

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00575/2015
With
MA/050/00142/2019

Date of Order: 03.05.2019

C O R A M

Hon'ble Mr. Jayesh V. Bhairavia, Judicial Member
Hon'ble Mr. Dinesh Sharma, Administrative Member

Chhote Lal, S/o Late Shividani Ram, resident of village – Shekhupur Bazar, PO – Nimi, PS – Shekhupur Sarai, Disatricht – Sheikhpura [Munger]. Applicant.

By Advocate: - Mr. J.K. Karn

-Versus-

1. The Union of India, through the Secretary Cum DG, Department of Posts, New Delhi-110001.
2. The Chief Postmaster General, Bihar Circle, Patna- 800001.
3. The Director of Postal Services [Hq], O/o Chief Postmaster General, Bihar Circle, Patna.
4. The Senior Superintendent of Post Offices, Gaya Division, Gaya. Respondents.

By Advocate: - Mr. H.P.Singh

O R D E R
[ORAL]

Jayesh V. Bhairavia Member [J] :- The applicant has filed the present OA seeking directions upon the respondents to regularize his services against the post of Night Guard at the Office of Sr. Superintendent of Posts, Gaya Division, a Group-D post w.e.f. the date of his eligibility with all consequential benefits. The applicant has also prayed for a direction upon the respondent authorities to allow

pension and all pensionary benefits in terms of orders/judgment passed by this Tribunal in OA/050/00777/2016, OA/050/00572/2017 and other cases since he already retired from service w.e.f. 30.11.2016 on attaining the date of superannuation.

2. The applicant was appointed as Night Guard in the Office of Sr. Superintendent of Post Offices, Gaya Division, Gaya in the year 1975 and since then he has been working uninterruptedly till date. The applicant was conferred temporary status as on 29.11.1989 vide order dated 04.07.1991 [Annexure-A/1]. Accordingly, he became at par with Temporary Group-D employee pursuant to G.I. Deptt. of Posts, Lr. No.66-09/91-SPB I dated 30th November, 1992 [Annexure-A/2] and was allowed all facilities.

3. The applicant submitted that he was employed against the regular post of Night Guard, as such the respondents were required to issue orders regarding his regularization against the aforesaid post but instead of doing so, vide order dated 20.12.2013 [Annexure-A/3], the Sr. Superintendent of Post Offices, Gaya Division, Gaya ordered his promotion to the post of MTS under 25% quota on selection cum seniority for the vacancy of the year 2011 and 2012 and was ordered for his posting under SDI[P], West Sub Division, Gaya. According to the applicant, the said promotion was just an eye wash as he is already getting the same scale of pay much before issuance of the said order along with annual increments. The applicant further submitted that

his nature of work was being changed after more than 37 years of service and was being given fresh temporary appointment in the cadre of MTS against the post of Runner at Mow –Usasdeora Line, vide order dated 23.12.2013 [Annexure-A/4].

4. The applicant submitted that in June, 2014, the Department circulated a policy decision in pursuance of Supreme Court judgement in the case of Uma Devi , wherein it has been stipulated that the casual labours having worked for ten years or more are to be regularized [Annexure-A/8]. Thereafter, the applicant approached the respondents through Annexure-A/9 praying therein to regularize his services but of no help.

5. The applicant submitted that the Sr. Superintendent of Post Offices, Gaya Division forwarded his case to the office of Chief Postmaster General, Bihar Circle but he has been denied his pension all pensionary benefits on account of his refusal to promotion as MTS, therefore, the entire family is facing starvation as no pension is being allowed to him.

6. The applicant relied upon the decision rendered by this Tribunal in OA/050/00777/16, OA/050/572/2017 and OA/050/ 00604/2017 with MA/050/00144/2019. This Tribunal in OA/050/00604/2017 has held as under : -

“The case of the applicant is that he retired on attaining the age of superannuation w.e.f. 31.12.2015 while employed against the

post of Night Guard at Divisional Office, Motihari. The applicant stated his service career w.e.f.0-1.05.1986 as contingent paid Night Guard. He was conferred temporary status of Group D w.e.f. 01.06.1993 vide order dated 08.10.1993 issued by Superintendent of Post Offices, Champaran Division, Motihari which was subsequently revised w.e.f. 29.11.1989 vide order dated 28.09.1994. He was confirmed at par with temporary Group D employees w.e.f. 30.11.1992 (vide order dated 05.03.2001). Despite such long period of service, the applicant was not regularized while several other employees junior to the applicant were regularised/promoted against the post of MTS. The applicant is being wrongfully denied benefit of pension and other pensionary benefits and hence, this OA.

2. *The respondents have filed a written statement denying the claim of the applicant. It is stated that he is not entitled to pensionary benefits since he retired on 31.12.2015 without his regularisation on the post of regular Group D for want of vacancy in regular Group D cadre. He has already been granted other benefits such as GPF, CGEGIS, LTC, Leave, Medical Facility and holidays but he is not entitled for pension/family pension, retirement gratuity/ DCRG under CCS(Pension) Rules, 1972.*

3. *During the pendency of this OA, the applicant has filed MA/050/00144/2019 dated 18.03.20189 in which he has requested for disposal of this case on the basis of other decisions of this Tribunal in OA/050/00777/2016, OA/050/00572/2017 and a number of others enclosed with the MA at Annexure-1 series. All these cases, according to the applicant, are based on exactly identical matter decided by this Tribunal.*

4. *Heard the parties. The learned counsel for the respondents did not deny similarity of the facts and issued involved in this case and those mentioned in the MA. However, he reiterated that the applicant is not eligible for pension since his services were not regularized.*

5. *After going through the cases cited in the MA, it is clear that services of the applicants in those cases were also not regularized and the issue involved is the same. Since the facts and the issues involved in this case and the ones disposed of by the decisions of this Tribunal in the cases cited above are identical, this OA is also allowed with a direction to the respondents to consider the case of the applicant and take appropriate decision for qualifying service of the applicant for the purpose of grant of pension and terminal benefits. This should be done in the light of judgments quoted above and the*

judgments of Hon'ble High Court of Patna in CWJC Nos. 11435 of 2017 and 10978 of 2017 (the cases on the basis of which the earlier OAs were disposed of). The entire exercise should be completed within two months of receipt of this order. MA is also allowed accordingly. No costs."

7. The respondents have filed their written statement and contested the case. Shri H.P.Singh, Id. Counsel for the respondents submitted that the applicant was not employed against the regular post of Night Guard. He further submitted that as per promotional hierarchy, the applicant was promoted to the post of MTS for the vacancy year 2011 and 2012 under 25% quota on selection on seniority and was allotted to SDI West Sub Division for his posting as MTS. The applicant was working as Temporary Status with certain departmental facility but after promotion, the applicant had to be facilitated full fledged departmental regular employee having all facilities attached with the post and it is up the applicant, whether he accepts the promotional post or refuses it.

8. Heard the learned counsel for the parties and carefully perused the materials on record.

9. On perusal of records, we come to the conclusion that since the Tribunal in several identical cases has directed the respondents to consider the case of the applicant and take appropriate decision for qualifying service of the applicant for the purpose of grant of pension and terminal benefits. Accordingly, in the present case also, we direct the respondents to consider the case of the applicant and take

appropriate decision for qualifying service of the applicant for the purpose of grant of pension and terminal benefits. This should be done in the light of judgments quoted above and the judgments of Hon'ble High Court of Patna in CWJC Nos. 11435 of 2017 and 10978 of 2017 (the cases on the basis of which the earlier OAs were disposed of). The entire exercise should be completed within two months of receipt of this order. MA -142/2019 stands of accordingly. No costs.

[Dinesh Sharma]
Administrative Member

[Jayesh V. Bhairavia]
Judicial Member

Mps.