

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

O.A./051/00238/2014

Orders Reserved on : 14th September, 2017
Date of orders : 07.10.2017

CORAM

HON'BLE MR. UDAY KUMAR VERMA, MEMBER (A)
HON'BLE MR. JAYESH V. BHAIKARIA, MEMBER (J)

Bharat Ram, son of Madan Ram, resident of Kalyanpur, P.O.-
Satsand, District – B, Deoghar, PIN Code 814116 (Jharkhand).

.....Applicant

By Advocate : Smt. M.M. Pal.

Smt. Ruby Pandey.

Versus

1. The Union of India through the Secretary, Government of India, Ministry of Communication, Department of Posts, New Delhi-cum- The Director General, Department of Posts, India, Dak Bhawan, New Delhi, PinCode – 110001.
2. The Senior Superintendent of Post Offices, Santhal Pargana Division, Dumka, (Jharkhand).
3. The Chief Post Master General, Jharkhand Circle, Ranchi, Pin Code 834002 (Jharkhand).
4. The Director of Postal Services, Jharkhand, Ranchi, Pin Code 834002 (Jharkhand).

..... Respondents.

By Advocates: Shri H.K. Mehta.

O R D E R

Javesh V. Bhairavia, Member (J):- In the present case, the Hon'ble High Court of Jharkhand at Ranchi vide its order dated 4th February, 2016 passed in WP(s) No.3701 of 2015 was pleased to set aside the

original order dated 17th November, 2014 passed in O.A./051/00238/2014 and remitted the case to CAT, Circuit Bench, Ranchi for hearing it afresh after giving opportunity to both the sides.

2. The applicant in the present O.A. mainly challenged the legality and correctness of the order dated 31.10.2013 (Annexure – A/1) passed by the respondent No.2-Senior Superintendent of Post Offices, Santhal Pargana Division, Dumka, Jharkhand, rejecting the claim of the applicant for grant of benefit of 50% of service rendered by the applicant under Temporary Status as a qualifying service period till the regularization for retirement benefits. It is further prayed by the applicant for a direction to the respondents to give pensionary benefit to the applicant by consideration of 50% of the service rendered by him under Temporary Status and by also considering his subsequent regularization as a Group – ‘D’/MTS on his attaining superannuation on 30th November, 2011 along with interest. It is further prayed that applicant be held entitled to grant of revised Group-D pay scale which was allowed and the pensionary benefits may be calculated on such revised pay scale.

3. Learned counsel for the applicant submitted in support of

his claim in this Original Application submitted as under.

- 3.1 That the applicant was appointed as per order dated 16th September, 1983 (Ann. A/3) as a Night Guard by the respondent authorities as a contingent paid Night Guard for Satsang P.S. – B, Deoghar, on remuneration of Rs.75/- p.m. The applicant joined his duty on 16.09.1983.
- 3.2 It is further stated that on the basis of letter no. 15-95/87 dated 12.04.1991 issued by the Directorate Posts, New Delhi Secretary Posts, New Delhi, which was circulated under C.O., Patna vide letter no. Est/E-34/RS/VI/Rig. Dtd 26.04.1991 (Annexure –A/5), the applicant along with other contingent paid Night Guards were granted “Temporary Status” with direction that their services were to be governed under the provisions of the Directorate’s letter dated 17.05.1990. The applicant was listed at Sl. No.4 in the list of temporary contingent paid Night Guards.

3.2 It is further submitted by L/c. for the applicant that the DPC was held on 08.08.2011 at C.O., Ranchi for consideration of the candidates-employees working in the Respondent Department with temporary status for the appointment as 'Group-D employees' and name of applicant was approved by the DPC and accordingly by order dated 12th August, 2011 the applicant was appointed in Group-'D'/MTS (Annexure-A/8). As per the said appointment, on 09.09.2011, the applicant assumed the charge as a Group-'D' employee at **B, Deoghar, H.O.** On 30.11.2011, the applicant till his superannuation had completed service in the department as a Group-'D' employee for a period of 2 months and 22 days only.

3.3 The applicant further submitted that he addressed a letter to Superintendent of Posts, Dumka Division, Dumka on 02.04.2012 requesting the respondent No.2 to kindly fix his pay in the pay-band 5200-20200 + G.P. 1800 with effect from 01/01/06 as per the guidelines contained in Memorandum/Circular issued by the Ministry of Personnel Public Grievances and Pension being No-4901/31/2008-EST(C) dated 23/01/2012 under casual labour Scheme of 1993 and also requested to consider his pensionary benefit on his superannuation i.e. 30.11.2011 accordingly.

3.4 Learned counsel for the applicant further stated that the applicant had also requested the respondent authority to grant him pensionary benefits as per the direction issued by the Department of Post, New Delhi vide order dated **26.08.2004** (Annex. 13/A), the said order dated 26.08.2004 was issued in reference to the O.M. issued by DoPT – Delhi OM No.517/2004-Estt(C) dated 11.08.2004, para 3 and 3 (e) of the said O.M. stipulate the condition as under:

3 The temporary status entitle casual labourers the following benefit

a.....

b.....

c.....

d.....

(e) 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits in regularization.

In view of above provision the L/c. for the applicant submitted that the applicant is entitled for the relief prayed in this O.A.

3.5 It is further pointed out by the learned counsel for the applicant submitted that as per the provisions of Casual Labourers (grant of Temporary Status) Regularization Scheme circular dated 25.09.1991, in para-6 of the said circular, it was clearly stated that

“50% of the service rendered under Temporary Status would be counted for the purpose of retirement benefits after regularization of a regular Group-‘D’ official”. In this case, after the applicant has rendered service from 1990 to 2011 under the “Temporary Status”. The applicant’s service was regularized to the Group – ‘D’/MTS on 08.08.2011 and he joined the duty on 09.09.2011 and continued till 30.11.2011 i.e. the date of his superannuation. Therefore, the applicant is entitled for the benefit of the aforesaid guidelines/circulars. However, for one reason or another reason, the respondent authority failed to consider and grant the eligible benefits to the applicant.

3.6 It is further submitted by the applicant that though the OM dated 26th April, 2004 issued by Government of India, Dept. of Per. & Trg. O.M. No.49014/1/2004 – Estt. (C) is quashed and set aside by the Hon’ble Apex Court and inspite of that, the claim of applicant has been not considered on the ground that as per the said OM dated 26th April, 2004, the new pension scheme has been introduced and claim of employees for grant of benefit of 50% of services rendered in a capacity of temporary status holder employee cannot be allowed to take benefit of the old pension scheme. The L/c.

for the applicant contended that it is an admitted fact that the said OM dated 26th April, 2004 is held to be not sustainable by the Hon'ble Apex Court as well as various High Court & CAT, therefore no reliance could be placed on it of the said O.M. dated 26th April, 2004.

3.7 It is also brought to the notice of this Tribunal by the L/c. of the applicant that the Department of Posts vide its letter dated 22nd July, 2016 issued the circular under the head “Casual Labourers with Temporary Status – clarification regarding contribution of GPF and pension under the old pension scheme” and according to it, the benefits as claimed by the applicant on the basis of circular/guidelines issued as per the OM dated 26.08.2004 (13A) is required to be granted.

3.7 It is contended by the learned counsel for the applicant that latest instructions issued by DoPT in its OM dated 26.07.2016 has also clarified that (a) Casual Labourers who did not granted temporary status under scheme, have completed three years of service after that they are entitled to contributing the GPF. (b) 50% of the service rendered under Temporary Status would be counted for the purpose of retirement benefits. In spite of this clear clarification issued

by the competent authority, the applicant's claim is also covered by the recent clarifications issued by the GOI circular. However, the respondent authority arbitrarily denied the grant of benefit to the applicant.

4. In view of the above stated facts and contention. The L/c. counsel for the applicant finally submitted that though the applicant is eligible to avail benefit of the Government/respondent policy/guidelines/circular issued time to time, however the said benefit has been not made available to the applicant. Therefore, the action of the respondent authorities is arbitrary and the impugned order dated 31st October 2013 issued by the respondent No.2 is in violation of the provisions of policy of the Department and is also contrary to the plethora of decisions rendered and settled by the Hon'ble Supreme Court and Hon'ble High Court and pray for grant of relief sought in the O.A.

5. In contra, the respondents have filed a written statement and objected the claim put forth by the applicant. The main thrust of argument raised on behalf of the respondent authorities is

that since the applicant service was regularized on 09.09.2011, i.e. in the year 2011, and at that relevant time the applicant's service was covered by the new pension scheme of April, 2004.

6. It is further submitted by the respondents that the new pension scheme (Scheme introduced in April, 2004) was in force on the date of applicant's joining of service as regular Group-D employee i.e. on 9.9.2011. According to the new pension scheme, the same is based on defined contribution, the length of the qualifying service for the purpose of retirement benefits has lost the reverence, no credit of casual services shall be available to the casual labourers on their regularization against Group 'D' post on or after 01.01.2004. The applicant service was regularized on 09.09.2011. Hence, the temporary service period from 1990 to 2011 of the applicant as casual labourer with temporary status cannot be considered for the benefit of pension. Therefore, the applicant is not entitled for any relief prayed for in this O.A.

7. It is further contended by the respondent that as per the provision of OM NO. 49014/1/2004-Estt.(C) dated 26th April, 2004 it is also stipulate that new pension scheme has been introduced and

according to the provision of the same the claim of employees for grant of benefit of 50% of services rendered in a capacity of temporary status holder employee cannot be allowed to take benefit of the old pension scheme. The service render under the temporary status cannot be consider as qualifying service, the service of the applicant was regularized after 01.01.2004, therefore, the applicant is not entitled to get the retirement benefits as claimed. Therefore, the order dated 31.10.2013 passed by the respondent is just and proper and the applicant is not entitled to any relief as sought in this O.A.

8. Heard the learned advocates for the respective parties and minutely perused the material available on record.

9. In the present case, the records make it amply clear that the applicant was in service from 16th September, 1983 as casual labourer/contingent paid night guard with the respondent department. Thereafter, on the basis of letters/guidelines dated 12.04.1991 issued by the Secretary, Post, New Delhi, the respondent authority issued the circular dated 26.04.1991 granting Temporary Status (T.S.) to the contingent paid night guards and accordingly, the applicant's services has been recognized with temporary status. The applicant rendered

service as Casual Labour with temporary status (T.S.) till 08.11.2011.

10. It is also an admitted fact that in the year 2011, the service of the applicant was regularized and the applicant was appointed in Group – ‘D’/MTS cadre on the recommendation of the DPC and he assumed the charge on 09.09.2011 accordingly.

11. It is required to note here that as per the communication dated 26.08.2004 (refer Annex. 13/A) the Department of Post, New Delhi directed all the heads of postal circle to follow the direction issued by the DoPT, New Delhi in O.M. No. 517/2004 – Estt. (C) dated 11.08.2004 wherein it was unambiguously made it clear in its para 3 and 3 (e).

3 “The temporary status entitles casual labourers the following benefit:

3 (e) 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits in regularization.”

In view of the above stated clarification made by the DoPT New Delhi and also by Departmental Post the respondent Postal Department is under the obligation to follow the same and according to it 50% service rendered by the casual labourers under temporary status would be counted for the purpose of retirement benefits on regularization.

12. The respondent authorities have failed to appreciate the fact that the OM dated 26.04.2004 has been quashed by various Benches of Cat/High Courts wherein it was opined that the scheme (including pension) could not be modified retrospectively and the benefit of service render by the casual labourers under the temporary status needs to be count for retirement / pensionary benefits. Against the said decisions the SLPs filed before the Hon'ble Supreme Court by the concerned Government Department, but in fail, the said SLPs have been also dismissed by the Apex Court. The said position is clarified by the DOPT in its OM No. 49014/2/2014-Estt.(C) dated 26.02.2016. It is further stated in the said OM in particular para 6 and 7 which are reproduced as under,

“6. The position has been reviewed in the light of the Court judgments in consultation with the Department of Expenditure. It has now been decided that the casual labourers who had been granted temporary status under the same, and have completed 3 years of continuous service after that, are entitled to contribute to the General Provident Fund.

7. 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits in respect of those casual labourers who have bee regularized in terms of para 8 of the OM dated 10.09.1993.”

9. It is also required to be noticed that subsequent to the above stated clarification issued by the DOPT on 26.02.2016, the

Department of Post issued its further clarification dated 22nd July, 2016 and in para 3 and 3(a) and 3(b), which is relevant to resolve the issue involved in the present original application. The same paras are reproduced.

"3. Therefore, in line with the instructions issued by DOP&T vide OM No. 4914/2/2014-Estt(C) dated 2.02.2016 on the subject following clarifications are hereby issued in respect of Casual Labourers in the Postal Department in supersession of Directorate letter No. 45-6/2005-SPB-1 dated 02.09.2005.

- (a) Casual Labourers who had been granted temporary status under the scheme, and have completed 3 years of continuous service after that, are entitled to contribute to the GPF.*
- (b) 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits in respect of those Casual labourers who have been regularized in terms of the provisions of Department of Post Scheme for regularization of Casual Labourers."*

10. In view of above stated policy and clarifications declared by the concerned respondent department, the claim of the applicant for availing the benefit of retirement as well as pensionary benefit for his qualifying services (under temporary status till regularization & regular service) put in by the applicant needs consideration, the qualifying service as claimed by the applicant is as under,

<u>Year</u>	<u>Months</u>	<u>Days</u>
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50% of T.S.(period (12.04.1991 to 08.09.2011)	10	07	2
Regular(service)	<u>00</u>	02	22
Qualifying Service	10	10	18

11. In our considered opinion based upon the scrutiny of the available record and the submission put forth by the learned advocates of the parties, 50% of the service rendered to the temporary status would have to be counted for the purpose of retirement benefits upon regularization. The reason stated by the respondent No.2 in its order dated 31.10.2013, which is impugned herein in the present case is contrary to the direction of the Department post, New Delhi. dated 26.08.2004 to be read with DOPT O.M. dtd 11.08.2004 and also the clarification issued by the Department of Posts on 22nd July, 2016 vide OM No.01-07/716SPB-1. The applicant admittedly was in employment on or before 10th September, 1993 with temporary status and his service was regularized in terms of the provisions of Department of Posts scheme for regularization of casual labourers. Therefore, the claim of the applicant is squarely covered as per the above stated OM and further clarification issued by the Department of

Posts. The grounds put forth by the respondent authorities in denying the claim of the applicant became irrelevant and is not only ill-founded, but misplaced too.

12. In view of what has been discussed above, we have no other option but to quash and set aside the impugned order dated 31.10.2013 with a direction to the respondents to consider the case of the applicant in view of above stated observation and pass appropriate speaking order with respect to grant of all the retirement benefit as claimed in the present O.A. within 60 days from the receipt of a copy of this order.

13. Accordingly O.A. is allowed. However, there shall be no order as to costs.

[Jayesh V. Bhairavia]
Member (J)
sk/-

[Uday Kumar Verma]
Member (A)