

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD**

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**Original Application No. 458 of 2002**

Allahabad this the 22 day of 4 2010

**Hon'ble Mr. A.K. Gaur, Member (J)**  
**Hon'ble Mr. S.N. Shukla, Member (A)**

1. Bharat Ram, son of Jittu Yadav, C.P. Chaukidar, Aurihar, district Ghazipur.
2. Krishna Pandey, son of Hawaldar Pandey, C.P. Chaukidar, Barachawar, district Ghazipur.
3. Narsingh Ram, son of Ram Lal Chaudhary, C.P. Chaukidar, Bara, district Ghazipur.
4. Sumer Ra, so of Ujagir Ram, C.P. Chaukidar, Bhanwarkola, district Ghazipur.
5. Moti Lal Sharma, son of Raja Ram, C.P. Chaukidar, Dildarnagar, district Ghazipur.
6. Sheo Singh Yadav, son of Jagpat Singh Yadav, C.P. Chaukidar, Deokali, district Ghazipur.
7. Pursottam Singh, son of Late Vishwanath Singh, C.P. Chaukidar, Dharhani, district Ghazipur.
8. Parmanand Singh, son of Ram Badan Singh, C.P. Chaukidar, Gahmar, district Ghazipur.
9. Khedu Singh Yadav, son of Jagar Dev Yadav, C.P. Chaukidar, Gangauli, district Ghazipur.
10. Harinarain Singh Yadav, son of Patiram Yadav, C.P. Chaukidar, Jakhania, district Ghazipur.
11. Ramoo Singh Yadav, son of Rithaie Singh Yadav, C.P. Chaukidar, Mardah, district Ghazipur.
12. Parshuram Ram, son of Ram Kishore Ram, C.P. Chaukidar, Mohammdabad Yusufpur, district Ghazipur.
13. Ram Lal Singh Yadav, so of Parashuram Singh Yadav, C.P. Chaukidar, Nandganj, district Ghazipur.



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14. Rama Shanker Lal Srivastava, son of Sudarshan Lal, C.P. Chaukidar, Reotipur, District Ghazipur.
15. Biredra Kumar Shrotri, son of Sri Bhagwan Das, C.P. Chaukidar, Sadat, district Ghazipur.
16. Banvari Ram, son of Jay Mangal, C.P. Chaukidar, Sayadpur, district Ghazipur.
17. Sawarath Ram, son of Mahesh Ram, C.P. Chaukidar, Shadiabad, district Ghazipur.
18. Gopal Jee, son of Ram Dahin Ram, C.P. Chaukidar, Satramganj Bazar, district Ghazipur.
19. Parmeshwar Singh Yadav, son of Hari Mangal Singh Yadav, C.P. Chaukidar, Tarighat, district Ghazipur.
20. Prakash Singh, son of Saudagar Singh, C.P. Chaukidar, Tajpur Dehma, district Ghazipur.
21. Virendra Lal Srivastava, son of Ram Prasad Lal, C.P. Chaukidar, Usia, district Ghazipur.
22. Sheo Lakhan Singh Yadav, son of Sikthu Yadav, C.P. Chaukidar, Zangipur, district Ghazipur.
23. Awadh Narain Rai, son of Sri Ram Janam Rai, C.P. Chaukidar, Zamania RS, district Ghazipur.
24. Tulsi Ram, son of Videshi Ram, C.P. Chaukidar, D.O. Ghazipur, Peetnagar, district Ghazipur.
25. Shamim Ahmad Khan, son of Sagir Ahmad Khan, C.P. Chaukidar, Bahadurgaj, district Ghazipur.
26. Kashi Nath Ram, son of Harihar, C.P. Chaukidar, Karimuddinpur, district Ghazipur.
27. Ram Raj Ram Chauhan, son of Jogi Chauhan, C.P. Chaukidar, Dullahpur, district Ghazipur.
28. Ashok Kumar Srivastava, son of Sri Shanker Lal Srivastava, C.P. Chaukidar, Mubarakpur, district Ghazipur.

**Applicants****By Advocate: Sri Siddharth Verma****Vs.**

1. Superintendent of Post Offices, Ghazipur Division, Ghazipur.
2. Union of India, through Secretary, Ministry of Communication, Department of Post and Telegraph, New Delhi.

**Respondents****By Advocate: Sri R.K. Srivastava**

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## ORDER

### **By Hon'ble Mr. A.K. Gaur, Member (J)**

By means of the present O.A., the applicants are challenging the orders dated 18.01.2002 and 21.02.2002 passed by respondent No. 1 by means of which the services of the applicants No. 1 to 24 were de-regularized without affording any opportunity of hearing to the applicants. The applicants have sought the following relief (s): -

- (a) *quash the orders dated 18.1.2002 and 21.2.2002 passed by the respondent No. 1 (Annexure No. 1 & 2);*
- (b) *direct the respondents to regularize the services of the applicants and they may further be directed not to deduct a sum of Rs.500/- per month from the salaries of all the applicants on the pretext that they were illegally awarded bonus earlier;*
- (c) *direct the respondents that the illegally deducted sum of Rs.500/- per month from the salaries of the applicants for the last two years may be reimbursed to the applicants and the respondents may further be directed to pay yearly bonus to all the applicants from time to time as was done two years before to the applicants;*
- (d) *direct the respondents to treat the applicants as regularized employees in the department of post offices;*
- (e) *pass such other and further order which this Hon'ble Tribunal may deem just and proper in the interest of justice;*
- (f) *award cost of the application to the applicants."*

2. The facts of the case are that the applicants were appointed as casual labourers in different Post Offices of the district of Ghazipur. After engagement, the applicants had been assigned night duties, which started from 5 p.m. to 9 a.m. in the morning. The service conditions of the applicants were ordered to be governed by the instructions contained in D.G. Posts New Delhi Commn. No. 45-95/87-SPB. I dated 12.04.1991 (annexure-A). It is stated by the applicants that in accordance with the Judgment of the Hon'ble Supreme Court passed on 29.11.1989 and the instructions issued by the Postal department, the applicants were treated as temporary

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employees in Group 'D' cadre since 29.11.1989. The applicants were also given all the benefits, as enumerated in the Judgment, after they were being given the status of temporary employees on 04.10.1991 (Annexure-B) and on 03.05.1995 (Annexure-C). The Postal department also issued an order on 03.11.1992 in which all the benefits which could be given to a casual labourer, whose status was converted into Group 'D' temporary employees, have been mentioned. The applicants further stated that as it was the privilege of Group 'D' temporary employees to be regularized, the applicants No. 1 to 24 were also regularized on 10.10.1996 (Annexure-E) w.e.f. 29.11.1992, and have also got their monthly salaries plus bonus. However, all of sudden and just acting against the Judgment of the Hon'ble Supreme Court dated 29.11.1989 and also against several instructions, orders etc. issued by the Department of Post Offices from time to time, a notice was issued to all the applicants No. 1 to 24 that they were to be de-regularized and if they wanted to say something against the proposed action, they may give their replies. In pursuance to the notice issued to the applicants, they have submitted common reply, as exactly similar types of notices were issued to all the applicants. It is stated that without considering grievance of the applicants, their services were de-regularized and they were relegated to the post of temporary employees in Group 'D' cadre. Assailing the aforesaid impugned orders, the applicants have filed the present O.A.

3. The respondents have filed the Counter Affidavit. Their main plea is that since there was no vacant post of Chaukidar in the Ghazipur region hence applicant's regularization in Group 'D' cadre vide order dated 29.11.1992 was in violation of the instructions



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issued by the Director General dated 30.11.1992. It is stated that there was no provision in the aforesaid Memo dated 30.11.1992 of the Directorate that the Contingent Paid Chaukidar may be regularized without any clear vacancy in Group 'D' cadre. Regarding show cause notice vide memo dated 01.01.2000, the respondents submitted that the applicants were given opportunity to represent against the proposal of de-regularization and after considering their reply, it was found that the order dated 10.10.1996 was incorrect and hence the same was directed to be cancelled and accordingly the impugned orders were passed, which are just and proper and need no interference by this Tribunal. Regarding payment of bonus and its recovery, the respondents have submitted that since the regularization of the applicants in Group 'D' cadre was in contravention of the instructions hence the same was cancelled, and in pursuance of the impugned orders, the applicants are liable to refund the excess amount paid to them.

4. The applicants have filed the Rejoinder Affidavit, denying the contentions of the respondents. The applicants have submitted that for regularization there was no necessity of a vacancy. Since the applicants are doing the same job, which a permanent Chaukidar does, their services are to be regularized in spite of the fact that there may not be any vacancy in the permanent cadre, and regularization is not dependant upon any vacancy in the permanent cadre. It is stated by the applicants that they were entitled for the bonus and recovery of the same is illegal.

5. In reply to the Rejoinder Affidavit, the respondents have filed the Supplementary Counter Affidavit, and the applicants in reply



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thereof have filed the Supplementary Rejoinder Affidavit. No new facts have been narrated in both the affidavits. The respondents have filed Supplementary Counter Affidavit-II, and the applicants have also filed the Supplementary Rejoinder Affidavit thereto.

6. We have heard Sri S.K. Verma, Senior Advocate, assisted by Sri Siddhartha Verma, learned counsel for the applicants and Sri R.K. Srivastava, Addl. Standing Counsel appearing on behalf of the respondents. The applicants in compliance of the order-dated 07.04.2010, have filed the Written Arguments but no Written Arguments has been filed on behalf of the respondents.

7. The main case of the applicants are that their services were regularized by order dated 10.10.1996 in compliance of the directions contained in the Judgment of the Hon'ble Supreme Court in 1990 (*Supplementary*) SCC 113, *Jagrit Mazdoor Union (Regd.) and others vs. Mahanagar Telephone Nigam Ltd. And another*, and therefore, impugned orders passed by the respondents are in violation of the directions contained in the aforesaid Judgment and instructions issued by the Postal department from time to time. The respondents have come with the case that as there was no vacancy, the applicants were wrongly regularized. The plea of the respondents is that there was no provision in the aforesaid Memo dated 30.11.1992 of the Directorate that the Contingent Paid Chaukidar may be regularized without any clear vacancy in Group 'D' cadre. It is vehemently urged on behalf of the respondents that since there was no vacancy of Contingent Paid Chaukidar in Ghazipur, the order of regularization was wrongly passed by respondent No. 1. Regarding show cause notice vide memo dated

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01.01.2000, the respondents submitted that the applicants were given opportunity to represent against the proposal of de-regularization and after considering their reply, it was found that the order dated 10.10.1996 was not according to Rules and hence the same was directed to be cancelled and accordingly the impugned orders were passed, which are just and proper and need no interference by this Tribunal. We have also carefully perused the Judgments cited by the learned counsel for the applicants, as the same are quite distinguishable. The question of Regularization is no longer res-integra in view of the Constitutional Bench's decision reported in 2006 SCC (L&S) 753-*Secretary, State of Karnataka and others vs. Umadevi and others*. It is settled that regularization cannot be a mode of recruitment by any State under Article 162 of the Constitution of India. No appointment could be made in violation of statutory rules.

8. Learned counsel for respondents has also placed reliance on the decisions reported in: -

1. 2006 (1) SCC 667 *State of U.P. vs. Neeharj Awasthi*;
2. J.T. 2006 (2) SC 137 *U.P.S.C. vs. Girish Jayanti Lal Vaghela*;

It is further argued that a person who is not in service cannot claim the relief of regularization in view of the decision reported in 1998 (1) SCC 183- *Ram Chandra and others vs. A.D.M.*; J.T. 2007 (6) SC 56-*M.B. Khilare vs. State of Maharashtra*.

Learned counsel for the respondents would contend that a person might have continued to work for more than a decade under the garb of interim order is not liable to be regularized. In support of this plea, following decisions have been referred to: -

1. 2009 (3) SCC 250 *State of West Bengal vs. Banibrata*;

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2. 2007 (2) SCC 491 – Punjab Water Supply and Sewerage Board vs. Ranjodh Singh.

**It is further argued that an employee acquires right to be regularized according to rules and when there were no clear vacancies for the applicants, the order of de-regularisation has rightly been passed by the respondents.** In order to buttress the aforesaid plea, following decisions of Apex Court has been relied upon: -

1. 2009 (2) SCC (L&S) 387 State of Haryana vs. Shankuntala Devi;
2. 2007 (10) SCC 544 State of Manipur and another vs. KSH. MOIRANGNINTHOU SINGH AND OTHERS
3. 2007 (1) SCC 408 Indian Drugs & Pharmaceuticals Ltd. vs. Workmen

Learned counsel for the respondents would contend that in an exactly similar circumstance, the respondents passed order of regularization, subsequently the discrepancy was noticed and after giving show cause, the same was rectified. In support of this plea, the Judgment in the case of 2008 (1) SCC (L&S) 272 Secretary to Govt. vs. K. Kesavulu has been relied upon by the respondents. In view of the facts and circumstances discussed above and decisions relied upon by learned counsel for the parties, we are of the view that the respondents have passed the impugned orders dated 18.01.2002 and 21.02.2002 in just and proper manner.

9. Regarding payment of bonus and its recovery, the respondents have submitted that since the regularization of the applicants in Group 'D' cadre was in contravention of the instructions hence the same was cancelled, and in pursuance of the impugned orders, the applicants are liable to refund the excess amount paid to them. The applicants' case is that since they are working on the regular post in compliance of the order issued by the respondents themselves, and there is no mistake or fault committed

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by them. The amount in question has not been paid to the applicants because of their misrepresentation or concealment of facts. In view of following decisions of Hon'ble Supreme Court, the recovery is uncalled for: -

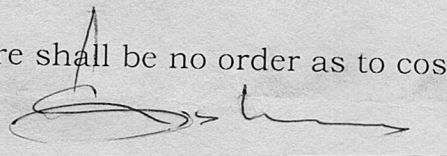
- (1). 2007 (1) SCC (L&S) 508 *Purshottam Lal and others vs. State of Bihar*;
- (2). 2006 SCC (L&S) 329 *Shushil & Ram Saran vs. I.G. Police*;
- (3). 1995 SCC (L&S) 248 *Sahib Ram vs. State of Haryana*;
- (4). 1994 SCC (L&S) 683 *Shyam Babu Verma vs. U.O.I.*
- (5). 2002 (3) SCC 302 *State of Karnataka vs. Bangalore University*

In our considered view, the applicants are not liable to refund the excess amount paid to them, as they have not committed any fault. This Tribunal also stayed the recovery of bonus amount paid to the applicants by order-dated 18.04.2002. Our view also gets support and strength from the aforesaid pronouncements of the Hon'ble Supreme Court. The respondents are not liable to recover the amount of bonus already paid to the applicants.

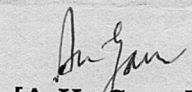
10. In view of the aforesaid observation, the O.A. is partly allowed in following terms: -

*"the amount of Bonus already paid to applicants need not be recovered and if it has been recovered, the respondents are directed to refund the amount within a period of four months from the date of receipt of a copy of this order."*

11. There shall be no order as to costs.



**[S.N. Shukla]**  
Member - A



**[A.K. Gaur]**  
Member-J

/M.M/