

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD**

Dated: This the 22nd day of January 2020

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J

**Original Application No. 330/00531/2018
With
Original Application No. 330/00951/2018**

Original Application No. 330/00531/2018

Rajdhari Yadav, aged about 61 years, S/o Chootay Lal Yadav,
Retired C.P. Chaukidhar, R/o Vill Dharaon Nara, PO Bhabhani,
District Allahabad.

. . . Applicant

By Adv: Shri M.K Yadav

V E R S U S

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. The Chief Post Master General, U.P. Circle, Lucknow.
3. The Post Master General, Allahabad Region, Allahabad
4. The Director of Postal Services, Allahabad Region, Allahabad.
5. The Superintendent of Post Offices, Mirzapur Division, Mirzapur.

. . . Respondents

By Adv: Shri Ashutosh Shukla

With

Original Application No. 330/00951/2018

Krishna Pratap Singh, aged about 61 years, S/o Late Ram Khelawan Singh, Retired C.P Chaukidar, R/o Sundar Ghat, Post Sadar, District Mirzapur.

. . . Applicant

By Adv: Shri M.K Yadav

V E R S U S

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. The Director General of Posts, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
3. The Chief Post Master General, U.P. Circle, Lucknow 226001.
4. The Post Master General, Allahabad Region, Allahabad 211001.
5. The Superintendent of Post Offices, Mirzapur Division, Mirzapur 231001

... Respondents

By Adv: Shri L.P Tiwari

ORDER

1. The applicant has filed this O.A under section 19 of Administrative Tribunals Act, 1985, seeking following reliefs in OA No. 531/2018:-

Relief in OA No. 531/2018

- “(i) Issue an order or direction commanding the respondents to make payment of pension (with arrears) and all other Post Retiral Benefits to the applicant due taking his entire period of service i.e. 24.01.1977 to 31.01.2017 in to consideration, with all other consequential benefits.
- (ii) Issue a further order or direction commanding the respondents to make payment of interest to the applicant on delayed payment on post retiral benefits at the rate of 18%.
- (iii) Issue any other and further order or direction/s; which this Hon’ble Court may deem fit and proper in the facts and circumstances existing in the present case.
- (iv) Award the cost of the O.A. to the applicant”.

Relief in OA No. 951/2018

- (i) Quash the impugned order dated 21.02.2018 (Annexure A-1 to the O.A.) passed by the respondent No.5 and issue direction commanding

the respondents to make payment of pension and all other Post Retiral Benefits to the applicant due taking his entire period of service i.e. 20.12.1979 to 30.11.2017 into consideration, with all other consequential benefits.

- (ii) Issue a further order or direction commanding the respondents to make payment of interest to the applicant on delayed payment on post retiral benefits at the rate of 18%.
- (iii) Issue any other and further order or direction/s; which this Hon'ble Court may deem fit and proper in the facts and circumstances existing in the present case.
- (iv) Award the cost of the O.A. to the applicant".

Brief facts in O.A. No. 531/2018

2. The brief facts of the case are that the applicant was initially appointed on 24.01.1977 as Full Time Contingent Paid Chowkidar and he was extended temporary status w.e.f. 29.11.1989 and thereafter he was accorded the benefits of Group 'D' employees. It is stated that the appointment of the applicant was made strictly in accordance with the provisions of Rule 154 (a) of Manual of Appointment and Allowances of Officers of the Indian Posts and Telegraphs Department. The applicant has retired on 31.01.2007 after attaining the age of superannuation but he has been denied the pensionary benefits. It has been alleged that he is entitled for all retiral benefits as admissible to comparable staff in the regular group 'D' employee. He made a representation dated 19.09.2017 and with a request to grant the monthly pension and other post retiral benefits, but no action has been taken by the respondents in this regard.

3. In the counter reply filed on behalf of respondents, it has been admitted that the applicant was engaged as C.P. Chowkidar on 24.01.1977 and he was granted temporary status w.e.f. 29.11.1989. It is further submitted that the services of the applicant were not regularized in Group 'D' cadre. Thus, in absence of

regularization order, pension and retirement benefits are not admissible to the applicant.

4. In the rejoinder, the applicant has reiterated the averments made in the O.A. and further submitted that he was appointed against the vacant Group 'D' post of C.P. Chowkidar in accordance with the provisions of Rule 154 (a) of Manual of Appointments and Allowances of Officers of the Indian Post and Telegraph Department w.e.f. 07.01.1982. It has been alleged that in view of Rule 154 (a), the applicant had to be brought on regular establishment at par with the regular Group 'D' employee.

Brief facts in O.A. No. 951/2018

5. The brief facts of the case are that the applicant was initially appointed on 20.12.1979 as Full Time Contingent Paid Chowkidar and he was extended temporary status w.e.f. 29.11.1989 and thereafter he was accorded the benefits of Group 'D' employees. It is stated that the appointment of the applicant was made strictly in accordance with the provisions of Rule 154 (a) of Manual of Appointment and Allowances of Officers of the Indian Posts and Telegraphs Department. The applicant has retired on 30.11.2017 after attaining the age of superannuation but he has been denied the pensionary benefits. It has been alleged that he is entitled for all retiral benefits as admissible to comparable staff in the regular group 'D' employee. The respondents have denied the request of applicant for payment of pension and other post retiral benefits as his services has never been regularized by the impugned order dated 21.02.2018 (Annexure A-1).

6. In the counter reply filed on behalf of respondents, it has been admitted that the applicant (in OA No. 531/2018) and applicant (in OA No. 951/2018) were engaged as C.P. Chowkidar on 24.01.1977 and 20.12.1979 and they were granted temporary status w.e.f. 29.11.1989. It is further submitted that the services of the applicant were not regularized in Group 'D' cadre. Thus, in absence of regularization order, pension and retirement benefits are not admissible to the applicant.

7. In the rejoinder, the applicant has reiterated the averments made in the O.A. and further submitted that he was appointed against the vacant Group 'D' post of C.P. Chowkidar in accordance with the provisions of Rule 154 (a) of Manual of Appointments and Allowances of Officers of the Indian Post and Telegraph Department w.e.f. 07.01.1982. It has been alleged that in view of Rule 154 (a), the applicant had to be brought on regular establishment at par with the regular Group 'D' employee.

8. I have heard and considered counsel for the parties and perused the record and gone through the pleadings available on record.

9 The applicant by placing reliance upon para 154(a) of the Manual of Appointment and Allowances of Officers of the Indian Posts and Telegraphs Department contended that he is entitled for all retiral benefits as may be admissible to comparable staff in the regular group 'D' employee. He relied upon the following judgments in support of his arguments -

“(i) O.A No. 917/04 – Chandi Lal Vs. U.O.I and Ors. decided on 2.9.2015 by CAT, Allahabad Bench.

(ii) O.A. No. 1626/05 – Shyam Lal Shukla Vs. U.O.I and Ors. decided on 28.7.2009 by CAT, Allahabad Bench.”

Rule 154 (a) of the Manual reads as under :-

“154(a) Selected categories of whole-time contingency paid staff, such as Sweepers, Bhisties, Chowkidars, Chobdars, Malis or Gardeners, Khalassis and such other categories as are expected to work side by side with regular employees or with employees in work-charged establishments, should, for the present, be brought on to regular establishments of which they form adjuncts and should be treated as “ regular” employees. The other contingency staff who do not fulfil these conditions, e.g., Dhobis, Tailors, Syccs, Grass Cutters, etc., should continue on the existing basis and should be treated to

be "Casual employees". Part-time employees of "regular" categories, as also employees of "Casual" categories who are not brought on to the regular establishment, will continue, as at present, to be paid from contingencies."

From the perusal of Rule 154 (a) of Manual it is manifestly clear that the Chowkidar, Sweepers, Malis, Khalassis who worked side by side with regular or with employees in Work Charge Establishment should be brought on regular Establishment and should be treated 'regular employees'. The Rule itself has used the work 'regular employee' without any reference to formal order of regularisation.

10. I have also gone through the judgments referred by the learned counsel for the applicant. In the case of Chandi Lal (supra), the applicant was working in the Department of Posts on work charge establishment w.e.f. 15.4.1982. He was granted temporary status w.e.f. 29.11.1989 and thereafter, he was brought on the pay scale of Group 'D' employee and also accorded service benefits admissible to the Group 'D' employee. Though no formal order of the regularisation was issued in the said case but the Tribunal held the applicant entitled to pension treating him a Group 'D' regular employee. The Writ Petition No. 11297/2006 filed against the said order was dismissed by Hon'ble Allahabad High Court vide order dated 02.03.2007 and Hon'ble Supreme Court also upheld the order of Tribunal and High Court vide order dated 03.03.2008 passed in SLP (CC) No. 3248/2008.

11. In the case of Shyam Lal Shukla (supra), the applicant was initially appointed as full time CP Chowkidar and was granted temporary status w.e.f. 29.11.1989. No formal order of regularisation was ever issued. In this case, the applicant was deemed to be regularised, treated as 'regular employee' of the Department and declared entitled to all post retiral benefits as per relevant statutory rules in force. The Writ Petition No. 60272/2009 filed against the said order of Tribunal, was dismissed by Hon'ble Allahabad High Court vide order dated 23.12.2011 and Hon'ble Supreme Court also

upheld the order of Tribunal and High Court vide order dated 06.08.2012 passed in SLP (CC) No. 12664/2012.

12. The facts and circumstances of above noted cases are almost similar to the case in hand. In the instant case, the applicants in both O.As were appointed as C.P. Chowkidar on 24.01.1977 and 20.12.1979. They were extended temporary status w.e.f. 29.11.1989 and thereafter they were accorded the benefits of Group 'D' employees. The cases of Chandi Lal and Shyam Lal Shukla went up to Hon'ble Supreme Court and case of Shyam Lal Shukla was also affirmed by the Apex Court. It has been settled that such employees shall be deemed to have been regularised and consequently required to be treated as regular employees of the respondents' department and consequently they are entitled to all pensionary benefits.

13. Accordingly, the O.A. stands allowed and impugned order dated 21.02.2018 (in OA No. 951/2018) is quashed and set aside. The respondents are directed to ensure payment of pension and other post retiral benefits alongwith interest @9% per annum from the date it becomes due till the date of actual payment as expeditiously as possible preferably within a period of three months from the date of receipt of copy of this order. No order as to costs.

(RAKESH SAGAR JAIN)

MEMBER – J

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