

F. No. C.18013/27/2018-Ad.III.B
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes & Customs

Hudco Vishala Building, Bhikaji Cama Place,
R. K. Puram, New Delhi, Dated: 06.11.2020

To
All Chief Commissioners/ Director General
under CBIC

Subject: Casual labourers with temporary status- clarification regarding contribution to GPF and pension under the old pension scheme- Regarding

Sir/Madam,

In continuation to the Board's letter no. C-18013/8/2020-Ad.III.B dated 20.10.2020, copies of DoPT's O.M. no. 49014/2/2014-Estt(C) dated 26.02.2016, 49014/2/2014-Estt(C) dated 28.07.2016 and 49014/2/2014-Estt(C)-Pt.I dated 11.10.2018 are enclosed herewith for information and further necessary action.

Yours faithfully,

Encl: As above

R.K. Jha.
6.11.2020
(R.K. Jha)

Deputy Secretary to the Govt. of India
Tel. No.: 011-26162693

Copy to:

- (i) Webmaster, CBIC for uploading this letter on CBIC's website
- (ii) JS (Admn.), CBIC

Not
Issued
09/11/2020

No.49014/2/2014-Estt (C)
Government of India
Ministry of Personnel, Public Grievances and PG
Department of Personnel and Training
Establishment Division

New Delhi, North Block,
February 26th, 2016

OFFICE MEMORANDUM

Subject: Casual Labourers with temporary status-clarification regarding contribution to GPF and Pension under the old pension scheme

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.

3. As per para 8 of the scheme, two out of every three vacancies in Group 'D' cadres in respective offices where the casual labourers have been working would be filled up as per extant recruitment rules and in accordance with the instructions issued by Department of Personnel and Training from amongst casual workers with temporary status. However, regular Group 'D' staff rendered surplus for any reason will have prior claim for absorption against existing/future vacancies. In case of illiterate casual labourers or those who fail to fulfill the minimum qualification prescribed for post, regularisation will be considered only against those posts in respect of which literacy or lack of minimum qualification will not be a requisite qualification. They would be allowed age relaxation equivalent to the period for which they have worked continuously as casual labourer.

4. Vide the O.M. No.49014/1/2004 -Estt (C) dated the 26th April, 2004, the above scheme was reviewed in the light of introduction of New Pension Scheme in respect of persons appointed to the Central Government service on or after 1.1.2004 as under:

(i) As the new pension scheme is based on defined contributions, the length of qualifying service for the purpose of retirement benefits has lost its relevance, no credit of casual service, as specified in para 5 (v), shall be available to the casual labourers on their regularisation against Group 'D' posts on or after 1.1.2004.

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(ii) As there is no provision of General Provident Fund in the new pension scheme, it will not serve any useful purpose to continue deductions towards GPF from the existing casual employees, in terms of para 5 (vi) of the scheme for grant of temporary status. It is, therefore, requested that no further deduction towards General Provident Fund shall be effected from the casual labourers w. e. f. 1.1.2004 onwards and the amount lying in their General Provident Fund accounts, including deductions made after 1.1.2004, shall be paid to them.

2. The existing guidelines contained in this Department's OM No. 49014/2/86-Estt.(C) dated 7.6.88 may continue to be followed in the matter of engagement of casual workers in the Central Government Offices.

5. The OM dated 26th April, 2004 has been quashed by various benches of CAT/High Courts who have decided that the scheme could not be modified retrospectively. The SLPs filed in the Hon'ble Supreme Court have been dismissed by the Apex Court in *UOI & Ors v Rameshwar Singh*, CC 1829/2014, *UOI & Ors v Ramsaran & Ors*, SLP (C) No. 25360-25362 of 2008, SLP 17358/2008, SLP 25360-62/09, *Union of India etc v Ajay Kumar & Ors*, SLP No.19673-19678/2009.

6. The position has been reviewed in the light of the Court judgements 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.

7. 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.

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 judgement 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.

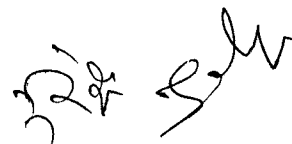
9. Ministries/Departments are also requested to identify cases where temporary status has been granted wrongly to those not covered under the OM dated 10.09.1993 and fix responsibility for the same.


(Mukesh Chaturvedi)
Director (E)

To
All Secretaries of Ministries/ Departments.

Copy to:

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2. Vice-President's Secretariat, New Delhi
3. The Prime Minister's Office, New Delhi
4. Cabinet Secretariat, New Delhi
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6. The Registrar General, the Supreme Court of India, New Delhi
7. The Registrar, Central Administrative Tribunal, Principal Bench, New Delhi
8. Comptroller and Auditor General of India, New Delhi.
9. The Secretary, Union Public Service Commission, New Delhi.
10. Central Vigilance Commission, New Delhi
11. Central Bureau of Investigation, New Delhi.
12. All Union Territory Administrations
13. Secretary, Staff Side, National Council (JCM), 13-C, Ferozeshah Road, New Delhi
14. ADG (M&C), Press Information Bureau, DoP&T.
- ✓ 15. NIC cell with request to upload it under OMs and Orders, Establishment, Daily Wage Casual Labour, and also 'What is new'.


(Mukesh Chaturvedi)
Director (E)

No.49014/2/2014-Estt(C)
Government of India
Ministry of Personnel, P.G. & Pensions
Department of Personnel & Training

North Block, New Delhi,
Dated the 28th July, 2016

OFFICE MEMORANDUM

Subject: Casual labourers with temporary status – clarification regarding contribution of GPF and Pension under the Old Pension Scheme.

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/Judgements. 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 been regularized on or after 01/01/2004.

3. As the benefit of Old Pension Scheme and GPF is admissible only to those Casual workers who are covered under the Scheme of 1993, all Ministries/ Department may strictly ensure that it does not lead to demand by regularly recruited fresh employees appointed on or after 1.1.2004 for similar benefit in place of NPS.

4. This issues with the concurrence of Department of Expenditure vide their I.D.No.1(15)/E-V/2015 dated 27.07.2016

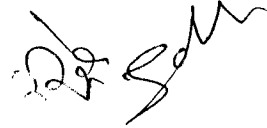


(Mukesh Chaturvedi)
Director(E)
Tele: 23093176

To
All Ministries/Departments.

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7. The Registrar, Central Administrative Tribunal, Principal Bench, New Delhi.
8. The Comptroller and Auditor General of India, New Delhi.
9. The Secretary, Union Public Service Commission, New Delhi.
10. Central Vigilance Commission, New Delhi.
11. Central Bureau of Investigation, New Delhi.
12. All Union Territory Administration
13. Secretary, Staff side, National Council(JCM),13 C, Ferozeshah Road, New Delhi.
14. ADG(M&C), Press Information Bureau, DoP&T.
- ✓ 15. NIC Cell with request to upload it under OMs and Orders, Establishment, Daily Wage Casual Labours and also 'What is New'.



(Mukesh Chaturvedi)
Director (E)

OFFICE MEMORANDUM

Subject: Clarification on modalities of transfer of the NPS contribution to casual labourer with temporary status to their GPF accounts.

The 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 continuous 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 was to be counted for the purpose of retirement benefits.
3. As per para 8 of the scheme, two out of every three vacancies in Group 'D' cadres in respective offices where the casual labourers had been working was to be filled up as per extant recruitment rules and in accordance with the instructions issued by Department of Personnel and Training from amongst casual workers with temporary status. However, regular Group 'D' staff rendered surplus for any reason would have prior claim for absorption against existing/future vacancies.
4. Vide the O.M. No.49014/1/2004 -Estt (C) dated the 26th April, 2004, the above scheme was reviewed in the light of introduction of New Pension Scheme in respect of persons appointed to the Central Government service on or after 1.1.2004. These casual labourers with temporary status were now to be considered under the NPS and their underlying amount in GPF was credited to them.
5. The OM dated 26th April, 2004 was quashed by various benches of CAT/High Courts who had decided that the scheme could not be modified retrospectively.

6. The position was reviewed in the light of the Court judgements in consultation with the Department of Expenditure. It was then decided vide this Department's O.M. No. 49014/2/2014-Estt(C) dated 26.02.2016 and O.M. No. 49014/2/2014-Estt(C) dated 28.07.2016 that the casual labourers who had been granted temporary status under the scheme, and have completed 3 years of continuous service after that, were entitled to contribute to the General Provident Fund. It was also decided that 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 was applicable to all casual labourers covered under the scheme of 1993 whether they were regularised before or after 31.12.2003.

7. It was 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 judgement in Union Of India And Anr vs Mohan Pal, 2002 (3) SCR 613, delivered on 29th April, 2002, will however be deemed to have been covered under the scheme of 10.09.93.

8. Subsequent to the issue of this Department's O.M. No. 49014/2/2014-Estt(C) dated 26.02.2016 and O.M. No. 49014/2/2014-Estt(C) dated 28.07.2016 several Ministries/ Departments were seeking clarifications as regards to the modalities of transfer of the amount lying in the NPS account to the GPF account of these casual labourers. The matter has been examined in consultation with D/o Pensions & Pensioners' Welfare, D/o Financial Services and D/o Expenditure.

9. D/o Pension and Pensioners' Welfare have clarified/ stated that the employees' share of the NPS subscription with interest should be withdrawn and deposited in the GPF accounts if these CL-TS regularized after 31.12.2003 and the Government share with interest accrued under NPS should be deposited in Government's account.

10. Controller General of Accounts (CGA) have furnished following clarifications vide letter No. 1(7)(2)/2010/cla./TA/129 dt 11.03.2016 on a similar matter which are as under:


- (i) **Adjustment of Employees contribution in Accounts:-** Amount may be credited to individual's GPF Account and the account may be recasted permitting up-to-date interest (Authority-FR-16 & Rule 11 of GPF Rules)
- (ii) **Adjustment of Government contribution under NPS in Accounts:-** To be accounted for as (-) Dr. to object heads 70-Deduct Recoveries under major Head 2071- Pension and other Retirement benefit-Minor Head 911- Deduct Recoveries of overpayment (GAR 35 and para 3.10 of List of Major and Minor Heads of Accounts)

(iii) *Adjustment of increased value of subscription on account of appreciation of investment- may be accounted for by crediting the amount to Govt. account under M.H.0071- Contribution towards Pensions and other Retirement Benefits 800- Other Receipts (Note under the above Head in LMMHA).*

11. The principle underlying the consideration of the case of CL(TS) is that Casual labourers who were covered under the scheme of 1993 and have been regularised in terms of the above scheme were entitled to GPF and Old Pension scheme even if they were regularised after 31.12.2003.

12. Furthermore, as per D/o Expenditure/CGA, if the benefits under old pension scheme are to be allowed to a retired employee, who had contributed towards NPS at any stage, the entire NPS accumulations i.e. employee's contribution + Government's matching contribution + appreciation thereon should be remitted into the accredited bank of the PAO concerned and the accounting procedure will be same in this case as prescribed at par 10 above.

13. All Ministries/Departments are requested to settle the matter as explained above. If any further clarification is needed in the matter, they should approach CGA (Controller General of Accounts) directly, since CGA is the accounting agency and is competent to clarify the matter.


(N. Sriraman)
Director (Establishment)
Telefax: 23094637

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All Ministries/ Departments of Government of India.

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- (VII) The Controller and Auditor General of India, New Delhi
- (VIII) The Secretary, Union Public Service Commission
- (IX) The Secretary, Staff Selection Commission
- (X) All Attached offices under the Ministry of Personnel, Public Grievances and Pensions
- (XI) All Officers and Section in the Department of Personnel & Training
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