(Reserved on 05.10.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Original Application No. 330/00464/2011

This the ***11th*** day of ***October, 2018***

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)

1. Phoolwati Devi, Wife of Lazman Prasad
2. Ravi Kant Son of Laxman Prasad.

   Both resident of Village – Dhaurahara, Post Office – Karmu, District-Sonbhadra.

.....Applicants

By Advocate: Shri Vinod Kumar

Versus

1. Union of India through Secretary, Tele Communication, Postal Department, Dak Bhawan, New Delhi.
2. The General Manager, Dak Life Insurance Office of Chief Post Master General at Lucknow.
3. Superintendent of Post Office, Mirzapur Division, Mirzapur.

.....Respondents

By Advocate : Shri Ram Pal Singh

O R D E R

DELIVERED BY:-

HON'BLE MR. GOKUL CHANDRA PATI, (MEMBER-A)

The facts of the case in brief as per the OA, are that the late husband of the applicant No. 1 (hereinafter referred to as ex- employee), who was granted temporary status w.e.f 29.11.1989 vide order dated 28.08.1991 (Annexure A-2) died on 24.05.2002. Prior to his death the ex-employee subscribed a Postal Life Insurance amounting to Rs. 50,000/-.

2. After death of ex-employee, the applicant No. 1 submitted a representation (copy enclosed as Annexure A-6) to the respondents for release of settlement dues of her husband as well as the amount of insurance. The applicant submitted another representation dated 02.07.2002 (Annexure A-7) before the Superintendent of Post Offices, Mirzapur for appointment of

compassionate grounds, which was rejected vide impugned order dated 10.07.2002 (Annexure A-1) on the ground that there is no provision for grant of compassionate appointment to the wards / widow of the CP Chaukidar. However, in pursuance to letter dated 11.10.2002 (Annexure A-8), the applicant again submitted an application alongwith requisite documents for compassionate appointment. A letter dated 15.02.2005 (Annexure A-10) was also issued seeking no objection as well as guardian certificate of applicant No. 2 for release of insurance amount of Rs. 50,000/- which were submitted vide Annexure A-11 and A-12. A succession certificate dated 20.12.2008 (Annexure A-14) was also filed by the applicant. The applicant has also submitted an application followed by reminder dated 30.10.2009 (Annexure A-15) for redressal of the grievance, but having received no response from the respondents, the applicants have filed the instant OA for the following main reliefs: -

> "i. to issue an order/direction in the suitable nature quashing the impugned order dated 10.07.2002 as passed by the respondent no. 3 i.e. Superintendent of Post Office, Mirzapur Division, Mirzapur (Annexure No. A-1) to Compilation No. I).
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> ii. to issue an order or direction in the suitable nature of mandamus commanding the respondents to release the insurance amount of Rs. 50,000/- in favour of the applicants alongwith settlement dues of the deceased employee with market rate of interest.
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> iii. to issue an order or direction in the suitable nature of mandamus commanding the respondents to allow the family pension in favour of the applicant No. 1 alongwith arrears of pension w.e.f. 24.05.2002 and further offer an appointment to the applicant no. 2 on any Group 'D' post as per rules. .

3. The respondents in their counter affidavit (in short CA) have stated that late husband of the applicant (referred hereinafter as ex-employee) was first appointed as a casual labour Chaukidar and he was accorded temporary status on 29.11.1989. He had worked continuously till his death. Casual labour allowed temporary status are given certain benefits which do not include pension or family pension and compassionate appointment unless he/she had been regularized in a Group D post. The ex-employee was also not appointed against sanction regular post. Since the ex-employee was never regularized or appointed against regular Group D post, the claim of compassionate appointment and family pension is not admissible to the

applicants. In regard to release of amount of insurance, it is stated that the PLI claim has been settled and amount of Rs. 72,770/- has been sanctioned for payment vide letter dated 08.09.2011 (Annexure -12 to the CA). No Rejoinder has been filed by the applicant in spite of opportunities given for the same

4. In spite of several opportunities, the applicant has not filed Rejoinder.

5. Heard Shri Vinod Kumar, learned counsel for the applicant. During the course of the arguments, learned counsel for the applicant submitted that the applicants are entitled for family pension. In support of his contention, learned counsel for the applicant has placed before us the copies of the following judgments:-

i. Judgment dated 28.07.2009 passed by CAT, Allahabad Bench in OA No. 1626/2005 – Shyam Lal Shukla Vs. Union of India & Ors.

ii. Union of India and others Vs. Shyam Lal Shukla and others – [(2012) 1 UPLBEC 225].

iii. judgment of Hon'ble Supreme Court dated 06.08.2012 in SLP (C) No. 12664/2012 – Union of India & Ors. Vs. Shyam Lal Shukla.

6. Admittedly, the applicant's husband was not regularized in any Group D post till his death. The issue to be decided is whether a casual CP employee with temporary status on his death will be eligible for family pension. The applicant's counsel has cited the case of Shyam Lal Shukla (supra) where Tribunal has held that such retired temporary status employee would be eligible for pension and family pension. This decision of the Tribunal was challenged before Hon'ble Allahabad High Court, in which, it was held as under:-

> "The Union of India through the Ministry of Communication, Department of Post has filed the present writ petition against the judgment and order dated 28th July, 2009 passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad (hereinafter referred to as Tribunal) in Original Application No. 1626 of 2005 filed by the respondent no.1, Shyam Lal Shukla.
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> 2. The brief facts leading to the instant petition are that the respondent no.1 was engaged as Contingency Paid Chowkidar "Sahson" Sub. Post Office district Allahabad in the year 1982.
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> 3.The initial engagement of respondent no.1 is on the record as Annexure-1 to his Original Application filed before the Tribunal and it has been issued in terms of Rule 267 of Posts and Telegraph Financial Hand Book, Volume-1, Second Edition. It is dated 10.4.1982 and bears signature of respondent no.1 as Relieving Officer. Respondent no.1 asserts that the engagement was against a vacant post. Annexure-2 of Original Application is communication dated 2.1.1992 wherein respondent no.1 has been treated to be "full time C.P.Employee of Postal Department" and has been conferred temporary status w.e.f. 29.11.1989. It goes on to say that respondent no.1 and some other similarly situated Employees will get all the benefits mentioned in the Director's letter dated 12.4.1991. In compliance thereof the respondent no.1 was extended all the benefits of regular employee such as DA, ADA, Leave entitlement, Maternity Leave, HRA, Bonus, Medical facility, Insurance Scheme and G.P.F.

4. It is noteworthy that temporary status to the respondent no.1 has been granted in pursuance of a Scheme known as Casual Labours (Grant of Temporary Status in Regularization) Scheme. The said Scheme was formulated by the Department of Post, Government of India vide communication dated 12.4.1991 issued by the Director General, Department of Post , New Delhi in compliance of the order of Supreme Court in Writ Petition No. 1276 of 1986 filed by the Reserved Trained Pool Telephone Operators of Bombay and others connected with other writ petitions. The said Scheme has been annexed as Annexure-1 to the writ petition. Relevant protion of the order of the Supreme Court in the said writ petition is quoted here in under:-

> "learned counsel for the petitioners concedes that the regularization of 21,000.00 employees in the Department of Telecommunications has been effected but complains that no such proceeding has taken place in respect of the postal employees. He states that there is pressing need for a parity of service conditions including pay, house rent allowance and other allowances between the temporary employees and the regular employees covered by this category. The learned Additional Solicitor General of India assures us that the scheme will be finalised latest by first week of April, 1989 and that complete position will be placed before the court at that stage...."
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> The scheme known as Casual Labourers(Grant of Temporary Status in Regularisation) Scheme has been formulated and put into operation from 1/10/1989 and a copy thereof has been placed for our consideration. We find that the scheme is comprehensive and apart from provision for conferment of temporary status, it also specifies the benefits available on conferment of such status. Counsel for the respondent-Nigams have told us that the scheme will be given full effect and other benefits contemplated by the scheme shall be worked out. In these circumstances, no further specific direction is necessary in the two applications relating to the two Nigams of Bombay and Delhi except calling upon the respondents to implement every term of the scheme at an early date."

5. The respondent no.1 was given temporary status in terms of the said Scheme w.e.f. 25.11.1989. The Superintendent of Post Office, Allahabad extended the emoluments of monthly salary such as DA and ADA, HRA as revised from time to time and granted privileges as provided to other regular employees. The petitioner reached to his age of superannuation on 30th June, 2003. Before his superannuation he made several representation for the benefit of pension. However, his representation failed to elicit any response from the authorities. Having, no option left he filed the Original Application before the Tribunal for the following relief:-

> 1.To direct the respondents to take due and appropriate actions into the matters and arrange payments of all retiring and pensionary benefits as admissible to other Deptt. Group D employees w.e.f. 1.3.2003 within stipulated period:
> 2.Pension and commutation,
> 3.Gratuity,
> 4.Un-availed earned to be encashed,
> 5.Medical treatment facilities,
> 6.To pay arrears of the benefits with 12% interest w.e.f. 1.7.2003 to the date actual period within stipulated period."

6. The petitioner's main defence before the Tribunal was that the respondent no.1 was not regularized as there was no vacancy and as such he is not entitled for the pension. The Tribunal by its impugned judgment and order has allowed the Original Application with a direction to treat the respondent no.1 as regular employee and also that he is entitle to all post retiral benefits as per relevant statutory Rules in force. The respondent no.1 was also held to be entitled to 9% annual interest from the date it becomes due.

7. We have heard Sri R.B.Singhal, Senior Advocate, Assistant Solicitor General of India assisted by Sri Rajesh Khare for the petitioner and Sri L.M.Singh learned counsel, for the respondent no.1.

8. As noticed earlier the Supreme Court had approved a Scheme for casual labours namely (Grant of Temporary Status in Regularization) Scheme. 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."

9. It is admitted fact that the Senior Superintendent of Post Office, Allahabad had issued a communication dated 2.1.92 and granted 'temporary status' to the respondent no.1 w.e.f. 29.11.1989 and his name was placed at Serial No. 11 in the list. It is neither the case of the petitioner nor is it believable that from the year 1992 till the date of superannuation of

respondent no.1 no post was available for his regularization. The action of the Department/Petitioner was in the teeth of paragraph 17 of the Scheme approved by the Apex Court mentioned herein above.

10. Apart from the aforesaid fact the respondent no.1 was entitled for the pension 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. From the perusal of Rule 154 A of Manual it is manifestly clear that the Chowkidar, Sweeper, Malis, Khalassis who worked side by side with regular or with employees in Work Charge Establishment should be brought on regular Establishment and should be treated 'regular employees'. The Rule itself has used the word 'regular employee' without any reference to formal order of regularization. The Tribunal has relied on Rule 154 A of the Manual of appointment and allowances of the Officers of the Indian Post & Telegraphs Department. It is, undisputed fact that the respondent no.1 has worked and has received the payment from contingent fund w.e.f. 10.4.1982 to 26.11.1989 i.e. Seven Years Six Months and Nineteen days, thereafter from the consolidated fund of Central Government from 26.11.1989 to 29.11.1992 three years and then from 30.11.1992 till the date of retirement i.e. 30.6.2003 as temporary Government Employee of Group D, for ten years Seven months and One day. The total qualifying service for pension comes to 17 years, four months and 10 days.

12. It is admitted case that the respondent no.1 from his initial engagement i.e. 10.4.1982 till his date of superannuation i.e. 30.6.2003 has worked uninterruptedly and to the entire satisfaction of the Department as has been stated in the Counter Affidavit, Supplementary Counter Affidavit before the Tribunal and in the Writ Petition before this Court and there is no mention that the work of the respondent no.1 was unsatisfactory.

13. The Tribunal has also relied on the order of the Supreme Court in Special Leave to Appeal dated 13.1.1997 arising out of the Original Application No. 159/93 of Tribunal, in the case of (Ram Lakhan v. Union of India and others) as well as order dated 2nd September, 2005 in Original Application No. 917 of 2004, (Chandi Lal versus. Union of India and others). The aforesaid orders were on the record of the Tribunal as Annexure-AR-2 and AR-3 with affidavit filed on 26.8.2008 in similar facts.

14. In our view the said Rule clearly spells out its essential purpose, to give pensionary benefit to certain class of employees as 'regular employee', notwithstanding the fact that no formal order of regularization was passed.

15. Sri Singhal has relied on the judgment of Central Administrative Tribunal, Lucknow Bench, Lucknow passed in Original Application No. 509 of 2004. We have perused the said judgment. In the said case, the learned Tribunal has not taken note of the Scheme framed by the Department dated 12.4.2001 and paragraph 17 of the Scheme wherein it is clearly provided that no recruitment will made from open market for Group D posts (except on compassionate appointment) till casual labours with requisite qualifications are available to fill up the posts in question. Moreover, the Tribunal has also mis-construed Rule 154 (a) as it has not appreciated the said Rule in correct prospective. It appears, the relevant part of the said Rule wherein it is provided that the Chowkidars etc. should be treated as "regular employee" subject to completion of conditions mentioned therein, has escaped the notice of the learned Tribunal.

16. Sri Singhal has also relied on the judgment of the Supreme Court passed in the case of Secretary, State of Karnataka v. Umadevi reported in 2006 (2) UPLBEC 1880. The said judgement has no application in the present case as in the present matter the Scheme has been framed by the Postal Department in compliance of the order of the Supreme Court and the said Scheme has been approved by the Supreme Court. Thus the Postal Department/Petitioner herein cannot resile from its obligation to implement the said Scheme in letter and spirit.

17. In the background of the aforesaid facts we are satisfied that there is no error in the impugned judgment of the Tribunal and it does not call for interference under Article 226 of the Constitution.

18. Hence, the writ petition is dismissed."

7. The above order dated 23.12.2011 was challenged in SLP No. 112664/2012 by Union of India which was dismissed. In other words, the judgment dated 23.12.2011 of Hon'ble High Court has attained the finality.

8. Applying the ratio of the judgment dated 23.12.2011 of Hon'ble High Court, Allahabad to the present case, which is identical to the case of Shyam Lal Shukla (Supra), it is clear thatthe applicant will be eligible for the benefit of family pension with arrears of pension as per the rules and as per the said judgment dated 23.12.2011 since the ex-employee had obtained temporary status w.e.f. 29.11.1989 and worked continuously till his death on 24.05.2002.

9. Regarding relief claimed in the OA for appointment of applicant No. 2 on compassionate grounds, as per the scheme for compassionate appointment as formulated by the DOPT, it is applicable for the regular employees. The father of the applicant was a contingent paid casual labour with temporary status under the respondents. Admittedly, the ex-employee was not regularized on the said post and the judgment dated 23.12.2011 of Hon'ble Allahabad High Court did not include the relief of compassionate appointment, this relief is not admissible in this OA.

10. So far as the relief claimed by the applicants regarding release of insurance amount, this amount has already been released by the respondents vide letter dated 08.09.2011 as stated in the CA, hence this relief has become infractuous.

11. In view of the above discussions, the OA is allowed to the extent that the respondents are directed to sanction family pension in favour of the applicant from the date of death of her husband as per the rules within a period of three months from the date of receipt of a certified copy of this order. No costs .

(GOKUL CHANDRA PATI)
MEMBER-A

Anand...