

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00610/17

Date of Order: 19/09/2018

C O R A M

HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER

Khazanchi Sharma, s/o Late Prasadi Misterly Resident of Mohalla-Dhawalpur, PO- Begampur, District- Patna- 800008.

..... Applicant.

- By Advocate: - Mr. S.K. Tiwary

-Versus-

1. The Union of India through the Secretary, Ministry of Communication, Department of Post, New Delhi- 110001.
2. The Director General, Department of Post, Dak Bhawan, Sansad Marg, New Delhi-110001.
3. The Chief Post Master General, Bihar Circle, GPO Complex, Patna- 800001.
4. The Director of Accounts (Postal), Patna- 800001.
5. Superintendent of Postal Store Depot, Patna GPO Compound, Patna- 800001.

..... Respondents.

- By Advocate(s) : - Mr. Radhika Raman

O R D E R
[ORAL]

J.V. Bhairavia, J.M.:- This OA has been filed by the applicant seeking the following reliefs:-

- “ (i) The applicant humbly prays that the respondents may be directed to finalize his pension w.e.f. 28.02.2017 and its benefits under CCS(Pension) Rules 1972 and consequential benefits immediately.
- (ii) The applicant further prays that arrears of pension and its benefits with 10% interest may be granted.

(iii) Any relief/reliefs may be granted to the applicant for ends of justice.

2. The applicant's case is that he was initially appointed as Casual Labour on 15.10.1981. He was subsequently granted temporary status w.e.f. 29.11.1989 and temporary status at par with Group 'D' employee w.e.f. 29.11.1992 as per Memo dated 07.12.1998 (Annexure A/1). The applicant retired from service on 28.02.2017. It is submitted that after his retirement he was not granted pension and other retirement benefits. The applicant approached the respondents by way of filing representation on 30.03.2017 (Annexure A/2) requesting for counting 50% service of temporary status period for grant of pensionary benefits enclosing therewith the order dated 22.03.2017 passed by this Tribunal in OA/050/00664/15 in an identical matter. But he was denied the pension on the ground that he had not completed 10 years qualifying service. It is the contention of the applicant that the applicant comes under the CCS(Pension) Rules, 1972 and the qualifying service ought to be counted from 29.11.1992 for pensionary benefits and half period would be counted from 29.11.1992 to 28.02.2017 (date of retirement).

3. The respondents in their written statement have submitted that due to unavailability of post of MTS in the office of Postal Store Depot (PSD) Patna, the applicant could not be regularized till the date of retirement. As such, they pleaded that pension cannot be granted to the applicant due to his temporary

status at the time of retirement. It is further submitted that as per the Scheme of Casual Labour, 50% of service rendered under temporary status would be counted for the purpose of retirement benefit after regularization and as such the applicant does not come under the CCS(Pension) Rules, 1972. It is submitted that the total strength of MTS cadre in PSD is 12 and there were 10 temporary status employees in the Unit including the applicant who was at sl. No. 3. Out of the said 10 TS employees, since only one temporary status employee was regularized against the vacancy meant for casual labourers, the applicant could not be considered as he was not regularized till his retirement due to non-availability of vacancy.

4. Heard the parties and perused the record.

5. In the present case it is not in dispute that the applicant was initially engaged as Casual Labour on 15.10.1981. He was subsequently granted temporary status w.e.f. 29.11.1989, and after completion of 3 years, he was granted temporary status at par with Group 'D' employee w.e.f. 29.11.1992 as per Memo dated 07.12.1998.

6. The claim of the applicant for grant of pension has been denied by the respondents on the ground that his service was not regularised, and he retired with temporary status at par with Group 'D' employee. Therefore, in absence of regularization of the service as Group 'D' employee the applicant was not granted benefit of pension.

7. The reason stated by the respondents for denying the benefit of pension to the applicant is not acceptable for the reason that the applicant has rendered three years of service with "temporary status" and rendered 24 years of service with "temporary status at par with Group 'D' employee" totaling 27 years of service under the respondents Postal Department. The fact remained that the respondents had not issued any promotion or regularization order during 27 years of applicant's service. Undisputedly, the applicant has rendered more than 10 years of continuous service and as such his right to claim pension has been accrued as per the provisions of Rule 10 of CCS(TS) Rules, 1965 read with Rule-2 of CCS(Pension) Rules, 1972.

8. An identical issue also came up for adjudication before this Tribunal in another case, i.e. OA 372 of 2017 (Bhikhani Devi Vs. Union of India & Ors.) wherein this Tribunal also observed as follows:-

" It could be noted that the decision rendered by the Hon'ble High Court at Patna in CWJC 227/2016 (supra) was rendered on 19.01.2016, whereafter a Division bench of the Hon'ble High Court at Patna while deciding the CWJC 10978/2017 on 04.09.2017 and CWJC 11435/2017 on 11.09.2017 in cases of employees who have put in long years of service since 50 years of their service on temporary status begets the benefit of pension, took a different view. In absence of any Apex Court decision ruling the field, this Tribunal inarguably and undoubtedly cannot venture to take a view contrary to that which has been taken by the Hon'ble High Court of Patna in its later decision in CWJC 10978/2017, as stated supra."

9. After observing as above, this Tribunal allowed the said OA and the respondents were directed to consider the case of the applicant in the light of the decision rendered in CWJC 11435/2017 and 10978/2017.

10. This Tribunal in an identical case, i.e. OA/050/00609/2017 decided on 21.08.2018 also held that considering the fact that the applicant had rendered more than 25 years of service in the department and he was not conferred with permanent status or regularization, 50% of the service rendered by the applicant as temporary status is required to be counted for the purpose of retirement benefits as also fixation of his pension.

11. In the present case, it is noticed that the applicant has rendered more than 24 years of service and he cannot be deprived of his legitimate right of pension. The present case is squarely covered by the decision of this Tribunal dated 27.03.2018 in OA No. 372/2017 and dated 21.08.2018 in OA No. 609/2017. Under the circumstances, the service rendered by the applicant ought to be considered by the respondents as qualifying service for grant of pension.

12. In view of the above, the objections raised by the respondents for denying the benefit of pension to the applicant cannot be accepted.

13. In the conspectus, the OA is allowed. The respondents are directed to consider the claim of the applicant for fixation of his pension and grant of gratuity and all other retiral dues in the light of

discussions made hereinabove and order passed by this Tribunal in identical case, i.e. OA 372/2017 (supra) within a period of two months from the date of receipt of a copy of this order. No order as to interest and costs.

[Jayesh V. Bhairavia]
Judicial Member

srk