Central Administrative Tribunal Lucknow Bench Lucknow

O.A. 44/2006, 500/2005, 531/2005, 533/2005, 6/2006, 509/2006, 534/2005 480/2006, 97/2006, 45/2005 & O.A.No.358/2009

This, the 9th day of September, 2009

Hon'ble Ms. Sadhna Srivastava, Member (Judicial)

O.A. No. 44/2006

1. Sanjay Misra aged about 43 years son of late R.J. Mishra at present working as temporary status C.P.Chaukidar, Postal Dispensary-I, Hazratganj, Lucknow.

2. Vijay Kumar Sharma son of late S.D. Sharma at present working as Chaukidar, Postal Dispensary, No. II, Aishbagh, Lucknow.

3. Ravindra Kumar Srivastava son of Sri K.N. Lal Postal dispensary No. III, Chandganj, Lucknow.

4. Hirdaya Narain Dwivedi, son of late Jamuna Prasad , Postal dispensary No. III, Chandganj, Lucknow.

5. Satya Narain son of late Ram Din, Postal Dispensary No III, Chandganj, Lucnoow.

Applicants

By Advocate: Sri Surendran P

VERSUS

1. Union of India ,through the Secretary, Department of Posts, New Delhi.
2. Chief Post Master General, U.P. Circle, U.P., Lucknow.
3. Director of Postal Services, Lucknow Region, Lucknow.
4. Chief Medical Officer In-charge, Postal dispensary NO.1, Hazratganj, Lucknow.
5. Chlef Medical Officer In-charge, Postal dispensary No. 2, Aishbagh, Lucknow.
6. Chief Medical Officer, Incharge Postal Dispensary No.3, Chandganh, Lucknow
7. Director, Ministry of Personnel, Public Grievance and Pensions, Department of Personnel & Training, New Delhi.

Respondents

By Advocate: Sri Azmal Khan

O.A. No. 97/2006

1. Rajneesh Kumar Mishra son of late Kashi Prasad Mishra, at present working as Water Man.

2. Ram Naresh son of Sri Arjun at present working as Water Man

3. Smt. Shanti Devi w/o Sri Mangal at present working as Sweeper.

4. Smt. Laxmi Devi w/o Sri Bikanu at present working as Farrash.

5. Rajendra Prasad Tiwari son of Sri Ram Tiwari at present working as Chaukidar.

6. Mewa Lal son of Mangal at present working as Chaukidar.

7. Smt. Meena w/o late Najeer Ahmad at present working as Sweeper.

8. Ramesh Chand Bajpai s/o late Radhey Shyam Bajpai at present working as Water Man.

9. Matelu Prasad s/o Firai Prasad at present working as Chaukidar.

10. Shiv Kumar son of late Sant Ram at present working as Chaukidar

11. Siyanand son of Sri Sehaj Ram Yadav at present working as Chaukidar.

12. Ram Daur son of Sri Becha Ram at present working as Chaukidar

13. Mohd. Irfan son of late Ali Abbas, at present working as Chaukidar.

14. Chandra Mohan at present working as Farrash cum Water man

(All the applicants are working under the jurisdiction and direct control of Senior Superintendent of Post Offices, Lucknow).

Applicants

By Advocate: Sri Surendran P

VERSUS

1. Union of India ,through the Secretary, Department of Posts, New Delhi.
2. Chief Post Master General, U.P. Circle, U.P., Lucknow.
3. Director of Postal Services, Lucknow Region, Lucknow.
4. Senior Superintendent of Post Offices, Lucknow
5. Chief Post Master, GPO, Lucknow.
6. Senior Post Master, Head Post Office, Chowk, Lucknow.
7. Director , Ministry of Personnel , Public Grievances and Pensions, Departmnt of Personnel and Training, NewDelhi.

Respondents.

By Advocate : Sri K.K. Shukla

O.A. No. 358/2009

1. Ved Prakash Shukla aged about 40 years son of Sri Lakshmi Narain Shukla R/o E-158/1, LDA Colony, Sector 1, Kanpur Road, Lucknow.

2. Avsan Kumar aged about 44 years son of late Sri Barati Lal r/o Devpur, H.No. 548/101, Post Office, Rajajipuram, Lucknow.

3. Devi Gulam aged about 41 years son of late Sri Sukhdeen H.No. 388/19 Ga, Khariai, Sadatganj, Lucknow.

4. Ahmed Javed aged about 42 years son of late Sri Abdul Majid R/o 36, Ashoka Garden Faizabad Road, Lucknow.

5. Rajiv Narain Mishra aged about 45 years son of G.N. Mishra R/o 132, Bairooni Khandak , Lucknow.

6. Vijay Shankar Tewari aged about 43 years son of late Pyare Lai Tewari R/o 1/636, Vikas Nagar, Lucknow.

7. Om Prakash aged about 47 years son of Sri Devideen R/o Sri U.K.Sikadia, Post Purwaheer, District- Kanpur.

8. R.B. Singh, aged about 48 years son of Sri indra Raj Singh R/o Raipur Raja Itaunja, Lucknow.

9. B.R. Saini aged about 45 years son of B.L.Saini, R/o Ektapuram, Triveni Nagar, Sitapur Road, Lucknow.

10. Mohd. Shakeel aged about 40 years son of Mohd. Yaqoob Ahmed R/o Mohari Bagh, Kharika Telibagh, Lucknow.

11. Zahid Ali aged about 43 years son of Mohd. Ali R/o 150, Takia Ewaz Ali, Ghasiyari Mandi, Lucknow.

12. Ram Narain son of late Ram Sewak aged about 46 years r/o Madhuban Nagar, Alambagh, Lucknow.

13. Ashok Kumar Mishra son of Sri Shyam Shundar Mishra aged about 42 years r/op Jana Nagri, Jagat Narain Road, Lucknow.

Applicants

By Advocate: Sri A.Moin

VERSUS

1. Union of India ,through the Secretary, Ministry of Posts, New Delhi.
2. Chief Post Master General, U.P. Circle, U.P., Lucknow.
3. Superintendent Engineer (Electrical), Megh Doot Bhawan, New Delhi.
4. Executive Engineer (Electrical) Postal Electrical Division, Post Office Building, Sector C, Aliganj, Lucknow.

Respondents.

By Advocate : Sri A.P.Usmani

O.A. No. 500/2006

1. Shiv Kumar Verma son of Sri Sarvajeet Verma aged about 46 years r/o Village Badli Khera, P.O. Manas Nagar, District Lucknow (U.P.) presently employed as Chowkidar (Group D), in Aliganj P.O. District- Lucknow (U.P.)

Applicant

By Advocate: None

VERSUS

1. Union of India ,through the Secretary, Department of Posts, Ministry of Communication ,Dak Bhawan,New Delhi.
2. Chief Post Master General, U.P. Circle, Hazratganj., Lucknow.
3. Chief Post Master, Lucknow GPO, Lucknow-1.

Respondents

By Advocate: Sri A.K. Pandey for Sri G.K.Singh

O.A. No. 480/2006

1. Ram Ashish son of Sri Ram Pratap aged about 48 years resident of village Rampur Banipur, P.O. Rasoolpur, District- Ambedkar Nagar, presently working as Chowkidar, Tanda Ambedkar Nagar, U.P.

Applicant

By Advocate: Sri Dharmendra Awasthi

VERSUS

1. Union of India ,through the Secretary, Department of Posts, New Delhi.
2. Chief Post Master General, U.P. Circle, Lucknow.
3. Director, Postal Services, Lucknow Region, Lucknow.

4. Director, Ministry of Personnel and Training, New Delhi
5. Senior Superintendent of Post Offices, Faizabad.

Respondents

By Advocate: None

O.A. No. 531/2005

1. Sidh Nath son of Khushi Ram Shukla at present working as C.P.Chowkidar, Ehey Hospital Post Office- District- Sitapur.

2. Raja Ram son of Kashi Ram at present working as C.P. Chowkidar, Parsada Post Office, District- Sitapur.

3. Rajesh Kumar son of Shyam Manohar Lai Srivastava at present working C.P. Chowkidar, Mohali P.O. District- Sitapur

4. Ganga Sagar at present working as C.P. Chaukidar, Husainaganj, P.O., District- Sitapur.

Applicant

By Advocate: Sri Surendran P

VERSUS

1. Union of India ,through the Secretary, Department of Posts, ,New Delhi.
2. Chief Post Master General, U.P. Circle, U.P.., Lucknow.
3. Director of Postal Services, Lucknow Region, Lucknow.
4. Superintendent of Post Offices, Sitapur.
5. The Director, Ministry of Personnel, Public Grievance and Pension , Department of Personnel and Trg. New Delhi..

Respondents

By Advocate: Sri A.K. Pandey for Sri G.K.Singh

O.A. No. 533/2005

1. Bhola Nath son of Badri Prasad at present working as C.P. Chaukidar Divisional Office, Sitapur.

2. Ram Narain son of Nanhoo at present working as C.P. Chaukidar, P.O. Suraiya Raja Saheb, District- Sultanpur.

3. Udai Chand son of Chotey Lai at present working as C.P.Mali , Sitapur, Head Post Office, Sitapur.

4. Rajpal son of Sarju, C.P. Chaukidar, Kamlapur, District- Sitapur.

5. Brijesh Kumar at present working as C.P.Chaukidar, Aurangabad, P.O., Sitapur.

Applicant

By Advocate: Sri Surendran P

VERSUS

1. Union of India ,through the Secretary, Department of Posts, ,New Delhi.
2. Chief Post Master General, U.P. Circle, U.P.., Lucknow.
3. Director of Postal Services, Lucknow Region, Lucknow.
4. Superintendent of Post Offices, Sitapur.

5. The Director, Ministry of Personnel, Public Grievance and Pension , Department of Personnel and Trg. New Delhi..

Respondents

By Advocate: Sri S.P.Singh/ Sri A.K.Pandey for Sri G.K.Singh

O.A. No. 6/2006

1. Sri Bipin Kumar Srivastava aged about 40 years son of late Sri Sita Ram Srivastava, Casual Labour Pump Generator Operator , Office of Senior Superintendent of Post Offices, Faizabad at par temporary Group 'D'.

2. Smt. Vijai Laxmi aged about 39 years widow of late Sri Sunder Lal Rastogi Casual labour Waterman at par with temporary Group D Office of SSPOs, Faizabad.

3. Sri Ram Sunder Yadav aged about 40 years son of Sri Deokali Prasad Yadav, Casual Labour Waterman cum Mali temporary status at par with temporary Group 'D' Faizabad H.O.

4. Sri Chandra Bhan Tewari aged about 42 years son of Sri Ram Avadh, Casual Labour Chowkidar at par with temporary Group D, Faizabad Head Office,

5. Sri Surju aged about 35 years son of Sri Ram Deo Yadav waterman cum Gardner at par with temporary Group D Faizabad Head Office.

6. Sri Sadhu Ram aged about 35 years, Casual Labour chowkidar at par with temporary Group 'D' Office of SSPOs, Faizabad.

7. Sushil Kumar aged about 36 years son of late Sri K.N. Singh , Casual Labour Helper at par with temporary Group D, O/o SSPOs, Faizabad.

8. Sri Ram Narain Yadav aged about 55 years casual labour Chowkidar, temporary status at par with Group D, Head Post Office, Faizabad.

9. Basu Deo about 37 years son of Sita Ram C.P.Chowkidar cum Farras Office of SSPOs, Faizabad at par with temporary Group D.

10. Maiku Lal aged about 42 years son of Chhedan Lal Casual Labour Chowkidar, temporary status Patranga.

11. Muneshwar Prasad aged about 50 years son of Mahabir Yadav casual labour temporary Group D status, Chowkidar, Khajurahab, Faizabad.

12. Badri Singh casual labour at par with temporary Group D chowkidar Pallia (Kheri)

13. Raghunandan Prasad Casual Labour Group D at par with temporary Group 'D' Chowkidar Gola Gokran Nath Kheri.

Applicant

By Advocate: None

VERSUS

1. Union of India ,through the Secretary, Department of Posts, Dak Bhawan,New Delhi.
2. Superintendent of Post Offices, Kheri.
3. Senior Superintendent of Post Offices, Faizabad.
4. CPMG, U.P., Lucknow.

Respondents

By Advocate: None

O.A. No. 45/2005

1. Harendra Kumar son of Sri Bhola Ram Prajapati
2. Ramesh Chandra Tripathi son of late Madhuri Saran Tripathi.
3. Girja Dixit sonof late Lauhar Dixit.
4. Ganga Prasad Kanaujia son of Sri Chotey Lal Kanaujia.
5. Kailash Nath Srivastava son of late Kedar Nath Srivastava
6. Radhey Shyam son of late Sita Ram.
7. Munna Lal Kanaujia son of Sri Bhagwan Din Kanauja
8. Mahesh Prasad son of late Daya Shankar
9. Mohd. Islam son of late Mohd. Iqbal Hussain.
10. Mohd. Ismail son of late Waris Ali
11. Arvid Kumar Singh son of Sri Prabha Shankar Singh
12. Shiv Kumar son of late Vetan Lal
13. Jawaharlal Sharma son of late Ram Avadh Sharma

(All 1 to 13 applicants are at present working under the control of Superintendent , Circle Stamp Depo, New Hyderabad, Lucknow.

Applicant

By Advocate: Sri Surendran P

VERSUS

1. Union of India ,through the Secretary, Department of Posts, ,New Delhi.
2. Chief Post Master General, U.P. Circle, U.P.., Lucknow.
3. Director of Postal Services, Lucknow Region, Lucknow.
4. Superintendent , Circle Stamp Deop, New Hyderabad, Lucknow.
5. Chief Post Master, G.P.O., Hazratganj, Lucknow.
6. The Director, Ministry of Personnel, Public Grievance and Pension , Department of Personnel and Trg. New Delhi.

Respondents

By Advocate: None

O.A. No. 509/2005

Dwarika Prasad Shukla aged about 46 years son of Ram Lakhan Shukla Mail Man RMS 'O' Division, Lucknow 226004, R/o Village Shukla Ka Purwa, P.O., Kahi (S.O. Bhiti) P.S. Bhiti District- Ambedkar Nagar.

Applicant

By Advocate: None

VERSUS

1. Union of India ,through the Secretary, Department of Posts, Ministry of Communication, Dak Bhawan, Sansad Marg,,New Delhi-110001.
2. The Secretary, Govt.s of India, Ministry of Personnel, Public Grievance and Pensions, Department of Personnel and Trg., New Delhi-110001.

3. Chief Post Master General, U.P. Circle, U.P.., Lucknow.
4. D.P.S. (H.Q.) O/O C.P.M.G. U.P. Circle, Hazratganj, Lucknow-226001.
5. Senior Superintendent RMS 'O' Division, Lucknow.

Respondents

By Advocate: None

(534/2005)

1. Ram Kumar son of Sattallu at present working as C.P. Guest House attendant, Sitapur Head Post Office, Kanpur.

2. Rajendra Prasad son of Puran Lal at present working as C.P.Chowkidar, Sitapur City Post Office, Sitapur.

3. Asharfi Lal son of Budhar at present working as C.P.Chowkidar, Old Town Post Office,
Sitapur

4. Daya Ram son of Chedhu at present working as C.P. Chowkidar, Hampur Post Office, Sitapur.

Applicant

By Advocate: Sri Surendran P

VERSUS

1. Union of India ,through the Secretary, Department of Posts, ,New Delhi.
2. Chief Post Master General, U.P. Circle, U.P., Lucknow.
3. Director of Postal Services, Lucknow Region, Lucknow.
4. Superintendent of Post Offices, Sitapur.
5. The Director, Ministry of Personnel, Public Grievance and Pension , Department of Personnel and Trg. New Delhi.

Respondents

By Advocate: None

ORDER

BY Hon'ble Ms. Sadhna Srivastava, Member (J)

The above eleven original applications involve similar question of facts and law. Therefore, they are being decided by a common judgment.

2. The facts are that about eighty applicants in the above Original Applications were engaged as Casual Labour/ dally wager in or about the year 1980 and continued to serve as such without any security of service till the decision of Hon'ble Supreme Court in the case of ***Daily Rated Casual Labour Vs. Union of India and others , 1988 SCC (L&S), 138*** *and* ***Jagrit Mazdoor Union (Regd.) and others Vs. Mahanagar Telephone Nigam Limited and others 1990 (13) ATC, 768*** . In those cases, the Supreme Court directed the respondents i.e. Union of India to prepare a scheme on a rational basis for absorbing as far as possible the casual labourers who

have been continuously working in P&T Department. It was also directed that on completion of one year of continuous service with at least 240 days of work (206 days in the case of office observing 5 days week), they should be conferred temporary status. On rendering 3 years of continuous service with temporary status, they should be treated at par with temporary Group 'D' employees of Department of Posts and would thereby be entitled to certain benefits as are admissible to Group 'D' employee on regular basis. In compliance of these directions, a scheme known as Casual Labourers (Grant of Temporary Status and Regularization) Scheme was drawn by Department of Posts in consultation with the Ministries of Law, Finance and Personnel and with the approval of the President. It provided for conferment of temporary status on such casual labourers who have in employment on 29.11.1989 after one year of continuous service. On rendering 3 years continuous service after conferment of temporary status, they were to be treated at par with temporary Group 'D' employees for the purpose of contribution of General Provident Fund (GPF in short). They were made eligible for some other benefits as well. This scheme came into operation by means of a circular dated 12.4.91. By this circular, number of benefits were given to them including the benefits of GPF.

3. There is no denial of the facts that the applicants in the above OAs were granted temporary status on one year continuous service and thereafter given the status of temporary Group D employees more than 10 years prior to the introduction of New Pension Scheme. It is also relevant to mention that Rule 4 of GPC (Services) Rules, 1960 also provide that a temporary govt. servant shall subscribe to the fund.

4. The question which arises for consideration by this Tribunal is as to whether the New Pension Scheme is applicable to the applicants. The grievance raised by the applicants is that the said scheme has been made applicable to them by order of DOP&T dated 26.4.2004. The clause 5(i) and (ii) of the said letter read as under:-

(i) As the new pension scheme is based on defined contributions, the length of qualifying service for the purpose of retirement benefits has lost its relevance, no credit of casual service, as specified in para 5(v) , shall be available to the casual labourers on their regularization against Group 'D' posts on or after 1.1.2004.

(ii) As there is no provision of General Provident Fund- in the new pension scheme, it will not serve any useful purpose to continue deductions towards GPF from the existing casual employees, in terms of para 5 (vi) of the scheme for grant of temporary status. It is , therefore, requested that no further deductions towards General Provident Fund shall be effected from the casual labourers w.e.f. 1.1.2004 onwards and the amount lying in their General Provident Fund accounts , including deductions made after 1.1.2004 shall be paid to them."

5. The applicants have raised a grievance that their rights have been altered; that they have been deprived of benefits of contributing towards GPF which has been permitted by the decision maker and which they have enjoyed for over ten years in the past; that they could legitimately expect to be permitted to continue to enjoy the said benefits.

6. Thus, the inference from their pleadings is that they want to invoke the doctrine of legitimate expectation. The Apex Court has dealt with the doctrine of 'Legitimate Expectation' in three cases (1) ***Navjyoti Co-operative Group Housing Society and others Vs. UOI 1992(4) SCC 477 (ii) Food Corporation of India Vs. M/s Kamdhenu Cattle Feed Industries 1993(1) SCC 71 and (iii) National Buildings Constructions Corporation Vs. S.P.Singh and others, 1998 SCC (L&S) 1770.*** It has been held therein that the essence of doctrine of legitimate expectation is fair play in administrative action. The State cannot unfairly disregard its policy statements. The existence of legitimate expectation may have a number of different consequences and one of such consequences is that the authority ought not to act to defeat the legitimate expectation without some overriding reason of public policy.

7. In the instant case, the order dated 12.4.91 conferring the benefits on daily wage workers was passed in pursuance of the direction of Supreme Court as mentioned above and it was done in consultation with other allied Ministry. It had also approval of President. There is no material on record to show that the subsequent order dated 26.4.2004 has the approval of President and the allied Ministries which had been consulted earlier have been consulted while altering the earlier policy decision. Then the most important question is whether the earlier order conferring benefits on the applicants in compliance of to the direction of

Supreme Court can be altered without leave of Supreme Court. Thus, to my mind, the action of Govt. in altering the earlier decision cannot be allowed to stand.

8. It is also relevant to mention that a Division Bench in O.A. No. 2684/2004 presided by the then Chairman, Justice B. Panigrahi has already quashed the subsequent order dated 26.4.2004 relying on the judgments passed by Jaipur and Chandigarh Benches of Tribunal on the same subject matter. It has been observed in the judgment that the new pension scheme introduced w.e.f. 1.1.2004 cannot apply to those who have been appointed earlier.

9. Resultantly, I am of the opinion that the subsequent order dated 26.4.2004 which has been impugned in these cases is not applicable to the applicants. The instructions in the said order not to deduct the GPF amount from the salary of the applicants is hereby quashed. The Original Applications are accordingly allowed. The interim order operating in favour of the applicants is hereby confirmed. There will be no order as to costs.

(Sadhna Srivastava)
Member (J)

HLS/-