

RESERVED

**Central Administrative Tribunal, Allahabad Bench,
Allahabad**

O.A. No.330/01359/2019

This the 17th day of February, 2021

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

Smt. Bhagyawati Srivastava, aged about 49 years w/o late Kamlesh Lal, Ex-Group D (now named as MTS) under Senior Superintendent of Post Offices, East Division, Varanasi, r/o A-38/289, B-2-F, B.K. Vijaipura, Koniya, Varanasi, U.P. -221007.

Applicant

By Advocate: Sri Santosh Kumar Kushwaha

Versus

1. Union of India through the Secretary, Ministry of Communication and I.T., Govt. of India, Dak Bhawan, Sansad Marg, New Delhi.
2. Director General of Posts, Ministry of Communication and I.T., Dak Bhawan, Sansad Marg, New Delhi.
3. Chief Post Master General, U.P. Circle, Lucknow.
4. Post Master General, Varanasi Region, Varanasi.
5. Senior Superintendent of Post Offices, East Division, Varanasi-221001.

Respondents

By Advocate: Sri M.K. Sharma proxy for
Sri Chakrapani Vatsyayan.

ORDER

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

The applicant, by means of the instant Original Application, has prayed for the following reliefs:-

- i) Issue a writ, order or direction in the nature of mandamus directing the respondents to pay the family pension, other pensionary benefits with 12% interest as the applicant's husband was a regular employee of the department on the strength of Rule 154 (a) of the Manual as the deceased employee was also similarly situated person to the O.As decided by this Hon'ble Tribunal.
- ii) The Hon'ble Tribunal may further graciously be pleased to issue any other suitable order or direction which this Hon'ble Court finds deem fit and proper.

iii) Award costs in favour of the applicant.

2. I have heard Sri Santosh Kumar Kushwaha, learned counsel for applicant and Sri M.K. Sharma holding brief of Sri Chakrapani Vatsyayan, on behalf of respondents. Perused the records.

3. The relevant facts in brief, necessary to decide the controversy involved in this case are that the husband of the applicant was initially appointed as 'Contingency Paid Chowkidar' under Senior Superintendent of Post Offices, East Division, Varanasi on 1.12.1985. In the wake of judgment dated 27.10.1987 passed by the Hon'ble Supreme Court in Writ Petition No. 373 of 1986 (Daily Rated Casual Labour Employed under P&T Department Vs. Union of India and others) and in Writ Petition No. 302 of 1986 in re. National Federation of P&T Employees and Anr. Vs. Union of India and others, a scheme for absorbing the Casual Labours continuously working for more than one year in Post and Telegraph Department, was prepared and in pursuance of that scheme, various circulars were issued for granting temporary status to such employees. Accordingly, the husband of the applicant was granted temporary status w.e.f. 29.11.1989. He, along with other similarly placed employees, was also granted certain benefits enumerated in the circular (Annexure A-3 to the O.A.), like D.A., HRA, GPF deduction etc. Photo copy of the letter dated 23.11.1995 issued by the respondents for treating the husband of the applicant at par with Group 'D' regular employee has been filed as Annexure No. A-4 to the O.A. by the applicant. Unfortunately, the husband of the applicant died in harness on 2.12.2018, before reaching the age of superannuation.

4. The grievance of the applicant is that despite the fact that husband of the applicant had served the respondent's department for more than 31 years, she has been denied the family pension and other benefits. It is contended that the husband of the applicant

had worked and received salary from contingency fund from 1.12.1985 to 28.12.1989 i.e. for 3 years 11 months and 28 days. Thereafter, he got salary from the consolidated fund of Central Government from 29.11.1989 to 28.11.1992 i.e. three years and from 29.11.1992 till the date of his death, as regular Group 'D' Government employee. Therefore, denial of benefits and status of regular employee to him, by the department is illegal and arbitrary and violative of Article 14,16, 21 and 311 of Constitution of India. It has been lastly contended that the applicant moved several representations with request to grant her the family pension and other emoluments admissible to her, but no action was taken by the respondents. Hence, this O.A.

5. In the Counter Affidavit, filed by the respondents, it has been admitted that husband of the applicant, late Kamlesh Srivastava, was engaged as Contingency Paid 'Chowkidar' at Varanasi H.O. and he was given temporary status w.e.f. 29.11.1989. It is also admitted that he was provided status of Group 'D' w.e.f. 29.11.1992. There is no denial of the fact that the husband of the applicant had died during service on 2.12.2018 and his wife had represented earlier too, for benefits applicable to a regular employee. However, the O.A. has been opposed on the ground that as the services of the husband of the applicant were not regularized in Group 'D' cadre, due to lack of vacancy, the family pension or any retiral benefits are not admissible to the applicant.

6. In the Rejoinder Affidavit, the applicant has reiterated the averments made in the O.A. and submitted that similarly placed employees, namely Sri Gangadeen, Sri Chhangur Sharma and Sri Raj Narain Tiwari have been found entitled for such benefits and they have been given those benefits, whereas the applicant has been denied for the same without any cogent reason.

7. Learned counsel for applicant has placed reliance upon para 154(a) of the Manual of Appointment and Allowances of Officers of the Indian Posts and Telegraphs Department herein after to be referred as "Manual" in short to contend that he is entitled for all retiral benefits as may be admissible to comparable staff in the regular group 'D' cadre. Ld. Counsel has 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."
- (iii) Chhangur Sharma Vs. Union of India and others (O.A. No. 332/2016 decided on 19th December, 2017 by CAT, Allahabad Bench.
- (iv) Writ –A No. 9489 of 2018 (Union of India and 5 other Vs. Chhangur Sharma) decided on 26.10.2018 by Hon'ble Allahabad High Court.
- (v) Special Leave Petition (Civil) Diary No. 32569 /2019, decided on 21.10.2019 by Hon'ble Supreme Court in Union of India & others Vs. Chhangur Sharma.

Findings:-

8. For the purpose of coming to a right conclusion, it is necessary to have a glance on Rule 154 (a) of the Manual, which 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."

9. From a 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 Charged 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 regularization.

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 charged 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 regularization 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 (Civil) -----/2008 (CC 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 regularization was ever issued. In this case, the applicant was 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. 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 (Civil) -----/2012 (CC 12664/2012).

12. I have also perused the judgment rendered in the case of **Chhangur Sharma Vs. Union of India and others (O.A. No. 332/2016)**, which was allowed by this Tribunal and the respondents were directed to ensure the payment of pension and other retiral benefits along with 7% interest per annum to the applicant, as expeditiously as possible, within a period of 3 months from the date of receipt of copy of this order.

13. The Union of India, filed a writ petition against the aforesaid order passed by this Tribunal, by means of **Writ –A No. 9486 of 2018 (Union of India and others Vs. Chhangur Sharma)**, which was dismissed by Hon'ble High Court vide order dated 26.10.2018. The **Special Leave Petition (Civil) Diary No. 32569 /2019, filed by Union of India and others Vs. Chhangur Sharma** was also dismissed by Hon'ble Supreme Court, vide order dated 21.10.2019. The O.A. of Chhangur Sharma was decided in terms of Raj Narain Tiwari's case, who was also similarly situated employee.

14. Thus, in view of the fact that several similarly placed employees have been granted pensionary benefits, treating them at par with regular Group 'D' employee, the instant O.A. also deserves to be allowed and is accordingly allowed in the same terms.

15. The respondents are directed to ensure payment of family pension and other retiral benefits to the applicant, if any along with interest @ 6% per annum from the date, it becomes due till the date of actual payment, as expeditiously as possible, within a period of 3 months from the date of receipt of certified copy of this order.

16. No order as to costs.

**(Justice Vijay Lakshmi)
Member (J)**

HLS/-