

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI**

O.A. No.764 of 2016

Orders reserved on : 26.11.2018

Orders pronounced on : 28.11.2018

Hon'ble Ms. Nita Chowdhury, Member (A)

Smt. Anita Devi
(Aged about 46 about years)
W/o late Shri Rajveer Singh,
r/o Village Arnia, Maujpur,
Post Khurja Junction,
Distt. Buland Shahr (U.P.)

....Applicant

(By Advocate : Shri T.D. Yadav)

VERSUS

1. Union of India through Secretary,
Department of Post, Dak Bhawan, New Delhi.
2. Chief Postmaster General U.P.
Circle Lucknow.
3. Assistant Superintendent of Post Offices Khurja.
4. The Superintendent of Post Offices,
Bulandshar (U.P.).

.....Respondents

(By Advocate : Shri Manish Kumar)

ORDER

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

- “(i) to direct the respondents to consider the case of the husband of the applicant for posthumous regularization w.e.f. 29.12.1997 i.e. from the date of regularization of similarly situated person and count 50% of temporary service for purpose of DCRG and family pension and other benefits.

- (ii) to direct the respondent to grant all the consequential benefits including DCRG, family pension and arrears with 18% interest to the applicant.
- (iii) to pass any other order/s as may be deemed fit and proper in the facts and circumstances of the case.
- (iv) Award costs.”

2. Brief facts of the case as stated in the OA are that the husband of the applicant, namely, Rajveer Singh was initially appointed as CP Chowkidar w.e.f. 18.6.1986 and respondents had also issued a Memo dated 17.9.1987 regarding revision of allowance of the husband of the applicant from 353 to 371.

2.1 Applicant further stated that in compliance of the directions of the Hon’ble Supreme Court, a Casual labours (Grant of Temporary Status and Regularisation) Scheme was drawn up by the respondents in consultation with the Ministry of Law vide letter dated 12.4.1991 and in pursuance of Director General of Post letter dated 12.4.1991, the respondents had granted temporary status to the applicant w.e.f. 29.11.1989 vide Memo dated 9.10.1991 (Annexure-D).

2.2 In pursuance of DG Post, New Delhi dated 14.5.2012 under subject “Casual Labourer Grant of Temporary Regularisation Scheme” 50% of the service rendered under temporary status was granted for the purpose of retirement benefits after regularization as a group ‘D’ official who were

regularized w.e.f. 29.12.1997 vide order dated 14.5.2012 and 4.6.2012, vide order dated 3.1.2013.

2.3 Applicant further stated that vide Memo dated 14.5.2012, number of similarly situated employees who were granted temporary status w.e.f. 29.11.1989 along with applicant by the respondents have been regularized w.e.f. 29.12.1997 but the applicant has been discriminated.

2.4 Applicant further stated that applicant's late husband is entitled for posthumous regularization w.e.f. 29.12.1997, i.e., from the date of regularization of similarly situated person with all consequential benefits as her husband was suffering from heart disease and ultimately expired on 6.3.2015 leaving behind 3 sons and 2 daughters also.

2.5 The applicant made a representation requesting to release pensionary benefits as well as grant of compassionate appointment to her son vide her application dated 4.4.2015 but the same has not been decided by the respondents, therefore, the applicant has left with no option except to file this OA for redressal of her grievances.

3. Pursuant to notice issued to the respondents, they have filed their reply in which they have stated that the applicant has filed the present OA claiming pensionary benefits as a result of her husband's death who was a contingency paid Chowkidar and was conferred temporary status but was not

regularized because he was not senior enough to come within 25% quota prescribed in recruitment rules for regularization of temporary status employees.

3.1 They further stated that applicant by virtue of instructions contained in circular dated 30.11.1992, is entitled to some limited benefits (other than pensionary benefits) which have since been released to her but she is not entitled to pension as claimed by her, as in order to become entitled pension and gratuity, an employee or his family has to satisfy requirements of CCS (Pension) Rules, 1972, which are not satisfied in applicant's case, because applicant's husband was not a regularly appointed employee. His status at the time of death was a casual labourer with temporary status. Rules 2(b) and 2(c) of the CCS (Pension) Rules, 1972 specifically exclude the application of these Rules to daily wagers employees and persons paid from contingencies.

3.2 They further stated that applicant's husband had been engaged as casual labour against the post of contingency paid Chowkidar in Khurja HQ w.e.f. 18.6.1986 on daily wagers basis, and was given temporary status w.e.f. 29.11.1989. However, the applicant's husband could not be regularized in group 'D' cadre till his death i.e., 6.3.2015 due to non-availability of vacancy in Group 'D' cadre. As such, the husband of the applicant is not entitled to get retiral benefits,

i.e., Pension, Gratuity and leave encashment as applicable to other permanent Group 'D' employees.

3.3 They also stated that in accordance with the clarification received from the office of the Director General Posts, New Delhi vide letter dated 30.11.1992, the casual labourers, who have been conferred temporary status and completed 3 years of service after conferment of such temporary status, have been allowed to be treated at par with temporary Group 'D' employee for granting the following benefits only: (1) All kinds of leave admissible to temporary employees; (2) Holidays as admissible to regular employees; (3) counting of service for the purpose of pension and terminal benefits as in the case of temporary employees appointed on regular basis for those temporary employees appointed on regular basis for those temporary employees (temporary status casual labourers) who are given temporary status and who complete 3 years of service in that status while granting them pension and retirement benefits after their regularization; (4) Central Government employees Insurance scheme; (5) G.P.F.; (6) Medical Aid; (7) L.T.C.; (8) All advances admissible to temporary Group 'D' employees; (9) Bonus.

3.4 They further stated that temporary status employees having rendered 3 years service after conferment of such temporary status were allowed to be treated at par with

temporary Group 'D' employee granting some benefits. In the said clarification, it is nowhere mentioned that the pensionary benefits i.e. pension, gratuity and leave encashment will be provided to a contingency paid employee who was not regularized. Since applicant's husband was not regularized till his death, i.e., 6.3.2015, the retirement benefits admissible to regular Government employees i.e. pension, gratuity and leave encashment are not admissible to him. The respondents cannot give more than what is admissible under letter dated 30.11.1992 (Annexure R-2).

3.5 They also stated that neither Memo dated 14.5.2012 is available in the office of the respondents nor has the applicant annexed copy thereof. The applicant's husband could not be granted temporary status because he did not fulfill the criteria of seniority-cum-fitness prescribed by the Departmental Promotion Committee. Applicant's husband could not be regularised in Group 'D' cadre till i.e. 6.3.2015 due to non-availability of vacancy in Group 'D' cadre. As such, he was not entitled to get retiral benefits i.e. pension and gratuity as applicable to other permanent Group 'D' employees.

4. Applicant has also filed her rejoinder in which she had reiterated the averments made in the OA and denied the contents of the counter affidavit.

5. Heard learned counsel for the parties and perused the material placed on record.

6. Counsel for the applicant while reiterating the averments as narrated in the OA submitted that the issues involved in this case is squarely covered by the Order of this Tribunal in OA No.1631/2016 (**Smt. Munni Devi vs. Union of India and others**) decided on 20.3.2017.

7. Counsel for the respondents submitted that the applicant's husband is entitled to the benefits only as it has been clarified by communication dated 30.11.1992 and as per the said communication, pension, gratuity and leave encashment is not admissible to casual labour conferred with temporary status and only the benefits as indicated in the said communication dated 30.11.1992 are admissible to casual labour granted temporary status and who completed 3 years of service while granting them pension and retirement benefits after their regularization.

7.1 Counsel further submitted that the Order of this Tribunal in **Smt. Munni Devi** (supra) is not applicable to the facts of this case.

8. It is undisputed fact that applicant's husband was initially appointed as C.P. Chowkidar on 18.6.1986 and was also granted temporary status w.e.f. 29.11.1991 and was continued to work till 5.3.2015 as he was suffering from heart

disease and ultimately expired on 6.3.2015 leaving behind applicant - widow, 3 sons and 2 daughters. The respondents have also not disputed that similarly situated employees were regularized w.e.f. 29.12.1997 vide Order dated 14.5.2012 and 4.6.2012 as is evident from (Annexure G). The applicant's husband rendered services for about **29 years** from the date of initial appointment and about **18 years** from the year of grant of temporary service. In **Smt. Munni Devi** case decided by this Tribunal (supra), the applicant was also a widow of late Shri Chander Bhan, who joined the respondent department as a casual worker on 26.5.1987, acquired temporary status w.e.f. 29.11.1989 and died in harness on 23.9.2004 and the applicant in that case also sought the direction to the respondents to grant family pension and pensionary benefits and this Tribunal after noting the relevant rule positions as also the judgments on the issues, as raised in this OA, held that the case of the applicant in the said case is squarely covered by the judgment of the Hon'ble Delhi High Court in the case of **Sharda Devi vs. Union of India and others** (W.P. (C) No.3018/2012 decided on 25.4.2013 as in Para 9 of the said judgment, the Hon'ble Delhi High Court has taken note of the judgment of the Apex Court, which is reproduced as under:-

“9. We note that as per the policy those who had acquired temporary status were entitled to be regularized against regular vacancies as and when they arose. In a somewhat similar circumstance, in

the decision pronounced by the Supreme Court which is reported as 1996 (7) SCC 113 Yashwant Hari Katakkar Vs. UOI & Ors. the Supreme Court opined that it would be unbelievable that a temporary status employee could not be made permanent even after serving for 18½ years. Pension was directed to be paid.”

as also the decision of the Allahabad Bench in the case of ***Jeewanti@Jeewa Devi vs. Union of India and others*** (OA No461/2012 decided on 28.4.2015) and the said OA filed by Smt. Munni Devi was allowed with a direction to the respondents to calculate the pensionary benefits of the applicant including the family pension and release all the arrears of pensionary benefits @ 8% per annum from the date it become due till the date actual payment is made to the applicant.

9. This Court is also of the considered opinion that instant case is squarely covered by the decision of this Tribunal in ***Smt. Munni Devi's*** case (supra) and accordingly the respondents are directed to consider the case of the applicant in the light of the aforesaid decision and pass a reasoned and speaking order within a period of three months from the date of receipt of certified copy of this Order.

10. In the result, the instant OA is disposed of in above terms. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

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