

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH. PATNA.**

Date of order : 18.2.10

OA 523 of 05, OA 825 of 05, OA 68 of 06 & OA 104 of 06

C O R A M

Hon'ble Mrs. Justice Rekha Kumari, Member [J]

Hon'ble Mr. Sudhir Kumar, Member [A]

1. O.A. No. 523 of 05

Ram Vinay Dwivedi, S/o Late Ram janam Dwivedi, working under Sr. Postmaster, Head Post Office, Muzaffarpur, r/o village Madanpur, P.O Sisawa, via Rampur, P.S. Kalyanpur, District East Champaran and 20 other applicants.

....Applicants

By Advocate : Shri M.P. Dixit.

Vs.

1. The Union of India through the Secretary, Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel & Training, New Delhi.
2. The Director General, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
3. The Chief Postmaster General, Bihar Circle, Patna.
4. The Post Master General, Northern Region, Muzaffarpur.
5. The Director of Postal Services, Muzaffarpur.
6. The Superintendent, Postal Store Depot, Muzaffarpur.
7. The Senior Post Master H.O. Muzaffarpur.

....Respondents

By Advocate : Shri S.K. tiwary

With

2. O.A. No. 825 of 05

Sanjay Kumar Singh, S/o Shri Kaushal Kumar Singh, r/o Hathiya Kan Sarai, Post Sarai, District – Patna and 22 other applicants.

....Applicants

By Advocate : Shri M.P. Dixit

Vs.

1. The Union of India through the D.G. , Department of Posts, New Delhi.
2. The Chief Postmaster General, Bihar Circle, Patna.
3. The Director of Postal Services, O/o the Chief Post Master General, Patna.
4. The Chief Postmaster General, Bihar Circle, Patna.
5. The Director of Accounts [Postal] Exhibition road, Patna.

....RespondentsBy Advocate : Shri B.K. Prasad

With

3. O.A. No. 68 of 06

Sunil Prasad s/o Shri Sudama Prasad, r/o village – Satbhirwa, P.O & P.S Majhauria, District – West Champaran and 24 other applicants.

....ApplicantsBy Advocate : Shri J.K. Karn.

Vs.

1. The Union of India through the Secretary, cum D.G. , Department of Posts, New Delhi.
2. The Chief Postmaster General, Bihar Circle, Patna.
3. The Post Master General, Northern Region, Muzaffarpur.
4. The Superintendent of Post Offices, Champaran Division, Motihari.

....RespondentsBy Advocate : Shri S.C. JhaWith4. O.A. No. 104 of 06

Vijay Kumar Khatri, S/o Late Ram Nath Arya, r/o Mohalla – Panch near – Urdu School, P.S. Jahamabad, , at present working as Night Guard at Mahendru Post Office, Patna and 2 other applicants.

....ApplicantsBy Advocate : Shri J.K. Karn.

Vs.

5. The Union of India through the Secretary, cum D.G. , Department of Posts, New Delhi.
6. The Chief Postmaster General, Bihar Circle, Patna.
7. The Director of Postal Services, Bihar Circle, Patna.
8. The Superintendent of Post Offices, Patna Division, Patna.

...Respondents

By Advocate : Shri S.C. Jha.

ORDER

Justice Rekha Kumari, M [J]:- In the above four OA[s] common question of fact and law is involved. So, they have been heard together and are being disposed of by this common order.

2. It appears that in compliance with direction of the Hon'ble Supreme Court, a scheme, namely, Casual Labourers [Grant of Temporary Status and Regularization] Scheme was drawn up by the Department of Post in consultation with the Ministry of Law, Finance and Personnel, and the President was pleased to approve the said scheme. According to that Scheme, the temporary status would be conferred on the casual labourers in employment as on 29.11.1989 and who continued to be in employment on the date the scheme came into force, and had rendered continuous service of at least one year. After rendering three years continuous service after conferment of temporary status, they would be treated at par with temporary Group 'D' employees for the purpose of contribution of GPF etc. The scheme was circulated on 12.06.91.

3. There was, then, modification in the above scheme which was circulated on 30.11.1992, giving more benefits to the casual labourers on completion of three years' service in temporary status. In that modification, in compliance with the direction of the Hon'ble Supreme Court wherein it was held that after rendering three years of continuous service with temporary status, the casual labourers shall be treated at par with Group 'D' employees and would thereby be entitled to such benefits as are admissible to Group 'D' employees on regular basis, it was decided by the Department of Post that the casual labourers of the department conferred with temporary status, as per the scheme circulated, be treated at par with Group 'D' employees with effect from the date they complete three years of service in the newly acquired temporary status, as per the scheme circulated on 12.4.91. It is further mentioned therein that from that date such casual labourers will be entitled to benefits admissible to temporary Group 'D' employee. The benefits given by this amended circular has been enumerated, which, besides other benefits, include contribution towards GPF.

4. The case of the applicants is that as per the above scheme and after having completed three years of continuous service with temporary status, they have been granted the status at par with Group 'D' employees from the various dates as mentioned in the OA[s]. They were enjoying the facility of GPF deduction from their salary, but with the introduction of new pension scheme, though the

scheme is applicable to Central Government employees appointed on or after 01.01.2004, the authorities have stopped deducting the amount of GPF from different dates of the year 2005.

5. The claim of the applicants, hence, is that the O.M of DOPT dated 26.04.04 forwarded to the Department of Post's letter dated 29.04.05 and a similar letter dated 2.9.05 of Department of Posts placing them in the new pension scheme and ordering stoppage of deduction towards GPF from them and other orders of the authorities passed on the basis of the above letters may be quashed, and the respondents may be directed to continue deducting GPF amount from the applicants and to treat them entitled to pension against Group 'D' posts.

6. The respondents have filed Written statements and contested the applications. Their case, inter alia, is that the grant of temporary status and regularization of casual labourers formulated by the department vide letter dated 12.04.91 has been reviewed and modified in the light of the introduction of the new pension scheme in respect of the persons appointed to Central Government Service on or ^{after} ~~before~~ 01.01.2004 in consultation with DOPT [vide letter dated 02.09.05 of the Department of Posts equivalent to O.M dated 26.04.04 of DOPT] , and according to this modification , [i] as the new pension scheme is based on defined contribution, the length of qualifying service for the purpose of retirement benefits has lost its relevance. No credit of on casual service as specified in para

[v] shall be available to the casual labourers on their regularization against Group 'D' post on or after 01.01.04, [ii] as there is no provision of GPF in the new pension scheme, it will not serve any useful purpose to continue deduction towards GPF from the existing casual employees in terms of para [vi] of the scheme for grant of temporary status. No further deduction, hence, shall be effected from the casual labours with effect from 01.01.04 onwards, and the amount lying in their GPF shall be paid to them.

7. Their case, hence, is that in view of the above modification, further deduction towards GPF from the applicants has been stopped, and the amount lying in their GPF Account has been ordered to be paid. Their case also is that the applicants have not yet been regularized, and they would come under the new pension scheme on their regularization in Group 'D' posts.

8. The learned counsel for both the party were heard.

9. It is an admitted position that in the light of the judgment of the Hon'ble Supreme Court, the temporary status casual labourers after rendering three years of continuous service would be at par with temporary Group 'D' employee. It is also not disputed that the applicants except the applicant, namely, Pawan Kumar Singh of OA 523 of 05, after rendering three years of continuous service after conferment of temporary status, have been put at par with the temporary Group 'D' employee prior to 01.01.04. It is also not disputed that monthly deduction towards

GPF are being made from the applicants. It is also not disputed that the new pension scheme will not be applicable even to the temporary employees who have entered into service prior to 01.01.04. Therefore, when the applicants came at par with the temporary Group 'D' employee prior to 01.01.04, there is no reason why they would be deprived of the facilities they were already enjoying without their consent. This is also against the doctrine of legitimate expectation.

10. In this regard, the decision of Lucknow Bench of CAT dated 09.09.09 passed in OA 44 of 2006 along with several other OA[s], relating to same matter, may be referred to. Before the Lucknow Bench also, several OA[s] were filed to quash the DOPT O.M dated 26.04.04 on the ground as mentioned in the above cases before this Tribunal. The Lucknow Bench referring to the decision of other different Benches held that the action of the government in altering the earlier decision cannot be allowed to stand, and so quashed the instructions contained in O.M dated 26.04.04 not to deduct the GPF amount from the applicants therein. The above decision of the Lucknow Bench further shows that relying on the judgments passed by Jaipur and Chandigarh Bench of CAT, the Division Bench in OA 2684 of 04 had also quashed the order of DOPT dated 26.04.04 holding that the new pension scheme cannot apply to those who have been appointed earlier than 01.01.04.

In view of the above decision and specially when the applicants were.

at par with temporary Group 'D' employees since before 01.01.04, the new pension scheme cannot be made applicable to the applicants who have completed three years of continuous service prior to 01.01.04, after conferment of temporary status. The DOPT O.M dated 26.04.04 and the Department of Post's letter dated 02.09.09 and other directions of different local authorities so far the instructions contained therein not to make any deduction towards GPF from the applicants, hence, is hereby quashed, and the respondents are directed to continue to deduct the GPF from them. As regards quashing of the above O.M of DOPT and letter of Department of Posts, so far the pensionary benefits are concerned, as the applicants have not yet been regularized, the issue is premature and so no order in this regard is passed.

So far the applicant, Pawan Kumar of OA 523 of 05 is concerned, it appears that he acquired temporary status on 17.02.01, so, he had not completed three years of continuous service as temporary status casual labour before 01.01.04. Hence, his case is different from other applicants, and his case cannot be allowed.

12. It may further be mentioned that according to written statement filed in OA 523 of 05, the services of the applicants, namely, Sardar Devendra Singh, Sanjay Kumar Sinha, Arun Kumar Mishra, Lal Babu Singh, Asharfi Bhagat, Ram Sagar Sah have been terminated [besides Pawan Kumar]. and they have filed OA 5

[s] against termination of service. So, if they have not been relieved and are still continuing in service, the respondents would continue to deduct GPF from them also.

13. In the result, OA[s] , except in respect of Pawan Kumar, are allowed in the manner indicated above. The OA 523 of 05 in respect of Pawan ^{Kumar} is dismissed. No order as to the costs.

[Sudhir Kumar] M [A]

/cbs/

Rekha Kumari
[Rekha Kumari] M [J]