

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

O.A. NO.1826 of 2017

This the 17th day of September 2019

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

Mahmood Hussain (D) Thr. LRS

1. Shahnaz Begam
W/o Mahmood Hussain,
Aged about 59 years,
R/o 272, Baba Kasai Pada,
Sadar Bazaar, Mathura, (U.P.).

.... Applicant

(By Advocate : Mrs. Rani Chhabra)

VERSUS

1. Union of India
Ministry of Communication,
Through its Secretary,
Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi.

2. Chief Postmaster General,
U.P., Lucknow,

3. Postmaster General
Agra Region, Agra.

4. Senior Superintendent of Post Offices,
Mathura Division, Mathura.

..... Respondents

(By Advocate : Shri R.K. Sharma)

O R D E R (Oral)

Heard learned counsel for the parties.

2. By filing this OA, the applicant though LRs, as he died during the pendency of this OA, is seeking the following reliefs:-

- “a. direct the Respondents to grant pension to the applicant under the CCS (Pension) Rules and restrain them to apply to the applicant New Pension Scheme known as Defined Contribution Pension Scheme; and
- b. Pass such other or further order/s as Your Lordships may deem fit and proper.”

3. Admittedly, the applicant had earlier filed OA 946/2003 wherein he was aggrieved by the communication dated 5.9.2002 vide which his request for regularization in the post of Mail Motor Driver had not been acceded to in the absence of regular post available and this Tribunal vide Order dated 29.3.2004 disposed of the said OA with the following observations:-

“4. The fact that the applicant has been working with the respondents since 18.4.85 and that one vacant post of Mail Motor Driver is available with the respondents are not in dispute. In other words, respondents still need the services of the applicant. In such a situation, I feel that ends of justice would be duly met if the respondents are directed to consider the case of the applicant while filling up the post of Mail Motor Driver, fallen vacant by the retirement of Shri Narain Singh, on regular basis in accordance with R/Rules and instructions on the subject, within a period of four months from the date of receipt of a copy of this order. I do so accordingly. Respondents shall also consider giving age relaxation to the applicant to the extent of service rendered by him with them while considering his eligibility.”

In compliance of the aforesaid Order of this Tribunal, the respondents have issued Memo dated 12.10.2004 vide which the applicant was appointed as Mail Motor Driver, Mathura H.O. against vacant post with immediate effect and

accordingly, the applicant assumed the charge of the said post on 13.10.2004 (forenoon), as per the charge report dated 15.10.2004.

4. Since before the date of regularization of his service in the year 2004, the applicant was discharging his duties as outsider Mail Motor Driver on daily-rated basis being sponsored by employment exchange, the said service cannot be taken into consideration for the purpose of pensionary benefits as all the employees, who were appointed or regularised on or after 1.1.2004, are mandatorily required to be covered by New Pension Scheme and not under old pension scheme.

5. Confronted with the aforesaid position, counsel for the applicant during the course of hearing placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Union of India and others vs. Rakesh Kumar and others*** (Civil Appeal No.3938 of 2017 decided on 24.3.2017 and contended that applicant was working with the respondents since 18.4.1985 and was regularised in the year 2004 only and as such the applicant is legally entitled for counting of his past service rendered by him as casual employee in terms of the directions contained in the said judgment of the Apex Court. Counsel further contended that applicant's service were not regularised prior to 2004 because of inaction on the part of the respondents.

6. On the other hand, counsel for the respondents submitted that the said judgment of the Apex Court is not applicable to the case of the applicant, as he had never been granted temporary status at any point of time. Rather he was discharging his duties on daily-rated basis till the date of his regularization, and his regularization was done only in 2004 in compliance of the directions given by this Tribunal in earlier OA preferred by him and as per the Scheme existing, all the employees, who were regularised or appointed after 1.1.2004, are governed by New Pension Scheme and not in accordance with Old Pension Scheme as the said Old Pension Scheme was not in existence w.e.f. 1.1.2004 and the services rendered by the applicant as causal employee on daily rated basic cannot be taken into consideration for the purpose of pensionary benefits. Counsel further submitted that disciplinary proceedings were initiated against the applicant under Rule 14 of the CCS (CCA) Rules, 1964 and upon finalization of the same, the applicant was awarded the punishment of compulsory retirement w.e.f. 31.5.2017 and also ordered recovery of Rs.20,000/- in one installment from the pay of May of the applicant vide order dated 24.5.2017.

7. From the above gamut of the facts of this case, it is clear that before regularization, the applicant was working on daily-rated basis as outsider Mail Motor Driver and his regularization was done only in the year 2004 after the Order of the Tribunal dated 29.3.2004 when the respondents were

directed to consider the case of the applicant for filling up the post which had fallen vacant due to retirement of one Shri Narain Singh on regular basis in accordance with recruitment rules and instructions on the subject, within a period of four months from the date of receipt of a copy of the said Order and that too with immediate effect and not from retrospective effect and it is admitted position that applicant had not been conferred temporary status at any point of time. Therefore, the said judgment of the Apex Court in the case of ***Union of India and others vs. Rakesh Kumar and others*** (supra) is not applicable to the facts of this case. In view of the fact that applicant was appointed on 13.10.2004 much after the New Pension Scheme came into effect, therefore, this Tribunal is of the considered view that the applicant is entitled to all the benefits, which are admissible as per the New Pension Scheme only. However, it is made clear that if the applicant is not paid the admissible dues consequent upon his compulsory retirement w.e.f. 31.5.2017, the respondents are directed to disburse the same to his legal heir(s) within a period of two months from the date of receipt of certified copy of this Order.

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

(Nita Chowdhury)
Member (A)

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