

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : BILASPUR

ORGINAL APPLICATION NO.200/01168/2011

Jabalpur, this Wednesday, the 31st day of July, 2019

**HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER**

1. N.K.Biswas, S/o Late Shri J.N.Biswas, Date of Birth- 1.1.1960, Insect Collector, R/o Thakur Ankul Chandra Ward No.31, Near Pump House, Post Hatkachora, Jagdalpur, District-Baster, Chhattisgarh-495004.
2. R.B.Rajoria, S/o Shri Kashiram Rajoria, Date of Birth 05.09.1953, Insect Collector, R/o Nayapara, Old Post Office Road, Post Jagdalpur, District Bastar, Chhattisgarh-495004.
3. T.P.Dewangan, S/o late J.P.Dewangan, Date of Birth 06.12.1960, Insect Collector, R/o Pt. Deendayal Upadhyay Ward, Kenvtapara, Post Jagdalpur, District Bastar, Chhattisgarh-495004.
4. D.R.Mandal, S/o Late Shri K.N.Mandal, Date of Birth 26.03.1957, Technician, R/o Nayamudapara, Ambedkar Ward, Highway Chennai Road, Post Jagdalpur, District Bastar, Chhattisgarh-495004.
5. O.P.Sahu, S/o Shri R.L.Sahu, Date of Birth 24.08.1957, Technician, R/o Near Gupta Bhawan, Shantinagar Frezerpur, Post Jagdalpur, District Bastar, Chhattisgarh-495004.
6. Shri Benudhar Jena, S/o Late Hari Jena, date of birth 19.08.1958, Staff Car Driver, R/o Ambedkar Ward, Near Karim Bakery, Behind Harijan Colony, Post Jagdalpur, District Bastar, Chhattisgarh-495004.

- APPLICANTS

(By Advocate – Shri S.K.Nandy)

Versus

1. Union of India through its Secretary, Ministry of Health and Family Welfare, New Delhi-110 011.
2. Director General Health Services P.H. (CDL Section) Nirman Bhawan, Ministry of Health & Family Welfare, New Delhi-110011.

3. Director, NCDC, National Institute of Communicable Diseases, Dharampura-1, Jagdalpur (CG)-494001. **- RESPONDENTS**

(By Advocate – Shri Manish Chourasia)

(Date of reserving the order: 10.12.2018)

ORDER

By Navin Tandon, AM-

The applicants are basically aggrieved by regularisation of their past services rendered by them in ICMR project, only for pensionary purposes.

2. The brief facts, as submitted by the applicants are as under:-

2.1 The applicants were initially appointed under ICMR Project during 1980-1983. Applicants Nos. 1 to 3 were appointed as Insect Collector; applicants Nos. 4 and 5 were appointed as Technicians; and applicant No.6 was appointed as Driver.

2.2 Earlier the Directorate of National Institute of Communicable Diseases (for brevity 'NICD') Delhi vide order dated 23.02.1987 issued an order intimating applicants about their proposed termination. However, later on before actual implementation of order dated 23.02.1987, it was withdrawn vide order dated 30.03.1987.

2.3 Similarly situated employees had filed Writ Petitions Nos.5856-57/1985 (**ICMR Malaria Project Workers Association and another Vs. Union of India and others**) before the Hon'ble Supreme Court. Upon an assurance of the official respondents in their counter affidavit

that the petitioners therein would be absorbed on suitable post, the Hon'ble Supreme Court disposed of aforesaid Writ Petitions vide order dated 14.08.1987 (Annexure A-3) with a direction to the respondents to extend the benefit of continuity of service from the date of their initial appointment.

2.4 Thereafter, the applicants were given adhoc appointment vide order dated 16.08.1988 (Annexure A-4) in NICD with effect from 01.03.1988 and subsequently vide order dated 25.09.1995 (Annexure A-5) the services of the applicants were regularised with effect from 01.03.1988.

2.5 As the past services of 21 similarly placed employees under various ICMR project, prior to absorption in NICD project w.e.f. 1.3.1988, were counted by the respondents vide order dated 19.02.2002, the applicants preferred series of representations (Annexure A-6) to the respondent-department seeking benefit of counting of their past services. Since it could not yield any fruitful result, they filed Original Application No.855/2009 before this Tribunal, which was disposed of vide order dated 01.02.2010 (Annexure A-7) with a direction to respondents to dispose of the applicants' representations by passing a detailed reasoned and speaking order.

2.6 In compliance to said directions of the Tribunal, the respondents have passed the order dated 05.01.2011 (Annexure A-8) and have

accepted the claim of the applicants for counting of past service rendered under ICMR Scheme.

2.7 However, the other consequential benefits arising thereto have not been extended in favour of the applicants, which again compelled the applicants to prefer representation and approach the Tribunal by filing Original Application No.233/2011, which was disposed of vide order dated 24.03.2011 with a direction to the applicants to submit fresh representation raising all the grievances and the respondents were directed to decide the same by passing a reasoned and speaking order. In compliance to the same, the respondents have passed an order dated 09.11.2011 (Annexure A-1) and have rejected the applicants' representation.

2.8 The applicants claim that they are entitled to get the benefit of ACP after completion of 12 years of service by counting their past services from the date of their initial engagement in ICMR project.

2.9 The Tribal Allowance and Ad-hoc bonus for the period 1986-87, 1987-88 was kept withheld by the department. However, after regularising the applicants, they are entitled to get the same.

2.10 The applicants' pay after recommendations of the 5th CPC was fixed at a lower rate than their entitlement. Thus, the respondents are now

required to take correcting steps to re-fix their pay from the date of their entitlement.

3. The applicants have, therefore, prayed for the following reliefs in this Original Application:-

- “8.(i) Summon the entire relevant record from the respondents for its kind perusal.*
- (ii) Set aside the order Dtd.9.11.2011 (Annexure A/1), command the respondents to provide all consequential benefits arising after counting their past services rendered in ICMR.*
- (iii) The respondents be directed to revise/antidate the benefit of ACP given to applicant by taking into account their past services.*
- (iv) The respondents may be further directed to apply proper pay fixation by adding the weightage of 20% of pre-revise pay as allowed in Vth CPC report and applicants be given the arrears of same.*
- (v) The respondent be further directed to release the amount of Tribal allowance and adhoc bonus as due towards applicant as per the chart annexed with the O.A.*
- (vi) Any other order/orders, which this Hon'ble Court deems fit and proper may also be passed;*
- (vii) Award cost of the litigation in favour of the applicant”.*

4. The respondents, on the other hand, have submitted as under:-

4.1 As per the directions of this Tribunal dated 01.02.2010 (Annexure A- 7) passed in O.A.No.855/2009, the order dated 05.01.2011 (Annexure R-1) was issued by the Ministry of Health and Family Welfare accepting the claim of the applicants for counting of past services rendered by them under ICMR Schemes. Accordingly, the past services rendered by them have already been counted for pensionary benefits vide office order dated 29.06.2011 (Annexure R-2).

4.2 The claim of the applicants for grant of all consequential benefits was examined by the respondents but the same was not agreed to, which was intimated to the applicants vide order dated 09.11.2011 (Annexure R-3).

4.3 The applicants were appointed under ICMR Scheme on temporary basis and their services were co-terminus with the Scheme itself, as mentioned in the offer of appointment dated 30.07.1982 (Annexure R-5). They were absorbed in NICD on regular basis w.e.f. 01.03.1988 vide order dated 25.09.1995 (Annexure R-6).

4.4 The applicants have been absorbed on regular basis against suitable post at NICD (now National Centre for Disease Control, for brevity 'NCDC') w.e.f. 01.03.1988. They were not treated as fresh entrant as claimed, as their pay was protected and they were allowed the same basic pay already drawn by them under ICMR Scheme. Prior to 01.03.1988 they were working temporarily under ICMR Scheme and in compliance of directions of Hon'ble Supreme Court in Writ Petition No.5856-57/1985 dated 14.08.1987 the past services rendered under ICMR Scheme have been counted for pensionary benefits vide order dated 29.06.2011. Thus, the past services will be treated as qualifying service for pensionary benefits.

4.5 The services of all the employees under ICMR Schemes, who were petitioners in W.P.No.5856-57/1985 (including applicants of this OA) have been regularised w.e.f. the date of their absorption i.e. 01.03.1988 and benefits of their past services rendered under ICMR Schemes have been given by counting the period for pensionary benefits.

4.6 The matter of grant of other benefits from (i) to (v) has already been examined exhaustively by the competent authority and was not agreed to grant the benefits as claimed by the applicants.

4.7 All the cases arising from the same W.P.No.5856-57/1985 covered by Hon'ble Supreme Court judgement dated 14.08.1987 have been treated alike and the benefit of counting of past services have been granted to the petitioners for pensionary benefits only.

5. The applicants have filed rejoinder to the counter reply submitted by the respondents.

6. Heard the learned counsel of both sides and carefully perused the pleadings of the respective parties and the documents annexed therewith. The arguments of the counsels were along the lines of their written pleadings.

7. This is the third round of litigation in this Tribunal. Earlier, the applicants along with other similarly situated employees had approached Hon'ble Supreme Court in WP No.5856-57 of 1985.

8. The order dated 14.08.1987 (Annexure A-3) of Hon'ble Apex Court in WP No.5856-57 of 1985 reads as under:-

"In the counter affidavit the respondents have assured us that the petitioners will be absorbed in suitable posts. We accept the assurance and give a direction that the petitioners will also be entitled to continuity of service from the date of their initial employment.

The Writ Petitions are disposed of accordingly".

9. National Institute of Communicable Diseases (for brevity 'NICD') vide its order dated 16.08.1988 (Annexure A-4) appointed the applicant (and others) on adhoc basis for one year w.e.f. 01.03.1988. It was stated therein that these employees will continue to draw the same basic pay plus usual allowances which they were drawing under ICMR Project prior to their appointment on adhoc basis.

10. Subsequently, NICD regularised them from the initial date of appointment i.e. 01.03.1988 vide its order dated 25.08.1995 (Annexure A-5).

11. We find that even after clear directions of Hon'ble Supreme Court, the respondents did not grant them continuity of service from the date of initial employment. It was only as a consequence of the applicants approaching this Tribunal in OA 855/2009, which directed the respondents on 01.02.2010 (Annexure A-7) to decide the representation, that the respondents issued orders dated 05.01.2011 (Annexure A-8). The

said order concludes as, “hereby accepts the claim of the applicants for counting of the past service rendered under ICMR schemes”.

12. Regarding consequential benefits, the respondents have issued order dated 09.11.2011(Annexure A-1) as a consequence to the directions of this Tribunal in OA No.233/2011. The concluding para reads as under:-

“NOW, THEREFORE, on consideration of the facts of the case, the competent authority vide powers vested in the office as per provision of Article 309 read with Article 311 of the Constitution of India, hereby decides that the Applicants’ past services are counted only for pensionary benefits. The Applicants are not entitled for other benefits as claimed above on account of their past appointment under research Projects of ICMR Scheme, which was for the particular financial year or till the termination of the research project, whichever is earlier, as mentioned in the offer of their appointment (copy enclosed). Their entitlement of such other benefits as claimed are therefore admissible only from the date of their absorption under NCDC”.

13. The appointment letter dated 30.07.1982 (Annexure R-5) has a condition that, “the appointment for the present is up to the end of the current financial year or till the termination of the project/scheme, whichever is earlier”.

14. It is the above mentioned condition in the appointment letter which has been relied upon by the respondents to deny other benefits to the applicants for the period they worked in ICMR project and have been granted such benefits only from the date of their absorption under NCDC.

15. Consequent to the orders of Hon'ble Supreme Court on 14.08.1987, the conditions of the appointment letter issued in the year 1982 can not be the criteria to decide consequential benefits. Hon'ble Supreme Court has stated that the petitioners will be entitled to continuity of service from the date of their initial employment. This is very clearly interpreted to mean that for all purposes, the applicants are to be treated as regular employees from the date of initial employment. In the face of the ruling of Hon'ble Supreme Court, the respondents can not take decision otherwise.

16. Accordingly, the Original Application is allowed. The impugned order dated 09.11.2011 (Annexure A-1) is quashed and set aside. Consequential benefits of allowances, ACP and 5th CPC, if any, may be granted considering the continuity of service from the date of their initial employment. Payment, if due, may be made within 90 days from the date of receipt of certified copy of this order. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

rkv