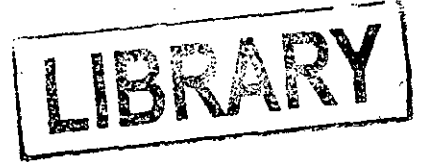


CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA



No.O A /350/118/2016

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member

Raja Ram Jana,
Son of Radhagobinda Jana,
Casual Chowkidar (Ty. Status),
Residing at Ektapur,
Via - Contai, P.O. Haipur,
District - Purba Midnapur,
West Bengal, PIN - 721 401.

.... Applicant.

- Versus -

1. Union of India
Service through the Secretary,
Ministry of Defence,
R.K. Puram,
New Delhi - 110 006.
2. The Director General,
Defence Estates,
Ministry of Defence,
Raksha Sampada Bhawan,
Ulaanbaatar Marg,
Delhi Cantt - 110 010.
3. The Director,
Defence Estates,
Ministry of Defence,
Eastern Command,
13, Camac Street, 7th Floor,
Kolkata - 700 017.
4. The Principal Director,
Defence Estates,
Eastern Command,
13, Camac Street, 7th Floor,
Kolkata - 700 017.

..... Respondents

For the applicant : Mr. G. Chowdhury, counsel

For the respondents : Mr. P. Mukherjee, counsel

Heard on : 19.09.2018

Order on : 14.11.18.

ORDER

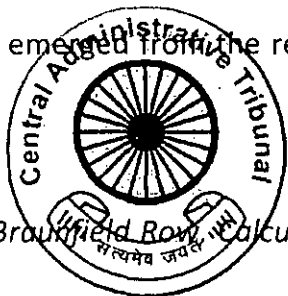
Bidisha Banerjee, Judicial Member

This application has been preferred in order to seek the following reliefs:-

"8.(a) A direction upon the respondents to treat the applicant as a permanent Group 'D' employee pursuant to the letter of appointment which was issued vide Annexure "A-2" to this application and to allow the applicant all retirement benefits as permanent Group 'D' employee of Government of India, Ministry of Defence.

(b) Issuance of any other order or orders and/ or direction as this Hon'ble Tribunal may deem fit and proper."

2. The admitted facts that emerged from the reply of the respondents are as under:-



"Premises No. 5 Braughfield Row, Calcutta -27 is A I land and belongs to Local Military Authorities. However, the LMAs were not willing to take over possession of the premises as the said land was not required by them and litigations were going on regarding confiscated goods of encroachers stored at site, as per order of the, Hon'ble High Court. Hence, the possession of the premises was taken over on 18.03.1982 after evicting the encroachers. Therefore, it became essential to guard the valuable Govt. land and assets worth crores of rupees and the confiscated items such as machines, tools etc. And other items of the encroachers. The deployment of the Chowkidars thus became essential and unavoidable as the premises is situated in a highly commercial and thickly populated area and is prone to encroachment and theft by the antisocial elements if left unguarded. The

arrangement for guarding the premises, for 24 hours was made by engaging Casual Chowkidars by shifting duty for 08 (eight) hours a day.

Initially the sanction was accorded vide Director, DL & C EC, Calcutta letter No. 360187/LC/Vol.IX dated 14.08.1982 for engagement of Casual Chowkidars for six months at daily narrick rates as prescribed by Station Headquarters and Shri Raja Ram Jana the present applicant continuously worked as Casual Chowkidar (with usual break) against the sanction accorded by the Competent Authority from time to time.

The matter was taken up with the Employment Exchange for sponsoring the candidates for working as Casual Chowkidars for 89 days basis, but they our attention to section 3(1) of the Employment Exchange (compulsory Notification of vacancies) Act, 1969 inter alia stating that there is no provision for sponsoring the candidates for such short period. However as per office records Sri Raja Ram Jana had been working in the office as Casual Chowkidar with effect from 22.03.1982 to 21.05.1982, 23.10.1982 to 02.05.1984, 15.06.1988 to 14.12.1988 and 18.02.1991 to 16.08.1993 with breaks in between (copy enclosed and marked as Annexure R-1). He was granted Temporary status with effect from 01.09.1993 vide Director, DE, ED, Calcutta letter No. 36001/A/LC-1 dated 03.12.1997 (copy enclosed and marked as Annexure R-2). He was also offered a temporary appointment to a Group - 'D' post of Safaiwala vide Director, DE, ED Calcutta letter No. 36001/A/LCI/III/45 dated 05.01.1999 (copy enclosed and marked as Annexure R-3). However, he was not allowed to join in the post of Safaiwala as his age was already above the upper age

limit as per DL&C Service (Group 'C' & 'D' post) Recruitment Rules, 1984. The proposal for regularization of services of the applicant i.e. casual labourer with temporary status was taken up with the Competent Authority in Ministry of Defence. The Ministry of Defence vide its order dated 03.10.2017 accorded sanction for relaxation of the relevant provisions in respect of Shri Raja Ram Jana alongwith other five casual labourers with temporary status of Defence Estates Organization. Accordingly, the Directorate General, Delhi Cantt. Vide letter dated 17.10.2017 communicated the same to the Principal Directorate, Defence Estates, Eastern Command stating that Shri Raja Ram Jana has been dispensed on attaining the age of 60 years by DEO Kolkata Circle and no vacancy in MTS has arisen before his dispensation from service. The case is being taken up separately with MoD for seeking their confirmation and exemption. In the meantime, in accordance with orders contained in DG, DE letter No. 105/22/ADM/DE/09 dated 17.04.2013 and DOP&T letter No. 49011/31/2008-Estt.(C) dated 23.01.2013, the pay of Shri Raja Ram Jana was refixed under CCS (RP) Rules, 2008 with effect from 01.01.2006 and placed in the PB-01, thereby increasing the Grade Pay from Rs. 1300/- to Rs. 1800/-, Shri Raja Ram Jana was drawing Basic Pay @ Rs. 8570/- and Grade Pay Rs. 1800/- before his dispensation from service."

3. A bare perusal of the aforesaid admitted position would indicate, reveal and demonstrate that the applicant was engaged way back in 1982. He discharged his duties as Chowkidar on casual basis till 31.08.1993, thereafter on temporary status from 01.09.1993 and was offered temporary appointment to a

Group 'D' post of Safaiwala on 05.01.1999. Only because he crossed the upper age limit as on 05.01.1999 for appointment, he was not allowed to join as such. The Ministry of Defence vide its order dated 03.10.2017 had already accorded sanction for relaxation of relevant provisions in respect of the applicant which could not be given effect to since the applicant was allowed to superannuate in the meantime. However, records reveal that the applicant was on regular scale of pay with annual increments when he retired. He was put in a regular scale of pay from 01.09.1997 and granted regular revision of pay scale in 2006 in terms of IVth CPC's recommendations. He retired in Pay Band -I i.e. Rs.5200-20200 with Grade Pay of Rs.1800/-. He was also asked to fill in the pension papers and deposit the photocopies of documents as required under the rules.

4. The applicant has pleaded that he acquired a right to get pension after serving so long as Group 'D' employee from 1999 onwards and for the lapses of the respondents he should not be left to suffer and be deprived of his pension as it would amount to violation of Article 21 of the Constitution of India. The applicant has pleaded that when he was engaged on casual basis on 22nd March, 1982 he was only 26 years old and, therefore, there should not be any impediment for granting him permanent status for the purpose of pension. The applicant alleged that the respondents misdirected themselves while submitting that he had crossed the upper age limit as on 05.01.1999. The applicant has categorically denied that while calculating the upper age limit, his services as casual Chowkidar with effect from 22.03.1982 to 26.08.1992 i.e. 4 years 8 months and 16 days was taken into account or that even after 5 years' age relaxation as Schedule Caste candidate and 4 years 8 months and 16 days' relaxation in regard

to his services as casual labour his age crossed the upper age limit for joining the post of Safaiwala.

5. Ld. counsel for the applicant had drawn our attention to the DOP&T's O.M. dated 10.09.1993 in regard to grant of temporary status and regularisation of casual workers in review of the policy that existed as on 07.06.1988. The O.M. dated 07.06.1988 provides as under:-

"(x) The regularisation of the services of the casual workers will continue to be governed by the instructions issued by this Department in this regard. While considering such regularisation, a casual worker may be given relaxation in the upper age limit only if at the time of initial recruitment as a casual worker, he had not crossed the upper age limit for the relevant post.

(xi) If a Department wants to make any departure from the above guidelines, it should obtain the prior concurrence of the Ministry of Finance and the Department of Personnel and Training. All the administrative Ministries/ Depts. Should undertake a review of appointment of casual workers in the offices under their control on a time-bound basis so that at the end of the prescribed period, the following targets are achieved:-

- (a) All eligible casual workers are adjusted against regular posts to the extent such regular posts are justified.*
- (b) The rest of the casual workers not covered by (a) above and whose retention is considered absolutely necessary and is in accordance with the guidelines, are paid emoluments strictly in accordance with guidelines.*
- (c) The remaining casual workers not covered by (a) and (b) above are discharged from service.*

2. The following time limit for completing the review has been prescribed in respect of the various Ministries/Depts:-

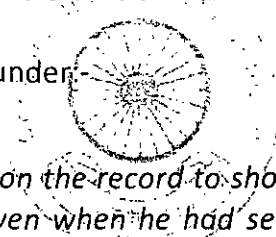
- (a) Ministry of Railways 2 years*
- (b) Department of Posts, Department of 1 Year Telecommunications and Department of Defence Production*
- (c) All other Ministries / Depts./Offices 6 months*

Each Ministry should furnish a quarterly statement indicating the progress of the review in respect of the Ministry (Proper) and all Attached / Subordinate offices under them to the Department of Personnel and Training in the proforma attached. The first quarterly return should be furnished to this Department by the 10th October, 1988."

6. Citing the aforesaid(extracted with emphasis) , Id. counsel for the applicant would vociferously argue that since the applicant was only 26 years old and well within the upper age limit as on the date of engagement on casual basis he ought to have been regularised against a permanent Group 'D' post. Id. counsel would further submit that the respondents had failed to discharge their duties in respect of the above by not undertaking the review as prescribed in the DOPT's O.M. due to which the applicant has been purposely made to languish till his superannuation.

7. That apart, Id. counsel would place the following decisions:-

(a) **Yashwant Hari katakar vs. Union of India and Others** wherein the Hon'ble Supreme Court would held as under:



"There is nothing on the record to show as to why the appellant was not made permanent even when he had served the Government for 18 ½ years. It would be travesty of justice if the appellant is denied the pensionary benefits simply on the ground that he was not a permanent employee of the Government. The appellant having served the Government for almost two decades it would be unfair to treat him as temporary/quasi-permanent. Keeping in view the facts and circumstances of this case we hold that the appellant shall be deemed to have become permanent after he served the Government for such a long period. The services of the appellant shall be treated to be in permanent capacity and he shall be entitled to the pensionary benefits. We allow the appeal, set aside the judgment of the Tribunal and direct the respondents to treat the appellant as having been retired from service on 7-3-1980 after serving the Government for 18 ½ years (more than 10 years of permanent service) and as such his case for grant of pension be finalised within six months from the receipt of this order. The appellant shall be entitled to all the arrears of pension from the date of retirement."

(b) In **Bank of Baroda vs. S.K. Kool(D)** through Lrs. and Anr. it was held by the Hon'ble Apex Court that *"there being a conflict provisions, both must be harmoniously construed so that both can be given effect to"*.

(c) In case of Secretary to Govt. Commercial Taxes and Registration Department, Secretariat and another vs. A. Singamuthu Hon'ble Apex Court allowed extension of benefit of regularisation to full time daily wagers who completed 10 years of continuous service.

8. Ld. counsel for the respondents on the contrary would oppose the prayer of the applicant seeking deemed regularisation in case of a retired employee to enable him to earn pension. Ld. counsel would submit that on the date of retirement the applicant was a casual Chowkidar with temporary status, therefore, he is not entitled to draw pensionary benefits under the rules.

10. Ld. counsels were heard and materials on record were perused.

11. Apart from the admitted position referred to supra, it is noticed from the records that on 11.03.2002 there was proposal to grant appointment to the applicant on regular basis wherein the following facts were recorded (extracted verbatim with supplied emphasis):-

"3. One of them Shri Raja Ram Jana was engaged as a Casual Chowkidar with approval from competent authority w.e.f. 22.3.1992. Initial period of his casual employment was over on 2.5.1984 with brakes in service in between. Then, again, he was engaged as a casual chowkidar from issue onwards with regular brakes in service.

4. As per the policy decision of GOI. Min. Of Personnel, PG & Pensions, Deptt. of Personnel & Training letter No. 51016/2/90-Estt(C) dated 10.9.1993, Sri Jana was granted Temporary Status along with a few other Casual Chowkidars (Similarly placed) with effect from 1.9.93. He has been regularly working as a Casual Chowkidar continuously w.e.f. 1.9.1993. There are no brakes in service and his wages are paid as nor extant Govt. orders on the subject.

5. Shri Jana was selected and offered temporary appointment as a safaiwala in Group 'D' cadre in the Defence Estates Organisations on a pay of Rs. 2, 550/- in the pay scale of Rs. 2550-55-2660-60-3220/- vide Director DE EC letter No. 360011/A/LC-1/III/45 dated 5.1.99. At the time of above appointment he was the senior most in service and his character and antecedents were verified and also Medical fitness has been certified by the

competent medical authority. However the individual was not allowed to actual join the office in the said post of Safaiwala on the ground that he appeared to be over aged. It is relevant to bring to your kind notice that the departmental candidates with 3 years continuous service are eligible to be appointed to Gr. 'D' post by direct recruitment in the same allied cadre upto 40 years of age normally and upto 45 years of age for SC s & STs. Swami's Handbook – 1999-Page 6 – Entry 6 may kindly be linked regarding age relaxation. Shri Jana who has been working in the Doptt. from 1982 onwards as a Casual Chowkidar with brakes in service and from 1993 as a casual Chowkidar with temporary status rendering continuous service for more than a period of 5 years was appointed on 5.1.1999 as he was 42 yrs old on the date of appointment, his date of birth being 17.1.1956. Hence it appears that he is fully eligible to be appointed against the Gr. 'D' post and hence it appears that he was appointed so by the competent authority namely the Director DE EC Kolkata. The DDE EC has also directed the DEO vide their letter No. 360011/LC-I/XXX/EC/DE181 dated 27.10.99 to take immediate necessary action to take Shri Jana as a Safaiwala in the office of the DEO Kolkata in terms of the said appointment letter dt. 5.1.99. The matter has been pending due to certain misunder standing on the rule position with reference to the ground realities.

6. As of now there is a person namely Shri Basudev Samanta who is working as a Casual Safaiwala against the vacant post of Safaiwala and if it is approved by the competent authority he could be shifted in the strength of Casual Chowkidar paving the way for taking Shri Raja Ram Jana as a temporary Safaiwala forthwith. It appears that this would be in compliance with the order of the DDE EC. It is fervently requested that the same may kindly be confirmed now to enable us to take Shri Jana against the post of Safaiwala on temporary basis and to keep Shri Basudev Samanta as a Casual Chowkidar."

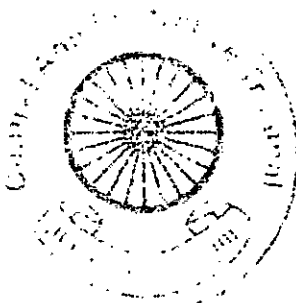
12. It is also evident from the record that no steps were taken by the authority pursuant to the DOPT's O.M. in 1993 and the applicant was allowed to cross the upper age limit for engagement in service against Group 'D' post. It is also noted from the DOPT's O.M. of 1993 as well as an office order dated 24.11.1999 marked as Annexure 'D' to the reply to the supplementary affidavit that, as per the Recruitment Rules for appointment to the post of Group 'D' from casual worker(Temporary status), age relaxation is permissible to the extent of the continuous service rendered as casual labour. Accordingly in case of the applicant, 1716 days' exemption had to be allowed in addition to 5 years' age relaxation as a Schedule Caste which would take the upper age limit to 25+5+4 years, 8months

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and 16 days totalling to 34 years 8 months and 16 days. In terms of DOPT's O.M. dated 10.09.1993, the applicant became entitled to be considered for regularisation in 1993 itself. Therefore, having considered the upper age limit as on 05.01.1999 instead of 1993 the date of earning temporary status (1993 to be precise), the respondents have deliberately flouted the O.M. and deprived the applicant of his right to earn his pension.

13. In view of such, the O.A. is disposed of with a direction upon the respondents to grant age relaxation strictly in terms of DOPT's O.M. dated 10.09.1993 and consider the applicability of the decisions cited supra to his case and pass appropriate orders in regard to grant of pensionary benefits to the applicant, within 3 months from the date of receipt of this order.

14. No costs.



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(Bidisha Banerjee)
Judicial Member