

Central Administrative Tribunal Lucknow Bench Lucknow

Original Application No.546/2006

This, the 3rd day of September, 2008

Hon'ble Mr. Shankar Raju, Member (J)

Hon'ble Smt. Veena Chhotray, Member (A)

1. Bhakta Bhadur Tamand s/o Bhim Bhadur aged about 50 years working as Cleaner in Operation Uttar Pradesh, GSI Sector E, Aliganj, Lucknow.
2. Dhan Bahadur Rai s/o A.R. Rai aged about 45 years working as Cleaner in Northern Region Office, GSI Sector E, Aliganj, Lucknow.
3. Raj Narain Pandey s/o Biswa Nath Pandey aged about 55 years working as Cleaner in Northern Region Office, GSI Sector E, Aliganj, Lucknow.
4. Arjun Chhetri s/o Laxmi Parsed Chhetri aged about 44 years working as Cleaner in Operation Uttar Pradesh, GSI Sector E, Aliganj, Lucknow.
5. Mohd. Sabir s/o Mohd. Jawwad, aged about 54 years, working as Cleaner in Operation Uttar Pradesh, GSI Sector E, Aliganj, Lucknow.

Applicant

By Advocate: Shri Amir Ahmad

Versus

1. Union of India through the Secretary, Department of Personnel and Training, Govt. of India, Loknayak Bhawan, Khan Market, New Delhi.
2. The Secretary, Ministry of Mines, Govt. of India Shastri Bhawan, New Delhi-110001.
3. The Director General, GSI, 27, Jawahar Lal Nehru Road, Kolkatta-700016.
4. The Dy. Director General, Northern Region office, GSI, Sector E, Aliganj, Lucknow.s

Respondents.

By Advocate: Shri Sunil Sharma

ORDER (ORAL)

By Hon'ble Mr. Shankar Raju, Member (J)

Heard the counsel .

2. Applicants who were initially under DOPT rules were appointed in Bhutan. On closure of the unit have been brought to India when they preferred a claimed for temporary status in O.A. No. 1031/1999 and O.A. No. 927/2002 before the Calcutta Bench of the Tribunal

which was disposed of on 12.11.2002, with a direction to the respondents to absorb all the applicants in the same capacity as they are working in Bhutan Unit as per DOPT rules. In other units of G.S.I. where vacancies are available in the order of their seniority. The applicants shall also be entitled to all admissible service benefits as per rules. In the wake of decision of Chandigarh Bench in the case of one Man Bahadur Kanti in O.A. No. 259/CH/2004 was disposed of on 1.2.2005 wherein directions have been issued to accord to the applicants on passing a fresh order by the respondents and thereafter consider the case of applicant for regularization of their services against Group 'D' posts. As a result thereof applicant No. 5 and other similarly circumstances have been given the benefits of grant of temporary status w.e.f 1.9.93 and other ancillary benefits of fixation of pay etc. and increments whereas in the case of applicants, temporary status was accorded only in 2003 and the regularization against Group 'D' was made only in 2005. This has an impact of applicants getting lesser pay and non fixation in appropriate grade and stage in the pay scale.

3. Learned counsel has also relied upon DOP&T O.M. dated 9.5.2008 wherein it has been decided that past cases in respect of pay fixation of casual labourers with temporary status would also be reviewed. We also find on record a communication of Ministry of Mines dated June 2008 where the decision of the Guwahati Bench when challenged in High Court of Judicature was directed to be implemented. Similar communication dated 23.11.2003 by GSI shows that the Tribunal's order of Chandigarh Bench dated 1.2.2005 has been implemented though a writ petition has been subjudice against it. In our considered view, which on perusal of the reply, shows that the request of the applicants to extend to them the benefits of decision of the Chandigarh Bench have been rejected only on the ground that it is not applicable. No reasons has been assigned an

rather in the Counter reply, we find that as the applicants were erstwhile engaged at Bhutan, the aforesaid service has not been reckoned for the purpose of grant of temporary status and regularization thereof at the appropriate time. In our considered view, the Calcutta Bench decision when protected the interest of the applicant by observing that service rendered in Bhutan was under DOP&T rules, non reckoning therefor would be an invidious discrimination to the applicants vis-à-vis others in violation of Articles 14 of the Constitution of India.

4. One of the grievance raised is also that GPF of the applicants was deducted from 1.1.96 which has been discontinued without any reasonable basis.

5. Learned counsel of respondents Shri Sunil Sharma states that the flood gate would open and there would be an anomalous situation would arise if the benefits are given to the applicants retrospectively. The above aspect of the matter is considered as the applicants by virtue of the decision of the Calcutta Bench have been entitled for protection of their rights to reckon their service in Bhutan as valid service. The ground of flood gate or chaotic situation cannot take away the valuable rights of applicants, as ruled by the Apex Court in **Coal India Ltd. V. Suraj Kumar Mishra**, 2008 (2) SCC (L&S) 321.

6. In the result, O.A. is allowed to the extent that the respondents shall now consider grant of temporary status to the applicants retrospectively, at par with their colleagues w.e.f. 1.1.93, and this would entail grant of consequential benefits as prayed for in para 8 of the O.A., within a period of three months from the date of receipt of copy of this order. No costs.


MEMBER (A)


MEMBER (J)

HLS/-