

RESERVED

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

O.A. No.330/01060/2019

This the 3rd day of September, 2021

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

Prahlad Prasad Yadav, aged about 59 years son of late Shri Gauri Shankar Yadav, MTS (erstwhile Group D) at Chaukhamba Post Office, Varanasi r/o house No. S-2/617-C, Village –Sikraur, Post Cantt, Tehsil Sadar, District- Varanasi, U.P.-221002, now dead represented through LR. 1/1. Smt. Kamla Devi aged about 62 years w/o late Prahlad Prasad Yadav r/o S-2/617 C, Sikraul Post Cantt. Tehsil Sadar, Varanasi.

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 Ashutosh Shukla

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) The Hon'ble Tribunal may graciously be pleased to direct the respondents to arrange payment of all retiring and pensionary benefits to the applicant, as admissible to other departmental employees of the same group w.e.f. 1.5.2020 within stipulated period, benefits viz. pension, commutation of pension, gratuity, unavailed earned leave to be encashed, medical facilities and arrears of the benefits with 12% interest till the date of actual payment

of the aforesaid dues, as the applicant has been retired from 30.4.2020.

- 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 Ashutosh Shukla, learned counsel for 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 Sri Prahlad Prasad Yadav, who was the original applicant of this O.A., was initially appointed as 'Contingency Paid Chowkidar' under Senior Superintendent of Post Offices, East Division, Varanasi on 26.9.1989. 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 original 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. Unfortunately, the original applicant died on 24.3.2021 during pendency of this O.A., therefore, his wife, Kamla Devi, being his legal heir was impleaded as applicant in this O.A. vide order dated 6.8.2021.

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 30 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 27/9/1989 to 29.11.1989 i.e. for 02 months and 02 days at initial stage. 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 superannuation i.e. on 30.4.2020, 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. The applicant in para 4.28 of the O.A. has 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 discriminated and the same benefits have been denied to him without any cogent reason.

6. 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 for the applicant has relied upon the following judgments in support of his arguments -

- (i) O.A. No. 1626/05 – Shyam Lal Shukla Vs. U.O.I and Ors. decided on 28.7.2009 by CAT, Allahabad Bench”, affirmed in CMWP No. 60272/2009 and in SLP (C) No. 12664 of 2012.

- (ii) Chhangur Sharma Vs. Union of India and others (O.A. No. 332/2016 decided on 19th December, 2017 by CAT, Allahabad Bench.
- (iii) 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.
- (iv) 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.
- (v) Raj Narain Tiwari Vs. UOI and others in O.A. No. 66 of 2017, affirmed by CMWP No. 18579 of 2018 and further in SLP (C) Diary No. 32555 of 2019 on 27.9.2019.
- (vi) Gangadeen Vs. UOI and others in O.A. No. 500 of 2016 dated 13.9.17, affirmed by CMWP No. 62313/2017 further in SLP (C) No. 32562/2019 on 14.10.2019.
- (vii) Smt. Bhagyawati Srivastava Vs. UOI and others in O.A. No. 1359/2019 dt. 17.2.2021, which has been complied with in CCP No. 37/2021, as stated on 18.8.2021.
- (viii) Smt. Kusum Devi and another Vs. UOI and others in O.A. No. 1643 of 2011 dt. 25.10.2017 affirmed the order granting family pension in CMWP No. 15538 of 2018, affirmed in SLP (C) Diary No. 18832 of 2020 on 28.1.2021.

7. In the Counter Affidavit, filed by the respondents, it has been admitted that husband of the applicant, late Prahlad Prasad Yadav, was engaged as Contingency Paid 'Chowkidar' at Chaukhamba Post Office 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 superannuated on 30.4.2020 and he 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.

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 regularisation.

10. I have perused the judgments relied upon by Ld. Counsel for the applicant. **O.A. No. 332/2016 Chhangur Sharma Vs. Union of India and others (O.A. No. 332/2016)** was allowed by this Tribunal, directing the respondents 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.

11. 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.

12. In the counter affidavit filed by the respondents, it has been admitted that in compliance of the orders of this Tribunal passed in O.A. No. 1561 of 2016 and 1562 of 2016, some of CP employees of this division were given retiral service benefits at par with regular group 'D' employees.

13. Thus, in view of the fact that admittedly 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.

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

15. No order as to costs.

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

HLS/-