

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This the 15th Day of January, 2021)

Hon'ble Mrs. Justice Vijay Lakshmi, Member (Judicial)

Original Application No.330/982/2014
(U/S 19, Administrative Tribunal Act, 1985)

1. Shri Pati S/o Late Bhagwati Prasad, R/o Vill. & PO – Hetapur, Jhunsi, District – Allahabad.
2. Ram Kailash S/o Late Kalideen R/o Vill. & PO – Hetapur, Jhunsi, District – Allahabad.
3. Radhey Shyam S/o Dhaadu, R/o 331, Kydganj Allahabad.

..... Applicants

By Advocate: Shri Vinod Kumar

Versus

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi – 110001.
2. The Chief Post Master General, U.P. Circle, Lucknow – 226001.
3. The Post Master General, Allahabad Region, Allahabad – 211001.
4. The Director Postal Services, Office of Post Master General, Allahabad Region, Allahabad – 211001.
5. The Sr. Superintendent of Railway Mail Services, 'A' Division, Allahabad – 211001.

..... Respondents

By Advocate: Shri R.K. Srivastava

O R D E R

Heard Shri Vinod Kumar, learned counsel for the applicants,
Shri R.K. Srivastava, learned counsel for the respondents and

perused the records along with the written submissions filed by learned counsel for both the parties.

2. The undisputed facts, related to the instant Original Application (OA), are that all the applicants were appointed in the Department of Post, Ministry of Communication, on casual basis, through employment exchange Allahabad, in the year 1984. Thereafter, under the government scheme dated 12.04.1991, they were granted temporary status w.e.f. 29.11.1989 and after granting temporary status, the following benefits, as per OM dated 30.11.1992 (Annexure A-7) of Ministry of Communication, Department of Post, were extended to them:-

- a. All kinds of leave admissible to Temporary employees.*
- b. Holidays as admissible to regular employees.*
- c. Counting of service for purpose of pension and terminal benefits as in the case of Temporary Employees, appointed on regular basis for those Temporary employees who are given Temporary Status and who completed 3 years of service in that status while granting them pension and retirement benefits after their regularization.*
- d. Central government employees insurance scheme.*
- e. G.P.F.*
- f. Medical Aid.*
- g. L.T.C.*
- h. All advances admissible to Temporary Group 'D' employees.*
- i. Bonus."*

3. However, their services were not regularized even though on 31.10.2005, the Post Master General had asked from respondent No.5 about the regularization of the services of the applicants. But, nothing was done and in the meantime, all the applicants retired on reaching the age of superannuation.

4. The grievance of the applicants is that despite the fact that they continuously worked for more than 20 years with the respondent without any disciplinary action being taken against them and without even any adverse remark against them, having temporary status with all the consequential benefits including contribution to GPF, at par with the several regular group 'D' employees, their services were not regularized and as a result depriving them from the pensionary benefits as available to regular employees.

5. The submission of the applicants is that all of them are entitled for all the retiral benefits that can be extended to a regular Group 'D' employee, in view of the fact that they have rendered more than 20 years of unblemished service with temporary status.

6. In this regard, reliance has been placed upon **Para 154 (a) of the Manual of Appointment and Allowance of Officers of the Indian Post and Telegraph Department**, which is quoted below:-

“Rule 154(a) – selected categories of whole time contingency paid staff such as Sweepers, Bhisties, Chowkidars, Chobars, 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 establishment, 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 fulfill these conditions e.g. Dhobis, Tailors, Syces, 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”.

7. The learned counsel for the applicants has further contended that a similarly situated colleague of the applicants had earlier approached this Tribunal by means of OA No.1626 of 2005 (Shyam Lal Shukla vs. Union of India & Ors), seeking the pensionary benefits on the same grounds, which OA was allowed by this Tribunal vide order dated 28.07.2009 with the following directions:-

“14. In view of admitted facts (noted above), the applicant is deemed to be regularized treated as ‘regular employee’ of the Department and declared entitled to all post retiral benefits as per relevant statutory rules in force. It is further provided that post retiral benefits shall be paid along with 9% per annum annual interest from the date it becomes due from the date its actual payment. Learned counsel for the applicant has submitted that he does not press for costs. It is made clear that applicant shall not be entitled to arrears of salary (if any) to his date of superannuation.

15. Accordingly, OA stands allowed to above directions/observations. Respondents are directed to ensure payment of pension and all other post retiral benefits as expeditiously as possible but not beyond the period of three months in accordance with law.”

8. The aforesaid order was challenged by the respondents before Hon'ble High Court by filing Writ Petition No.60272 of 2009 (Union of India & Ors. Vs. Shyam Lal Shukla). This Writ petition was dismissed on merits vide order dated 23.12.2011, by Hon'ble High Court. Thereafter, the respondents filed S.L.P. No.12664 of 2012 (Union of India & Ors. Vs. Shyam Lal Shukla) before Hon'ble Apex Court, which was also dismissed by Hon'ble Supreme Court vide order dated 06.08.2012.

9. Learned counsel for the applicant has contended that as the judgment rendered by this Tribunal in OA No.1626 of 2005, has been confirmed up to Hon'ble Supreme Court and on the basis of this order, several other claims of similarly situated employees have been decided by this Tribunal on the same terms, and in consequence, the respondent department has released the pensionary benefits, to the applicants of those OAs, the present OA, being squarely covered with the verdict of Shyam Lal Shukla's case (supra) and several other cases, copies whereof have been annexed with the written submissions, may also be decided in the same terms.

10. Per contra, learned counsel for the respondents has vehemently opposed the OA. In the written submissions as well as in the Counter and Supplementary Counter Affidavits, the following objections have been raised against the OA:-

- (i) The instant OA is highly time barred, therefore it is not maintainable.
- (ii) The applicants could not be regularized as only 25% vacancies were allowed to be filled up from Temporary Status Casual Labour.
- (iii) The applicants have retired on attaining the age of 60 years, therefore now their services cannot be regularized and the prayer of the applicants for regularization is totally contrary to law and hypothetical. It is not tenable and the OA being devoid of merits is liable to be dismissed.

11. I have given my thoughtful consideration to the rival contentions made by learned counsel for the parties and have carefully gone through the record, the written submissions and all the judgments referred to by learned counsels, in support of their contentions.

12. The respondents have not disputed the fact that the applicants have rendered more than 20 years of unblemished service in their department after getting temporary status and as a result, the respondents have granted them all the benefits as enumerated in the provision contained in **Para-154(a) of the Manual of Appointment and Allowances of Officers of the**

Indian Post and Telegraph Department. The main contention raised by learned counsel for the respondents in the counter affidavit as well as in the written submissions, is that the services of the applicants could not be regularized in Group 'D' post because there were no vacancies and without acquiring the status of a regular employee, the applicants were not found entitled to receive terminal benefits, moreso, now as all of them have retired, their services can be regularized.

13. Admittedly, all the three applicants have now been retired. The respondents have denied the terminal benefits to the applicants due to the reason that they could not be regularized in Group 'D' category, because of lack of vacancies, whereas the terminal benefits are admissible only to those employees, who have rendered their services as a regular employee.

14. The controversy involved in the present OA, that whether the employees, who have been conferred temporary status in pursuance of D.G. Post Letter No.45-95/87/SPB-I dated 12.04.1991, are entitled for pensionary benefits or not or it is necessary for them to acquire regular status, is no more *res integra* in view of the judgment in Shyam Lal Shukla's case (*supra*), wherein the same controversy has been decided by this Tribunal and the order passed by this Tribunal has been upheld up to Hon'ble Supreme Court.

Therefore, the instant OA also deserves to be decided in the same terms.

15. Testing the facts of the instant OA in light of the above cited judgements, this Tribunal is of the firm view that when the service particulars of the applicants, as claimed by them, were admitted to the respondents, the applicants should have been treated by them as deemed to be regularized, as per the verdict given in those judgments and consequently they should have been treated as regular employees of the Department from the date their regularization became due and the applicants should have been granted all the post retiral benefits as per relevant statutory rules. However the respondents denied the same on the ground of lack of vacancies and in the meantime, all the applicants retired on reaching the age of superannuation.

16. The relief column of the OA shows that the applicants have sought the relief in the nature of Mandamus commanding the respondents to regularize their services by creating supernumerary group D posts with all consequential benefits.

17. However, in view of the fact that all the applicants have now been superannuated, the relief sought by them to create supernumerary post cannot be granted.

18. Accordingly, **the OA stands allowed in the same terms as in Shyam Lal Shukla's case (supra)** and the respondents are directed to ensure payment of pension and other retiral benefits to the applicants along with simple interest @ 7% p.a. from the date it becomes due till the date of actual payment, preferably within a period of **06 months** from the date of receipt of a certified copy of this order.

19. Under the circumstances, there shall be no order as to costs.

(Justice Vijay Lakshmi)
Member (Judicial)

Sushil