

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 25th February, 2021.**

+ **W.P.(C) 2597/2021**

DR. SUNIL KUMAR VERMA **Petitioner**
Through: Mr. M.K. Bhardwaj, Adv.

Versus

**ALL INDIA INSTITUTE OF MEDICAL SCIENCE
AND ANR.** **Respondents**
Through: Mr. Satvik Varma, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MR. JUSTICE AMIT BANSAL

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

CM APPL. 7699/2021 (for exemption)

1. Allowed, subject to all just exceptions and as per extant Rules.
2. The application is disposed of.

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3. The petition impugns the order dated 14th October, 2020 of the Central Administrative Tribunal (CAT) Principal Bench, of dismissal of O.A. No. 1021/2020, preferred by the petitioner.
4. The counsel for the respondent All India Institute of Medical Sciences (AIIMS) appears on advance notice.

5. We have heard the counsel for the petitioner for the purposes of admission.

6. The petitioner, as per his own case, worked in various projects of AIIMS, from time to time and was absorbed in a permanent post in AIIMS, only on 5th December, 2008 and superannuated in the year 2014. Upon the petitioner having been denied pension, the petitioner approached the CAT by way of O.A. No.2446/2017, which was disposed of vide order dated 17th May, 2019, by directing the respondent AIIMS to, within 90 days therefrom, pass a detailed order on why the petitioner could not be given the pensionary benefits in accordance with the previous order dated 11th December, 2003 of AIIMS. In pursuance thereto, AIIMS passed an order dated 22nd /28th August, 2019, setting out reasons for the non-entitlement of the petitioner to pension. Aggrieved therefrom, the petitioner preferred O.A. No.1021/2020 aforesaid and against dismissal whereof, this writ petition has been filed.

7. CAT, in the impugned order has recorded/reasoned, (i) that according to the petitioner, his service in various capacities, “ever since 1987 was in different projects of AIIMS and there was hardly any discontinuance”; (ii) that it was further the case of the petitioner, that the administration of AIIMS itself had, on 11th December, 2003, decided to count his service in other projects also for the purpose of pension; (iii) that in law, an employee can get pension only if it is provided in the relevant rules; (iv) that the Old Pension Scheme was in force only up to 31st December, 2003 and from 1st January, 2004, the New Pension Scheme had come into existence but which was not so beneficial to the employees, compared to the Old Pension Scheme; (v) though AIIMS undoubtedly engaged the petitioner in Research

Projects, one after the other, since 1st April, 1987, but it was only on 5th December, 2008, that the petitioner was absorbed in regular service of AIIMS; (vi) that in the context of payment of pension, the question was, whether the petitioner was in pensionable service as on 31st December, 2003; (vii) that the petitioner, in accordance with the Memorandum dated 11th December, 2003, would as on 31st December, 2003, have been in pensionable service, only if he had been absorbed prior thereto; however the petitioner, as aforesaid, was absorbed only on 5th December, 2008; (viii) that the petitioner, as on 31st December, 2003, did not hold a pensionable post, for his past service to be counted for the purposes of pension; and, (ix) the petitioner also was unable to show that the post held by him was pensionable.

8. The counsel for the petitioner has invited our attention to the counter affidavit filed by AIIMS in the earlier O.A. No.2446/2017, preferred by the petitioner, and in which the respondents pleaded that the petitioner was not eligible for pension as he joined AIIMS after 1st January, 2004 i.e. after the introduction of the New Pension Scheme and therefore was not eligible qua pension under the Old Pension Scheme. Our attention is next invited to the order dated 17th May, 2009 in earlier O.A. No.2446/2017 preferred by the petitioner, whereby the plea of the respondents qua ineligibility of the petitioner was not accepted and the respondents were directed to take decision. On the basis thereof, it is argued that CAT, after in the earlier O.A. holding that the petitioner was entitled to pension, could not have dismissed the subsequent O.A. of the petitioner. Attention is also invited to Rule 17(1) titled 'Counting of service on contract' of the Central Civil Services (Pension) Rules, 1972, to contend that a person who is initially engaged by

the Government on a contract for a specified period and is subsequently appointed to same or another post in a substantive capacity in a pensionable establishment, without interruption of duty, may opt either to retain the Government contribution in the Contributory Provident Fund or to agree to refund to the Government the monetary benefits in the Contributory Provident Fund. On the basis thereof, it is argued that the same also provides for computing the qualifying service for the purposes of pension.

9. We have considered the aforesaid contentions and are unable to find any merit therein. It is not as if in the order dated 17th May, 2009 disposing of the earlier O.A. No.2446/2017 preferred by the petitioner, any categorical finding was returned as to the entitlement of the petitioner to pension, for it to be said that the impugned decision dated 14th October, 2020 in the subsequent O.A. No. 1021/2020 is in conflict with the earlier decision dated 17th May, 2009 in the earlier O.A. No.2446/2017 preferred by the petitioner. A reading of the pleadings in the earlier O.A. No.2446/2017 and the order therein shows that it was the case of the petitioner therein that at least four others had been given the benefit of pension vide Memorandum dated 11th December, 2003 and which led to CAT remitting the matter to AIIMS, for taking a decision setting out reasons, why the petitioner was not being treated at par with them.

10. AIIMS, pursuant thereto, in its Office Memorandum dated 22nd /28th August, 2019, has reasoned (i) that the petitioner, prior to joining AIIMS on absorption basis, on 28th November, 2008, with effect from 5th December, 2008, had worked in different research projects, from 1st April, 1987 to 8th August, 2003, from 8th March, 2004 to 31st March, 2007 and from 13th

August, 2007 to 16th May, 2008; (ii) that as per policy/guidelines formulated by AIIMS for regularization of services of staff engaged in research projects, the staff was required to have rendered more than 15 years of service in total, irrespective of break period; (iii) that the petitioner had not completed 15 years of service as on 1st January, 2004, when the New Pension Scheme came into force; (iv) that it is for this reason that the petitioner, prior to 1st January, 2004, was not absorbed on permanent basis; and, (v) that the other four whose example was given by the petitioner before CAT in the earlier round, had completed 15 years of service in different projects, before 1st January, 2004 and they had been absorbed on permanent basis, before 1st January, 2004.

11. The aforesaid reasons speak for themselves and we need not say more.

12. Though several other reasons have also been given in the said memorandum but for the purposes of judicial review of the impugned decision 14th October, 2020, we need not say more.

13. All that can be observed is, that the decisions of, AIIMS in denying pension, as well as of CAT in dismissing the O.A. preferred by the petitioner, are found to be in accordance with law and no fault, least perversity, is found therein.

14. Dismissed.

RAJIV SAHAI ENDLAW, J.

AMIT BANSAL, J.

FEBRUARY 25, 2021/SU