

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHO.A.NO.: 169 OF 2006

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[Patna, this 11th ~~December~~ ^{1st}, the ~~Wednesday~~ ^{Wednesday} Day of November, 2008]C O R A M

HON'BLE MS. SADHNA SRIVASTAVA, MEMBER [JUDL.]

HON'BLE MR. AMIT KUSHARI, MEMBER [ADMN.]

1. O. A. No. 169 of 2006Chamari Gope, son of Late Jugal Gope, village & P.O.- Islampur, Mohalla – Buddha Nagar, P.S.;- Islampur, District – Nalanda.APPLICANT.By Advocate :- Shri J.K.Karn.

Shri H.K.Karn.

Vs.

1. The Union of India, through the Secretary cum D.G., Department of Posts, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Bihar Circle, Patna.
3. The Director of Postal Services, O/o the Chief Postmaster General, Bihar Circle, Patna.
4. The Director Accounts [Postal], Exhibition Road, Patna.
5. The Superintendent of Post Offices, Nalanda Division, Biharsharif.
6. The Postmaster, Islampur Sub Post Office, Nalanda Division, Biharsharif.RESPONDENTS.

By Advocate :- Shri S.C.Jha, ASC.2. O. A. No.: 677 of 2006

Raj Kishore Prasad, son of Late Ram Narayan Prasad, village – Pipra Bazar, P.O.: Damodarpur, P.S.: Pipra, District – East Champaran.

.....APPLICANT.By Advocate :- Shri J.K.Karn.

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Vs.

1. The Union of India, through the Secretary cum D.G., Department of

Posts, Dak Bhawan, New Delhi.

2. The Chief Postmaster General, Bihar Circle, Patna.
3. The Director of Accounts [Postal], Exhibition Road, Patna.
4. The Postmaster General, Northern Region, Muzaffarpur.
5. The Superintendent of Post Offices, Champaran Division, Motihari.
6. The Inspector of Posts [South], Motihari.RESPONDENTS.

By Advocate :- Shri M.D.Dwivedi, ASC.

O R D E R

Sadhna Srivastava, M[J] :- With the consent of learned counsel for the parties, both these OAs have been taken up for final disposal at the stage of admission. We have accordingly heard the counsel for parties and have bestowed to our earnest consideration to the pleadings.

2. The factual matrices of the case, as brought out by the applicant of OA No. 169 of 2006, are that Chamari Gope initially engaged as contingent paid night chowkidar in the postal department during the year 1968-69. Thereafter, on completion of required number of working days he was granted temporary status vide order dated 28.01.1994 as contained in Annexure-A/1. After completing three years service as casual labourer with temporary status, the applicant was treated at par with temporary group 'D' employee by order dated 14.10.1996 w.e.f. 14.10.1994 [Annexure-A/2]. On attaining the age of 60 years the applicant was retired w.e.f. 13.12.2005 [Annexure-A/3]. After retirement the applicant filed a representation before the respondents for payment of retiral benefits.

3. The facts, as alleged in OA 677 of 2006, are that the applicant, Ram Kishore Prasad, was engaged as contingent paid night chowkidar on daily wages in 1982. He was granted temporary status vide order dated 23.12.1993 w.e.f. 29.11.1989. Thereafter, the respondent issued an order dated 11.06.2002 [Annexure-A/1] treating him at par with temporary group 'D' employee. On attaining the age of superannuation, i.e., 60 years he retired on 30.09.2006. The applicant has not been paid retiral benefits, hence this OA.



Reliefs claimed in both the OAs are for payment of retiral benefits including pension.

4. The respondents filed written statements in both the OAs stating therein that the applicants at the inception of their service were engaged on casual basis and after that temporary status was granted to them. Since they were not regularised, their claims regarding payment of retiral benefits are not tenable.

5. The primary question for our examination and consideration in both the cases relate as to whether casual labourers who were granted temporary status as-per-scheme are entitled for grant of pension and other retiral benefits in postal department. The learned counsel for the applicants heavily placed reliance on the judgment reported in 2005 [2] ATJ 242 [Rama Swami Vs. Union of India & Ors.] and contended that failure to regularise the applicants should not result in deprivation of pension at the end of the service.

6. In matter of pension, postal employees are governed by 'CCS [Pension] Rules, 1972'. Under Rule 2 of the Rules, it has been laid that the rules will be applicable to government servant appointed substantively to Civil Services, but shall not apply to person in casual and daily rated employment. Rule 13 deals with commencement of qualifying service. It says that qualifying service of a Govt. servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in officiating or temporary capacity provided that officiating or temporary service is followed without interruption by substantive appointment in same or another service or post. There~~fore~~^{fore}, ex facie it is clear that the person who has not been appointed against a regular post will not be deemed to be under the coverage of CCS [Pension] Rules, 1972.

The Apex Court in the case of Prabhu Narain & Ors. Vs. State of Uttar Pradesh [2004 (13) SCC 662] has observed that 'no doubt pension is not a bounty, it is valuable right given to an employee, but in the first place it must be shown that the employee is entitled to pension under a particular rule and the Scheme as the case may be.

7. Coming to the facts of the present case it is clear that both the



applicants have acquired temporary status and have put in ^{more than} _{three} years of continuous service, have been treated at par with temporary group 'D' employees for following purposes :-

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 service for those temporary employees who are given temporary status and who complete three years of service in that status while granting them pension and retirement benefits after their regularization.
4. Central Govt. Employees Insurance Scheme.
5. G.P.F.
6. Medical Aid.
7. L.T.C.
8. All advances admissible to temporary Group 'D' employees.
9. Bonus." ^{to}

8. The temporary status gives opportunity ^{to} _{of} a casual labourer to claim certain benefits which are available to regular temporary group 'D' employee. Admittedly, the applicants were not regularised although they were having temporary status. This operated as disability, in the matter of grant of pension because until regularised they would not have been entitled to pension.

9. Normally, if a person or a class of persons are not brought within the ambit of pension payment, it may not be possible for a Court, to direct that persons so excluded nevertheless will have to be brought within the coverage only for the reason that the court consider it just or equitable. A policy decision of the Govt. requires to be kept undisturbed, unless discriminatory. By getting a temporary status, the door is open to casual labourer for onward regularization and he gets certain benefits like pay, allowances, GPF, festival advance, etc. equal to counter-parts. But for certain



other benefits of substantive nature, he is obliged to wait.

9. The learned counsel for the applicant has argued that in the case of Rama Swami Vs. Union of India & Ors. [2005 (2) ATJ 242] the Chandigarh Bench of the Tribunal held that casual labourer having worked more than 20 years of service can not be denied pension at the end of service on the ground of non regularization. In a similar set of facts before Jodhpur Bench of Tribunal in OA No. 291 of 2003 [Santosh Vs. ICAR] the widow of deceased employee raised a grievance that family pension and other terminal benefits were being denied to her by the employer, i.e., ICAR on the ground that her deceased husband, Durga Lal was not holding a permanent status in service. CAT held that though her husband was not holding the permanent status in service, yet the applicant was entitled to the family pension and other benefits by treating him to have been regularised on the date of death. Aggrieved by the aforesaid judgment department filed a SLP before Supreme Court and the Supreme Court has held Tribunal's view erroneous as merely on the basis of length of service of her deceased husband on temporary status it cannot be deemed as if he had been regularised [Indian Council of Agricultural Research & another Vs. Santosh; 2007 (1) SCC (LSS) 394]. In view of the above legal position the applicants are not entitled to the benefits of pension.

10. The Five Members Bench of this Tribunal has also denied family pension to the widow of employee in OA No. 1722 of 2005 with other connected OAs [decided on 05.09.2007] on the same analogy that the family pension will not be admissible to the widow of deceased employee because the employee having been not regularised in the service.

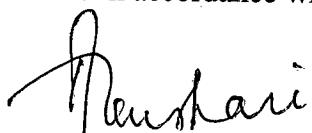
11. In view of the above legal position there cannot be any doubt that a person with temporary status is eligible for pension only if he has been regularised before retirement.

Resultantly, both the OAs fail and accordingly dismissed. No cost.

12. ^{pleadings} Before we part with, we may observe that although there is no proceeding in the OA about the arguments raised by the learned counsel for



the applicants at Bar that the applicants were entitled for terminal gratuity even if they were not entitled to pension. If so, they are given the opportunity to approach the department and the respondents are directed to consider the same in accordance with rules by means of a speaking order. No cost.



[Amit Kushari]/M[A]



[Sadhna Srivastava]/M[J]

skj.