

Open Court

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

Original Application No.330/01455/2014

This the 28rd day of March, 2018

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

Syed Ali son of late Hamid Ali resident of village Jahagir Nagar Gauhra, Post and Post Station Khakhreru, Tehsil Khaga, District- Fatehpur-212601.

Applicant

By Advocate: **Sri Pankaj Srivastava**

Versus

1. Union of India through its Secretary, Ministry of Post and Tele Communication, New Delhi.
2. The Post Master General, Kanpur Region, Kanpur.
3. Director, Postal Accounts, Aliganj, Lucknow.
4. Superintendent of Post Offices, Fatehpur.

Respondents

By Advocate: **Sri R.P. Singh**

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 an order or direction in the nature of mandamus commanding the respondents to grant pension and all other post retiral benefits to the applicant with all consequential benefits.
- ii) To issue a further order or directions in the nature of mandamus commanding the respondents to make payment of monthly pension (with arrears) and other post retiral benefits to the applicant along with 18% interest.

iii) The Hon'ble Tribunal may be pleased to issue any other order or direction as this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.

iv) Award the cost to the Original Application to the applicant.

2. The brief facts as stated in the O.A. are that the applicant was appointed on the post of Congingency Paid Chaukidar on 14.9.1982 and he was granted temporary status vide letter dated 23.5.1991. It is also mentioned that in compliance of judgment dated 29.11.1989, the respondents also issued a letter dated 11.1.1993 regarding regularization of casual labour.

2.1 It is further submitted that applicant rendered more than 30 years of continuous service and got retired w.e.f. 31.7.2013 on attaining the age of superannuation i.e. 60 years.

2.2 After the retirement, applicant was not paid post retiral benefits including the monthly pension. The applicant vide application dated 17.7.2009 requested the respondent to grant his monthly pension and all other retiral benefits.

2.3 Applicant submitted that in similar circumstances one Sri Chandi Lal as well as Sri Shyam Lal Shukla were filed O.A.No. 917/2004 and O.A. No. 1626/2005 and this Court decided both the cases in favour of the applicants.

3. Notices were issued to the respondents who in turn filed the counter reply through which it is stated that as per the judgment of CAT Allahabad Bench dated 29.3.2005 in O.A. No. 1172 of 2000 and judgment dated 13.12.2004 in O.A. No. 609 of 2002, the Chief Post Master General, U.P. Circle vide letter dated 2.9.2005 has directed to prepare seniority list of all casual labours for absorption in regular basis in Department under 25% quota as per recruitment rules 2002. The applicant was not regularized in Group D in Department under 25 % quota vacancies reserved for casual labours on seniority basis. The applicant was retired from service on 31.7.2013 as treated at par Group D with temporary status and the applicant was not entitled for pensionary and other benefits.

4. Heard the learned counsel for applicant Sri Pankaj Srivastava and learned counsel for respondents Sri R.P. Singh.

5. Learned counsel for applicant reiterated the facts as stated in the O.A. Counsel further submitted that since the applicant has already been treated as regular employee and was also granted pay scale of Group D employees, hence contention of the respondents that the applicant was only awarded temporary status and was not regularized is against the factual aspects.

6. Counsel for respondents submitted that applicant was only awarded temporary status and was not regularized and in the absence of any regular vacancy, the judgment relied upon by the applicant will be of no use and in respect of payment of pension and retiral benefits to the persons holding temporary status was made, was as per observation of the Tribunal in the case of Shyam Lal Shukla Vs. UOI (O.A. No. 1626/2005 decided on 28.7.2009.

7. 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 and O.A. No. 1848 of 2012 (Shree Niwas Sharma Vs. Union of India and others) decided on 21st July, 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.

8. Counsel for respondents submitted that no doubt applicant was engaged as part time contingency paid Chowkidar. The applicant was never appointed on any sanctioned post. He was conferred temporary status in pursuance of judgment of Apex Court communicated 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 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.

9. 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.

10. Shyam Lal Shukla (Applicant of O.A. No.1626/2005) was also appointed as contingency paid

Chowkidar w.e.f. 10th April, 982 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 Shyal 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.

11. 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 from 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.

12. 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 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, 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."

13. Thus, relying upon the judgment passed by this Tribunal in afore mentioned 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.

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

HLS/-

