RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

Dated: This the **19** day of **December** 2017.

PRESENT:

HON'BLE DR. MURTAZA ALI, MEMBER – J

Original Application No. 332 of 2016

Chhangur Sharma aged about 60 years S/o Shri Ram Poojan Sharma retired (Temporary Group 'D') Generator Operator under Head Post Office Varanasi R/o A-38/106-X Vijayi Pura Kuniya Varanasi (U.P.).

. . . Applicant

By Adv: Shri S.K. Kushwaha

V E R S U S

1. Union of India through Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Director General (Posts), Ministry of Communication, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
3. Chief Post Master General, U.P. Circle, Lucknow.
4. Post Master General, Allahabad Region, Allahabad.
5. Senior Superintendent of Post Office, East Division, Varanasi 221001.
6. Senior Post Master, Head Post Office, Varanasi-221001.

. . .Respondents

By Adv: Dr. Rajeshwar Tripathi

O R D E R

The applicant has filed this O.A under section 19 of Administrative Tribunals Act, 1985 for grant of pensionery benefits.

2. The brief facts of the case are that the applicant was initially appointed on 10.04.1982 as Part Time Contingent Paid Pump Operator/Generator Operator and he was extended temporary status w.e.f. 29.11.1989 and thereafter he was accorded the benefits of Group 'D' employees. It is stated that the appointment of the applicant was made strictly in accordance with the provisions of Rule 154 (a) of Manual of Appointment and Allowances of Officers of the Indian Posts and Telegraphs Department. The applicant has retired on 31.01.2016 after completing about 34 years of service but he has been denied the pensionery benefits. It has been alleged that he is entitled for all retiral benefits as admissible to comparable staff in the regular group 'D' employee. He made a representation dated 09.02.2016 (Annexure-A-14) with a request to grant the monthly pension and other post retiral benefits, but no action has been taken by the respondents in this regard.

3. In the counter reply filed on behalf of respondents, it has been admitted that the applicant was engaged as Part Time Contingent Paid Pump Operator/Generator Operator on 10.04.1982 and he was granted temporary status w.e.f. 29.11.1989. It is further submitted that the services of the applicant were not regularized in Group 'D' cadre. Thus, in

the absence of regularization order, pension and retirement benefits are not admissible to the applicant.

4. In the rejoinder, the applicant has reiterated the averments made in the O.A. and further submitted that he was appointed against the vacant Group 'D' post of Part Time Contingent Paid Pump Operator/Generator Operator in accordance with the provisions of Rule 154 (a) of Manual of Appointments and Allowances of Officers of the Indian Post and Telegraph Department w.e.f. 10.04.1982. It has been alleged that in view of Rule 154 (a), the applicant had to be brought on regular establishment at par with the regular Group 'D' employee.

5. Heard Sri S.K. Kushwaha, counsel for the applicant and Dr. Rajeshwar Tripathi, counsel for the respondents and perused the record.

6. The applicant by placing reliance upon para 154(a) of the Manual of Appointment and Allowances of Officers of the Indian Posts and Telegraphs Department contended that he is entitled for all retiral benefits as may be admissible to comparable staff in the regular group 'D' employee. He

relied upon the following judgments in support of his arguments -

"(i) O.A No. 917/04 – Chandi Lal Vs. U.O.I and Ors. decided on 2.9.2015 by CAT, Allahabad Bench.

(ii) O.A. No. 1626/05 – Shyam Lal Shukla Vs. U.O.I and Ors. decided on 28.7.2009 by CAT, Allahabad Bench."

Rule 154 (a) of the Manual reads as under :-

> ***"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 establishments, should, for the present, be brought on to regular establishments of which they form adjuncts and should be treated as " regular" employees. The other contingency staff who do not fulfil these conditions, e.g., Dhobis, Tailors, Syccs, Grass Cutters, etc., should continue on the existing basis and should be treated to be "Casual employees". Part-time employees of "regular" categories, as also employees of "Casual" categories who are not brought on to the regular establishment, will continue, as at present, to be paid from contingencies."***

From the perusal of Rule 154 (a) of Manual it is manifestly clear that the Chowkidar, Sweepers, 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 work 'regular employee' without any reference to formal order of regularisation.

7. I have also gone through the judgments referred by the learned counsel for the applicant. In the case of Chandi Lal (supra), the applicant was working in the Department of Posts on work charge establishment w.e.f. 15.4.1982. He was granted temporary status w.e.f. 29.11.1989 and thereafter, he was brought on the pay scale of Group 'D' employee and also accorded service benefits admissible to the Group 'D' employee. Though no formal order of the regularisation was issued in the said case but the Tribunal held the applicant entitled to pension treating him a Group 'D' regular employee. The Writ Petition No. 11297/2006 filed against the said order was dismissed by Hon'ble Allahabad High Court vide order dated 02.03.2007 and Hon'ble Supreme Court also upheld the order of Tribunal and High Court vide order dated 03.03.2008 passed in SLP (Civil) ---------/2008 (CC 3248/2008).

8. In the case of Shyam Lal Shukla (supra), the applicant was initially appointed as full time CP Chowkidar and was granted temporary status w.e.f. 29.11.1989. No formal order of regularisation was ever issued. In this case, the applicant was deemed to be regularised, treated as 'regular employee' of the Department and declared entitled to all post retiral benefits as per relevant statutory rules in force.

The Writ Petition No. 60272/2009 filed against the said order of Tribunal, was dismissed by Hon'ble Allahabad High Court vide order dated 23.12.2011 and Hon'ble Supreme Court also upheld the order of Tribunal and High Court vide order dated 06.08.2012 passed in SLP (Civil) ---------/2012 (CC 12664/2012).

9. The facts and circumstances of above noted cases are almost similar to the case in hand. In the instant case, the applicant was appointed as Part Time Contingent Paid Pump Operator/Generator Operator on 10.04.1982 and he was extended temporary status w.e.f. 29.11.1989 and thereafter he was accorded the benefits of Group 'D' employees. The cases of Chandi Lal and Shyam Lal Shukla went up to Hon'ble Supreme Court and it has been settled that such employees shall deemed to have been regularised and consequently required to be treated as regular employees of the respondents' department and consequently they are entitled to all pensionery benefits.

10. Accordingly, the O.A. stands allowed. Impugned orders dated 10.02.2016 (Annexure-A-1), 27.12.2016 with order dated 07.12.2016 (Annexure-A-1/A) are quashed and set aside. The respondents are directed to ensure payment of

pension and other post retiral benefits alongwith interest @7% per anum from the date it becomes due till the date of actual payment as expeditiously as possible within a period of three months from the date of receipt of copy of this order. No order as to costs.

Member-J

RKM/