

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Orders reserved on : 24. 1. 2018
Orders pronounced on : 7. 2. 2018

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

O. A. No. 330/00710/2012

Naresh Chandra Prajapati son of late Pancham Lal Prajapati r/o Village and Post
Si kanderpur, G. T. Road, Kannauj .

..... Applicant

By Advocate: Sri Ashish Srivastava

Versus

1. Union of India, through its Secretary, Ministry of Communication, Sanchar Bhawan, New Delhi .
2. Director General (Post), Ministry of Communication, Department of Post, New Delhi .
3. The Chief Post Master General, U. P. Circle, Lucknow (U. P.).
4. Superintendent of Post Offices, Fatehgarh Division, Farrukhabad.

..... Respondents

By Advocate : Shri R. K. Srivastava

O R D E R

The Applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs: -

- i) The Hon'ble Tribunal may graciously be pleased to quash the impugned order dated 21. 2. 2012 (Annexure No. 1) passed by respondent No. 4.
- ii) The Hon'ble Tribunal be pleased to direct the respondents to grant the applicant entire pensionary benefits including pension w. e. f. 1. 7. 2011.
- iii) The Hon'ble Tribunal may kindly be pleased to direct the respondents to treat the applicant as regular appointee of the department and extend him all benefits available to a regular appointee.
- iv) Any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case may be given in favour of the applicant.
- v) Award the costs of the original application in favour of the applicant.

2. Earlier the applicant had filed O. A. No. 1101/2011 before this Tribunal for direction to grant the applicant entire pensionary benefits including pension w. e. f. 1. 7. 2011 and to treat the applicant as a regular appointee of the department and extend him all benefits available to a regular appointee. In support of the O. A. the applicant has contended that he had put in about 40 years of service and having been conferred the temporary status as such he is entitled to get the pensionary benefits but the department is not giving. The aforesaid O. A. was disposed of by this Tribunal vide order dated 21. 9. 2011 with direction to the applicant to prefer self contained representation putting in all the facts and on receipt of such representation, the respondent No. 2 shall consider the matter and disposed of the same by passing a reasoned and speaking order within a period of one month.

3. In compliance of the same, applicant has filed a representation on 16. 11. 2011 which was disposed of by the respondents vide its order dated 21. 2. 2012 which is impugned in the present O. A.

4. Aggrieved by the order dated 21. 2. 2012, applicant has filed the present O. A. for quashing the same on the ground that applicant was initially appointed as C. P. Chowkidar on 29. 11. 1970 and was granted temporary status on completion of 240 days in the Department. It is also submitted that applicant has rendered for 41 years of regular service at a regular pay scale and he cannot be denied the

pensionary benefits observing him C. P. Chowkidar. It is further submitted that on grant of temporary status, the applicant became a temporary employee and the temporary Govt. Servant Rules stipulates that an employee with 'temporary' status on completion of three years of regular service shall acquire status of a 'quasi' permanent employee and as such would be eligible for all benefits including pensionary benefits admissible to a regular Govt. servant. It is further stated that status of temporary and quasi permanent employee cannot be compared with contingency paid (C. P.) employee.

4. Counter reply has been filed by the respondents in which it is stated that applicant was appointed as C. P. Chowkidar on 29.11.1970 and the Department had given temporary status of Group D employees to such C.P. Chowkidar who were engaged for full working hours i.e. 8 hours including half hours lunch time and will be paid on the basis of the minimum of the pay scale for a regular Group D official including other allowances as admissible under Rule. The applicant was also given temporary status of Group D employee and after attaining 60 years of age, he was discharged from service on 30.6.2011. It is further stated that applicant was not absorbed as permanent Group D employee, hence pension and other benefits were not admissible to him. Applicant earlier filed O.A. before this Tribunal and in compliance of the direction of this Tribunal, applicant has submitted self contained representation dated 16.11.2011 and considering the pleas put forth by the applicant in his representation, competent authority has passed a reasoned and speaking order dated 21.2.2012 which is challenged by the applicant in this O.A.

5. 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 the counter reply.

6. 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 retirement 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 and O.A. No. 1845 of 2012 (Khursheed Alam Vs. Union of India and others) decided on 2nd April, 2014.

7. Counsel for respondents submitted that no doubt applicant was engaged as contingency paid Chowkidar in the office of the respondents on 29.11.1970. The applicant was never appointed on any sanctioned post. He was conferred temporary status on 1.1.1992 in pursuance of by DG post letter dated 12.4.1991, 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. 30.6.2011 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.

8. 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.

9. 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 retiring benefits only on the ground of non regularization. The ground taken by the respondents is that applicant was not regularized in absence of vacancy.

10. 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 Lekhan 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. 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.

11. 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 was granted temporary status and respondents provides 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 retiring 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, 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."

12. 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 retiring 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

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of certified copy of this order. No order as to costs.
(Justice Dinesh Gupta)
Member (J)
HLS/-