

Reserved.

Central Administrative Tribunal
Allahabad Bench, Allahabad.

Dated: Allahabad This the 15th day of October 99.

Present: Hon'ble Mr. Rafiquddin, Member (J.)

Original Application No. 360 of 1998.

1. Smt. Nisab Khatoon W/O Shahrul Hasnain
R/O Town Saithal, P.O. Saithal Distt.
Bareilly.
2. Rauful Hasan s/o Late Shahrul Hasnain
R/O Town Saithal, P.O. Saithal, Distt. Bareilly.

. . . Applicants.

(Through Sri Saumitra Singh, Adv.)

Versus

1. Union of India, through Secretary,
Department of Posts, Dak-Tar Bhawan,
Parliament Street, New Delhi.
2. Senior Post Master, Bareilly.
3. Senior Superintendent of Post Offices,
Department of Post, Bareilly.
4. Post Master General, Bareilly Zone, Bareilly.
5. Chief Post Master General, U.P. Circle,
Lucknow.
6. Director of Posts and Accounts, Aliganj,
Sector-4 U.P. Lucknow.

. . . Respondents.

(Through Sri S.C. Tripathi, Adv.)

Order (Reserved)

(By Hon'ble Mr. Rafiquddin, J.M.)

The applicants who are the widow and the
son of deceased Shahrul Hasnain have approached

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this Tribunal for quashing the order dated 13th August 1997 passed by the Accounts Officer of respondent No.4 rejecting their claim for family pension. It has also been sought that the respondents be directed to grant compassionate appointment to the applicant No.2 on any suitable post as per his qualification.

2. The admitted facts of the case are that the deceased Shahrul Hasnain was initially appointed as Chaukidar on 26th August 1981 on casual basis at Sub Post Office Saithal, Distt. Bareilly. He was later on given temporary status with effect from 29.11.89 vide order dated 21.7.93 passed by respondent No.3. Sri Shahrul Hasnain died on 23.10.1995 while in service, he leaving behind widow (Applicant No.1) and the son (applicant No.2)

3. The case of the applicants is that the deceased Shahrul Hasnain having completed three years continuous service after the grant of temporary status with effect from 29.11.89, became entitled for regularisation of his service in Group 'D'. Consequently his legal heir are entitled for the payment of all the retiral benefits including payment of family pension. The formal order for regularisation of the service of the deceased employee could not be passed on account of some malafide reasons on the part of the respondents.

4. It has also been pleaded that the temporary status was granted to the deceased employee in pursuance of a Circular letter issued by the Director General of Posts, New Delhi dated 12th April/ April 1991 in which various facilities which shall be granted to such full time casual labours who have been granted temporary status including

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corrected vide
court's order
dated 16-12-99.

S. M. Nafis
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the regularisation of their services in other units have been given. It is stated that a sum of ~~Rs. 2000/-~~ ^{2000/-} has been paid to the family of late employee from the Employee Welfare Fund and a sum of Rs. 4,519/- has also been paid being the amount of G.P. Fund of the deceased employee. On the basis of these facts it has been claimed that the deceased employee was in fact a regular employee hence his widow can not be deprived from the benefit of family pension merely for want of formal order of regularising the services of the deceased.

Similarly applicant No.2, son of the deceased employee is also eligible for appointment on compassionate grounds as per his qualification. However the representations made by the applicants for grant of family pension and for appointment on compassionate grounds have been rejected hence this O.A.

5. The respondents have contested the O.A. on the grounds that since late Shahrul Hasnain was never appointed on regular basis in the department in any capacity hence the claim for grant of pensionary benefits or for appointment on compassionate grounds is not tenable. It is, however, admitted to the respondents that deceased employee was given temporary status with effect from 29-11-89. It is also stated that as per policy of the department, existing vacancies in Group 'D' cadre are mainly filled in from the E.D.A. But it is admitted that provisions also exist that officials having temporary status are also to be absorbed in the department.

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6. I have heard the arguments of the learned counsel for the parties and perused the entire record.

7. It is evident from the admitted facts of the present case that deceased employee was duly granted temporary status by the respondents. The case of the applicants is based on the communication No. 66-9/91-SPB.I dated 30.11.1992 from Sri Krishnamoorthy ADG(SFN) Department of Posts New Delhi addressed to all Heads of Postal Circle and circulated vide CPMG, U.P. Circle Lucknow No. RECTT/R-31/VI/5 dated 8 Dec.1992 (Annexure IV) which is extracted as under:-

" Sub:- Regularisation of casual labourers.

Vide this office circular letter No. 45-95/97-SPBI dated 12.4.1991 a scheme for giving temporary status to casual labourers fulfilling certain conditions was circulated.

In their judgment dated 29.11.1989, the Hon'ble Supreme Court have held that after rendering three years of continuous service with temporary status, the casual labourers shall be treated at par with temporary group 'D' employees of the Department of Posts and would thereby be entitled to such benefits as are admissible to Group 'D' employees on regular basis.

In compliance with the above said directives of the Hon'ble Supreme Court, it has been decided that the casual labourers of this department conferred with temporary status as per the scheme circulated in the above said Circular No.45-95/87-SPB-I dated 12.4.1991 be treated at par with temporary Group 'D' employees with effect from the date they complete three years of service in the newly acquired temporary status as per the

above said scheme. From that date they will be entitled to benefits admissible to temporary Group 'D' employees such as:-

1. All kinds of leave admissible to temporary employees.
2. Holidays as admissible to regular employees.
3. Counting of service for the purpose of pension and terminal benefits as in the case of temporary employees who are given temporary status and who complete three years of service in that status while granting them pension and retirement benefits after their regularisation.
4. Central Government Employees Insurance Scheme.
5. G.P.F.
6. Medical Aid.
7. L.T.C.
8. All advances admissible to temporary Group 'D' employees.
9. Bonus.

Further action may be taken accordingly and proper service records of such employees may also be maintained.

Sd/-
Chief P.M.G., U.P. Circle
Lucknow.

8. The list of benefits admissible to an employee who has been granted temporary status enumerated in the aforesaid circular shows that the same is not exhaustive but is merely illustrative. Besides the service rendered by such employee was also to be counted for the pension and retirement benefits after of course their regularisation. Now the only question in this case is whether the applicant No.1 (widow of the deceased) is entitled for grant of family pension in the absence of a formal order of regularisation of the service of her deceased husband. It is also significant to note

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that in the impugned order dated 13.8.97 (Annexure-1) the only reason for not regularising the service of the deceased employee has been mentioned that there was no vacant post in Group 'D' in Bareilly Region. In other words the deceased employee was otherwise eligible to be regularised having completed three years continuous service after grant of temporary status to him. In this connection the learned counsel for the applicant has drawn my attention towards letter dated 21st July 1993 issued by the Senior Superintendent of Post Offices Bareilly (Annexure-3) through which temporary status was granted to the deceased employee Shahrul Hasnain in which inter-alia it has been specifically mentioned vide clause 11 which provides that his services were entitled to be regularised in other units and he may be deployed anywhere within the recruitment unit. It has been urged that the deceased employee, as such, could be regularised on any post of Group 'D' in any other unit of the respondent No.1 if the same was not available within Bareilly region. Although the respondents have however not specifically pleaded that no Group 'D' post was available to the deceased employee in any other unit after completion of three years continuous service and when the deceased was eligible to be regularised. Besides it, it has been clearly admitted by the respondents that provisions exist for the absorption of officials in the department who have been granted temporary status.

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9. Under the facts and circumstances of the aforesaid case, the learned counsel for the applicant has contended that the services of the deceased employee should be deemed to have been regularised and the widow-applicant should not suffer for no fault of her on account of ~~enaction~~ on the part of the officers of the respondents. I also find force ~~force~~ in the arguments of the learned counsel for the applicant and there should be no difficulty in assuming that the services of the deceased employee should have been regularised.

10. It has been pointed out on behalf of the respondents that the applicant can not claim the family pension because the deceased employee was never appointed on regular basis in the department in any capacity. It is urged that the deceased employee was not holding any post hence the claim for family pension is not justified. On this point the Apex Court in the case of V.M. Chandra Versus Union of India and others, 1999 Supreme Court Cases (L&S) 838 has clearly held that even a casual labour can have a designation. The observation of the Apex Court is as under:-

" The view taken by the Chairman of the Railway Board that there can not be any designation assigned to a casual employee baffles all logic because there can be engagement of a peon on casual basis and it can not be said that both are casual employees and, therefore there cannot be any distinction between a peon and a clerk as they are engaged on casual basis. In that view of the matter we do not think that the view taken

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by the Chairman of the Railway Board was justified."

11. The learned counsel for the applicant has also referred to a case decided by Calcutta Bench of the C.A.T. The facts of the aforesaid case are identical and I fully agree with the opinion express by the Calcutta Bench of this Tribunal in the case of Malatikar (Smt.) and others Versus Union of India and others reported in (1992)21 Administrative Tribunal cases 583 on the question of deemed regularisation of casual labourers which is as under:-

"It is a fact that while discussing the entitlement of casual labourers after the acquisition of temporary status, the Supreme Court did hold that retiral benefit of pension is not admissible to casual labour acquiring temporary status. However, this decision has to be read along with the Supreme Court's views in Robert D'Souza 1982 S.C.C.(L & S)124 and Inder Pal Yadav cases (1985)2 S.C.C.648 deprecating the practice of utilising the services of casual workers for long period without regularising them. While it is true that casual railway workers cannot get pensionary benefits till they are regularised, this cannot give a blank check to the Railways to defer such regularisation indefinitely, without any rhyme or reason. If they do so, thereby creating the type of heart-rending situation, as in the present case the railway casual workers concerned must be deemed to have been regularised on the dates of their expiry. This is the ratio of the judgment in Robert D'Souza, Inder Pal Yadav and Ram Kumar Cases 1988 S.C.C.(L&S)329.

The widows, therefore, should not be allowed to suffer due to inaction of the respondents. Denial of family pension in such cases would be against all canons of justice, equity and fair play. The employees shall be deemed to have been regularised on the dates of their death and family pension regularated accordingly."

12. Similary in another case namely K. Pattammal

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Versus Union of India and others (1994) 26 Administrative Tribunals cases 290. The Madras Bench of C.A.T. has also expressed the same view and has held that the deceased employee may be declared entitled to posthumous in a regularisation and one family member could also be considered for compassionate appointment. It has also been held in this case that the regularisation of service is precious right since it brings in its wake, several consequential benefits including grant of family pension.

13. Considering the facts of this case it is clear that the respondents have not been able to explain for not regularising the service of the deceased employee after his complete three years service being granted temporary status by the respondents. Consequently the service of the deceased employee will be deemed to have been regularised as Chaukidar on the date of his death. Since admittedly the deceased employee has completed ten years service as Chaukidar, the applicant-widow is entitled for grant of family pension under the C.C.S. Pension Rules 1972. This provision does not appear to be in dispute and the present OA. for grant of family pension deserves to be allowed.

14. As regards the application of the applicant No.2, the son of the deceased employee, the same has also been rejected merely on the ground that the deceased was not a regular employee of the department, his application can not be considered for his appointment on compassionate ground. However, as I have held above that the service of the deceased employee will be deemed to have been

21

regularised on the date of his death, the application of applicant No.2 for appointment on compassionate grounds is also to be considered as per rule by the respondents. The same can not be rejected that the deceased was not a regular employee of the department. Accordingly the O.A. is liable to be allowed.

15. The O.A. is allowed. The impugned order dated 13.8.97 is quashed and the respondents are directed to pay the applicant the family pension treating the service of the deceased employee having been regularised on the date of his death. The family pension will be calculated as per rules and the arrear will also be paid to the widow within three months from the date of communication of this order. The respondents are also directed to consider and pass order on the application of the applicant No.2 for appointment on compassionate ground treating him as the son of regular employee within three months from the date of communication of this order.

Rafiqul
Rafiqul
Member (J.)

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