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**CENTRAL ADMINISTRATIVE TRIBUNAL,  
CHANDIGARH BENCH,  
CHANDIGARH.**

O.A.No.060/00892/2014

Date of Decision : 14.8.2015  
Reserved on : 10.08.2015

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, JUDICIAL MEMBER  
HON'BLE MRS. RAJWANT SANDHU, ADMINISTRATIVE MEMBER**

Makhan Singh, son of Sh. Ralla Singh, resident of VPO Wada Rayya Kallan, Patti Chhinewal, Tehsil Baba Bakala, District Amritsar.

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Applicant

Versus

1. Union of India through the Secretary, Ministry of Information & Technology, Department of Posts, Dak Bhawan, New Delhi.
2. The Post Master General, Punjab West Region, Sector 17, Chandigarh.
3. Senior Superintendent of Post Offices, Amritsar, District Amritsar.

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Respondents

Present: Mr. Gagneshwar Walia, counsel for the applicant  
Mr. Ram Lal Gupta, counsel for respondents

**ORDER**  
**HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)**

1. This is the second round of litigation regarding the claim of the applicant for regularization of his services as Chowkidar. Earlier the applicant had filed OA No.847/PB/2012 seeking the following relief:-

“The impugned order Annexure P-5 dated 16.4.2012 may be quashed and the respondents be directed to regularize the services of the applicant on the post of Chowkidar and thereafter release all the retiral benefits of the applicant including pensionary benefits, GPF, Gratuity, LTC, Leave Encashment, medical allowance at par with regular Group D employees alongwith interest @ 18% from the date it has become due.”

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● The OA was disposed of with the following directions:-

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8. Having heard the learned counsel for the parties, we are of the view that the respondent department has taken a hyper technical view of the matter rejecting the representation of the applicant only on the ground that the same has been filed belatedly. Such disposal does not satisfy a representationist. Justice should be seen to be done and it should be the endeavour of the Department to ensure that the applicant is provided a reasoned and speaking order in response to his representation which was received by the Department on 16.2.2012.
9. As such, the respondent No. 2 is directed to decide the representation of the applicant as submitted on 16.2.2012, in accordance with law and rules, through a reasoned and speaking order within a period of sixty days from the date of receipt of a certified copy of this order by respondent No. 2, and copy of decision may also be communicated to the applicant."

As a follow up to this order dated 22.04.2014, the matter was decided by the respondent Department vide Memo dated 02.07.2014 (Annexure P-6). Now the applicant has again filed the present OA seeking the same relief as was sought vide OA No.847/PB/2012 as detailed in para 1 above.

2. In the grounds for relief, it has been stated as follows:-

- (i) The applicant has put in more than 20 years of service and was granted temporary status at par with Group-D employees. The Hon'ble Supreme Court had passed the Judgment dated 29.11.1989 i.e. Jagrit Mazdoor Union (Regd.) Vs. Maha Nagar Telephone Nigam, reported 1990(1) SLR 839 pursuance to which the respondents have framed a scheme known as Casual Labourers (Grant of Temporary Status and Regularization) Scheme. This scheme was formulated in pursuance of the directions of the Hon'ble Apex Court in consultation with the Ministry of Law, Finance and Personnel. As per the scheme, temporary status would be conferred on casual labourer in employment as on 29.11.1989 and who continued to be currently employed and have rendered services of at least one year during the year they must have been engaged for a period of 240 days. According to the scheme and in terms of the Supreme Court judgment in the above mentioned case after

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rendering 03 years of continuous service with temporary status, the casual labourer shall be treated at par with Group-D employees of Department of Posts and would thereby be entitled to such benefits as are admissible to Group-D employees on regular basis (Annexure P-7). Para 12 of the judgment deals with the said issue. It is further stated that in terms of the Supreme Court judgment and also in terms of the Casual Labourers (Grant of Temporary Status in Regularization) Scheme, the applicant was granted temporary status w.e.f. 30.10.1998 and thus was to be treated at par with regular Group-D employees on regular basis. Hence, in this view of the matter, the applicant is legally / statutorily entitled to the payment of retiral benefits by treating him as a regular employee for all intents and purposes and thus the impugned order passed by the respondent is totally arbitrary and illegal and against the judgment of the Hon'ble Supreme Court and the Scheme framed by the respondents.

- ii) The respondents have wrongly characterized the applicant to be a casual employee not holding any post in accordance with any statutory rules. After the grant of temporary status, the applicant is entitled to be considered at par with Group-D employees for all intents and purposes including the grant of pensionary retiral benefits. Further more CCS (Pension Rules) would be applicable to the applicant and the applicant cannot be termed to be a casual employee by any stretch of imagination. Perusal of the applicability of the CCS (Pension) Rules clearly provide that persons paid from contingencies or persons in casual / daily rate employment are not eligible for grant of pensionary benefits but in the present case the applicant has attained temporary status Group-D employee under the casual Labourers (Grant of Temporary Status in Regularization) Scheme. Hence, he would be entitled to the benefit of pension in view of the deemed parity with regular Group-D employees. Thus, the impugned orders passed by the respondents is totally arbitrary and illegal, against the statutory rules, hence liable to be set aside.
- iii) It has been authoritatively laid down by the different Benches of Central Administrative Tribunal as well as by different High Court Benches and Supreme Court that a postal employee who has been granted temporary status in terms of the scheme formulated by the Department of Posts in pursuance to the compliance of the order of the Hon'ble Supreme Court in Writ Petition No.1276 of 1986 are entitled to the benefits of pensionary benefits by treating them as regular employee for all intents and purposes. A compilation of the orders / judgments are herein after provided.

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- a) Ram Narain Versus Union of India decided by CAT Lucknow Bench OA No. 383 of 2003 decided on 22nd September, 2011, wherein the said case similarly situated employee was claiming the benefit of pension after rendering service of about 20 years on the ground that he was granted temporary status and thus is entitled to be treated at par with Group-D employees after completion of 03 years of temporary status service. The OA was allowed by the C.A.T. Lucknow Bench and the pensionary benefits were granted to him after relying on the judgment of the Hon'ble Supreme Court in Jagrit Mazdoor Sabha's case (supra) and further placing reliance on various other orders passed by different Benches of CAT. Copy of the order dated 22nd September, 2011 is annexed as Annexure P-8.
- b) More similar orders have also been passed by the C.A.T. Allahabad Bench on 21.07.2000 in OA No. 518 of 1996 and on 02.09.2005 in OA No. 917 of 2004. Both these orders of the C.A.T. have been compiled with and the applicants have been granted the pensionary benefits by treating them at par with departmental Group-D employees and relying on Clause 154 of the manual.
- c) Furthermore in OA No. 917 of 2004 of C.A.T. Allahabad Bench vide order dated 02.09.2005 similar relief was granted to similarly situated employee and the writ petition filed before the High Court against the same was dismissed and the SLP before the Supreme Court was also dismissed. Furthermore the Allahabad HC has also held that the Group-D temporary status employees are entitled to pensionary benefits vide reported in 2013(4) LLJ 741 i.e. Parshuram Yadav vs. UOI Copies of the orders/judgments are annexed as Annexure P-9 (Colly).
- d) Furthermore, the Hon'ble Delhi High Court in case of Prem Chand Vs. UOI, decided on 13.03.2013 has specifically recorded that various Benches of C.A.T. have directed and ordered pension to be paid to the employees or their widows who have acquired temporary status by holding them entitled to be treated as regularized in service in terms of circular dated 12.04.1981(Annexure P-10). Furthermore, the Allahabad High Court in the case of UOI Vs. Sham Lal Shukla has specifically dealt with the issue which the applicant is agitating before this Court..In the said case, the Hon'ble High Court has specifically dealt with the scheme for casual labourer (Grant of Temporary Status in Regularization) and

after placing reliance on paragraph 17 of the said scheme along with the Post and Telegraph Ministerial Manual Establishment (A) has specifically held that the ambit of the above said rule clearly spells out its essential purpose i.e. to give pensionary benefits to certain class of employees as regular employees notwithstanding the fact that no formal order of regularization was passed. Therefore, the action of the respondents in not granting the benefit of pension to the said similarly situated employee was held contrary to the scheme and the rules and he was held entitled to be granted the benefit of pension by treating him as a regular employee even though no formal order of regularization was passed in his favour. Copy of the said judgment of the Hon'ble Allahabad High Court is annexed as Annexure P-11. Thus, all the orders/judgments as narrated above duly covers the case/relief of the applicant on all four corners and the impugned order which have been passed by respondent no. 2 is totally arbitrary, illegal, against the statutory rules and against the law settled by the various Courts and Tribunal in this regard.

iv) The Hon'ble Punjab and Haryana High Court in case titled Rakha Singh Vs. State of Punjab in CWP No. 7780 of 2004 has specifically held that temporary P.R. Chowkidars to be entitled to pensionary benefits at par with regular employees on the ground that they have put in large number of years and have been treated to be regular employees by the Govt. (Annexure P-13). The judgment is applicable to the facts & circumstances of the present case as the applicant after having put in more than 20 years of service has not been regularized even though various policies were issued by your department from time to time. Similarly, in CWP No. 16786 of 2001 decided on 05.12.2002 the Hon'ble High Court has granted retiral benefits to persons whose services were not regularized on the above said corollary. Hence, the impugned order is totally arbitrary and illegal and not sustainable and liable to be set aside.

3. In the written statement filed on behalf of the respondents, the facts of the matter have not been disputed. The background of the whole matter regarding implementation of the Casual labourers (Grant of Temporary Status in Regularization) Scheme has been discussed. It has further been stated that the applicant contended that he was working as Part Time Chowkidar at Rayya Post

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Office and had put in more than 20 years of service and has claimed to be treated a regular employee for all intents and purposes after conferment of 'Temporary Status'. The applicant has also claimed that the post on which he was working was a regular and permanent one and even otherwise he had been treated to be at par with regular employees with regard to grant of pay scale, increments and other service benefits and hence could not be discriminated on the verge of his retirement for payment of his retiral benefits. However, paras 7 & 16 of the Scheme state that Conferment of Temporary Status does not automatically imply that the casual labourers would be appointed as regular Group 'D' employee within any fixed time frame. Appointment to Group 'D' vacancies will continue to be done as per the extant recruitment rules, which stipulate preference to eligible ED employees. The conferment of temporary status has no relation to availability of sanctioned regular Group-D posts. A casual labourer holds neither regular nor temporary post. The term "temporary service" has no similarity with the term and concept of "temporary status". The term "temporary status" has been used for the first time in the Scheme dated 12.04.1991 that was prepared on the directions issued by the Hon'ble Supreme Court and is not a piece of legislation framed under the proviso to Article 309 of the Constitution of India.

4. It is further stated that before the provisions of the Leave Rules or Pension Rules, FRSR etc. could be invoked and made applicable, the minimum requirement to be satisfied is that an employee should be a "Government

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● Servant". The basic question which arises for consideration is whether a person in casual service or a daily rated or part time employment with or without conferment of temporary status as provided in the Scheme dated 12.04.1991 could be termed as a 'Government Servant'. The Central Civil Services (Leave) Rules, 1972 are applicable only to Government Servants appointed to the civil services and posts in connection with the affairs of the Union. These Rules specifically exclude persons in casual or daily rated or part time employment.

Similarly, the provisions of Central Civil Service (Temporary Service) Rules, 1965 are applicable to a person who holds a civil post. The provisions of Central Civil Services (Pension) Rules, 1972 are also applicable to Government servants including civilian Government servants in the Defence services appointed "substantively to civil services and posts in connection with the affairs of the Union". These Pension Rules are not applicable to persons in casual and daily rated employment". As per the aforementioned Rules, whether it is pension rules or leave rules, one factor is common i.e. the official should be appointed to civil services and posts in connection with the affairs of the Union. Under the Articles 309 and 311 under Part XIV of the Constitution dealing with the services under the Union and the States also, the word "post" in connection with the affairs of the Union or of any State as well as civil posts has been used. The moot question is whether a casual labourer could be said to be holding a civil post or could be said to be in employment in connection with the affairs of the Union. It is a known fact that the casual labourer does not hold any post much less a civil post. He is not employed against any sanctioned post. Moreover, he is not paid

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from the allocations made against sanctioned strength. The nomenclature itself shows that he remains a casual labourer. Mere grant of temporary status under the Scheme prepared and notified on the directions issued by the Hon'ble Supreme Court does not change the colour and status of a casual labourer and clothe him as "Government Servant".

5. In the rejoinder filed on behalf of the applicant, reliance has been placed in the case of "Kewal Singh Vs. State of Punjab", in CWP No.4867 of 2000, decided on 05.09.2002, wherein para 7 reads as follows:-

"In the present case, the petitioner has admittedly served the department for more than 15 years. Apparently, there was nothing against him which may disentitle him to get pension. The mere failure of the Government to sanction a regular post should not result in deprivation of the pension at the end of service."

6. Arguments advanced by the learned counsel for the parties were heard when they reiterated the content of the OA, rejoinder and the written statement respectively.

7. We have given our careful consideration to the matter. It is seen that the applicant was conferred Temporary Status in 1988 and thereafter he continued as such for 20 years before being discharged from service on completion of 60 years of age on 13.12.2008. There is ample case law to support the claim of the applicant for pension even though he was not regularized while in service ostensibly due to non-availability of regular posts as stated by the respondents in the written statement. Kewal Singh (supra) appears to be squarely applicable in the matter. Moreover in a matter relating to the

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Chandigarh Administration in "UT Chandigarh & Ors. Vs. Sampat & Ors." decided on 03.04.2014, the Apex Court had directed that daily wage / work charge staff who had continued to serve the Chandigarh Administration / Municipal Corporation for long periods of time and whose services have not been regularized during their service due to non-availability of regular posts should be deemed to be regularized on the date of superannuation and be allowed pension thereafter. The present case merits similar treatment. Hence, the respondents are directed to treat the applicant as having been regularized in service w.e.f. 13.12.2008 and he may be paid pension as per his entitlement thereafter. Action in this regard may be completed within three months from the date of receipt of a certified copy of this order being served upon the respondents.

8. No costs.

(RAJWANT SANDHU)  
ADMINISTRATIVE MEMBER.

(SANJEEV KAUSHIK)  
JUDICIAL MEMBER

Place: Chandigarh  
Dated: 19.8.2015

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