

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00278/2019**

Date of Order: 02.01.2020

C O R A M

HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

1. Kaushal Kumar Singh, Son of Late Rameshwar Singh.
2. Deo Narayan Yadav, son of Late Mathur Yadav.
3. Anirudh Prasad Singh, son of Late Karu

All are working at par with Group-D, Office of the Chief Post Master, Patna GPO, Patna- 800001 (Bihar).

.... Applicants.

By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the Director General of Post, Department of Post, Government of India, Dak Bhawan, Sansad Marg, New Delhi-110001.
2. The Chief Post Master General, Bihar Circle, Patna G.P.O. Campus, Patna- 800001(Bihar).
3. The Director, Postal Services (HQ), Office of the Chief Post Master General, Bihar Circle, Patna G.P.O. Campus, Patna- 800001 (Bihar).
4. The Chief Post Master, Patna G.P.O., Patna- 800001 (Bihar).
5. The Director of Accounts (Postal), Patna G.P.O. Campus, Patna- 800001 (Bihar).
6. The Deputy Chief Post Master (Mail-Treasurer), Patna GPO, Patna-800001 (Bihar).

.... Respondents.

By Advocate: - Shri Rana Randhir Singh

ORDER
[ORAL]

Dinesh Sharma, A.M:- In this OA, the applicant has prayed for giving direction to the respondents to treat the applicants as entitled to get the pension along with all consequential benefits upon their superannuation



from service being temporary Government servant at par with Group D employee. Their case is that the respondents are treating the applicants under temporary status instead of regular status only to deny them from the benefit of monthly pension and other consequential benefits after their superannuation which is bad in law and is against various judicial pronouncements of the Hon'ble Apex Court/High Court and different benches of the CAT including Patna Bench. The applicants have been granted temporary status w.e.f. 29.11.1989, 29.11.1989 and 28.11.1992 respectively. After completion of three years under temporary status the respondents have declared them as temporary Government servant at par with group D employee w.e.f. 29.11.1992, 29.1.1.192 and 28.11.1995 respectively. The applicants are due to superannuate from service on 30.04.2020, 29.02.2020 and 31.10.2025 respectively but even after rendering more than 20 years' service as temporary Group D employee they are still being treated under temporary status although they have submitted representations including one dated 25.01.2019 (Annexure-A/4). The Department has informed them by a letter dated 11.02.2019 that no pension will be available to them after their superannuation since they have been granted only temporary status and such facilities available only to departmental employees. The applicants have prayed for cancelling this decision generally citing various judicial pronouncements (without specifically mentioning details of any case).



2. A written statement has been filed by the respondents in which they have stated that all the applicants are working as temporary status employees at par with Group D and if they will not yet regularised in regular service at the time of their retirement they will not be entitled to get pensionary benefits. The written statement encloses the rules regarding Casual Labour (Grant of Temporary Status and Regularisation) Scheme with the Department of Posts circulated vide letter No. 45-95/87-SPB I, dated 12,04.1991 according to which 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after their regularisation (Annexure - R/1). It is also stated that CCS (Pension) Rules, 1972 shall not apply to persons in casual and daily rated employment since in the present case all the applicants were casual labourers at present and were paid from contingencies.



3. A rejoinder has been filed by the applicants in which they have reiterated that they are entitled to get the benefits claimed in this OA as many cases have been decided by this Hon'ble Tribunal upheld by Hon'ble High Court. No specific case was, however, quoted in the rejoinder too.

4. I have gone through the pleadings and heard the arguments. At the time of arguments, learned counsel for the applicants produced a copy of the decision of the Hon'ble High Court of Patna in CWJC No. 10978 of 2017. The decision of the Hon'ble High Court is reproduced in toto hereinunder: -

“Heard counsel for the Union of India.

The order under challenge is dated 18.02.2016 passed by the Central Administrative Tribunal, Patna Bench, Patna in O.A.900 of 2012.

O.A. was filed by the private respondent for finalization of his pension and grant of its benefits under CCS (Pension) Rules, 1972, since he was granted temporary status of Chowkidar/Night Guard in the Department.

Plea was taken before the Tribunal by the present petitioners that the service of the private respondent was not regularized nor he worked on a regular Group-D post till his retirement. Therefore, he is not entitled to the pensionary benefits.

The Tribunal has taken note of the following facts which has relevance:-



“We have perused the pleadings as well as judgments placed by the applicants. It is noted that the Full Bench of this Tribunal, after considering the circular of the Department, has held that since, New Pension Scheme will not be applicable to the applicants who have acquired Temporary Status of Group-D employees much before 01.01.2004. It has also been held that the applicants after confirmation of temporary status, they are entitled to be treated at par with group-„D“ employees for the purpose of contribution to General Provident Fund. Moreover, the Hon“ble High Court, Patna in their recent judgment dated 15.12.2015 passed in CWJC No.17204 of 2015 has observed interalia:-

“4. The Tribunal, noticing the Full Bench judgment as well as the judgment of the Karnataka High Court in this regard in favour of the employees, held that they would be covered by the Old Pension Scheme. To us, the problem is simple. The New Pension Scheme would apply to persons coming in Government Service after 1.1.2004. The applicants before the Tribunal were first casual labourers, but with effect from 1989 they acquired the temporary status or the status of a temporary employees of the Government in the department of Post. After three years of such continuous services, they were entitled to certain benefits, which a permanent Group-D employees gets. They were receiving the same, pending confirmation in service as a permanent employee. Towards pensionary benefits, G.P.F. deductions were made. Then came cut-occurred in the year 2011, they were substantially appointed as permanent employees. To us, the answer would be evident from the fact that they were already in service prior to 1.1.2004, though in a temporary status. To us, it appears that the meaning of the Scheme, which puts the cut-off date as 1.1.2004 is that all those persons, who have come in service after 1.1.2004 would be covered by the New Pension Scheme. As noted and state above, the applicants before the Tribunal, the respondents herein, were already in service, though in temporary status prior to the cut-off date. To them, this cut-off date would not apply, and consequently they would be deemed to be in service on 1.1.2004 having been confirmed as permanent employees in Group-D with effect from 2011. Thus, we find no error in the judgment and order of the Tribunal.

5. This writ petition is, accordingly, dismissed.”

Moreover, as per Clause-6 of their own Scheme dated 15.05.1991, 50% of the service rendered under Temporary Status would be counted for the purpose of retirement benefits after regularization as regular group “D” official. As the applicant is granted temporary status prior to 01.01.2004 and was subsequently regularized as group-D. As per the Scheme of the respondents, 50% of the service rendered under Temporary Status to be counted for the as new entrants.”

The Tribunal, therefore, has taken a correct view because in similar and identical circumstances the High Court had held in favour of an employee and that judgment/order stands and holds the field.

In view of the above, the writ has no merit. It is dismissed.”

4. As is clear from the above, the Hon’ble High Court has upheld Tribunal’s judgment in OA 900/2012 which was in the context of applicability of new versus old pension scheme and this Tribunal and the Hon’ble High Court came to the conclusion that employees who are granted temporary status and who were regularized later would be considered under the old pension scheme, if they were granted temporary status prior to 01.01.2004 which was the cut- off date for the application of the new pension scheme. The learned counsel for the applicant has argued that this decision is squarely applicable on the facts of the current case in view of the fact that similar plea about the private respondents therein (equivalent to applicants herein) not being regularized till their retirement was taken by the petitioners therein (respondents in the present case). Since the judgment of the Hon’ble High Court produced by the learned counsel for the applicant has only a partial quote of paragraph 5 of the decision of the Tribunal in OA 900/2012, I have gone through the whole judgment of this Tribunal in OA 900/2012 dated 18.02.2016. On reading through this judgment, I find that the paragraph-5 which starts from “we have perused the pleadings.....” does not end with “..... is, accordingly, dismissed”, but goes further as follows:-



“ Moreover, as per Clause-6 of their own Scheme dated 15.05.1991, 50% of the service rendered under Temporary Status would be counted for the purpose of retirement benefits after regularization as regular group ‘D’ official. As the applicant was granted temporary status prior to 01.01.2004 and was subsequently regularized as Group-D, as per the Scheme of the respondents, 50% of the service rendered under Temporary Status also to be counted for the purpose of retiral benefits and they cannot be treated as new entrants.

6. Therefore, we are of the opinion that the applicant is entitled to be guided by Old Pension Scheme and will be entitled for the benefits as per the said Scheme. Accordingly, OA is allowed with above observations and directions with no order as to costs.”



5. It is clear from the above that the decision of this Tribunal which was later upheld by the Hon’ble High Court was based on the finding by this Tribunal that contrary to the plea taken by the respondents therein, the applicant therein were granted temporary status prior to 01.01.2004 and was subsequently regularised as Group ‘D’ (underline emphasized). Thus, applying the ratio of the above judgment, the applicants in the instant OA will also be entitled to be treated under the old pension scheme provided they are regularized before their retirement. The OA is, therefore, disposed of with the direction to the respondents to take appropriate action under their rules for regularisation, if the applicants are found eligible under the rules for such regularization. They are also directed to treat the applicants under the old pension scheme, if their services get regularized before their retirement. Since the applicant no. 2 is going to retire on 29.02.2020, a decision about his regularisation should be taken at the earliest possible

and not later than 30 days from the date of receipt of this order. In a similar way, a decision regarding regularisation of the remaining two applicants should also be taken within three months from the date of receipt of this order. The OA is disposed of accordingly. No order as to costs.

[Dinesh Sharma]
Administrative Member



Srk.