

Central Administrative Tribunal
Principal Bench

OA 4226/2015

Reserved on: 15.01.2018

Pronounced on: 31.01.2018

Hon'ble Mrs. Jasmine Ahmed, Member (J)

Smt. Kuntesh, Age 39 years,
W/o late Sh. Ram Kishan,
R/o H.No. 647, Kamla Nehru Nagar,
Ghaziabad (UP)
(widow of late Ram Kishan)

...Applicant

(By Advocate: Shri S.K. Gupta)

Versus

1. Union of India through
Secretary, Department of Aayush,
Ministry of Health & Family Welfare,
IRCS Building,
New Delhi-110001.

2. Director,
Pharmacopoeia Laboratory for Indian Medicine,
Department of Aayush,
Ministry of Health & Family Welfare,
Kamla Nehru Nagar,
Ghaziabad-210002.

...Respondents

(By Advocate: Sh. G.D.Sharma)

O R D E R

By way of the present O.A., the applicant has sought
the following relief(s):-

- “(i) Quash and set aside the communication dated 05.12.2014 (Annexure A-1);
- (ii) Direct the respondents to consider the case of the applicant for grant of family pension w.e.f. 28.03.2012 with all consequential benefits along with the arrears of pension with interest at the rate of 10% p.a.;
- (iii) May also pass any further order(s), direction(s) as be deemed just and proper to meet the ends of justice.”

2. The brief factual matrix of the case is that the husband of the applicant Ram Kishan (now deceased) was initially employed in the office of respondent no.2 on casual basis in the year 1998. During his life time, the deceased was conferred temporary status w.e.f. 01.12.1993 by the respondents vide letter dated 17.12.1993 in terms of Casual Labour (Grant of Temporary Status and Regularization) Scheme of Government of India dated 10.09.1993. It is the contention of the applicant that even during his life time, the deceased husband was entitled to be considered for regularization but the respondents remained silent over this issue despite the decision of the Hon'ble Apex Court in the case of **State of Karnataka vs. Uma Devi**. Aggrieved, the deceased husband of the applicant made a representation dated 16.09.2009 claiming regularization followed by reminder dated 04.03.2011 but both the representations fell onto the deaf ears of the respondents and yielded no result. In the meantime, Ram Kishan – husband of the applicant died on 28.03.2012. The applicant further submits that after sudden demise of her husband, she approached this Tribunal by way of OA No.144/2013 claiming the job on compassionate appointment as her representation in this regard was rejected vide order dated 31.10.2012 and the said OA was

dismissed on 28.03.2014 against which the applicant preferred a Writ Petition No.11934/2015 before the Hon'ble High Court of Delhi, which was partially allowed vide order dated 01.03.2016. However, in the meantime, the applicant submits that she came across a decision of the Hon'ble High Court of Delhi in an identical case titled as **Sharda Devi vs. Union of India** [WP(C) No.3018/2012 decided on 25.04.2013] by virtue of which benefits of family pension was allowed to the applicant therein. Immediately, the applicant submitted a representation dated 19.06.2013 before the respondents claiming family pension relying upon the decision of the Hon'ble Apex Court in the case of **Yashwant Hari Katakhar vs. Union of India & Ors.** [(1996) 7 SCC 113] on the basis of which the High Court of Delhi allowed the writ petition in the case of **Sharda Devi vs. Union of India** (supra). Despite the above settled position of law, when the respondents did not decide the representation of the applicant dated 19.06.2013, the applicant approached the Tribunal by way of OA No.3311/2014 seeking the relief pertaining to grant of family pension and the said OA was disposed of vide order dated 22.09.2014 directing the respondents to dispose of the applicant's representation. The applicant submits that in pursuance of the above order of the Tribunal, the

respondents passed the impugned order dated 05.12.2014 rejecting the claim of the applicant on the ground that the late husband of the applicant could not be regularized as no vacancy existed and none of his juniors was regularized. The applicant submits that though her husband was entitled to regularization during his life time but it is the respondents who did not take any decision over the said issue for a long time and meanwhile her husband died on 28.03.2012. She further contends that both the grounds taken by the respondents in declining the request of the applicant to grant her family pension are not apt in law and are clearly against the decision of the Hon'ble Apex Court in **Yashwant Hari Katakhar vs. Union of India & Ors.** (supra), wherein it has been held as under:-

“3. Dr Anand Prakash, learned Sr. Adv. appearing for the Union of India, has contended that on 7/3/1980 when the appellant was prematurely retired he had put in 18 1/2 years of quasi-permanent service. According to him, to earn pension it was necessary to have a minimum of 10 years of permanent service. It is contended that since the total service of the appellant was in quasi- permanent capacity he was not entitled to the pensionary benefit. There is nothing on the record to show as to why the appellant was not made permanent even when he had served the government for 18 1/2 years. It would be travesty of justice if the appellant is denied the pensionary benefits simply on the ground that he was not a permanent employee of the government. The appellant having served the government for almost two decades it would be unfair to treat him as temporary/quasi-permanent. Keeping in view the facts and circumstances of this case we hold that the appellant shall be deemed to have become permanent after he served the government for such a long period. The services of the appellant shall be treated to be in permanent capacity and he shall be entitled to the pensionary benefits. We allow the

appeal, set aside the judgment of the tribunal and direct the respondents to treat the appellant as having been retired from service on 7/3/1980 after serving the government for 18 1/2 years (more than 10 years of permanent service) and as such his case for grant of pension be finalised within six months from the receipt of this order. The appellant shall be entitled to all the arrears of pension from the date of retirement. No costs."

In view of the above submissions, the applicant prays that the instant OA has merit and deserves to be allowed.

3. The respondents have filed their counter affidavit denying the averments made by the applicant in her OA. The respondents have submitted that the judicial pronouncements on which the applicant has placed reliance are not applicable to the present case on the sole ground that the deceased employee was not regularized during his life time as there is no such rule or provision to allow/grant family pension to the legal heirs of the deceased daily wager.

4. I have carefully gone through the pleadings of the case and documents available on record and thoroughly perused the decisions cited by the learned counsel for the applicant.

5. The sole issue to be adjudicated in this case is that whether the applicant/legal heir of the deceased employee, who was conferred temporary status but was not regularized even after having the requisite length of service

for regularization, is entitled to be granted the family pension or not?

6. The identical issue as involved in this case has been dealt with by the Allahabad Bench of this Tribunal in the case of ***Khacheru Singh vs. Union of India & Ors.*** [OA No.1847/2012 decided on 11.11.2016] and the OA was allowed treating the deceased employee to be deemed regularized and a direction was issued to the respondents to ensure payment of pension and other post-retiral benefits along with interest at the rate of 9% per annum from the date it becomes due till the date of actual payment as expeditiously as possible. The relevant portion of the order is being reproduced hereunder:-

“9. The defence set up by the respondents’ department in the said OA No.1626 of 2005 and the defence of the respondents’ department in the present OA is one and the same that the applicant was not regularized in Group ‘D’ cadre as there was no vacancy. This defence was rejected by this Tribunal in its order dated 2.9.2005, which was confirmed by the Hon’ble High Court Allahabad by its judgment dated 23.12.2011 in the aforesaid Writ Petition No.60272 of 2009.

10. In view of these facts, the question that arises for consideration in the present O.A. is that whether postal employee who was conferred temporary status in pursuance of the D.G. Post letter No.45-49/87/SPB-I dated 12.4.1991 is entitled for pensionary benefits or not is no more res integra. Hence, argument of the learned counsel for the respondents is not tenable.

11. In view of the facts that the service particulars of the applicant, as claimed by him, are admitted by the respondents, the applicant is deemed to have been regularized and consequently required to be treated as ‘regular employee’ of the respondents’ department and

accordingly, I am of the view that the case of the applicant is at similar footing as the case of the applicant in OA No.917/2004 and OA No.1626/2005. Hence, it is hereby declared that the applicant is entitled to all post retiral benefits as per relevant statutory rules in force and the applicant is entitled for payment of interest as per rules. It is further ordered that the post retiral benefits shall be paid along with 9% per annum interest from the date it become due till the date of actual payment...”

7. I have also gone through the decision dated 01.03.2016 rendered by the Hon’ble High Court of Delhi in a writ petition filed by the applicant against the Tribunal’s order dated 28.03.2014 in her earlier OA No.144/2013 wherein the Hon’ble High Court has observed as under:-

*“8...However, we notice that there is a decision of this Court dated 4th November, 2015 in W.P.(C) No.10382/2015, titled **Union of India & Ors. vs. Babita**, wherein a temporary employee, who had worked for 20 years, had died in service and request for compassionate appointment was declined. The Tribunal in the said case had allowed the OA and had directed the Union of India to consider the legal heir’s case for compassionate appointment. The High Court in the said order has referred to the nature and character of temporary status under the aforesaid Scheme and has observed that once the temporary worker had rendered three years of continuous service, he was entitled to certain benefits and was virtually treated in similar manner as regular employees...”*

8. It is not in dispute that the deceased husband of the applicant was conferred temporary status w.e.f. 01.12.1993 but was not regularized till he died on 28.03.2012. Therefore, in view of the judicial pronouncements, referred to above, and the observations of the Hon’ble High Court in WP(C) No.11934/2015 (supra) that once the temporary worker had rendered three years of continuous service, he

was entitled to certain benefits and was virtually treated in similar manner as regular employees, the applicant in this case is entitled to the benefits of family pension treating his deceased husband as deemed to have been regularized.

9. Accordingly, the O.A. stands allowed. The impugned order dated 05.12.2014 passed by the respondents is quashed and set aside. The respondents are directed to consider the claim of the applicant for grant of family pension w.e.f. 28.03.2012 in the light of the above observations and judicial pronouncements and ensure that payment of pension and other post-retiral benefits along with interest @ 8% per annum from the date it becomes due till the date of actual payment is paid to the applicant as expeditiously as possible within a period of three months from the date of receipt of certified copy of this order. There shall be no order as to costs.

(Jasmine Ahmed)
Member (J)

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