

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**Original Application No.180/00809/2017
& Original Application No.180/00110/2019**

Wednesday this the 20th day of November, 2019

C O R A M :

HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER

Original Application No.180/00809/2017

1. Venugopal C., S/o Chandrasekhara Pillai,
Aged 53 years, Senior Passport Assistant,
Passport Office, Thiruvananthapuram – 695 024.
Residing at Achutham, Thevalakkara P.O., Kollam – 690 524.
2. Sureshkumar S., S/o Sukumaran Nair,
Aged 54 years, Senior Passport Assistant,
Passport Office, Thiruvananthapuram – 695 024.
Residing at C.S.Bhavan, Kottarthu vilai,
Ponmana PO, K.K.District, Tamil Nadu – 629 182.
3. A.Pushpadasan, S/o Antony,
Aged 56 years, Senior Passport Assistant,
Passport Office, Thiruvananthapuram – 695 024.
Residing at Kuruthan vila, Puthiyathura PO,
Thiruvananthapuram – 695 526.
4. Beena C.S., W/o Shajilal,
Aged 50 years, Senior Passport Assistant,
Passport Office, Thiruvananthapuram -695 024.
Residing at Thejas, TC 19/1519-1, NMRA 237,
Nalumukku, Kudappanakunnu PO,
Thiruvananthapuram – 695 024.
5. K.Mohankumar, S/o Kuttan Nair,
Aged 56 years, Junior Passport Assistant,
Passport Office, Thiruvananthapuram – 695 024.
Residing at Mohanageetham,
Tharatta, Kachani, Karakulam PO,
Thiruvananthapuram – 695 564.

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6. Geethakumari B., W/o Sasidharan Nair,
Aged 57 years, Junior Passport Assistant,
Passport Office, Thiruvananthapuram – 695 024.
Residing at Thekkathil Puthenveedu, TC 27/1386,
Rishimangalam, Vanchiyoor P.O., Thiruvananthapuram.
7. C.Sahadevan, S/o Chellappan,
Aged 61 years, retired Senior Passport Assistant,
Passport Office, Thiruvananthapuram -695 024.
Residing at Vilayil Veedu, Paliakonam,
Venjaramoodu, Thiruvananthapuram – 695 607.
8. Rajan A., S/o Ayyappan,
Aged 60 years, retired Office Assistant,
Passport Office, Thiruvananthapuram – 695 024.
Residing at Anjali Bhavan, Thiruvazhimukku,
Thiruvallam, Thiruvananthapuram- 695 027.

....Applicants

(By Advocate Mr.P.Ramakrishnan)

v e r s u s

1. Union of India,
represented by the Secretary to Government,
Ministry of External Affairs, New Delhi – 110 001.
2. The Union of India
represented by Secretary to Government,
Ministry of Finance, New Delhi – 110 001.
3. The Joint Secretary (CPV) and Chief Passport Officer,
Ministry of External Affairs, New Delhi – 110 001.
4. The Regional Passport Officer,
Regional Passport Office,
Thiruvananthapuram – 695 024.
5. The Chief Controller of Accounts,
O/o the Pr.Chief Controller of Accounts,
Ministry of External Affairs, Jawaharlal Nehru Bhavan,
23 D, Janpath, New Delhi – 110 011.

....Respondents

(By Advocate Mr.N.Anilkumar, SCGSC)

Original Application No.180/00110/2019

1. A.P.Ambujakshy, W/o Unnikrishnan P.V.,
Mekkodi House, PO Parannur,
Pullaloor Mukku, Kozhikode – 673 585.
2. Amibika C., D/o Chidambaram Pillai,
Sreehari, Meethal House,
Near Kondan Valli Temple, PO Melur,
Koyilandi, Kozhikode – 673 306.
3. Lekshmi P., W/o R.Janardhanan,
Senior Passport Assistant, Passport Office, Kozhikode.
Residing at TC 40/95, First Puthan Street,
Manacaud PO, Thiruvananthapuram – 695 009.
4. K.Mohan Kumar, S/o Karunakaran Nair,
Senior Passport Assistant, Passport Office, Kozhikode.
Residing at Padmasree, TC 85/2005, SRA 74,
Seeveli Nagar, Kaithamukku, Pettah PO,
Thiruvananthapuram -695 024.
5. Remlath P., W/o Abdul Nazer M.K.,
Senior Passport Assistant, Passport Office, Kozhikode.
Residing at Shafi Vihar, T.K.Paramba, P.O.,
Thiruvannur, Kozhikode-673 029.
6. E.K.Radhakrishnan, S/o Imbichikutty,
Senior Passport Assistant, Passport Office, Kozhikode.
Residing at Mankuni Kuzhiyil,
PO Peringolam, Kozhikode – 673 571.
7. Krishnanandan K.P., S/o Gopalan K.P.,
Senior Passport Assistant, Passport Office, Kozhikode.
Residing at Kudal Purakkal House,
PO Mannur, Kozhikode-673 328.
8. Anil Kumar K., S/o Raghavan,
Senior Passport Assistant, Passport Office, Kozhikode.
Residing at Dwaraka, Keriyeeri,
Mokavoor, Eranhikkal PO,
Kozhikode – 673 303.

...Applicants

(By Advocate Mr.P.Ramakrishnan)

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v e r s u s

1. Union of India, represented by the Secretary to Government, Ministry of External Affairs, New Delhi – 110 001.
2. The Union of India represented by Secretary to Government, Ministry of Finance, New Delhi – 110 001.
3. The Joint Secretary (CPV) and Chief Passport Officer, Ministry of External Affairs, New Delhi – 110 001.
4. The Regional Passport Officer, Regional Passport Officer, Kozhikode – 673 006.
5. The Chief Controller of Accounts, O/o the Pr.Chief Controller of Accounts, Ministry of External Affairs, Jawaharlal Nehru Bhavan, 23 D, Janpath, New Delhi – 110 011.Respondents

(By Advocate Mr.N.Anilkumar, SCGSC)

These applications having been heard on 6th November, 2019, the Tribunal on 20th November, 2019 delivered the following :

ORDER

These applications are identical in nature and hence they are disposed of by this common order.

2. The brief facts in O.A.No.180/809/2017 are as follows : Applicant Nos.1 to 4 and Applicant Nos.5 & 6 were Senior Passport Assistants and Junior Passport Assistants respectively. Applicant Nos.7 & 8 had retired from service while working as Senior Passport Assistant and Office Assistant respectively. All the applicants except the 5th applicant had joined service on 1.8.2007. The 5th applicant had joined service on 5.4.2004. Earlier they have

approached this Tribunal by filing O.A.No.918/2011 and O.A.No.184/2012.

In O.A.No.918/2011 vide order dated 13.2.2012 this Tribunal held as follows :

“6. Arguments were heard and documents perused. In the writ petition No.12690 of 2009, the High Court of Delhi has held as under :-

"The petitioner, Union of India through Secretary, Ministry of Health & Family Welfare, challenges the order dated 7th July, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in T.A.No.444 of 2009 titled Dalip Kumar v. Union of India and another directing the petitioner to treat the respondent covered under CCRS Pension Scheme.

The respondent had filed a petition seeking grant of pension as per the pension scheme in vogue when he acquired temporary status in 1997. Much after the grant of temporary status and continuing on the said post in Group D.

This is not disputed that petitioner was appointed to the substantive post on 29th June, 2004 and by that time another scheme referred to as "New Defined Contribution Pension Scheme" had been introduced from 1st January, 2004.

The Tribunal has relied on statutory rule like Rule 13 of the CCS (Pension) Rule, 1972 which categorically stipulates that qualifying service of a government servant commences from the date he is asked to charge on a temporary capacity provided that this temporary service is followed without interruption by substantive appointment in the same or in another service or post. The Tribunal noticed that the respondent was granted temporary status which continued and he was appointed in substantive post in Group D and, therefore, under Rule 13 his qualifying service would commence from the date of grant of temporary status.

Learned counsel for the petitioner relying on Central Civil Service (Pension) Rules, 1972 has contended that the rule is applied to government servants appointed on or before 31st day of December, 2003 and it will not be applicable to the respondent as he was appointed to the substantive post on 29th June, 2004. If Rule 13 of the CCS (Pension) Rule, 1972 obligates commencing of qualifying service from the date an employee takes charges of the post, on 29th June, 2004 on appointment after continuous service on the temporary post, it will relate back to 1997 when the temporary status was granted to the respondent. Though new pension scheme was introduced from 1st January, 2004, however, Rule 13 of CCS (Pension) Rules, 1972 has not been abrogated by the new pension scheme salient features which are as under :-

"Introduction of New Pension Scheme

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Government of India have introduced a New Defined Contribution Pension Scheme replacing the existing system of Defined Benefit Pension System vide Government of India, Ministry of Finance, Department of Economic Affairs Notification, dated 22.12.2003 (copy enclosed). The New Pension Scheme comes into operation with effect from 1.1.2004 and is applicable to all new entrants to Central Government service, except to Armed Force, joining Government service or order after 1.1.2004.

The salient features of the New Pension Scheme are as follows :-

The New Pension Scheme will work on defined contribution basis and will have two tiers - Tier-I and II. Contribution to Tier-I is mandatory for all Government servants joining Government service on or after 1.1.2004, whereas Tier-II will be operational and at the discretion of Government servants.

In Tier-I, Government servants will have to make a contribution of 10% of his Basic Pay plus DA, which will be deducted from his salary bill every month by the PAO concerned. The Government will make an equal matching contribution.

Tier-I contributions (and the investment returns) will be kept in a non-withdrawable Pension (Tier-I Account. Tier-II contributions will be kept in a separate account that will be withdrawable at the option of the Government servant. Government will not make any contribution to Tier-II account.

The existing provisions of Defined Benefit Pension and GPF would not be available to new

Government servants joining Government service on or after 1.1.2004."

The scheme is applicable to all new entrants to the Government service, however, it does not take away the rights of old entrants prior of 31.12.2003. In the facts and circumstances, on the plea of the petitioner, the order of the Tribunal directing the petitioner to treat the applicant covered under CCRS Pension Scheme cannot be faulted. There is no illegality or irregularity in the order of the Tribunal dated 7th July, 2009 requiring any interference by this Court. The writ petition is, therefore, dismissed."

7. In the case of the applicant in OA No.517 of 2011, this Bench has, vide order dated 23-08-2011, held as under :-

"8. Arguments were heard and documents perused. Pension under the CCS (Pension) Rules, 1972 is applicable subject to fulfillment of minimum qualifying service. If the new pension rule has to apply, then, the commencement of qualifying service should be posterior to 1.1.2004. Where the commencement of qualifying service is anterior to 1.1.2004, it is the old CCS (Pension) Rules, 1972 which would apply and for being eligible to draw pension, conditions of minimum qualifying service as prescribed should be fulfilled. In the instant case, admittedly, both the applicants were granted temporary status as early as December 1995 and the period of temporary status is reckoned from that date till their regular appointment on 24.5.2006. Thus, half the temporary service, viz, 5 years and 3 months were to add to the period of regular service and thus for purpose of entitlement to terminal benefits, the date of regular service in

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this case should be deemed from February 2001 itself (5 years 3 months prior to 24.5.2006). As such, both the applicants are entitled to pension subject to fulfillment of their qualifying service under the CCS (Pension) Rules, 1972.

9. In view of the above, the O.A is allowed. Annexure A-1 order is quashed and set aside. Respondents are directed to verify the records of the 1st applicant and work out his qualifying service ad subject to fulfillment of minimum qualifying service for the purpose of grant of pension, she shall be paid the pension and other terminal benefits on the basis of CCS(Pension), Rules, 1972.

10. Subject to fulfillment of the conditions prescribed in the pension rules, necessary action to issue PPO etc should be undertaken on priority basis and suitable orders shall be passed and pension granted to the 1st applicant within a period of three months from the date of communication of this order. The entitlement of pension shall be from the date of the 1st applicant's superannuation. As regards the 2nd applicant, as and when the said applicant superannuates, his case for pension shall be considered in accordance with CCS (Pension) Rules, 1972."

8. In view of the above, adopting the above mentioned order, this OA is allowed. It is declared that the applicants shall be covered by the CCS (Pension) Rules, 1972 and not by the new pension scheme. Consequently, their cases be processed accordingly. Subscription under the new pension scheme shall not be recovered by the respondents from the applicants and if any such amount has in the past been recovered, the same shall be refunded to the applicants within two months from the date of receipt of copy of this order.

9. Under the above circumstances, there shall be no orders as to costs."

3. The brief facts in O.A.No.180/110/2019 are as follows : Applicant Nos.1 and 2 had retired from service as Office Assistant and Junior Passport Assistant respectively and Applicant Nos.3 to 8 are working as Senior Passport Assistants. Earlier Applicant Nos.1 and 2 & 5 to 8 have approached this Tribunal by filing O.A.No.184/2012. Following the order in O.A.No.918/2011, this Tribunal has allowed O.A.No.184/2012 vide order dated 12.6.2012. The operative part of the same reads as follow :

11. Accordingly, the O.A is allowed. It is declared that the applicants are covered by CCS (Pension) Rules, 1972 and not by the new pension scheme. Consequently their cases be processed accordingly. Subscription

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under the new pension scheme shall not be recovered by the respondents and if any such amount* has in the past been recovered, the same shall be refunded to the applicants within two months from the date of receipt of this order.

12. Under the above circumstances there shall be no orders as to costs.

4. However the respondents informed the applicants that the order in the O.As will be implemented after an identical issue pending before the Apex Court in SLP No.13942/2009 is decided. It is submitted that the aforesaid SLP was decided on 26.7.2016 and thereafter orders were issued in respect of the applicants bringing them under the Old Pension Scheme. The applicants are now before this Tribunal aggrieved by the inaction on the part of the respondents in not refunding the employees contribution which had continued to be deducted from their salary even after the aforesaid orders of this Tribunal. Since the representations filed by the applicants did not evoke any response, the applicants in both the O.As approach this Tribunal seeking the following reliefs :

1. Issue an order directing respondents 2 and 3 to return the amounts wrongly deducted from the salary of the applicants for the period from 2007 to 2016 by way of employee's contribution to the pension scheme forthwith.
2. Direct the respondents to repay the amounts deducted from the salary of the applicants from 2007 to 2016 and to credit the same to the respective individual bank accounts maintained by the applicants herein.
3. Direct the respondents to pay penal interest at the rate of 18% on the amounts due to the applicants herein.
4. Such other orders and directions as are deemed fit in the facts and circumstances of the case.

5. In the rejoinder filed by the applicants in O.A.No.180/809/2017 it is submitted that on the basis of the interim order dated 15.10.2018 the respondents have disbursed the amounts due to the applicants after deducting the contribution to the GPF for the period from 2007 to 2016. But the respondents have restricted the interest part upto 4.2.2016. The applicants claim that interest should be disbursed until the actual date of payment.

6. The applicants in O.A.No.180/110/2019 are less fortunate as inspite of the order of this Tribunal dated 12.6.2012 in O.A.No.184/2012 the respondents have neither refunded the employee's contribution which had continued to be deducted from their salaries from 2007 to 2016 nor they been paid interest, legitimately due to them till date.

7. Reply statement has been filed in both the O.As. The respondents in O.A.No.180/809/2017 submitted that the fund section of the Office of the Principal Chief Controller of Accounts, Ministry of External Affairs, New Delhi has posted the GPF amount of all the eight employees concerned to their respective GPF accounts and interest calculated as per the GPF Rules.

8. The respondents in O.A.No.180/110/2019 submitted that though initially the applicants were treated under the NPS but subsequently they were treated as covered under CCS (Pension) Rules, 1972. The Ministry of

Finance, Department of Expenditure, Central Pension Accounting Office, New Delhi vide OM dated 13.7.2018 has clarified the procedure for extending the benefits of old GPF/Pension Scheme to those casual workers covered under the Scheme of 1993 and regularized on or after 1.1.2004. As per this O.M the employee's contribution shall be credited to the individual's GPF account and the account shall be recast permitting upto date interest as applicable from time to time. The respondents submitted that implementation of the transfer of employee's contribution to GPF account has to be done through the software maintained by NSDL (Central Recordkeeping Agency) and they hoped that after the necessary updation and authorization by the 5th respondent on NSDL software, the amount shall be credited to their GPF account.

9. Heard learned counsel for the parties at length and perused the pleadings available on record. The main issue pertains to the eligibility of the applicants in the O.As to be included under the Old Pension Scheme and not New Pension Scheme. This issue has been settled in favour of the similarly placed employees who have all been allowed to come under the Old Pension Scheme. Having settled this issue what remains is for returning the contributions already made under New Pension Scheme along with interest for the delay in refunding the same. It is maintained by the respondents that steps in this regard have already been initiated by Central Pension Accounting Office, Department of Expenditure, Ministry of Finance and the O.M dated

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13.7.2018 has already clarified the procedure. All that remains at this stage for the Tribunal is to reiterate that employee's contributions are to be credited to the individual's GPF account with the accounts itself being recast including interest till the actual date of payment in the case of applicants in O.A.No.180/110/2019. In the case of applicants in O.A.No.180/809/2017 since the respondents have already disbursed the employee's contributions and interest for such delayed payment upto April, 2016, the respondents are directed to disburse interest to the applicants from April, 2016 till the actual date of payment. This shall be done within a period of three months from the date of receipt of a copy of this order.

10. The Original Applications stand allowed. No order as to costs.

(Dated this the 20th day of November 2019)

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/00809/2017

1. **Annexure A1:** True copy of the order dated 13/2/2012 in O.A.No.918/2011.
2. **Annexure A2:** True copy of the representation dated 27/2/2012 filed by the 5th applicant.
3. **Annexure A3:** True copy of details of the deductions made from the salary of the applicants herein obtained from the office of the 4th respondent.
4. **Annexure A4:** True copy of the order dated 26/7/2016 issued by the 3rd respondent.
5. **Annexure A5:** True copy of joint representation dated 05/06/2017 submitted by the 1st applicant before the 3rd respondent.
6. **Annexure A6:** True copy of representation dated 05/06/2017 submitted by the 2nd applicant before the 3rd respondent.
7. **Annexure A7:** True copy of representation dated 05/06/2017 submitted by the 3rd applicant before the 3rd respondent.
8. **Annexure A8:** True copy of representation dated 05/06/2017 submitted by the 4th applicant before the 3rd respondent.
9. **Annexure A9:** True copy of representation dated 05/06/2017 submitted by the 5th applicant before the 3rd respondent.
10. **Annexure A10:** True copy of representation dated 05/06/2017 submitted by the 6th applicant before the 3rd respondent.
11. **Annexure A11:** True copy of representation dated 05/06/2017 submitted by the 7th applicant before the 3rd respondent.
12. **Annexure A12:** True copy of representation dated 05/06/2017 submitted by the 8th applicant before the 3rd respondent.
13. **Annexure A13:** True copy of representation dated 11/12/2018 sanctioning payment to 7th applicant.
14. **Annexure A14:** True copy of order dated 07/12/2018 sanctioning payment to 8th applicant.
15. **Annexure R1:** True copy of letter dated 07.12.2018 from the Office of the Principal Chief Controller of Accounts, Ministry of External Affairs, New Delhi.

List of Annexures in O.A. No.180/00110/2019

1. **Annexure A1:** True copy of the order dated 12/6/2012 in OA No.184/2012.

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2. **Annexure A2:** True copy of the Order dated 13/2/2012 in OA No.918/2011.
 3. **Annexure A3:** True copy of the representation dated 13/12/2012 submitted by the 1st applicant before the 3rd respondent.
 4. **Annexure A4:** True copy of the order dated 26/7/2016 issued by the 3rd respondent.
 5. **Annexure A5:** True copy of joint representation dated 15/3/2018 submitted by the applicants before the 3rd respondent.
 6. **Annexure R1 :** True copy of O.M. No.CPAO/IT & Tech/Clarification/P&PW/13(Vol-III)/2018-19/68 dated 13.07.2018 issued by the Ministry of Finance, Department of Expenditure, Central Pension Accounting Office, New Delhi.
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