2000 and subsequently their services were regularised in 2004. They are being denied pension under the CCS(Pension) Rules on the ground that their regularisation had taken place after 01.01.2004 and, therefore, they would be regarded as coming under the purview of New Pension Scheme. As the applicants were appointed as per provisions of the Recruitment Rules and the delay in regularising them was not attributable to the applicants, they must be deemed to have been regularised from the date of eligibility and accordingly, brought under the CCS Pension Rules 1972, it is contended.

3. The respondents have filed reply in which it is submitted that the applicants had not been appointed as Male Warder in the year 2000 against regular vacancies.

As a matter of fact 24 posts of Male Warders had only been created much later by GO dated 24.10.2002 and, therefore, the claim that they were appointed against vacant posts is contrary to the facts. The applicants were entitled to appointment against the regular posts only to the extent of 50% as the Recruitment Rules provided for filling up of Male Warder, 50% by employment exchange and 50% by Home Guards. However, as it was decided to absorb the Casual Warders against the newly created posts, the orders of the Lt. Governor were obtained to relax the relevant rule and all the 25 posts were filled up by absorption as per seniority of the Casual Warders.

4. The Departmental Promotion Committee that recommended the applicants for absorption had met only on 12.02.2004 after the New Pension Scheme had come into effect and, therefore, the applicants could not be regularised with effect from a previous date. The applicants had been appointed after the New Pension Scheme came into effect and hence the applicant's claim for being covered under the CCS Pension Rules was devoid of merits, it is contended.

5. Both the counsel argue on the respective lines.

6. I have considered the pleadings and the submissions made by the rival counsel. The fact that the applicants had been appointed as Casual Warder in the year 2000 is not contested. The case of the respondents is that the applicants had been appointed, not against a sanctioned post which came to be created only by an order dated 24.10.2002. The respondents proposed to absorb the applicants against 24 posts created on the said date although the Recruitment Rules provided for filling up of the

posts to the extent of 50% only through employment exchange and the remaining 50% by Home Guards.

7. In the reply of the respondents it is submitted that the posts of 24 Casual Warders were created as a special case. In the proceedings of the DPC dated 12.02.2004 also it was noted that these posts were created in lieu of posts of 24 casual warders for absorbing them. The Committee had noted that these 24 casual warders were selected from the employment exchange and were recruited as per the provisions of the Recruitment Rules for the post of Male Warder.

8. It is also submitted in the reply of the respondents that the Recruitment Rules issued in 1994 stipulated that Government servants should have completed not less than 3 years in posts which were in the same lines or allied cadres. Accordingly one Casual Warder, Bezawada Thrimurthulu who was appointed on 18.12.1999 was deemed to have completed 3 years of service on 18.12.2002 whereas the applicants would have completed 3 years of service only on 24.10.2005, i.e., 3 years from the date of creation of the posts.

9. It would be clear from the pleadings that the posts were specially created with a view to absorbing the applicants. Necessary relaxation of rules had also been made to enable the absorption to the applicants against the 24 posts created. It is also a fact that the applicants had not been absorbed only after 3 years from the date of creation of posts but much earlier in 2004 itself shortly after the departmental promotion committee which met on 12.02.2004 recommended their absorption. As such it is not possible to accept the contention that the applicants would have completed 3 years of

service only in 2005 and, therefore, be eligible for absorption only thereafter.

10. The only point that now remains is whether the applicants had completed 3 years of service from the initial date of engagement. Evidently, they have completed this requirement in 2003. The 24 posts specially created for them had also been created on 24.10.2002 itself and, therefore, when it was proposed to relax the rules and absorb all of them, there was no impediment to their absorption on the date of completion of 3 years of service in the year 2003. As the delay in the process of granting relaxation and, thereafter, holding the DPC is not attributable to the applicants, I am of the view that the applicants deserve to be considered for relaxation w.e.f. the date of completion of 3 years in service, when the 24 posts were already available for them.

11. In view of the above, the respondents are directed to consider advancing the date of absorption of the applicants to the date 3 years from the date of initial engagement and accordingly decide their entitlement for pension under the CCS Pension Rules 1978.

(R. Ramanujam)
Member(A)
11.12.2018

AS