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Central Administrative Tribunal, Allahabad Bench, Allahabad

Original Application No. 330/00586/2012

Reserved on 8.2.2018

Pronounced on 8.3.2018

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

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

Chandan Dubey son of Late Jai Dev Dubey r/o Village Haiti Deeh, Post Haiti Bazar,  
District- Varanasi.

Applicant

By Advocate: Sri Rajesh Kushwaha

Versus

1. Union of India through Secretary, Ministry of Communication, Subhash Marg, New Delhi.
2. Post Master General, Allahabad Region, Allahabad, U.P.
3. Superintendent/ Inspector Post Office, Varanasi West Mandal, Varanasi.
4. Assistant Superintendent /Inspector Post Office, West U.P. Mandel, Varanasi.

Respondents

By Advocate: Sri Dharmendra Tiwari proxy to Sri N.P. Shukla

ORDER

HON'BLE MR. JUSTICE DINESH GUPTA, MEMBER (J)

The applicant preferred this O.A. u/s 19 of the Administrative Tribunal's Act, 1985 with the following relief:-

i) The Hon'ble Tribunal may quash the order dated 1.1.2011 passed by respondent No. 4 and direct the respondents to consider the appointment on the post for remaining five years and/or may direct the respondents to issue an order or direct the respondents to pay the retirement benefits of the applicant in view of the group D employee.

ii) To issue any such order or direction that this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

iii) To award the cost of the application.

2. The brief facts emerging from the O.A. are that the applicant was initially appointed as casual employee (EDR) by the respondents since 1976. Thereafter, on 23.2.1981 (Annexure No. 2), the Superintendent/ Inspector of the Post Office West, U.P. Khand Varanasi, the applicant was appointed on the post of EDMP, Katara Bazar, U.P. Post Office, Varanasi. Thereafter, on 3.1.1986 (Annexure No. 3), the applicant was appointed as regular employee on the post of C.P. Chowkidar, Hathi Bazar Post Office.

2.1 The applicant has honestly worked in the department from 30.2.1981 to 5.1.2011. The applicant has retired after completing the age of 60 years on the post of C.P. Chowkidar vide letter dated 1.1.2011 (Annexure No. 5).

2.2 When after retirement, the respondents have not paid the pensionary benefits to the applicant, the applicant moved an application on 30.5.2011 (Annexure No. 6) with the prayer for payment of retiral dues.

2.3 The Superintendent of Post Office Varanasi vide letter dated 8.7.2011 (Annexure A-1) has denied the retiral benefits to the applicant saying that there is no any provision of pension or pensionary benefits.

2.4 Applicant has filed O.A. No. 1172/2011 challenging the order dated 18.7.2011 which was allowed by the Tribunal vide order dated 21.9.2011 (Annexure No. 8) directing the respondents to examine the claim of the applicant keeping in view the order dated 3.1.1986 placed on record within three months.

- 2.5 Respondents without examine the record, has rejected the claim of the applicant vide order dated 16.1.2012 (Annexure No.10) stating that applicant had worked on the post of EDMP which is extra departmental post and retired on 5.1.2011 and as such there is no provision for grant of retiral dues to the applicant.
3. Notices were issued to the respondents who in turn filed the counter reply through which it is stated that applicant was appointed as EDR in the year 1976. Later on he was appointed as C. P. Chowkidar vide order dated 3.1.1986. Since the applicant has worked for more than 240 days in the department, hence he has been given temporary status in Group D cadre since 29.11.1989 vide order dated 6.9.1991 and the applicant has retired on 5.1.2011. Since the applicant was given only temporary status in Group D cadre as C. P. Chowkidar, as such he is entitled only for increment, medical facility, leave and LTC facility as Group D employee and is not entitled for pension and pensionary benefits as Group D.
4. Rejoinder reply is filed by the applicant through which he has reiterated the facts as stated in the O.A. and denied the contents of counter reply.
5. Learned counsel for applicant has also relied upon the case of Union of India and others Vs. Shyam Lal Shukla passed in Writ Petition No. 60272/2009 and case of Union of India and 6 others Vs. Haider Husain and another passed in Writ Petition No. 68773 of 2014.
6. Heard the learned counsel for the applicant Sri Rajesh Kushwaha and learned counsel for respondents Sri Dharmendra Tiwari proxy for Sri N. P. Shukla and perused the pleadings available on record.
7. The learned counsel for applicant submitted that the applicant was initially appointed as casual employee (EDR) by the respondents since 1976. Thereafter, on 23.2.1981, the applicant was appointed on the post of EDMP, Katara Bazar, U.P. Post Office, Varanasi. Again on 3.1.1986, the applicant was appointed as regular employee on the post of C. P. Chowkidar, Hathi Bazar Post Office as such he is entitled for pensionary benefits but respondents in spite of direction issued by this Tribunal vide order dated 21.9.2011 that respondents to examine the claim of the applicant keeping in view the order dated 3.1.1986, rejected the claim of the applicant vide order 16.1.2012.
8. Counsel for respondents submitted that since the applicant was given only temporary status in Group D cadre after completion of 240 days as C. P. Chowkidar, as such he is entitled only for increment, medical facility, leave and LTC facility as Group D employee and is not entitled for pension and pensionary benefits as Group D and there is no illegality in the order passed by the respondents and O.A. is liable to be dismissed.
9. Counsel for applicant submitted that the 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, O.A. No. 1848 of 2012 (Shree Niwas Sharma Vs. Union of India and others) decided on 21st July, 2017 and O.A. No. 330/01710/2014 (Chhotey Lal Vs. Union of India and others) decided on 4.10.2017. Counsel lastly submitted that case of applicant is fully covered with the aforesaid judgments passed by this Tribunal and applicant is also entitled for pension and retiral benefits. Lastly counsel for applicant submitted that this Tribunal also relying upon the judgment of Shyam Lal Shukla (supra) decided O.A. No. 436/2011 (Haider Husain Vs. Union of India) decided on 25th March, 2014 which was also affirmed by the High Court vide order dated 10.2.2015 passed in Writ petition No. 68773 of 2014 and O.A. No. 1845 of 2012 (Khursheed Alam Vs. Union of India and others) decided on 2nd April, 2014.
10. Counsel for respondents submitted that no doubt applicant was engaged as contingency paid Chowkidar. The applicant was never appointed on any sanctioned post. He was conferred temporary status, certain facilities were provided to the contingency paid casual labour but the applicant was never regularized on Group D posts as there was no regular vacancy. The applicant was permitted to retire from service w.e.f. 5.1.2011 on attaining the age of 60 years. Since the applicant was

not regularized in Group D cadre, hence pension and terminal benefits were not given to him. Counsel further submitted that the facts and circumstances of case of Shyam Lal Shukla is on different issue and as such order passed in that case is not applicable in the present case.

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 are 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 Hon'ble 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. The applicant was also granted temporary status and applicant was also granted all the benefits mentioned by the respondents in para No. 3.1 of body of this order and was paid to the applicant in compliance of order of Hon'ble Supreme Court. However, defence of O.A. in this case is also similar that applicant could not be regularized due to want of vacancy which was also the case of respondents in Shyam Lal Shukla.

14. Thus, considering the case in hand and earlier case of Shyam Lal Shukla, which was also affirmed by Hon'ble Apex Court, it is not disputed that applicant was engaged as contingency paid chowkidar and was granted temporary status 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 vacancy was not available and he was not a regular employee. 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, Mali's, Khalasi's 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

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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."

15. 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 ensure payment of pension and other post retiral benefits to the applicant along with interest @ 9% per annum 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 certified copy of this order. No order as to costs.

(GOKUL CHANDRA PATI)  
MEMBER (A)

(JUSTICE DINESH GUPTA)  
MEMBER (J)

HLS/-