

# **CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH**

OA/100/4548/2015

New Delhi, this the 19<sup>th</sup> day of September, 2018

## **Hon'ble Mr. K.N. Shrivastava Member (A)**

(Through Mrs. Rani Chhabra, Advocate)

## Versus

1. Chief Post Master General  
Department of Posts  
U.P. Circle, Lucknow-226001
  2. Post Master General,  
Bareilly Region,  
Bareilly-243001.
  3. Senior Superintendent of Post Offices  
Saharanpur (U.P.)-247001

(Through Shri Vijendra Singh, Advocate)

## ORDER (ORAL)

The applicant's husband late Shri Ishak Lal was engaged by the respondent-postal department in the year 1987 as casual labourer. Vide Annexure A-3 order dated 24.12.1992, he was granted temporary status. He died in harness on 1.05.2013. The applicant, being widow of late Shri Ishak Lal, has been

craving for grant of family pension to her but the same has been orally rejected by the respondents. Accordingly, the applicant has approached this Tribunal through the instant OA praying for the following relief:

- "8.(a) direct the Respondents to grant pension/ service benefits to the Applicant whose family is in hardness and having no source of income."
2. Pursuant to the notice issued, respondents entered appearance and filed reply.
3. Heard Mrs. Rani Chhabra, for the applicant and Shri Vijendra Singh, for the respondents.
4. Mrs. Rani Chhabra, learned counsel for the applicant submitted that the applicant's husband was granted temporary status in terms of Casual Labourers (Grant of Temporary Status and Regularization) Scheme of the Central Government (Annexure A-1). She drew my attention to paragraph 6 (iv) of the Scheme where it is stated that 50% of service rendered under temporary status shall be counted for the purposes of retirement benefits after regularization. She further stated that as per para 6 (v) of the aforesaid Scheme, a temporary status holder who has rendered three years of continuous service, becomes eligible for grant of Festival Advance, Flood Advance as well as for General Provident Fund. Her further contention is that the applicant's husband had rendered about 21 years of service after securing temporary status and hence, in terms of para 6 (iv) of the Scheme, he deemed to have completed more

than ten years of regular service and as such, had become eligible for pension in terms of Rule 14 of CCS (Pension) Rules. Taking that ratio into consideration, she submits that the applicant is, therefore, entitled for family pension in terms of rule 14 of the aforesaid Rules. Mrs. Rani Chhabra, learned counsel for the applicant further argued that this Tribunal in the following cases has already granted the relief prayed for in identically situated applicants therein:

- (i) O.A. 1631/2016, **Smt. Munni Devi Vs. Union of India and others** decided on 20.03.2017.
- (ii) O.A. 1842/2016, **Smt. Shashi Vs. Union of India and others** decided on 9.10.2017.

5. Per contra, Shri Vijendra Singh, learned counsel for the respondents submitted that temporary status holder employees become eligible for all benefits including retirement benefits only after they are brought to the permanent establishment through a regular selection process for Group 'D' posts. In this regard, he drew my attention to para 5 (iv) of the Scheme at Annexure A-1. He also relied on the judgment of the Hon'ble Apex Court in **Indian Council of Agricultural Research and anr. Vs. Santosh** (Appeal (Civil) No.4499/2006) decided on 16.10.2006, where it has been held as under:

"Merely because compassionate appointment has been granted to the legal heir of late Durga Lal that does not in any way improve the situation so far as the respondent is concerned. That is an appointment given to a legal heir even if it is accepted to be a regular, subsequent to the death of Durga Lal and such appointment cannot alter the status of late Durga

Lal in service. The impugned judgment of the High Court confirming that of the CAT cannot be sustained. Both the CAT's order and judgment of the High Court stand set aside. The appeal is allowed but without any order as to costs."

He thus argued that since the applicant's husband had not been brought on permanent establishment of respondent-department, the prayer of the applicant for grant of family pension cannot be considered. Shri Vijendra Singh also placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Uttar Haryana Bijli Vitran Nigam Ltd. & ors. Vs. Surji Devi**, Appeal (Civil) No.576/2008 dated 22.01.2008 wherein it has been held as under:

"14. The scheme relating to grant of Family Pension was made under a statute. A person would be entitled to the benefit thereof subject to the statutory interdicts. From a bare perusal of the provisions contained in the Punjab Civil Services Rules, Volume 2 vis-a-vis the Family Pension Scheme, it would be evident that the respondent was not entitled to the grant of any family pension. Husband of the respondent was a work-charge employee. His services had never been regularized. It may be unfortunate that he had worked for 11 years. He expired before he could get the benefit of the regularization scheme but sentiments and sympathy alone cannot be a ground for taking a view different from what is permissible in law. [See [Maruti Udyod Ltd. v. Ram Lal and Others](#), (2005) 2 SCC 638, [State of Bihar & Ors. v. Amrendra Kumar Mishra](#), 2006 (9) SCALE 549, [Regional Manager, SBI v. Mahatma Mishra](#), 2006 (11) SCALE 258, [State of Karnataka v. Ameerbi & Ors.](#) 2006 (13) SCALE 319 and [State of M.P. and Ors. v. Sanjay Kumar Pathak and Ors.](#) [2007 (12) SCALE 72]. The statutory provisions, as noticed hereinbefore, debar grant of family pension in favour of the family members as the deceased employee if was a work-charge employee and not a permanent employee or temporary employee. The period during which an employee worked as a work-charge employee could be taken into consideration only when his services are regularized and he becomes permanent and not otherwise."

6. I have considered the arguments of the learned counsel for the parties and also perused the pleadings.

7. Admittedly, late Shri Ishak Lal, husband of the applicant had acquired temporary status on 24.12.1992. He thus became eligible for consideration for regularization as a permanent employee in terms of Annexure A-1 Scheme. However, such consideration could not be extended to him during his life time (perhaps one of the reasons being non-availability of the post itself).

8. Be that as it may, this Tribunal in its judgments referred in para 4 above, in identical cases where the employee had put in more than ten years of service in temporary status, had allowed family pension to spouses of the deceased employees.

9. It is not in dispute that a casual labour with temporary status has to go through a selection process for being brought to the permanent establishment. Late Shri Ishak Lal could not get permanent status for reasons not available on record. I have perused the judgment in **Santosh** (supra) and **Surji Devi** (supra). In **Santosh** (supra), the Tribunal had directed the respondents therein to sanction family pension to the widow of the deceased, treating the deceased as a regular employee. The Hon'ble Supreme Court did not agree with the Tribunal and held that the deceased could not have been treated as a regular employee and as such, his widow could not have been granted family pension. In **Surji Devi** (supra), the petitioner's husband

was a work-charge employee and had not been regularized. The Hon'ble Supreme Court thus held that his widow could not be considered for family pension. I find that both the judgments do not have direct applicability to the instant case on the ground of facts being different.

10. In the instant case, admittedly the applicant's husband had acquired temporary status way back in the year 1992 and has served as temporary status holder for 21 years. He was not a work-charge employee nor the applicant is seeking grant of family pension to her treating him as a regular employee and accordingly for reckoning the period of service rendered by him for the purpose of computation of family pension. The applicant is merely seeking the relief in terms of the Tribunal's order in **Smt. Munni Devi** (supra) and **Smt. Shashi** (supra) wherein 50% of the period of temporary service has been taken into consideration for determining the eligibility for grant of family pension. After going through these judgments of the Tribunal, I am of the view that the applicant's case is squarely covered by these two judgments of the Tribunal and the applicant deserves the same relief that has been granted to the applicants therein.

11. In the conspectus of discussion in the foregoing paras, this OA is allowed in terms of the Tribunal's order dated 20.03.2017 in **Smt. Munni Devi** (supra) and dated 9.10.2017 in **Smt. Shashi** (supra). The respondents are directed to sanction family pension to the applicant reckoning 50% of the service rendered by late Shri Ishak Lal (husband of the applicant) holding

temporary status. This shall be done within a period of three months from the date of receipt of a certified copy of this order. For the sake of clarity, I would like to further mention that the applicant shall be entitled for family pension from the date of her eligibility but without any interest on the arrears of pension.

(K.N. Shrivastava)  
Member (A)

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