

Central Administrative Tribunal Lucknow Bench Lucknow.

Original Application No.431 of 2008

This, the 31st day of October, 2013.

HON'BLE SHRI NAVNEET KUMAR MEMBER (J)

1. Smt. Sabira, widow of Late Ali Husain, resident of Village and Post Office Machhrehta, District-Sitapur.
2. Alimuddin, aged about 19 years, son of Late Ali Husain, resident of Village and Post Office Machhrehta, District-Sitapur.

Applicants

By Advocate Sri Surendran P.

VERSUS

1. Union of India through Director General, 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.

Respondents

By Advocate Sri G. K. Singh.

(Reserved On 14.10.2013)

ORDER

By Hon'ble Sri Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act ,1985 with the following reliefs:-

- (i) To quash the impugned order dated 8.9.2008 contained in Annexure No. 1 to the original application.
- (ii) To issue a direction to the respondents to grant the family pension and other retirement benefits to the applicant No. 1.
- (iii) To issue a direction to give the appointment on compassionate ground to the applicant no. 2 on a suitable post according to his qualification.
- (iv) Such other/further reliefs as the Hon'ble Tribunal may deem appropriate in the facts and circumstances of the case may also be granted in favour of the applicants and against the respondents.
- (v) Allow the original application with cost.

2. The brief facts of the case are that the applicants are the wife and the son of the ex-employee who died on 5.12.2007. Soon after, the applicant No. 1 moved an application on 23.8.2008 for sanctioning of retrial dues and also to give an appointment on compassionate ground. Thereafter, the applicant No. 2 also moved an application on 30.9.2008 to give appointment on compassionate ground as he has



already passed 8th Examination. The respondents vide order dated 8.9.2008 rejected the claim of the applicant for disbursement of retrial dues and also for grant of compassionate appointment by means of a common order. Feeling aggrieved by the said order, the applicants preferred the present O.A.

3. The learned counsel for the applicant has categorically pointed out that after the appointment of the applicant on 6.2.1992 was granted temporary status in Group 'D' cadre and since 1992, till the date of death of the employee, he worked under the same capacity. Apart from this, the learned counsel appearing on behalf of the applicant has also pointed out that as per the order dated 6.8.2007, the applicant was confirmed with the temporary status in Group 'D' cadre on completion of three years continuous service from the date of conferment of temporary status and was treated at par with temporary Group 'D' employee w.e.f the date noted against their name. In the case of the applicant, the date which was mentioned against the name of the applicant is 29.11.1992. The learned counsel for the applicant has also relied upon certain decisions of the Tribunal passed in different OAs.

4. The learned counsel appearing on behalf of the respondents have filed their reply and through reply, it was pointed out by the respondents that the present O.A. is not maintainable in terms of plural relief as the applicant No. 1 is claiming for retrial dues where as the applicant No. 2 is claiming compassionate appointment. The learned counsel for the respondents has filed a copy of the Memorandum which deals with the Defendants of Casual Labourers conferred with Temporary Status not eligible for appointment on compassionate grounds. On the basis of the said OM, learned counsel for the respondents pointed out that since the ex-employee was granted temporary status, therefore, the applicant No. 2 is not entitled for grant of compassionate appointment. However, learned counsel

for the respondents also pointed out that since the employee worked as Chowkidar was not regularized on any departmental post as such, no retrial benefits like pension, gratuity is admissible to the applicant.

5. Learned counsel appearing on behalf of the applicant has filed rejoinder and through rejoinder, mostly the averments made in the O.A. are reiterated. It is once again submitted by the learned counsel appearing on behalf of the applicant that all those employees who have completed three years service are entitled to get the benefit of temporary status Group 'D' with all benefits of regular Group 'D' employees and the regular Group 'D' employees are entitled to get pension and all other benefits. Admittedly, the applicant was given temporary status Group D employees w.e.f. 29.11.1992 as such, he claims that he is also entitled to get all the benefits.

6. Learned counsel for the respondents has filed the supplementary counter reply in which the averments made in the counter reply were reiterated.

7. Heard the learned counsel for the parties and perused the record.

8. Admittedly, the applicant No. 1 is the wife of the deceased employee whereas, the applicant No. 2 is the son of the ex-employee. The ex-employee was engaged as Chowkidar on 1.8.1980 and subsequently, he was granted temporary status by means of an order dated 6.2.1992 w.e.f. 29.11.1989. Subsequently, by means of an order dated 6.8.2007 the applicant was conferred with temporary status of Group 'D' cadre after completion of three years continuous service from the date of conferment of temporary status from the date mentioned against the name of the ex-employee. The date which was mentioned was 29.11.1992 as such, the applicant was conferred with temporary status in Group D cadre. In compliance of the direction of the Ho'ble Apex Court, the respondents have drawn a scheme in consultation with the Ministry of Law, Finance and Personnel and

it was decided that the temporary status would be conferred on the casual labours in employment as on 29.11.1989 and who continue to be currently employed and have been engaged for 240 days. This scheme was known as Casual Labours (Grant of Temporary Status and Regularization) Scheme and this scheme was issued by the respondents vide their letter dated 12.4.1991. Para 8 of the said scheme reads as under:-

“After rendering three years continuous service after conferment of temporary status, the casual labourers would be treated at par with temporary Group ‘D’ employees for the purpose of contribution to General Provident Fund. They would also further be eligible for the grant of Festival Advance/Floor Advance on the same conditions as are applicable to temporary Group ‘D’ employee provided they furnish two sureties from permanent Govt. servants of this Department.”

9. Apart from this, the respondents have issued the circular in the month of November 1992. Para 3 of the said circular reads as under:-

“3. In compliance with the above said directive of the Hon’ble supreme Court it has been decided that the Casual Labourers of this Department conferred with temporary status as per the scheme circulated in the above said circular No. 45-95/87-SPB-I dated 12.4.1991 be treated at par with temporary Group ‘D’ employees with temporary with effect from the date they complete three years of service in the newly acquired temporary status as per the above said scheme. From that date they will be entitled to benefits admissible to temporary Group ‘D’ employees such as:-

1. All kinds of leave admissible to temporary employees.
2. Holidays as admissible to regular employees.
3. Counting of service for the purpose of pension and terminal benefits as in the case of temporary employees appointed on regular basis for those temporary employees who are given temporary status and who complete 3 years of service in that status while granting them pension and retirement benefits after their regularization.

4. Central Government Employees Insurance Scheme.
5. G.P.F.
6. Medical Aid.
7. L.T.C.
8. All advance admissible to temporary Group 'D' employees.
9. Bonus.

Further action may be taken accordingly and proper service records of such employees may also be maintained."

10. As mentioned earlier that after the order of Hon'ble Supreme Court a Scheme was formed for casual labours The said Scheme was drawn up by the Postal Department in consultation with the Ministries of Law, Finance & Personnel. The Scheme provides inter alia 'temporary status' should be conferred on casual labours in employment as on 29.11.1989 and continued to be employed on the said date and have rendered continuous service of at least one year. If an employee get the temporary status he should be entitled for minimum of the pay scale for a regular Group D including DA/HRA and CCA. One of the important feature of the Scheme which has relevance for the present controversy is that no recruitment from open market will be done till the casual labours were available to fill up the posts. The paragraph 17 of the Scheme is extracted hereunder below :-

"17. No recruitment from open market for group 'D' posts except compassionate appointments will be done till casual labourers with the requisite qualification are available to fill up the posts in question."

In term of the Post & Telegraphs Ministerial Manual Establishment

Rule 154 (a) which is quoted herein below :-

"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 establishment, should, for the present, be brought on to regular establishments of which they form adjuncts and should be treated as "regular" employees."

11. It is also seen from the record that as per the order dated 6.8.2007, the applicant was conferred with temporary status of Group D cadre after completion of three years continuous service



from the date of conferment of temporary status as shown against the name of the applicant and his name find place in the said list at serial No. 7. The learned counsel for the applicant has also relied upon the judgments of this Bench passed in O.A. No. 518 of 1996 and another O.A. No. 383 of 2003 wherein, similar issue has been decided. In the present case, I do not find any justified reason to take a different view. Having regard to the judgment rendered by the Hon'ble Apex Court as well as also the long period of the service of the applicant and adhering pragmatic approach, this O.A. deserves to be allowed. Apart from this, in the judgment of the Hon'ble Apex court dated 29.11.1989, the Lordship observed that "**after rendering three years of continuous service with temporary status, the casual labourers shall be treated at par with temporary Group D employees of the Department of Posts and would thereby be entitled to such benefits as are admissible to Group D employees on regular basis.**"

12. The learned counsel for the respondent also relied upon the circular dated 6th November, 1998 is in regard to appointment on compassionate grounds to the dependents of casual labourers conferred with temporary status. The said OM provides as under:-

"The matter has been examined in consultation with the DOP&T the nodal Ministry in this regard. The grant of temporary status to the casual employees is without reference to the availability of regular posts. Hence such casual employees are not entitled to the benefits as are admissible to regular employees holding Civil posts. The dependent of casual employees with temporary status are therefore not entitled to the benefit of compassionate appointment."

13. In compliance of the aforesaid orders of the Hon'ble Apex Court, it has been decided that the casual labourers of the respondents organization, conferment of the temporary status as per the scheme circulated be treated at par with Group 'D' employees after completion of 3 years of service.



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14. In view of the above, the present O.A. is maintainable. Accordingly, the impugned order dated 8.9.2008 contained in Annexure A-1 to the O.A. is hereby quashed to the extent of grant of pension only. The O.A. is partly allowed. The family pension should be computed by taking length of service as applicable to the temporary Group D employee shall be worked out and be paid to the applicant within a period of Three months from the date of receipt of copy of this order. As regards the grant of appointment on compassionate ground is concern the same shall be governed by the OM dated 6th November, 1998.

15. With the above observation, the O.A. is partly allowed. No order as to costs.

Navneet Kumar
(Navneet Kumar)
Member (J)

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