

RESERVED:

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
THIS THE 4th DAY OF AUGUST, 2006
Original Application o. 1331 of 1999

CORAM:

HON.MR.JUSTICE KHEM KARAN, V.C.

1. Bhanu prakash jain(after his death during pendency of OA)
Smt.Chandra Prabha Jain, a/a 60 Years, W/o Late B.P. Jain.
2. Pawan Kumar Jain,
a/a 33 years, S/o Late B.P. Jain
3. Jai Kumar Jain, a/a 28 years
S/o Late B.P. Jain
4. .Km.Bharti jain, a/a 16 years
D/o Late B.P. Jain

All resident of House No.122,
Hari nagar, Firozabad.

.. Applicants

(By Adv: Shri K.K. Mishra)

1. Union of India, through
Direcgtor General, Department
Posts, India, New Delhi
2. Chief Post Master General,
U.P. Circle, Lucknow.
3. Post Master General,
Agra region, Agra.
4. Superintendent of Post Offices,
Mainpuri Division,
Mainpuri

5. Post Master, Firozabad.

.. Respondents

(By Adv: Shri Saumitra Singh)

ORDER

JUSTICE KHEM KARAN, V.C.

Late Shri B.P. Jain filed this OA u/s 19 of A.T. Act 1985

with the prayer that the respondents be directed to pay him his pension with all arrears of pension from the date of retirement and to pay other retiral benefits as may be admissible to Group 'D' regular employees.

Connected vide
order dated 13.3.07
in order sheet


13/3/07

2. It is stated that he was initially appointed as Contingent paid Chowkidar in the year 1969 in Firozabad Head Post Office. Later on the post was redesignated as CP Farrash. He continued working as CP Farrash but was neither regularized nor conferred a temporary status. It is said that on the basis of certain directions issued by the Apex court, postal department framed a scheme where under all those casual employees working on 29.11.1989 were conferred a temporary status. He says that though several juniors to the applicant were granted temporary status w.e.f. 29.11.1989 vide memo No.A-5/CP employees/1991-92 dated 20.11.1991 but the benefit was not given to him. It is further stated in para 4(7) that at last he was also granted temporary status w.e.f. 10.1.1993 vide memo dated 4.1.1992(A-3). He complained against discriminatory attitude of the authorities (A-4). He retired on 14.7.1999 after attaining superannuation at the age of 60 years. Though provident fund was released vide order dated 6.8.1999 the rest of the claims admissible under the rules were however not released or given. According to him he is entitled to the pensionary benefits as he served the department for about 30 years and was also accorded a temporary status and according to the scheme he was to be treated at par with other regular employees of Group 'D'.

3. In their reply, the respondents have resisted the claim of the applicant for pensionary benefits on the grounds inter alia, that since applicant had not completed requisite period after having been conferred temporary status so was not entitled to pensionary benefits. They say that conferment of temporary status does not amount to a regular appointment and services of the applicant were never regularized. In his rejoinder the applicant has tried to say that after conferment of temporary status a casual labourer completing three years is to be treated at par with temporary status Group 'D' employees of the department.

4. During the pendency of this OA the original applicant B.P> Jain died and his legal representatives were substituted in his place.

5. We have heard Shri K.K.Mishra, appearing for the applicant and Shri Saumitra Singh for the respondents.

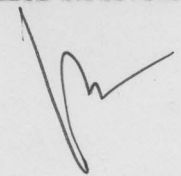


6. According to Shri Mishra Para 3(3) of Scheme dated 30.11.1992 (C.A-II), is clear on the point that an employee, having attained the status of temporary employee, is entitled to all the service benefits including pensionary benefits on completing 3 years of service with temporary status. On the other hand, Shri Saumitra Singh, argues that such pensionary benefits will be available as per rules, but only after regularization.

7. The Scheme evolved, pursuant to a decision of the Apex Court, is the same as contained in Annexure CA-1 and CA-II. A plain reading of C.A.-1 and CA-II, makes it clear that pensionary/terminal benefits as are admissible to regularly appointed Group 'D' employees, shall become admissible to the employees with "temporary status" but on completing three years with such new status and after regularization. There appears to be force in the argument of Shri Singh that under this Scheme of 1991-92, conferment of temporary status on a casual labourer, alone will not be sufficient to claim pensionary and terminal benefits and for that such employee must complete three years with temporary status and must be regularized.

8. But then the argument of Shri Mishra is that regularization was in the hands of employers and if they ignored it or willfully shelved it, till the superannuation of the applicant on 14.7.1999, he or his legal heirs should not be deprived of such benefits as they were not at fault. According to Shri Mishra, the applicant served the department for over a period of 30 years and it would be highly unjust to deny him or his family members the pensionary and other terminal benefits. Relying on a decision of Cuttack Bench in 'Rama Swamy Vs. Union of India & Ors reported in Administrative Law judgments 2005 (2) Page-242, Shri Mishra has gone to the extent to say that even service rendered as casual labourer has to be taken into account for purposes of pension.

9.. The contention of Shri Saumitra Singh is that the facts and circumstances of the case in hand are different and here the question has to be decided on the basis of the provisions contained in the Scheme of 1991-92. The learned counsel submits that regularization depended on several facts including on



availability of vacancies in Group 'D' and there is nothing on record to suggest that any junior to the applicant was regularized before his superannuation.

10. I have carefully considered the respective submissions. There is no dispute on the point that the original applicant served the respondents for over a period of 30 years. There is no successful denial of the fact that his juniors were accorded temporary status on 29.11.1989 (see para 4.6) and he was given that status w.e.f. 10.1.1993 (see para 4.7 of OA) even after 10.1.1993, he served with new status for more than 6 years. The original applicant has said in so many words (see paras 4.18, 4.19, of OA) that regularization was the matter which rested in the hands of respondents and he being illiterate, had no control over the same nor the means to know about all this.

11. What I consider just, the facts and circumstances of the case, is to ask the respondents to grant pensionary benefits/terminal benefits to the eligible applicants, if such benefits were given to any casual labourer, junior to the original applicant in that category and for doing the same to treat the original applicant as regularized one.

12. So this O.A. is finally disposed of with a direction to the respondents to give pensionary/ terminal benefits to applicant No.1 (widow of the deceased original applicant), if such benefits were made admissible to any of the junior to the applicant (late Shri Jain) and in order to do so shall treat him as regularized one. This exercise shall be completed within a period of four months, from the date a certified copy of this order is placed before them.

13. The applicants shall get Rs.2000/- as costs from the respondents.

Dated : Aug¹ 06

Uv/


VICE CHAIRMAN