

Reserved
(On 16.08.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

Dated: This the 28th day of August 2018

Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Original Application Number. 330/00082 of 2011

Ahibaran Singh, S/o late Sri Jagannath, R/o Mohalla Shankarganj Ward No. 15, Wayajuriya, Bambi Nahar Pul, Post Office Jhinhak, District Ramabai Nagar.

.....Applicant

By Adv: Shri R. Verma

VE R S U S

1. Union of India through Ministry of Post and Telegraph, New Delhi.
2. Chief Post Master General, U.P. Circle, Lucknow.
3. Chief Post Master, Kanpur.
4. The Superintendent of Post Offices, Kanpur (M) DN. Kanpur – 1.
5. Post Master General, Kanpur.

.....Respondents

By Adv: Shri Ram Pal Singh

O R D E R

By Hon'ble Mr. Gokul Chandra Pati, Member (A)

This Original Application (in short OA) has been filed by the applicant under section 19 of the Administrative Tribunals Act, 1985 with the prayer for following reliefs:-

A. To allow the application and direct the respondent to consider the applicant for absorption / regularization against Group "D" Vacancy of different year in accordance with the Scheme of 1991.

OR

direct the respondents to consider the claim of applicant for his absorption against 25% Quota in terms of Revised Recruitment Rules and Circular in view of the decision dated 23.03.2005 passed in O.A. No. 1172 of 2000 (Rakesh Chandra Sharma vs. Union of India and others.)

B. A direction may be given to the respondents to the extent that the service of applicant may be regularised and should be treated at par with the Group "D"

Employee for the purpose of pension, D.C.R. as admissible to the Group "D" Employee.

- C. *To direct the respondents to provide different of arrears of salary of CP Choukidar and Regular Group "D" Employee from the date on which he was entitle for adsorption / regularization against Group "D" Post after regularizing his service.*
- D. *A direction may also be given to provide him arrears of pension of regular Group "D" Post alongwith the current pension after regularizing him on Group "D" post.*
- E. *To pass any order or direction as this Hon'ble Tribunal may deem fit and proper on the facts and circumstances of the case in the interest of justice.*
- F. *Award the cost of the application to the applicant."*

2. The facts of the case are undisputed. The applicant was appointed as a contingent paid (in short CP) chaukidar at Jhinhak Sub-Post office on 25.2.1973 vide order dated 10.1.1973 of the respondent no. 4 and he was given temporary status of Group D at par vide order dated 15.5.1991(Annexure A-8). The applicant retired from service on 31.01.2009 and then he made a representation dated 22.5.2010 (Annexure A-10). In this representation, it was stated that the applicant was eligible for absorption in regular service as per the Recruitment rules, 2002, which provided that 25% of the vacancies in Group D posts will be filled up from among the casual labour.

3. The respondents filed Counter Affidavit (in short CA) stating that the applicant was not regularized before retirement and he is eligible for the benefits as a temporary Group D employee since he was not promoted or regularized against permanent Group D post. The casual labour with temporary status has no claim for regularization only because of the scheme. It is stated that against the vacancies of Group D post, ED/GDS employees are to be preferred as they are the feeder cadre. About the OA No. 609/2002 referred by the applicant, was duly considered by the respondents and the case of the applicants in that case was rejected.

4. Heard learned counsel for the applicant, who submitted that the dispute has been settled by a number of cases, where the cases of the employees have been accepted by the Tribunal, which have been upheld in Hon'ble Supreme Court. Subsequent to the hearing, a Written Arguments was filed by the applicant's counsel, enclosing the

judgment dated 28.7.2009 of this Bench of the Tribunal in the case of Shyam Lal Shukla vs. Union of India and others in OA No. 1626/2005 and copy of the judgments of Hon'ble Allahabad High Court and Hon'ble Apex Court upholding the Tribunal's judgment in Shyam Lal Shukla (supra) have also been attached.

5. Learned counsel for the respondents stressed on the fact that the applicant was not regularized before his retirement. Hence, he will not be entitled for the benefits as prayed for in the OA. A copy of the Written Arguments of the applicant's counsel was handed over to the learned counsel for the respondents on 16.8.2018, who was also allowed to file his Written Arguments by 23.8.2018.

6. Learned counsel for the respondents submitted written arguments subsequent to hearing on 30.07.2018 after receiving a copy of the written arguments of the applicant (vide order dated 16.08.2018 in this OA). Learned counsel for the respondents, in the written arguments, the averments in the pleadings have been reiterated, citing the judgment of Lucknow Bench of this Tribunal in OA No. 609/2002, which was up-held by Hon'ble Allahabad High Court. It was further submitted that the applicant was given the temporary status and after three years of service, the benefits would be admissible at par with Group 'D' employees subject to condition mentioned therein. The applicant could not be regularized due to ban on recruitment vide letter dated 17.08.2010.

7. In the case of Shyam Lal Shukla (supra) cited by the applicant's counsel, the applicant in OA No. 1626/2005 (referred as employee) was appointed as a contingent paid Chaukidar under work charged establishment full time continuously since 10.4.1982. He was given temporary status w.e.f. 29.11.1989 in pursuance to a scheme circulated by the DOPT. He retired on 30.6.2003 without being regularized. In the OA No. 1626/2005, this Bench of the Tribunal held as under:-

"13. I am in full agreement with the above decision of the Tribunal (as affirmed by the Apex Court). The applicant has also filed copy of the judgment and order dated 2.3.2007 passed by Division Bench of Allahabad High Court in writ petition No. 11297 Of 2006 – Union of India and 3 Others versus Chandi Lal And Another affirming, above order of the Tribunal refusing to interfere in exercise of its jurisdiction under Article 226 of the

Constitution of India. There is no scope to doubt that because of non action on the part of respondents, the applicant is being denied his just and equitable relief. Considering that applicant has retired long back and this OA is pending since 2005, it will not be fair and just to direct the applicant to approach the department to issue formal order of regularization and then to initiate orders extending post retiral benefits to the applicant.

14. *In view of admitted facts (noted above), the applicant is deemed to be regularized, treated as 'regular employee' of the Department and declared entitled to all post retiral benefits as per relevant statutory rules in force. It is further provided that post retiral benefits shall be paid along with 9% per annum annual interest from the date it becomes due from the date of its actual payment. Learned counsel for the applicant has submitted that he does not press for costs. It is made clear that applicant shall not be entitled to arrears of salary (if any) prior to his date of superannuation.*

15. *Accordingly, OA stands allowed subject to above directions / observations. Respondents are directed to ensure payment of 'pension' and all other post retiral benefits as expeditiously as possible but not beyond the period of three months in accordance with law."*

8. The respondents challenged above judgment of the Tribunal in Hon'ble Allahabad High Court in Civil Misc. Writ Petition No. 60272 of 2009 and in this Writ, vide order dated 23.12.2011, it was held by Hon'ble High Court as under:-

"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 Lekhan 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 be 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....."

Against the above judgment of Hon'ble Allahabad High Court, the Union of India filed SLP before Hon'ble Apex Court, which was also dismissed vide order dated 06.08.2012.

9. In the case of Ram Kripal and others vs. Union of India and others in OA No. 609/2002 decided by Lucknow Bench of this Tribunal, which is cited by the learned counsel for respondents in his written arguments, the prayer of the applicant of the said OA No. 609/2002 was for regularization of his services at par with another case which was cited in that case, as would be revealed from the order dated

13.12.2004 in OA No. 609/2002. From perusal of the said order, it is clear that there was no prayer for sanction of pensionary benefits. IN the case of Shyam Lal Shukla (supra) cited by the applicant's counsel, the relief allowed by this Tribunal was for sanction of pensionary benefits as the para 15 of the said order extracted in para 7 of this order would reveal. There was no relief granted regarding regularization of the services. Hence, there is no conflict between the decision of this Bench in the case of Shyam Lal Shukla (supra) and of Lucknow Bench in the OA No. 609/2002 which is relied on by the respondents in their pleadings and written submissions.

10. In view of the above discussions, we are of the considered opinion that the facts of the case of the applicant before us in the present OA are similar to the facts in the case of Shyam Lal Shukla (supra) and both the persons had retired as contingent paid chowkidar / staff under the respondents. Hence, the decision of this Bench vide order dated 28.07.2009 which has been upheld by Hon'ble Allahabad High Court vide order dated 23.12.2011 and the SLP filed against the said order has been dismissed by Hon'ble Apex Court, squarely covers the case of the applicant in present OA who is also entitled to same reliefs which were extended to Shyam Lal Shukla. In reply, the respondents have referred to the decision of Lucknow Bench in OA No. 609/2002 in their pleadings as well as the written arguments, in which, the relief sought was regularization which was not granted by the Tribunal and by the respondents. As discussed in para 9 of this order, the relief granted in the case of Shyam Lal Shukla was regarding pensionary benefits, which was not considered in the OA No. 609/2002, which will, therefore, not be helpful for the respondents.

11. Hence, following the order of this Bench in the case of Shyam Lal Shukla (supra) in OA No. 1626/2005, we direct the respondents to ensure payment of 'Pension' and all other post retiral benefits to the applicant in accordance with law, within a period of three months from the date of receipt of a certified copy of this order.

12. The OA is allowed in part as above. No costs.

(Rakesh Sagar Jain)
Member (J)

/pc/

(Gokul Chandra Pati)
Member (A)