

Reserved on 7.3.2018

**Central Administrative Tribunal, Allahabad Bench,
Allahabad**

Original Application No.330/00757/2010

This the 5th day of April, 2018

Hon'ble Mr. Justice Dinesh Gupta, Member (J)

R.K. Mishra aged about 60 years son of late S.D.Mishra, r/o 127298 U Block, Nirala Nagar, Kanpur-14.

Applicant

By Advocate: **Sri R.K. Shukla**

Versus

1. Union of India through the Secretary, Department of Post, Govt. of India, Dak Bhawan, Sansad Marg, New Delhi-1.
2. The Director of Accounts (Postal), U.P. Circle, Lucknow-24.
3. The Sr. Supdt. Of Post Offices, Kanpur City, Division, Kanpur-1.

Respondents

By Advocate: **Sri M.K. Sharma**

By Hon'ble Mr. Justice Dinesh Gupta, Member (J)

The applicant has filed the present O.A. under Section 19 of the AT Act with the following reliefs:-

- i) To issue a writ, order or direction in the nature of certiorari to quash the respondent's order dated 28.1.2008 & 9.12.2009 i.e. Annexure No. A-1 and A-2 respectively.
- ii) To issue a writ, order or direction in the nature of mandamus directing the respondents to add the period of 4 years 2 months & 12 days i.e. from 10.11.71 to 22.1.76 in qualifying service of the applicant thereby

computing the Q.S. of the applicant as 33 years for the purpose of pension calculation.

iii) To issue any other suitable writ, order or direction in the light of the facts and circumstances of the case which this Hon'ble Court may deem fit and proper.

iv) To order cost of petition to the applicant.

2. The brief facts emerging from the O.A. are that the applicant was appointed as a whole time contingency paid Chowkidar on 10.11.1971 at Anwarganj Post Office, Kanpur.

2.1 It may be mentioned that w.e.f. 1.8.1975, the department initiated to convert the post of Extra Departmental Chowkidar for administrative reasons.

2.2 The applicant took a departmental test for the test category post on 23.1.1976 but the department did not select him on the ground that his services were of 'part time casual labour' . The applicant being aggrieved by the above act, approached the court of law and a judgment and decree was passed by the District Judge, Kanpur in favour of the applicant in Civil Appeal No. 430 of 1978 on 19.8.1981 (Annexure A-5) with a direction to the respondents to treat the applicant in regular Group D cadre w.e.f. 23.1.1976 with all consequential benefits.

2.3 2nd Appeal filed by the respondents in Allahabad High Court numbered as 3052 of 1981 was dismissed on

11.12.1981 (Annexure A-6). Thus, the order dated 19.8.1981 has become final.

2.4 The applicant passed other departmental examination and in last proceeded to the Telecom Department on deputation cum absorption basis and was finally absorbed in Telecom w.e.f. 14.2.2005. The applicant's services in the postal department were treated up to 8.2.2005 for pension. The applicant finally retired on superannuation from BSNL w.e.f. 31.7.2009 as Accounts Officer.

2.5 The respondent No. 3 prepared the pension case of the applicant and counting half of his services w.e.f. 10.11.1971 to 22.1.1975 as qualifying service for pension computed total qualifying service as 31 years in the light of O.M. Dated 14.5.1968 (Annexure A-7) and submitted the same to the respondent No.2 for finalization.

2.6 Respondent No. 2 while finalizing the pension case of applicant ignored the entire period of 10.11.1971 to 22.1.1976 as qualifying service. When applicant represented to respondent No. 2 for reckoning his previous service as qualifying service for pension, the respondent No. 2 issued a letter dated 28.1.2008 stating therein that had the services of the applicant not converted into E.D. services w.e.f. 1.8.1975, he could

have got the benefit of C.P. services, as stipulated in Rule 14.

2.7 Thereafter, applicant filed a comprehensive petition dated 4.1.2009 (Annexure A-8) to the highest authority of the department i.e. the Secretary, Department of Post, New Delhi (Respondent No. 1) with a prayer for adding period from 10.11.1971 to 22.1.1976 for qualifying service because there is a apparent error of law in the approach of respondent No. 2 but the respondent No. 1 passed order dated 9.12.2009 (Annexure A-2) stating therein that C.P. and E.D. services are not taken into account for qualifying service for calculation of pension.

2.8 From the above, three different versions have erupted from three above respondents.

a) The respondent No. 3 counted half of the period from 10.11.1971 to 22.1.1976 as qualifying service treating the aforesaid period 'whole time contingency service' stating to be in compliance of Rule 14 of pension rules order dated 14.5.1968.

b) The respondent No. 2 out rightly ignored the services on the ground that had the services not been converted into E.D. services w.e.f. 1.8.1975, the services would have been counted as Q.S.

c) The respondent No. 1 stated that C.P. and E.D. services are not countable as qualifying services for pension.

3. Notices were issued to the respondents who in turn filed the counter reply through which it is stated that applicant was engaged as contingency paid chowkidar at Anwarganj Post Office, Kanpur on 10.11.1971. The said chowkidar was converted in other establishment of Extra Departmental Chowkidar w.e.f. 1.8.1975. Thereafter, the applicant was absorbed in regular cadre of class iv w.e.f. 23.1.1976 and resigned from postal department and date of retirement was treated as 8.2.2005. As such qualifying service of the applicant for pensionary benefits was 23.1.1976 to 8.2.2005. The applicant submitted his representation for reckoning of C.P. / ED services as qualifying service and the matter was examined by the Postal Department , New Delhi and the applicant was replied vide order dated 1.12.2009 that the services of the applicant as C.P. Chowkidar and E.D. Chowkidar from 10.11.1971 to 22.1.1976 have not been taken into account by DA (P) Lucknow since C.P. and ED services are not taken into account as qualifying service for calculation of pension.

4. Rejoinder reply is filed by the applicant through which he has reiterated the facts as stated by him in the O.A. and denied the contents of counter reply.

5. Written arguments have also been filed by the learned counsel for applicant and learned counsel for respondents through both counsel have reiterated the

facts as stated by them in the Original Application and in the Counter reply.

6. Heard the learned counsel for applicant Sri R.K. Shukla and learned counsel for respondents Sri M.K. Sharma.

7. Learned counsel for applicant submitted that applicant was appointed as a whole time contingency paid chowkidar on 10.11.1971 and later on the post of applicant was converted as Extra Departmental Chowkidar. Thereafter, applicant proceeded to the Telecom Department on deputation cum absorption basis and was finally absorbed in Telecom w.e.f. 14.2.2005. The applicant's services in the postal department were treated up to 8.2.2005 for pension. The applicant finally retired on superannuation from BSNL w.e.f. 31.7.2009 as Accounts Officer. When the respondent No. 3 prepared the pension case of the applicant and counting half of his services w.e.f. 10.11.1971 to 22.1.1975 as qualifying service for pension computed total qualifying service as 31 years but the Respondent No. 2 while finalizing the pension case of applicant ignored the entire period of 10.11.1971 to 22.1.1976 as qualifying service. Applicant filed a comprehensive petition dated 4.1.2009 to the Secretary, Department of Post, New Delhi (Respondent No. 1) with a prayer for adding period from 10.11.1971 to 22.1.1976

for qualifying service but the respondent No. 1 passed order dated 9.12.2009 stating therein that C.P. and E.D. services are not taken into account for qualifying service for calculation of pension. As such three different views have been taken by three respondents i.e. respondent No. 3 counted half of the period from 10.11.1971 to 22.1.1976 as qualifying ,e respondent No. 2 out rightly ignored the services on the ground that had the services not been converted into E.D. services w.e.f. 1.8.1975, the services would have been counted as Q.S. and respondent No. 1 stated that C.P. and E.D. services are not countable as qualifying services for pension.

8. The learned counsel for applicant placed reliance of **Swamysnews October, 2005** and submitted that in the case of **Nasib Singh Vs. State of Punjab and others, 1999 (5) SLR 497**, the pensionary benefits were denied to the petitioner on the ground that his services were less than ten years. Instructions had been issued by the Govt. whereby the daily wage workers were regularized on 20.1.1995. The petitioner had 13 years of service to his credit. It was held that "***if a temporary or adhoc service is followed by regular service, the entire period of service shall count for purposes of pension***". There is yet another decision of the same High Court in the case of **Kewal Singh Vs. State of Punjab 2000(4) SCT 650**, in which relying upon the full Bench

decision in the case of **Kesar Chand Vs. State of Punjab through the Secretary, PWD B&R, Chandigarh and others 1988(2) PLR 223**, it was held that ***"the period of service rendered by an employee on work charge basis prior to regularization of his service, has to be considered as qualifying service while determining the pension."***

9. Learned counsel for respondents submitted that applicant was engaged as contingency paid chowkidar on 10.11.1971 and the post of applicant was converted in other establishment of Extra Departmental Chowkidar w.e.f. 1.8.1975. Thereafter, the applicant was absorbed in regular cadre of class IV w.e.f. 23.1.1976 and retired on 8.2.2005. As such qualifying service of the applicant for pensionary benefits was 23.1.1976 to 8.2.2005. The matter of counting the service of applicant as C.P. / ED services for qualifying service was examined by the Postal Department , New Delhi and was rejected vide order dated 1.12.2009 stating that the services of the applicant as C.P. Chowkidar and E.D. Chowkidar from 10.11.1971 to 22.1.1976 have not been taken into account by DA (P) Lucknow since C.P. and ED services are not taken into account as qualifying service for calculation of pension.

10. Case of applicant is squarely covered with the judgment passed by this Tribunal in O.A. No.

1626/2005 (Shyam Lal Shukla Vs. Union of India and others) decided on 28th day of July, 2009 which was affirmed by the High Court in Civil Misc. Writ Petition No. 60272 of 2009 (Union of India and others Vs. Shyam Lal Shukla) decided on 23.12.2011 and further SLP No. 12664/2012 filed by the Union of India against the order of High Court dated 23.12.2011 was also dismissed vide order dated 6.8.2012. The Counsel for applicant further submitted that relying upon the judgment passed by this Tribunal in O.A. No. 1626/2005, this Tribunal allowed O.A. No. 1847/2012 (Khacheru Singh Vs. Union of India and others) on 11th November, 2016 and O.A. No. 1848 of 2012 (Shree Niwas Sharma Vs. Union of India and others) decided on 21st July, 2017.

11. From perusal of the judgment of Shyam Lal Shukla Vs. Union of India which was affirmed by the High Court as well as by the Hon'ble Apex Court, it is clear that the facts of that case is similar to the case of applicant of present O.A.

12. Shyam Lal Shukla (Applicant of O.A. No.1626/2005) was also appointed as contingency paid Chowkidar w.e.f. 10th April, 1982 and respondents also issued letter of confirmation of appointment of applicant as Chowkidar. Shyam Lal Shukla was working continuously as Chowkidar and received allowances as

revised from time to time like other contingent paid employees of the Deptt. In the year 1987, on the basis of judgment of Hon'ble Supreme Court of India in which a direction was issued to DGP&T to frame a rational scheme to regularize the rendered and into regular establishment, the DGP&T has framed a scheme w.e.f. 25.11.1989 and conferred the temporary status to Shyam Lal Shukla w.e.f. 25.11.1989 and he was also given minimum pay scale of Group D employees w.e.f 29.11.1989 along with other benefits of service and annual increments, except pensionary and retiring benefits till their services was not regularized by the Department. Thus from the facts of Shyam Lal Shukla, it is clear that he was engaged as contingency paid chowkidar in 1982 and was granted temporary status on 25.11.1989. However, he was denied the pension and retiral benefits only on the ground of non regularization. The ground taken by the respondents is that applicant was not regularized in absence of vacancy.

13. The applicant Shyam Lal Shukla (in O.A. No. 1626/2005) also placed reliance of the final judgment and order dated 13.1.1997 (RA-2 in O.A. No. 1626/2005) in Special Leave of Appeal to Apex Court in Writ Petition No. 25119 of 1995 arising out of order dated 17.9.1996 in O.A. No. 159/1993 of CAT, Allahabad Bench in the case of Ram Lakhan Vs. Union of India and others as

well as order dated 2.9.2005 in O.A. No. 917/2004 (Chandi Lal Vs. Union of India and others) and after considering the aforesaid decision of the Tribunal affirmed by the Apex court, O.A. No. 1626/2005 (Shyam Lal Shukla Vs. Union of India) was allowed by this Tribunal which was also affirmed upto the stage of Hon'ble Apex Court. Relying upon the case of Shyam Lal Shukla, this Tribunal also allowed O.A. No. 1847/2012 (Khacheru Singh vs. UOI) and O.A. No. 1848/2012 (Shree Niwas Sharma Vs. UOI). The case of Shyam Lal Shukla, Khacheru Singh and Shree Niwas Sharma are fully cover the case of applicant of present O.A.. The applicant of present O.A. was also engaged as C.P. Chowkidar on 3.7.1970 and his appointment was made in accordance with the provision of Rule 154 (a) of the Manual for pay and allowances to the officers of P&T Department.

14. The applicant of the present O.A. was also engaged as C.P. Chowkidar on 10.11.1971 and later on was converted as Extra Departmental Chowkidar by the Department and thereafter absorbed as Class IV employee w.e.f. 23.1.1976 in Telecom Department w.e.f. 14.2.2005. The appointment of the applicant was made against a regular vacancy in the light of instructions contained in Rule 154 of the "Manual of Appointment & Allowances of the Officers of Indian Posts & Telegraph

Department. The applicant was later on regularized. As such, case of applicant is similar to the case of Shyam Lal Shukla..

15. Thus, considering the case in hand and earlier case of Shyam Lal Shukla which was also affirmed by the Apex Court, it is not disputed that applicant was engaged as contingency paid chowkidar and respondents provided all the benefits to the applicant as admissible to regular Group D employees and applicant also retired on attaining the age of superannuation i.e. at the age of 60 years. He was also not granted pensionary and retiral benefits on the sole defence that C.P. and E.D. services are not taken into account in qualifying services for calculation of pension. However, the applicant is entitled for the benefits under Rule 154 of the Manual of appointment and allowances. The Hon'ble High Court on perusal of the Rule 154 of the aforesaid manual in its judgment dated 23.12.2011 has held as follows:-

"From the perusal of Rule 154 A of Manual, it is manifestly clear that the Chowkidar, Sweeper, Mails, Khalasis 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 regularization. The Tribunal has relied on Rule 154 A of the Manual of appointment and allowances of the officers of Indian Post and 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 Govt. 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 Govt. 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."

The Hon'ble High Court of Allahabad has further held as under:-

"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."

16. Thus, relying upon the judgment passed by this Tribunal in aforementioned OAs and confirmed by the High Court as well as by the Hon'ble Apex Court, the applicant is also entitled for similar benefits as granted

to applicants of that O.As. Accordingly, O.A. is allowed. Respondents are directed to count the service rendered by the applicant as contingency paid chowkidar and E.D. employee till his regularization as a whole for the purpose of pensionary benefits and in case applicant finds eligible for pensionary benefits, he may be granted pension and pay arrears to him along with interest @ 9% per annum. Since the matter is quite old, the respondents are directed to complete this exercise within a period of 4 months from the date of receipt of certified copy of this order. No costs.

**(Justice Dinesh Gupta)
Member (J)**

HLS/-

