

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI**

O.A. No.2446 of 2017

Orders reserved on : 14.05.2019

Orders pronounced on : 17.05.2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Dr. Sunil Kr. Verma (aged 63 years)
S/o Late Sh. K.K. Verma
R/o New Jyoti Housing Society,
Plot No.27, Flat No.A-201, Sector-4, New Delhi-110078
.....Applicant
(By Advocate : Shri B.S. Jarial)

VERSUS

The Chief Administrative Officer,
All India Institute of Medical Sciences,
Ansari Nagar, New Delhi-110029.
.....Respondent
(By Advocate : Shri Nipol Gautam)

ORDER

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- “A. Direct the respondent to allow the Pension under CCS (Pension) Rules, 1972, as already admitted by the Respondents in their RTI reply dated 15.06.2017 (Ann A-13 (Colly), arrears with interest rate as applicable and in future as per the extant rules of the respondent. And
- B. Direct the respondent to release Gratuity and commutation of pension along with 18% compound interest on the delayed retiral dues till the payment is made, and

- C. Direct the Respondent to give damages to the applicant and costs of this litigation and costs of the lawyer's notice given to the Respondent as deem fit and proper to this Hon'ble Tribunal, and
- D. Any other relief the Hon'ble Court may deem fit and proper in the facts and circumstances of the case. Prayed accordingly in the interest of justice."

2. Brief facts of the case as stated by the applicant are that the applicant joined as Assistant Research Officer in the Department of Medicine, AIIMS, New Delhi on 01.04.1987 in a Project which lasted for about 11 months and 9 months (till 30.06.1999). Immediately after joining, the AIIMS Administration had allowed a GPF No. G-5360 to the applicant and started deducting the contribution amount from his salary since the beginning, i.e., from 1.4.1987. Annexure A-1 of the O.A. is the appointment letter dated 3.4.1987 of the applicant in which the service conditions of the applicant are stated. It is the respondent who had opened GPF account no.G 5360 of the applicant. And hence he avers that the services rendered on contract basis or ad hoc services shall be counted for pensionary benefits. Later on also applicant was given various projects from time to time till his retirement thus was continuously given assignments by the respondent from 19.9.2001 in various projects. Thereafter, the respondents vide its Memo dated 28.11.2008 had absorbed the applicant though the applicant was entitled to be absorbed in the year 2005 after completion of 15 years

of services. The matter regarding counting of past service rendered by him in various projects of the respondent for grant of pensionary benefits is also sought to be considered as per rules of the respondent.

2.1 The applicant states that he is entitled for counting of his services since 1.4.1987 till the date of his retirement i.e. 31.8.2014 towards pensionary benefits as decided in catena of judgments of various courts.

2.2 The case of the applicant is fully covered by the old pension scheme. As the new pension scheme had been introduced on 1.1.2004 by Government of India. On 23.8.2003, the Govt. of India had approved the proposal to implement the budget announcement of 2003-2004 relating to introducing a new restructured defined contribution pension system, to be named NPS. Thereafter, through Govt. of India, Ministry of Finance, Notification dated 22.12.2003, published in the Gazette of India of the same date, it was directed as follows:-

“G.I.M.F. Notification No.5/7/2003-ECB and PR, dated 22.12.2003-published in Gazette of India, Extraordinary Part-1, Section I, dated 22.12.2003.

Introducing a new restructured defined contribution pension system for new entrants to Central Government Service – The Government approved on 23rd August, 2003, the proposal to implement the budget announcement of 2003-2004 relating to introducing a new restructured defined contribution pension system for new entrants to Central Government service, except to Armed Forces, in the first stage, replacing the existing system of defined benefit pension system.

3. The above averments made by the applicant are totally controverted by the respondent, who states that the applicant has been through various rounds of litigations and even filed a contempt petition against the respondent being Cont. Case (C) No. 1473/2005 before the Hon'ble Delhi High Court and the High Court dismissed the said contempt petition vide order dated 19.12.2005 with the following observations:-

“Averments made in the petitions shows that if at all, petitioner must take resort to a substantive action. By and large, the order passed by the learned Single Judge was to consider claim for regularization of the petitioner on completing 15 years of service. Whether the petitioner has completed 15 years of service or not, requires a substantive adjudication. I decline to initiate contempt action, leaving remedy open to the petitioner to file a substantive petition.

Petition dismissed.”

3.1 They drew our attention to Memo dated 28.11.2008 contents of which reads as under:-

“ALL INDIA INSTITUTE OF MEDICAL SCIENCES
RECRUITMENT CELL

No.-1-34/93-Estt-I (P/f)

Dated:- 28 NOV 2008

MEMORANDUM

Subject:- Absorption of Dr. Sunil Kumar Verma
to the post of Scientist-I under the Core
Research Cadre at the AIIMS.

The Director has been pleased to order the absorption of Dr. Sunil Kumar Verma, to the post of Scientist-I in the pay scale of Rs.8000-275-13500 (Pre-revised) plus usual allowances as admissible under the rules, with effect from the date he assumes the charge of the post of Scientist-I under the Core Research Cadre at the AIIMS in accordance with the decision of the Supreme Court. His pay will be fixed as per rules.

The matter regarding counting of past service rendered by Dr. Sunil Kumar Verma in various projects at the AIIMS for grant of pensionary benefits, shall be considered as per rules of the Institute.

Other terms and conditions of his service will be as provided under the rules and regulations of the Institute and made applicable to the employees of the Institute from time to time.

He will also be required to conform to the rules, regulations, discipline and code of conduct imposed by the Institute on its employees from time to time.

Sd/-
(RAVI CHAUHAN)
ADMINISTRATIVE OFFICER

Dr. Sunil Kumar Verma
276, pocket 'c', Shaikh Sarai,
Phase-I, New Delhi”

3.2 They point out that it is clearly mentioned in the above Memo that the matter regarding counting of past service rendered by the applicant in various projects of the respondent for grant of pensionary benefits shall be considered as per the rules of the Institute.

4. Counsel for the applicant has placed reliance on the following decisions:-

(i) ***Union of India and others vs. Tarsem Singh*** (Civil Appeal No.5151-5152 of 2008) decided on 13.8.2008 by the Hon’ble Supreme Court;

(ii) ***Dr. Neelam Aggarwal & others vs. Union of India and others*** (OA No.105/2018) decided by the CAT, Chandigarh Bench vide order dated 13.3.2018;

(iii) **Dr. Souvik Maiti vs. Union of India and another** (OA No.959/2016) decided by the CAT, Principal Bench, New Delhi vide order dated 7.8.2018; and

(iv) **Som Nath & others vs. State of Punjab and others** (in CWP No.1432/2012) decided by the Hon'ble Punjab and Haryana High Court at Chandigarh vide Order dated 23.1.2013.

5. This is controverted by the respondent's counsel, who pointed out that decision of the Apex Court in **Tarsem Singh's** case (supra) relates to whether belated service claim can be rejected on the ground of delay and laches or limitation and has no relevance to this case as this Tribunal has already heard the matter on merit. We agree with the contention of the respondent and find no relevance of this ruling in this matter as this case is being adjudicated on merit and not being dismissed on the ground of limitation.

5.1 Counsel further pointed out that the decisions of the Tribunal in the cases of **Dr. Neelam Aggarwal** (supra) and **Dr. Souvik Maiti** (supra) relate to applicability of pension scheme and have no relevance in this matter as in this OA, principle issue is whether the applicant is entitled to any pension under the rules of the respondents. According to respondent, prior to applicant's absorption as permanent employee on 28.11.2008, the applicant was only a project

employee in various projects undertaken by the Institute from time to time and hence, he is not entitled to any pension as he was appointed in the Institute on 28.11.2008. The new Pension Scheme had been introduced on 1.1.2004. Hence, it is the contention of the respondents that the applicant will be entitled to the pension after the introduction of the new Pension Scheme. We find merit in the contention of the respondent, especially as first of all the question to be decided is whether pension is payable at all to the applicant.

5.2 So far as reliance placed by the applicant on the decision in **Som Nath** (supra) is concerned, counsel pointed out that this is a matter relating to daily wagers and their claim to be covered by the GPF Scheme and not by the New Contributory Pension Scheme. The respondents have correctly stated that this has no relevance to the facts of this case as the applicant is claiming pension on the ground that he is a regular employee and they are able to distinguish the same. Hence, all the cases referred to by the applicant have been differentiated and distinguished by the respondent.

4. However, after all the arguments, we find that vital issue in this case is the averment of the applicant that persons similarly placed as the applicant have been given the reliefs asked for by him and no reason has been given as to why similar reliefs could not be granted to him. In the legal notice dated 6.5.2017 given on behalf of the applicant, it has

been clearly stated that the following persons have been given the relief by the respondent:-

“It will also not be out of order to mention that in the past you have given pensionary benefits in terms of O.M.F. 20-19/90-Estt.I dt. 11/12/03 to following employees similarly placed as Dr. Sunil was/is and retired from AIIMS:

1. Dr. L.K. Sarya, Dept. of Gynae & Obst.,
2. Dr. Mailton, Dept. of Gynae & Obst.,
3. Dr. Manju Ghosh, Dept. of Pediatrics,
4. Dr. Sujata Joshi, Dept. of Biomedical Engineering.

Hence on the rule of parity also, Dr. Sunil deserves the same treatment as above said personnel.”

But no reply has been given to the above prayer in the counter affidavit filed by the respondent.

5. In view of the factual position as mentioned above, we dispose of this OA by directing the respondent to pass a detailed order on why the applicant of this OA cannot be given the pensionary benefits in accordance with their previous order with regard to the aforesaid portion of the representation within a period of 90 days from the date of receipt of certified copy of this Order.

6. The OA is disposed of in above terms. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

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