

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

O.A. No.2833 of 2017

Orders reserved on 11.07.2019

Orders pronounced on : 19.07.2019

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

1. Babban Choudhary, MTS, Group 'C'
Aged about 41 years,
S/o Sh. Subhraj Chaudhary,
R/o H-146, Kalibari Marg,
New Delhi-110001.
2. Anil Kumar, MTS, Group 'C'
Aged about 42 years
S/o Sh. Haridwar Paswan,
R/o 494, Sec-2, Type-II, Shadik Nagar,
New Delhi-110049.
3. Vasudev, MTS, Group 'C',
Aged about 48 years,
S/o Sh. Ram Phal, R/o VPO Havshala Kalan,
Distt. Sonapat, Haryana.
4. Rajender Prasad, MTS, Group 'C',
Aged about 47 years,
S/o Sh. Hari Kishan,
R/o 103, Type-I, Road No.3,
Andrews Ganj, New Delhi-110049.
5. Lal Bahadur, MTS, Group 'C'
Aged about 43 years,
S/o Sh. Ram Bilas,
R/o Qtr. No.5, Road No.3,
Andrews Ganj, New Delhi-110049.

....Applicants

(By Advocate : Shri M.K. Bhardwaj)

VERSUS

1. Union of India,
Through its Secretary,
Department of Supply,
Ministry of Commerce & Industry,
Udyog Bhawan, New Delhi.
2. The Director General of Supplies & Disposals,
'Jeevan Tara' Building,
5, Sansad Marg, New Delhi-110001.

.....Respondents

(By Advocate : Shri Satish Kumar)

ORDER

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

- “(a) To quash and set aside the impugned order dated 09.08.2016 and direct the respondents to grant benefit of GPF and Old Pension Scheme to the applicants for all purposes.
- (b) To direct the respondents to treat the applicants covered under OM dated 10.09.1993 and treat their service rendered from the date of initial appointment as eligible service for the purpose of pension and pay fixation etc. as per the judgment of Hon’ble Punjab & Haryana High Court dated 23.01.2013 in CWP No.1342/2012 and other similar petitions mentioned in the OA.
- (c) To allow the OA with costs.
- (d) To pass such other and further orders which their lordships of this Hon’ble Tribunal deem fit and proper in the existing facts and circumstances of the case.”

2. Brief factual matrix of the case are that the applicants on being sponsored by Employment Exchange, Kamla Market, Delhi, were appointed as Casual Labours on different dates, i.e., from April 1993 to October, 1993 and January 1996. When temporary status was not granted to the applicants in terms of the provisions of DOP&T OM dated 10.9.1993 even after completion of more than 7 years of service, one of the applicant, being applicant no.1, filed OA 1866/2000 before this Tribunal and this Tribunal vide Order dated 19.4.2001 disposed of the same with directions to the respondents to treat the said OA as representation of the applicant No.1 and

consider the said applicant No.1's plea for grant of temporary status. Remaining applicants no.2 to 5 of this OA did not file any OA. They filed representations before the respondents, which were disposed of by the respondents on the same terms as they had disposed of the representation of applicant no.1.

2.1 When respondents did not implement the aforesaid directions, the applicants approached the respondents to do the needful. According to the applicants, the respondents assured them for positive action. The applicants being casual labourers believed in the version of the respondents and did not take any action in the matter. When it came to their knowledge that similarly placed persons appointed in different departments of Government were granted temporary status, they represented to the respondents and finally the respondents appointed them to the posts of Peon in the year 2005.

2.2 Thereafter vide order dated 13.6.2007, their services were confirmed on different dates in the year 2007. However, they were not granted benefit of Old Pension Scheme. Being aggrieved, the applicants submitted their representations on 12.7.2016 which were considered and rejected vide impugned order dated 9.8.2016 on the ground that the benefit of GPF and Old Pension Scheme is applicable to all those casual labourers, who are covered under the Scheme of the 10th September, 1993 even if they have been regularized on or

after 01.01.2004. Being aggrieved by the aforesaid impugned order, the applicants have filed this OA seeking the reliefs as quoted above.

3. When this matter was taken up for consideration, learned counsel for the applicants submitted that impugned order is liable to be quashed by this Tribunal as the respondents failed to consider that the applicants' case is fully covered by the OM dated 10.9.1993 as they completed 206/240 days of continuous service in one calendar year and when the respondents have not granted/taken any action on the issue of grant of temporary status to these applicants, one of the applicant, i.e., applicant no.1 approached this Tribunal by filing OA 1866/2000 (**Babban Chaudhary s. UOI and others**) and this Tribunal vide Order dated 19.4.2001 disposed of the same with the directions to consider the claim of the applicant for grant of temporary status within three months from the date of receipt of copy of the said Order. However, for a considerable period, the respondents have not taken any action despite the fact that they were in service much prior to 1.1.2004 and as per the judgment of the Hon'ble Punjab and Haryana High Court in the case of **Somnath & others vs. State of Punjab & others** (CWP No.1432/2012), which was upheld by the Apex Court and also subsequent judgment of the Punjab and Haryana High Court in the case of **Harbans Lal vs. State of Punjab and**

others (CWP No.2371/2010), the applicants' case was required to be examined by the respondents.

3.1 Counsel also submitted that respondents cannot be permitted to take advantage of their own wrong committed by them in not granting temporary status to the applicant and making the said lapse as the basis to deprive them from the benefits of Old Pension Scheme as all the applicants were appointed against Group 'D' vacancies in the year 1993 and thereafter their services were also regularised in 2005, therefore, the applicants could not have been deprived from benefit of Old Pension Scheme. As such the action of the respondents is highly illegal and violative of Articles 14 and 16 of the Constitution as well as the aforesaid judgment of the Supreme Court in the case of **Nihal Singh & others vs. State of Punjab and others**, (2013) 14 SCC 65.

3.2 Counsel further submitted that the respondents have failed to consider that on regularization, the entire service of applicants from the date of initial appointment was required to be treated as regular service for all purposes as per the law laid down by the Hon'ble Supreme Court of India in the following cases:-

- a) **Direct Recruit Class-II Engineering Officers' Association and others v. State of Maharashtra and others**, AIR 1990 SC 1607 [Para 44],
- b) **State of W.B. & Ors. v. Aghore Nath Dey & Ors.**, (1993) 3 SCC 371 [Paras 21 to 26],

- c) **N.K.Chauhan & Ors. v. State of Gujarat**, AIR 1977 SCC 251[Paras 30 to 32 & 40],
- d) **S.B.Patwardhan v. State of Maharashtra**, (1977) 3 SCC 399 [Paras 39 and 51],
- e) **Baleshwar Das v. State of U.P.**, (1980) 4 SCC 226 [Paras 30 to 36],
- f) **A. Janardhan v. Union of India**, (1983) 3 SCC 601 [Paras 38 and 34],
- g) **B.S.Mathur & Anr. v. Union of India**, (2008) 10 SCC 271 [Paras 12, 39, 40, 49 to 52],
- h) **Sunil Kumar Mehra v. M.C.D. & Anr.**, W.P.(C) No.2059/2012 of Delhi High Court[Paras 31 to 34],

3.3 Counsel also urged that the respondents have failed to consider that the applicants were appointed as per Rules in the year 1993 & 1996 and the new Pension Scheme was made applicable only in such cases where the appointments were made after 1.1.2004 and not prior thereto. As such, the respondents action denying the applicants benefits of Old Pension Scheme cannot be said to be justified.

4. Counsel for the respondents by referring to their counter affidavit submitted that the judgment of the Apex Court in the case of **Somnath & others vs. State of Punjab & others** (supra) is not at all applicable in present case being distinguishable on facts as the applicants are not covered by OM dated 10.9.1993 as they were not in employment on the date of issue of the said OM dated 10.9.1993 and as such they are not eligible for grant of temporary status.

4.1 Counsel further submitted that the instant OA is barred by limitation as the applicant has not challenged the order dated 10.3.2005 in which it has clearly been mentioned that they would be governed by the new Pension Scheme introduced by the Government of India w.e.f. 1.1.2004 and the applicants were accorded constitutional status of civil servant only vide order dated 13.6.2007. If they are aggrieved by the same, they ought to have challenged the same within one year from the date of passing of the said order. Instant OA has been filed in the year 2017, i.e., much after expiry of more than about 11 years from the year of appointment given to the applicants in 2005.

4.2 Counsel also submitted that the directions contained in the aforesaid Order of this Tribunal dated 19.4.2001 passed in OA No.1866/2000 were adhered to and representations of the applicants and others, in total 12 representations, were considered and examined by the respondents. Since none of them (including five applicants) were covered under the Scheme of 1993 and as such they were informed by the respondents that the benefit of old pension scheme and GPF is not admissible to them as per extant rules.

5. Counsel for the applicants in rebuttal by referring to his rejoinder submitted that the respondents have wrongly averred that the applicants are not covered under Old Pension Scheme. In fact, the applicants were appointed in

1993 as such they got covered under Old Pension Scheme. He again reiterated that the present case is squarely covered by the decision of the Apex Court in the case of **Somnath & others vs. State of Punjab & others** (supra). He further submitted that if the respondents had taken timely action in compliance of the directions of this Tribunal dated 19.4.2001 passed in OA No.1866/2000, the applicants would have been given appointments on regular basis much before 2004 since the applicants were appointed as casual labour during 20.4.1993 to October 1993 on being sponsored by the Employment Exchange and as such the applicants are very much covered under OM dated 10.9.1993.

6. Heard Shri M.K. Bhardwaj, learned counsel for the applicant and Shri Satish Kumar, learned counsel for the respondents and also carefully perused the pleading on record.

7. Having regard to the submissions of learned counsel for the parties, first of all, it is observed that this case is not barred by limitation as the reliefs which are claimed by the applicant are in the nature of recurring cause of action and recurring loss. As such the present case cannot be said to be hit by limitation.

8. The applicants are basing their claim on two counts, firstly, that they were appointed in 1993 and as per the OM dated 10.9.1993, the applicants ought to have been granted

temporary status, which respondents have not done despite the fact that this Tribunal while disposing of one of the applicant's representation directed them to decide the issue of grant of temporary status to the applicant within a period of three months from the date of receipt of copy of the said Order, i.e., way back in the year 2001. But the applicants were given regular appointment only in 2005 and secondly, the applicants' case is fully covered by the decision of the Hon'ble Supreme Court in the case of **Somnath & others vs. State of Punjab & others** (supra).

9. It is an admitted fact that the applicants, who were given appointments on regular post of Peon in 2005, were not temporary status employees but were only casual labourers and although one of the applicants moved OA No.1866/2000 dated 19.4.2001 for grant of temporary status but they have moved their representations much after their regular appointment to the said post in 2015 and 2016, which were duly considered by the respondents and rejected the same on the basis of the DOP&T's OMs dated 26.2.2016 and 28.7.2016 and held that the benefit of GPF and Old Pension Scheme is applicable to all those casual labourers, who are covered under the Scheme of 10.9.1993 even if they have been regularised on or after 1.1.2004 and since the applicants are not covered under the Scheme of 1993, the

benefit of Old Pension Scheme and GPF is not admissible to them as per the extant rules.

10. Since the respondents have rejected the claim of the applicants by giving a reason that the applicants' case is not covered under the DOP&T's OM dated 10.9.1993, this Tribunal deems it appropriate to consider the said OM, the relevant portion of the said OM is reproduced as under:-

"1. This scheme shall be called "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993."

2. This Scheme will come into force w. e. f. 1.9.1993.

3. This scheme is applicable to casual labourers in employment of the Ministries/Departments of Government of India and their attached and subordinate offices, on the date of issue of these orders. But it shall not be applicable to casual workers in Railways, Department of Telecommunication and Department of Posts who already have their own schemes.

4. Temporary Status

(i) Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week).

(ii) Such conferment of temporary status would be without reference to the creation/availability of regular Group 'D' posts.

(iii) Conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on need basis. He may be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work.

(iv) Such casual labourers who acquire temporary status will not, however, be brought on to the permanent establishment unless they are selected through regular selection process for Group 'D' posts.

5. Temporary status would entitle the casual labourers to the following benefits:-

(i) Wages at daily rates with reference to the minimum of the pay scale for a corresponding regular Group 'D' official including DA, HRA and CCA

(ii) Benefits of increments at the same rate as applicable to a Group 'D' employee would be taken into account for calculating pro-rata wages for every one year of service subject to performance of duty for at least 240 days, 206 days in administrative offices observing 5 days week) in the year from the date of conferment of temporary status.

(iii) Leave entitlement will be on a pro-rata basis at the rate of one day for every 10 days of work, casual or any other kind of leave, except maternity leave, will not be admissible. They will also be allowed to carry forward the leave at their credit on their regularisation. They will not be entitled to the benefits of encashment of leave on termination of service for any reason or on their quitting service.

(iv) Maternity leave to lady casual labourers as admissible to regular Group 'D' employees will be allowed.

(v) 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after their regularisation.

(vi) After rendering three years' continuous service after conferment of temporary status, the casual labourers would be treated on par with temporary Group 'D' employees for the purpose of contribution to the General Provident Fund, and would also further be eligible for the grant of Festival Advance/Flood Advance on the same conditions as are applicable to temporary Group 'D' employees, provided they furnish two sureties from permanent Government servants of their Department.

(vii) Until they are regularized, they would be entitled to Productivity Linked Bonus/ Adhoc bonus only at the rates as applicable to casual labourers.”

In view of the above, what is required to be seen is whether the applicants' case comes under the ambit of clause 4 of the aforesaid Scheme. The Hon'ble Supreme Court in the case of ***Union of India and another vs. Mohan Pal etc. etc.*** in Appeal (Civil) No.3168 of 2002 had an occasion to consider the same very issue and the Apex Court observed as under:-

“Clause 4 of the Scheme is very clear that the conferment of 'temporary' status is to be given to the casual labourers who were in employment as on the date of commencement of the Scheme. Some of the Central Administrative Tribunals took the view that this is an ongoing Scheme and as and when casual labourers complete 240 days of work in a year or 206 days (in case of offices observing 5 days a week), they are entitled to get 'temporary' status. We do not think that clause 4 of the Scheme envisages it as an ongoing Scheme. In order to acquire 'temporary' status, the casual labourer should have been in employment as on the date of commencement of the Scheme and he should have also rendered a continuous service of at least one year which means that he should have been engaged for a period of at least 240 days in a year or 206 days in case of offices observing 5 days a week. From clause 4 of the Scheme, it does not appear to be a general guideline to be applied for the purpose of giving 'temporary' status to all the casual workers, as and when they complete one year's continuous service. Of course, it is up to the Union Government to formulate any scheme as and when it is found necessary that the casual labourers are to be given 'temporary' status and later they are to be absorbed in Group 'D' posts.”

And further observed as under:-

“However, we make it clear that the Scheme of 1.9.1993 is not an ongoing Scheme and the 'temporary' status can be conferred on the casual labourers under that Scheme only on fulfilling the conditions incorporated in Clause 4 of the Scheme, namely, they should have been casual labourers in employment as on the date of the

commencement of the Scheme and they should have rendered continuous service of at least one year, i.e., at least 240 days in a year or 206 days (in case of offices having 5 days a week). We also make it clear that those who have already been given 'temporary' status on the assumption that it is an ongoing Scheme shall not be stripped of the 'temporary' status pursuant to our decision.”

In view of the aforesaid observations of the Apex Court, the DOP&T issued another OM dated 26.02.2016 on the subject of casual labourers with temporary status-clarification regarding contribution to GPF and Pension under the Old Pension Scheme. In so far as it is relevant, this office memorandum states as follows:

"1. Undersigned is directed to refer to this Department's OM No. 51016/2/90-Estt (C) dated the 10th September, 1993 vide which a scheme for grant of temporary status to the casual employees was framed. The scheme applied to those casual labourers who were in employment on the date of the issue of the OM and had rendered one year of continued service in Central Government Offices, which meant that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week) . The scheme did not apply to Departments of Telecom & Posts and Ministry of Railways.

2. As per the scheme, after rendering three years' continuous service after conferment of temporary status, the casual labourers were to be treated at par with temporary Group D employees for the purpose of contribution to the General Provident Fund. Further, after their regularisation, 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits.

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 General Provident Fund.

8. It is emphasised that the benefit of temporary status is available only to those casual labourers who were in employment on the date of the issue of the OM dated 10th September, 1993 and were otherwise eligible for it. No grant of temporary status is permissible after that date. The employees erroneously granted temporary status between 10.09.1993 and the date of Hon'ble Supreme Court judgment in Union of India And Anr. vs. Mohan Pal, 2002(3) SCR 613 delivered on 29 April, 2002, will however be deemed to have been covered under the scheme of 10.09.93."

Thereafter another OM was issued by the DoP&T dated 28.07.2016 on the subject "Casual Labourers with temporary status- clarification regarding contribution of GPF and Pension under the Old Pension Scheme." This said OM, *inter alia*, provides as under:-

"The undersigned is directed to refer to this Department's OM of even number dated 26th February, 2016 on the above subject and to say that some references have been received in this Department from various Ministries/ Departments seeking a clarification with regard to the Para 7 of the referred OM.

2. The OM was issued in consultation with Department of Expenditure and the Department of Pension and PW. It was clarified vide that OM that this Department's O.M. dated 26th April, 2004 had been quashed in a series of Orders/ Judgments. The OM dated 26th February, 2016 restores the provisions of the Scheme as it existed prior to the OM dated 26th April, 2004. The benefit of GPF and Old Pension Scheme is applicable to all those casual labourers who are covered under the Scheme of the 10th September, 1993 even if they have regularised on or after 01/01/2004."

11. Having regard to the above observations of the Apex Court as well as the above noted OMs, it is observed that in order to acquire 'temporary status', the applicants should have been in employment as on the date of commencement of the Scheme and they should have also rendered a continuous service of at least one year which means that they should have been engaged for a period of at least 240 days in a year or 206 days in case of offices observing 5 days a week. Admittedly, the applicants were engaged as casual labourers from April 1993 to October 1993 and also in January 1996, as mentioned by the applicants in the list of dates and event. As such, they have not specifically stated on which dates they were actually appointed. However, having regard to the averments of the applicants that they were engaged from 20.4.1993 to 18.10.1993 and also in January, 1996, it is observed that as per the aforesaid interpretation of Clause 4 of the said 1993 Scheme of the Apex Court in the aforesaid case, the case of the applicants does not come within the ambit of the said Scheme, reason being as on 10.9.1993, none of the applicants have fulfilled the requirement of engagement for a period of at least 240 days in a year or 206 days in case of offices observing 5 days a week. As such, the conclusion drawn by the respondents in the impugned order does not suffer from any illegality and infirmity.

12. So far as reliance placed by the learned counsel for the applicants on the judgment of the Apex Court in the case of ***Somnath & others vs. State of Punjab & others*** (supra) is concerned, after perusing the said judgment, during the course of hearing itself a query was raised to the learned counsel for the applicants on how the said judgment is applicable to the case of the applicants since the same is confined to the concerned employees of the State of Punjab and has no application to the facts of this case, although counsel for the applicants has not been able to refute the same but requested for a day's time to enable him to produce some other relevant judgment but after waiting for about a week, no such judgment was produced by him and his arguments have already been controverted by the respondents during the course of hearing by relying upon the Hon'ble Delhi High Court. So it was not necessary to wait and hence, the judgment arrived at. Other judgments, as referred to above, relied upon by the applicants are also not relevant to the facts of this case.

13. It is further relevant to note that the aforesaid OMs of the DOP&T dated 26.2.2016 28.6.2016 were considered by the Hon'ble Delhi High Court very recently on 30.1.2019 in WP(C) No.984/2019 in the case of ***Para Medical Technical Staff Welfare Association of MCD and another vs. NDMC***

in which while upholding the order of this Tribunal, following observations have been made, which reads as under:-

“5. From the above, it would be seen that the Governmental decision was to give the benefit of GPF and Old Pension Scheme to all those Casual Labourers, who were covered under the Scheme of 10.09.1993, which scheme was framed for the purpose of regularisation of casual workers. It was clarified that all those who were regularised under the scheme of 10.09.1993, even if they had been regularised on or after 01.01.2004, would be covered under the Old Pension Scheme.

6. However, those who were regularised subsequently and not under the Scheme of 1993, were not entitled to coverage under the Old Pension Scheme.

7. To substantiate their claim, the petitioners sought to rely upon several decisions before the Tribunal and the Tribunal, while passing the impugned order has dealt with each one of them, specifically pointing out how they were not relevant for raising the issue of the petitioner.

8. Mr. Sharma once again sought to refer to those very judgments in support of his submissions. The crux of the petitioner's submission is that like those casual labourers, who were covered under the regularisation scheme of September 1993, the petitioner No.2 and the members of the petitioner No.1 association are similarly situated. The only difference is in the shift of time.

9. We cannot agree with the submission of Mr. Sharma for the reason that when the Government decides to come out with a scheme for regularization, grant of pension etc., it has to examine the aspect about the financial burden that the exchequer would be put to, and it is in that light that the Government decides, as a matter of policy, as to the nature and extent of benefits which may be extended to a particular class of employees. The petitioner do not have a choice in that matter and cannot, after taking the benefit of regularization, which was not under the scheme of September 1993, seek to derive further benefits which were never intended to be bestowed upon them.”

14. As is clear from the facts of this case, as stated by the applicants themselves, that they had been appointed as casual labourers on different dates starting from April 1993 to October 1993 and also upto January 1996. Hence, as none of them had completed one year period as casual labourers when the Scheme for regularization dated 10.9.1993 came into force, none of them could be given the benefit under the said Scheme and their regularization occurred in 2005. As a result, all the applicants of this OA were not covered under the Scheme of 10.9.1993 and they were in fact regularised subsequently. They are not entitled to coverage under the old Pension Scheme, as has been detailed in the order cited above and most recently, in the Order of the Hon'ble Delhi High Court dated 31.1.2019 in WP(C) No.984/2019 in the case of ***Para Medical Technical Staff Welfare Association of MCD and another vs. NDMC***. As is clear from the dates of appointment given to the applicants in this OA, their dates of appointments does not come within the time frame for those who are considered under the said Scheme. Hence, we do not find any merit in their contentions made in this OA. The detail order in this regard, which has been passed by the respondents vide OM No.A-11020/1/2015/A-V dated 9.8.2016, is in keeping with the said 1993 Scheme as on 10.9.1993. Reason being that on 10.9.1993, none of the applicants fulfills the requirement of having been engaged for

a period of at least 240 days in a year or 206 days in the case of offices observing 5 days week in a year. As such the conclusion drawn by the respondents in their impugned order does not suffer from any illegality and infirmity.

15. In view of the above facts and circumstances of the case, the OA is bereft of any merit and the same is dismissed. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

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