

Reserved

Central Administrative Tribunal, Allahabad Bench,

Allahabad

Original Application No.330/00226/2018

This the 11th day of February, 2019

Hon'ble Mr. Justice Bharat Bhushan, Member (J)

Rajendra Kumar Mishra s/o late Shri Pathadin Mishra r/o VPO- Ingohata, Hamirpur-210341.

..... Applicant

By Advocate: Sri Shyamji Das Kapoor

Versus

1. Union of India through the Secretary, Ministry of Communication & I.T. (Dept. of Posts), New Delhi and others.
2. The Secretary, Ministry of Personnel, Training and Pension Welfare (Dept. of Pension), New Delhi.
3. The Chief Post Master General, U.P. Circle, Lucknow.
4. The Post Master General, Kanpur Region, Kanpur.
5. The Supdt. of Post Offices, Banda Division, Banda.
6. The Director of Accounts (Postal), U.P. Circle, Sector 'D', Aliganj, Lucknow

..... Respondents.

By Advocate:-Sri Nand Lal Maurya

ORDER

HON'BLE MR. JUSTICE BHARAT BHUSHAN, MEMBER (J)

The applicant, Sri Rajendra Kumar Mishra, has filed the present Original Application (O.A.) for the following reliefs:-

- i) To quash the pension refusal letter/order No. PG/DOPG-267/217 date 26.9.2017 issued by the Office of Post Master General, Kanpur Region, Kanpur as the G.O. of 1968 relied therein is not applicable in the case of the applicant.

The applicant is governed by the provisions of the "Grant of Temporary Status and Regularization Scheme of

1991" formulated by the Department of Posts Government of India.

- ii) To direct the respondents to calculate and pay pension and gratuity from the date they fell due.
- iii) To direct the respondents to pay interest on the arrears of pension and gratuity @ 12% P.A. in view of the principle laid down in their judgment by the Hon'ble Supreme Court and Hon'ble High Court regarding interest payment.
- iv) To pass any other order/direction which the Hon'ble Tribunal may deem fit and proper in the present case.
- v) To allow the original application with cost.

2. The facts of the O.A. are that the applicant Rajendra Kumar Mishra was appointed as Casual Chowkidar in the Postal Department of Government of India. He was conferred temporary status on 29.11.89 under Grant of Temporary Status and Regularization Scheme formulated by the Department of Post in consultation with the Ministry of Law, Finance and Personnel. This scheme was formulated by the Department of Post, Government of India on 12.4.1991 in compliance of orders of Apex Court passed in Writ Petition No. 1276/1986.

3. The applicant was granted temporary status on completion of successful 3 years' of service on 28.11.1992 and became entitled to be treated at par with temporary Group 'D' employee. He started contributing GPF in regular way and also earned annual increment in the pay scale of Group 'D' employee. The applicant superannuated on

31.3.2017 but he was denied pension by the Post Master General, Kanpur Region, Kanpur vide order dated 26.9.2017.

4. Learned counsel for applicant has submitted that the denial of this pension is on the ground of 1968 G.I.O. which is inapplicable in the case of applicant because he is governed by the provision of Regularization Scheme prepared at the instance of the Hon'ble Supreme Court and promulgated after the approval of President of India.

5. Respondents have claimed that the applicant was engaged as contingency paid chowkidar and was granted temporary status w.e.f. 29.11.1989. However, he was never regularized against any vacant Group 'D' post upto his retirement date. Respondents have further stated that applicant was never part of regular vacant Group 'D' post, therefore, he was rightly denied pension. Respondents have also claimed that the applicant was entitled for contribution of GPF and earned annual increment after the grant of temporary status but temporary status is not at par with regular employee of the department. Therefore, the applicant is not entitled for any retiral benefits like pension and other benefits.

6. Heard Sri Shyamji Das Kapoor , learned counsel for applicant and Sri Nand Lal Maurya, learned counsel for respondents.

7. As far as details of service of applicant are concerned, they are not in dispute. Applicant was indeed appointed as casual chowkidar in the Postal Department and has rendered continuous service till 31.3.2017 when he superannuated on attaining the age of 60 years.

8. It is pertinent to point out that temporary status to the applicant was granted in pursuance of scheme known as

Casual Labours (Grant of Temporary Status in Regularization) Scheme. This scheme was formulated by the Department of Post, Government of India vide communication dated 12.4.1991 issued by the Director General, Department of Post, New Delhi in compliance of the order of Supreme Court in Writ Petition No. 1276 of 1986 filed by the Reserved Trained Pool Telephone Operators of Bombay and others connected with other writ petitions.

9. The applicant was given temporary status in terms of the said scheme w.e.f. 29.11.1989. The department also extended the financial benefits of DA, ADA, HRA as revised from time to time and also granted other privileges provided to other employees. The applicant retired on attaining the age of superannuation on 31.3.2017.

10. Admittedly, this scheme was drawn at the instance of Hon'ble Apex Court with prior consultation of Ministry of Law, Finance and Personnel. The scheme, in fact, provided that no recruitment from open market will be done till casual labourers are available to fill up the posts. Paragraph 17 of the scheme is reproduced as under:-

"17. No recruitment from open market from group 'D' posts except compassionate appointment will be done till casual labourers with the requisite qualification are available to fill up the posts in question."

11. There is no dispute that temporary status was indeed granted to the applicant. In this connection, it is relevant to point out that this Tribunal has already adjudicated similar dispute in O.A. No. 1201/2011 decided on 21.12.2016 (Smt. Gayatri Devi vs. Union of India and others). Even prior to that in O.A. No. 1470 of 2011 decided on 18.4.2013 (Debari Ram Vs. Union of India and others), this Tribunal had

adjudicated another similar dispute. It is pertinent to point out that the department had invoked the jurisdiction of High Court of Allahabad by filing writ petition No. 60272 of 2009 (Union of India and others Vs. Shyam Lal Shukla) which has been dismissed. The Hon'ble High Court in its judgment dated 23.12.2011 has held as follows:-

"From the perusal of Rule 154 A of Manual, it is manifestly clear that the Chowkidar, Sweeper, Mails, Khalasis who worked side by side with regular or with employees in work charge establishment should be brought on regular establishment and should be treated regular employees. The Rule itself has used the work 'regular employee' without any reference to formal order of regularization. The Tribunal has relied on Rule 154 A of the Manual of appointment and allowances of the officers of Indian Post and Telegraphs Department. It is, undisputed fact that the respondent no. 1 has worked and has received the payment from contingent fund w.e.f. 10.4.1982 to 26.11.1989 i.e. seven years six months and nineteen days, thereafter, from the consolidated fund of Central Govt. from 26.11.1989 to 29.11.1992 three years and then from 30.11.1992 till the date of retirement i.e. 30.6.2003 as temporary Govt. employee of Group D for ten years seven months and one day. The total qualifying service for pension comes to 17 years four months and 10 days."

The Hon'ble High Court of Allahabad has further held as under:-

"In our view the said Rule clearly spells out its essential purpose to give pensionary benefit to certain

class of employees as regular employee notwithstanding the fact that no formal order of regularization was passed."

12. The facts in O.A. No. 1470/2011 and O.A. No. 1201/2011 are similar to the facts of the present O.A. Those judgments and judgment dated 23.12.2011 of Allahabad High Court passed in Writ Petition No. 60272 of 2009 (Union of India and others Vs. Shyam Lal Shukla) have finally settled the question that postal employees who were granted temporary status in pursuance of D.G. Post Letter No. 45-95/87/SPF-I dated 12.4.1991 are entitled for pensionary benefits.

13. The service details of the applicant are not in dispute. The applicant is deemed to have been regularized and consequentially required to be treated as regular employee of respondents' department. Therefore, the present O.A. is allowed. Respondents are directed to ensure payment of pension and other post retiral benefits along with interest @ 7% per annum from the date it becomes due till the date of actual payment, as expeditiously as possible, preferably within a period of four months from the date of receipt of certified copy of this order. No order as to costs.

**(JUSTICE BHARAT BHUSHAN)
MEMBER (J)**

HLS/-

