

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD**

Dated: This the 22nd day of January 2019

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER - J

Original Application No. 1183 of 2008

Jai Shree Thakur, son of Chhalar Thakur, Resident of Village & Post Shoharatgarh, District Siddharatha Nagar.

.....Applicant

By Advocate: Shri R.S. Gupta

Versus

1. Union of India through Secretary, Post & Telegraph, New Delhi.
2. Chief Post Master General, U.P. Circle, Lucknow 226001.
3. Post Master General, Gorakhpur Division, Gorakhpur.
4. Superintendent of Post Offices, Basti Division, Basti.
5. Inspector of Post Office, Bast North Sub Division

. . . Respondents

By Adv: Shri S. Srivastava

ORDER

1. The applicant Jai Shree Thakur has filed this O.A. under section 19 of Administrative Tribunals Act, 1985 seeking following reliefs:-

"(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 17.6.2008 of respondent No. 3 (vide Annexure No.1, supra) entire grounds are retired upon.

(ii) Issue writ, order or direction in the nature of mandamus commanding and directing the respondents to make payment of pension, encashment of leave, to make refund of Rs.4000/- wrongly deducted from his pay, to make payment of Rs.3045/- sanctioned as fund CEGIS with interest

and also make payment for the services rendered by the applicant on Sundays w.e.f. 1992 to 31.7.2007 with interest, all the grounds are relied upon.

- (iii) Issue such other and further suitable writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and the circumstances of the case.
- (iv) Award costs of this application to the applicant".

2. The brief facts as stated in the O.A. are that the applicant was appointed on the post of E.D. Chowkidar at Post office Shoharatgarh on 17.07.1976 by the respondents and said post was converted C.P. Chowkidar and he was granted temporary status vide letter dated 13.01.1995 (Annexure-A4). Vide letter dated 30.08.2006 (Annexure-A5), applicant was asked to make formal application for pension atleast one year in advance of his retirement date. Applicant retired from service on 31.07.2008 and was also accorded encashment leave. However vide impugned order dated 17.06.2008, respondent has rejected his request for pension and other monetary reliefs. Applicant submitted that in similar circumstances one Sri Chandi Lal filed O.A.No. 917/2004 and this Court decided the case in favour of the applicant therein.
3. In the counter affidavit, respondents while admitting the temporary status of the applicant have taken a host of ground to disallow the claim of applicant. The applicant was not regularized in Group D in Department under 25 % quota vacancies reserved for casual labours on seniority basis and the applicant was not entitled for pensionary and other benefits.
4. I have heard the learned counsels for the parties and perused the pleadings and documents on record.

5. Learned counsel for applicant reiterated the facts as stated in the O.A. Counsel further submitted that since the applicant has already been treated as regular employee and was also granted pay scale of Group D employees, hence contention of the respondents that the applicant was only awarded temporary status and was not regularized is against the factual aspects.
6. Counsel for respondents submitted that applicant was only awarded temporary status and was not regularized and in the absence of any regular vacancy, the judgment relied upon by the applicant will be of no use and in respect of payment of pension and retiral benefits to the persons holding temporary status was made, as per, observation of the Tribunal in the case of Shyam Lal Shukla Vs. UOI (O.A. No. 1626/2005 decided on 28.7.2009).
7. Counsel for applicant submitted that the case of applicant is squarely covered with the judgment passed by this Tribunal in O.A. No. 1626/2005 (Shyam Lal Shukla Vs. Union of India and others) decided on 28th day of July, 2009 which was affirmed by the Hon'ble High Court in Civil Misc. Writ Petition No. 60272 of 2009 (Union of India and others Vs. Shyam Lal Shukla) decided on 23.12.2011 and further SLP No. 12664/2012 filed by the Union of India against the order of High Court dated 23.12.2011 was also dismissed vide order dated 6.8.2012 . The Counsel for applicant further submitted that relying upon the judgment passed by this Tribunal in O.A. No. 1626/2005, this Tribunal allowed O.A. No. 1847/2012 (Khacheru Singh Vs. Union of India and others) on 11th November, 2016, O.A. No. 1848 of 2012 (Shree Niwas Sharma Vs. Union of India and others) decided on 21st July, 2017 and O.A No. 917/2004 filed by Chandil Lal and decided vide order dated 01.12.2005. Counsel lastly submitted that case of applicant is fully covered with the aforesaid judgments

passed by this Tribunal and applicant is also entitled for pension and retiral benefits.

8. Counsel for respondents submitted that no doubt applicant was engaged as part time contingency paid Chowkidar. The applicant was never appointed on any sanctioned post. He was conferred temporary status, certain facilities were provided to the contingency paid casual labour but the applicant was never regularized on Group D posts as there was no regular vacancy. The applicant was permitted to retire from service on attaining the age of 60 years. Since the applicant was not regularized in Group D cadre, hence pension and terminal benefits were not given to him. Counsel further submitted that the facts and circumstances of case of Shyam Lal Shukla is on different issue and as such order passed in that case is not applicable in the present case.
9. From perusal of the judgment of Shyam Lal Shukla Vs. Union of India which was affirmed by the High Court as well as by the Hon'ble Apex Court, it is clear that the facts of that case is similar to the case of applicant of present O.A.
10. Shyam Lal Shukla (Applicant in O.A. No.1626/2005) was also appointed as contingency paid Chowkidar w.e.f. 10th April, 1982 and respondents also issued letter of confirmation of appointment of applicant as Chowkidar. Shyam Lal Shukla was working continuously as Chowkidar and received allowances as revised from time to time like other contingent paid employees of the Deptt. In the year 1987, on the basis of judgment of Hon'ble Supreme Court of India in which a direction was issued to DGP&T to frame a rational scheme to regularize the rendered and into regular establishment, the DGP&T has framed a scheme w.e.f. 25.11.1989 and conferred the temporary status to

Shyam Lal Shukla w.e.f. 25.11.1989 and he was also given minimum pay scale of Group D employees w.e.f 29.11.1989 along with other benefits of service and annual increments, except pensionary and retiring benefits till their services was not regularized by the Department. Thus from the facts of Shyam Lal Shukla, it is clear that he was engaged as contingency paid chowkidar in 1982 and was granted temporary status on 25.11.1989. However, he was denied the pension and retiral benefits only on the ground of non regularization. The ground taken by the respondents is that applicant was not regularized in absence of vacancy.

11. The applicant Shyam Lal Shukla (in O.A. No. 1626/2005) also placed reliance of the final judgment and order dated 13.1.1997 (RA-2 in O.A. No. 1626/2005) in Special Leave of Appeal to Apex Court in Writ Petition No. 25119 of 1995 arising out of order dated 17.9.1996 in O.A. No. 159/1993 of CAT, Allahabad Bench in the case of Ram Lakhan Vs. Union of India and others as well as order dated 2.9.2005 in O.A. No. 917/2004 (Chandi Lal Vs. Union of India and others) and after considering the aforesaid decision of the Tribunal affirmed by the Apex court, O.A. No. 1626/2005 (Shyam Lal Shukla Vs. Union of India) was allowed by this Tribunal which was also affirmed upto the stage of Hon'ble Apex Court. Relying upon the case of Shyam Lal Shukla, this Tribunal also allowed O.A. No. 1847/2012 (Khacheru Singh vs. UOI) and O.A. No. 1848/2012 (Shree Niwas Sharma Vs. UOI). The case of Shyam Lal Shukla, Khacheru Singh and Shree Niwas Sharma are fully cover the case of applicant of present O.A.. The applicant of present O.A. was also engaged as C.P. Chowkidar om 3.7.1970 and his appointment was made in accordance with the provision of Rule 154 (a) of the Manual for pay and allowances to the officers of P&T Department. The applicant was also granted temporary

status and applicant was also granted all the benefits mentioned by the respondents in para No. 3.1 of body of this order and was paid to the applicant in compliance of order of Hon'ble Supreme Court. However, defence of O.A. in this case is also similar that applicant could not be regularized due to want of vacancy which was also the case of respondents in Shyam Lal Shukla.

12. During the argument, learned counsel for the applicant produced copy of the judgment of this Tribunal in passed in OA No. 1455 of 2014 on 27.3.2018 (Syed Ali Vs. UOI and Ors) and submitted that similar decision may be given in this case also.
13. I have perused the aforesaid order and I am of the opinion that in this case also, applicant is entitled to similar relief as has been given to the applicant of OA No. 1455 of 2014. In that case, the Tribunal was given following orders relying upon the case of Shyam Lal Shukla, which was affirmed by the Hon'ble High Court and Hon'ble Supreme Court as:

“Thus, relying upon the judgment passed by this Tribunal in afore mentioned OAs and confirmed by the High Court as well as by the Hon'ble Apex Court, the applicant is also entitled for similar benefits as granted to applicants of that O.As. Accordingly, O.A. is allowed. Respondents are directed to ensure payment of pension and other post retiral benefits to the applicant along with interest @ 9% per annum from the date it becomes due till the date of actual payment as expeditiously as possible within a period of three months from the date of receipt of certified copy of this order. No order as to costs”.

14. Hence, considering the facts of this case and earlier case of Shyam Lal Shukla (supra) which was also affirmed by the Apex Court, and also case of Syed Ali (supra), it is undisputed that applicant was engaged as contingency paid chowkidar and was granted temporary status and respondents provides all the benefits to the applicant as admissible to regular Group D employees and applicant also retired on attaining the age of superannuation i.e. at the age of 60 years. He was also not granted pensionary and retiral benefits on the sole defence that vacancy was not available and he was not a regular employee. However, the applicant is entitled for the benefits under Rule 154 of the Manual of appointment and allowances. The Hon'ble High Court on perusal of the Rule 154 of the aforesaid manual 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."

15. 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."

16. In view of the above decisions and observations, I am of the view that in this case also, applicant is entitled to similar benefits. Accordingly, O A is allowed. Respondents are directed to ensure payment of pension and other post retiral benefits as well the refund of Rs.4000/- wrongly deducted from his pay, Rs.3045/- sanctioned as Fund CEGIS to the applicant along with interest @ 6% per annum from the date, it becomes due till the date of actual payment as expeditiously as possible within a period of three months from the date of receipt of certified copy of this order. No order as to costs.

(Rakesh Sagar Jain)

Member (J)

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