

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 26th day of August, 2010

ORIGINAL APPLICATION NO. 148/2009

CORAM

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER

Smt. Nirmala Sharma wife of Late Shri Ram Karan Sharma aged about 41 years, resident of Near Gunawalon Ki Haveli, Kota Junction, Kota (Rajasthan).

.....Applicant

(By Advocate: Mr. C.B. Sharma)

VERSUS

1. Union of India through Secretary to the Government of India, Department of Posts, Ministry of Communication and Information Technology, Dak Bhawan, New Delhi.
2. Postmaster General, Rajasthan Southern Region, Ajmer.
3. Senior Superintendent of Post offices, Kota Postal Division, Kota.
4. Director of accounts (Postal), Jaipur.

.....Respondents

(By Advocate: Mr. Gaurav Jain)

ORDER (ORAL)

The applicant is the widow of Late Shri Ram Karan Sharma has filed this OA thereby praying for the following reliefs:-

- "(i) That the entire record relating to the case be called for and after perusing same respondents may be directed to restore the family pension to the applicant from the month of October, 2006 with the further direction not to recover any amount on account of family pension paid to the applicant since 30.5.2001 to 30.09.2006 treating the late husband as deemed regularized by quashing memo dated 26.3.2009 with the notice dated 9.11.2006 (Annexure A/1 and A/7) with all consequential benefits.
- (ii) That respondents be further directed not to withdraw any benefits extended to the applicant after the death of her husband and allow to draw family pension as drawn upto 30.09.2006.
- (iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.

(iv) That the cost of this application may be awarded."

2. The grievance of the applicant in this case is regarding impugned order dated 26.03.2009 (Annexure A/1) whereby the representation of the applicant made pursuant to the direction given by this Tribunal in earlier OA No. 462/2006 decided on 24.11.2006 was decided whereby direction was given to the applicant to submit representation before respondent no. 2, who will decide the same within a period of one month from the date of the receipt of the representation. At this stage, it will be useful to quote the relevant portion of the impugned order, which reads as under:-

I have gone through the representation and relevant records carefully and dispassionately and found that Shri Ram Karan Sharma, late husband of Smt. Nirmala Sharma and the then Casual labour who was working as Chowkidar in Kota Dn. was conferred Group 'D' status with temporary status and before death he was not absorbed as regular employee. Therefore, no reason/ground was available to get pension and pensionary benefits on account of death. But all pensionary benefits were given to Smt. Nirmala Sharma erroneously. However, on detection of mistake pension payment was stopped and recovery of amount of Pension and pensionery benefits already paid was ordered. Her contention that she was not provided with the information regarding status of her husband in the department by the department is not tenable as there is no provision in the law/departmental rule to provide information regarding status of Govt. servant to his family members. Her contention that her husband was posted against regular Group 'D' post is also not correct as Shri Ram Karan Sharma was never posted as a regular Group 'D' employee. He was a casual labour and was working against the post of Chowkidar. He was, however, conferred Group 'D' with temporary status as mentioned in his service book which is the concrete evidence to prove status of the demise employee. Besides above, Shri Ram Karan Sharma was fully aware of his status as he applied several times to appoint himself as regular employee during his life time but due to lack of requisite qualification he was not brought on regular establishment at that time. This fact of temporary status of Shri Ram Karan Sharma as well as irregular payment of Pension and Pensionary benefits alongwith the fact that irregularity was detected at the time of considering Smt. Nirmala Sharma's case of compassionate appointment was also mentioned by the SSPOs Kota in the Show Cause Notice dated 09.11.2006. There is no

provision in the law/departmental rules to regularize the service of deceased employee as regular employee after his death and also the payment of Pension & Pensionary benefits on the ground that demise employee had left three daughters and particularly in this case when an employee with temporary status is not eligible for payment of family pension and pensionary benefits. Provisions of Rule 9 and Rule 70 of CCS (Pension) Rules, 1972 is not applicable in this case as Shri Ram Karan Sharma was a casual labour.

Based on the above facts, I do not find any reason to interfere in the matter and therefore reject the representation."

It is this order, which is challenged in this OA.

3. Respondents have filed their reply thereby justifying their action.
4. I have heard the learned counsel for the parties and have gone through the material placed on record. From the material placed on record, it is evident that husband of the applicant was a Casual labour Chowkidar with temporary status and his service was never regularized. Thus I see no infirmity in the reasoning given by respondent no. 2, as reproduced above, whereby it has been held that casual labour with temporary status is not entitled to the pensionary benefits and thus the widow of the applicant was not entitled to the payment of pension & pensionary benefits. The respondents have also explained the circumstances for issuing the show cause notice when such discrepancy came to the notice of the department. The question whether casual labourers with temporary status are entitled to pensionary benefits has been considered by the Apex Court in the case of **General Manager, North Western Railway & Others vs. Chanda Devi**, 2008 (1) SCC (L&S) 399 and it has been held that what was protected by conferring temporary status upon a casual employee was his service and by reason thereof the Pension Rules were not

made applicable to the workman so long as he is not absorbed in Government service. Even the learned counsel for the applicant does not dispute that pension rules are applicable to government servant and casual labour with temporary status cannot be termed to be a Government servant unless absorbed by giving regular appointment.

As can be seen from relief clause, as reproduced above, the applicant is claiming that directions may be given to the respondents to treat her husband as government servant by regularizing his service from back date. According to me, such course is not permissible, more particularly, in view of the law laid down by the Constitutional Bench of the Apex Court in the case **Secretary, State of Karnataka & Others vs. Uma Devi (3) & Others**, 2006 SCC (L&S) 753, the Apex Court in Para No. 53 has made the following observations:-

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [AIR 1967 SC 1071], R.N. Nanjundappa [1972 (1) SCC 409] and B.N. Nagarajan [1980 SCC (L&S) 4] and referred to in Para 15 above, of duly qualified persons in duly sanctioned vacant post might have been made and the employees have continued to work for ten years or more, but without the intervention of orders of the courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned post but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

5. As can be seen from the Para extracted above, the Apex Court has categorically held that regularization, if any already made, but not sub judice, need not be reopened based upon this judgment but there should not be further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme. Thus in terms of the law laid down by the Apex court in the case of Uma Devi's case, no direction can be given to regularize the service of the husband of the applicant from the back date, dehors the constitutional scheme as admittedly, the husband of the applicant was engaged as casual labour without following due process of selection and without advertisement of the post and thus has no right for regular or permanent employment. Thus according to me, the applicant is not entitled to any relief and OA deserves to be dismissed without any costs.

6. Before parting with the matter, it may be observed that the applicant was granted family and other retrial benefits on account of the mistake committed by the respondents for which the applicant cannot be held responsible. The applicant is a widow of a casual labour and might have spent the amount of pensionary benefits presuming that she was entitled to the same legally. Admittedly, the applicant did not know the implication of the undertaking given by her to the effect that if DCRG and pension of excess amount is paid to her, she will refund the same. Further undertaking given by the applicant was regarding excess payment of DCRG and pension amount whereas in the instant case, the applicant has been held not entitled to any amount of pension & gratuity. Admittedly, it is not a case of such nature where family pension and gratuity was paid in excess. In case

the husband of the applicant is held entitled to the pensionary benefits being a government servant, in that eventuality, no excess payment of gratuity and pensionary benefits has been given to the applicant. However, it is a case of such nature where husband of the applicant was not a government servant but was a casual labour with temporary status and thus not entitled to any amount of gratuity as well as pensionary benefits. Thus it is a case where the respondents should consider the matter regarding waiving of the excess amount of DCRG amounting to Rs.50,796/- and also family pension @ Rs.1480 + DA per month paid to the applicant w.e.f. 30.05.2001 to 30.09.2006 in the absence of any fraud attributed to the applicant. In the similar circumstances , the Apex Court in the case of **Paras Nath Singh vs. State of Bihar & Others**, 2009 (2) SCC (L&S) 198 has set aside the order of Hon'ble High Court upholding the recovery @ Rs.5000/- from the salary of the applicant. Even the Apex Court in the case of Chanda Devi (supra) while holding that Casual labour with temporary status are not entitled to pensionary benefits, however, in exercise of power conferred under Article 142 of Constitution of India directed that in case respondent no. 1 before the Apex Court has been given any benefit including the benefit of family pension, the same shall not be recovered. On the same parity, the case of the applicant for waiver of gratuity as well as pensionary benefits is required to be considered by the respondent no. 2. I wish to clarify that since the apex Court in the case of Chanda Devi has given such direction in exercise of power under Article 142 of Constitution of India, as such no positive direction can be given by this Tribunal regarding waiver of gratuity amount and pensionary benefits, as power of Article 142 of Constitution of India can

only be exercised by the Apex Court and not by other courts or Tribunals.

7. For the foregoing reasons, the OA is disposed of with no order as to costs.



(M.L. CHAUHAN)
MEMBER (J)

AHQ