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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.181/00696/2018

Monday, this the 28th day of October, 2019

CORAM:

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

Shri N.Cheriyakoya,
S/o Amdari,
Aged 48 years,
Helper, Fibre Factory,
Kavaratti, U.T. of Lakshadweep,
residing at Nedunilam,
Kadamath Island,
U.T. Of Lakshadweep,
Pin. 682 556.Applicant

(By Advocate Mr. M.R.Hariraj)

V e r s u s

1. The Administrator,
Union Territory of Lakshadweep,
Kavaratti – 682 555.
2. The Secretary,
Department of Industry,
Kavaratti, U.T. of Lakshadweep,
Pin. 682 555.
3. The Director of Industries,
Kavaratti,
Union Territory of Lakshadweep,
Pin. 682 555.Respondents

(By Advocate Mr.S.Manu for Respondents)

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This application having been heard on 24th October, 2019, the Tribunal on 28th October, 2019 delivered the following :

ORDER

OA No.696/2018 is filed by Shri N.Cheriyakoya, Helper, Fibre Factory, Union Territory of Lakshadweep, aggrieved by the refusal of the respondents to appoint him on regular basis with effect from the date of his eligibility, thereby barring him from being included under the CCS (Pension) Rules, 1972. The reliefs sought in the OA are as follows:

- i. To declare that the applicant is entitled to be treated as regular helper under the respondents with effect from 27/3/1999 and to direct the respondents to treat the applicant as a regular helper with effect from 27.3.1999 with all consequential benefits.
- ii. to declare that the applicant is entitled to have 50% of his service as casual labour and temporary status labour as qualifying for pension and direct the respondents to reckon the services of the applicant accordingly.
- iii. to declare that the applicant is entitled for pension and pensionary benefits reckoned and disbursed in accordance with CCS (Pension) Rules and to direct the respondents to reckon and disburse the pension and pensionary benefits in accordance with CCS (Pension) Rules.
- iv. to direct the respondents to refund the amounts recovered as pension contributions from the applicant, with interest at the rate of 12% per annum.
- v. grant such other reliefs as may be prayed for and the court may deem fit to grant and
- vi. to grant the costs of this Original Application.

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2. The applicant had started his career as a Casual Labourer in Fibre Factory, Kadamath, having been engaged for the first time on 21.10.1987. He was awarded temporary status with effect from 1993 as per order dated 25.09.1997 (Annexure A1). The applicant along with others who are similarly placed were given offer of appointment, by order dated 27.03.1999. However, they were not granted appointment on the ground that the vacancy position was being reviewed. Aggrieved, the applicant had approached this Tribunal by filing OA No.386/2006 and had obtained orders to the effect that their date of employment shall be with effect from the date of original eligibility and the request shall be considered when orders are finally issued (Annexure A2). However, as per the final order dated June, 2007, the revival of posts approved was restricted to the date of issuance of the said order (Annexure A3).

3. Although the applicant was granted pay fixation reckoning the increments obtained during the time he was a temporary status employee, the fact is that the appointment itself was not given retrospective effect, resulting in him being treated as personnel who joined service after 01.01.2004 and being included under the New Pension Scheme, which commenced from that date. He filed a representation on 18.01.2013 pointing out his claim to be included in the CCS (Pension) Rules, 1972 (Annexure A6). But this did not find favour with the respondents.

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4. The benefit he is seeking, that of including 50% of temporary status service for retirement benefits, is permitted through OM No.49014/2/2014-Estt(C) dated 26.02.2016, copy of which is at Annexure A7. It is admitted that the applicant had been offered regular appointment based on his eligibility for the same and the order dated 27.03.1999 which has not been given effect to, is evidence of this. The delay in implementing the order is exclusively attributable to the respondents and the applicant should not be made to suffer in consequence.

5. The respondents have filed reply statement wherein the facts of applicant's service have been admitted. It is further admitted that the Lakshadweep Administration had been in favour of regularising the applicant along with others from the date indicated in 1999, but were unable to do so in view of the various procedural and administrative issues. Having been appointed after 01.01.2004, the applicant can now be considered only as part of New Pension Scheme. However, it is not denied that the applicant comes under the purview of the OM issued by the Government, copy of which is at Annexure A7.

6. Ms.Ganga representing Mr.M.R.Hariraj was heard on behalf of the applicant and also Standing Counsel for the Lakshadweep Administration. The short point to be considered here is whether the applicant is entitled to be included under the more beneficial CCS (Pension) Rules, 1972 instead of

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New Pension Scheme in which he has been included now. The applicant had been granted temporary status with effect from 1993 and was given an offer of appointment on 27.03.1999. Various procedural formalities stood in the way of issuance of formal orders and he came to be regularised only with effect from June 2007. To be a part of the old Pension Scheme, an employee had to be in service on 01.01.2004 and the Administration taking a view that he was regularly appointed only in June, 2007 have included him under NPS, which is a contributory scheme unlike the earlier scheme. As pointed out by the applicant and as admitted by the respondents, the OM dated 26.02.2016 issued by the Department of Personnel and Training, Government of India states, "50 of the service rendered under temporary status would be counted for the purpose of retirement benefits in respect of those casual labourers who have been regularised in terms of para 8 of the OM dated 10.09.1993". This squarely applies to the applicant and he is eligible for the benefit as prayed for .

7. Taking 50% of his service as casual labour from 1993 and adding that to his regular service from 2007 onwards, his total regular service will have to be refixed to a date prior to 01.01.2004, which makes him eligible for inclusion in CCS (Pension) Rules, 1972. This Tribunal declares that he is entitled for the benefit as prayed for. OA succeeds. The contribution already made under NPS may be arranged to be deposited in his GPF account.

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However, there shall be no order as to the interest claimed. No costs.

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.181/00696/2018

- 1. Annexure A1:** True copy of order No.1/4/97-Ind. Dated 25.09.1997.
- 2. Annexure A2:** True copy of order dated 14/9/2007 in O.A 386/2006 of this Honourable Tribunal.
- 3. Annexure A3:** True copy of order No.6(1)/2003-SSI(P-II) dated June 2007 issued by the Union of India.
- 4. Annexure A4:** True copy of final order dated 10/6/2008 in OA 386/2006 of this Honourable Tribunal.
- 5. Annexure A5:** True copy of order No.1/12/98/IND(I) dated 20.9.2007.
- 6. Annexure A6:** True copy of the representation dated 18/1/13 submitted by the applicant to the 1st respondent.
- 7. Annexure A7:** True copy of O.M.No.49014/2/2014-Estt(C) dated 26.02.2016.
- 8. Annexure R1(a) :** true copy of the representation dated 16.12.2003 submitted by the applicant.
- 9. Annexure R1(b) :** True copy of the final order dated 19.12.2005 in OA No.872 of 2005.
- 10. Annexure R1(c):** True copy of the order F.No.1/12/98-IND dated 22.02.2006 issued by the Secretary (Administration) Union Territory of Lakshadweep.
- 11. Annexure R1(d):** True copy of the letter f.No.16/1/94 IND dated 3.5.1996.
- 12. Annexure R1(e):** True copy of the recruitment Rules for the post of Helper Fiber Factories.
- 13. Annexure R1(f):** OM F.No.1/12/90-Ind(Vol.II) dated 31.10.1998
- 14. Annexure R1(g):** True copy of the offer of appointment Order F.No.1/12/98-Ind.(3) dated 27.3.1999.
- 15. Annexure R1(h):** True copy of the order in OA No.433 of 99 dated 13.7.2001.
- 16. Annexure R1(i):** True copy of the Om No.7(3)E(Coord)/99 dated 5.8.1999.
- 17. Annexure R1(j):** True copy of the OM No.7(3)-E(Coord)/99 dated 23.10.2000.
- 18. Annexure R1(k):** True copy of the letter F.No.1/12/98-Ind dated 28.11.2001.
- 19. Annexure R1(l):** True copy of the letter 2116/E coord /1/2001 dated 4.1.2002.
- 20. Annexure R1(m):** True Copy of the letter F.No.1/12/98-Ind dated 8.3.2002.

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- 21. Annexure R1(n):** True copy of the letter MOF(Exp) D No.1214/(Ecoord) 2006 dated 08.09.2006.
- 22. Annexure R1(o):** True copy of the letter F.No.1/12/98-Ind dated 19.11.2006.
- 23. Annexure R1(p):** True copy of the letter No.6(1)/2003 SSI-IP III dated 6/2007.
- 24. Annexure R1(q):** True copy of the order F.No.1/12/98-Ind dated 15.9.2007.
- 25. Annexure R1(r):** True copy of the order F.No.1/12/98-IND(1) dated 20.9.2007.
- 26. Annexure R1(s):** True copy of the OM No.49014/2/2014-Estt(C)-Pt.I dated 11.10.2018.
- 27. Annexure R1(t):** True copy of the OM No.49014/2/2014-Estt(C)-Pt.I dated 12.10.2018.
