

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00092/2017

Date of Order : 15.04.2019

C O R A M

HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

Indrawati Devi, W/o Late Amardeo Prasad, resident of Village – Bhirha Gopalpur, P.O. – Tiriarpur, District – Balia [Uttar Pradesh], PIN 287001.

... Applicant.

- By Advocate : Shri J.K.Karn

-Versus-

1. The Union of India through Secretary-cum-D.G., Department of Posts, Dak Bhawan, New Delhi – 110001.
2. The Chief Postmaster General, Bihar Circle, Patna – 800 001.
3. The Director Accounts [Postal], Exhibition Road, Patna – 800 001.
4. The Postmaster General, Northern Region, Muzaffarpur – 848101.
5. The Director of Postal Services, Northern Region, Muzaffarpur – 848101.
6. The Superintendent, RMS NB Division, Samastipur – 848101.
7. The Sub Record Officer, RMS NB Division, Barauni – 851112.

..... Respondents.

By Advocate :- Shri H.P.Singh, Sr. SC.

O R D E R
[oral]

Per Mr. J.V. Bhairavia, J.M.:- The applicant has filed the instant OA for a direction upon the respondents to settle and release the pensionary and other death benefits at the earliest. The applicant has further prayed for release of DCRG amount as also to settle the family pension and release the arrears with admissible interest.

2. The husband [late Amardeo Prasad] of the applicant was engaged as Casual Labour in RMS NB Division in the year 1982-83 after being sponsored by the Employment Exchange. Her husband, was conferred Temporary Status w.e.f. 01.01.2001, vide memo dated 14.02.2001 [Annexure-A/1].

2. The applicant submitted that after rendering 3 years of service as temporary status after 01.01.2001, her husband became at par with Temporary Group-D employee. Accordingly, vide memo dated 17.03.2016 [Annexure-A/2], issued by the Superintendent, RMS 'NB' Division, Samastipur, her husband on being selected in pursuance of recommendations of DPC held on 14.03.2016, was appointed in MTS cadre in pay band of Rs. 5200-20200 [PB-I] with grade pay of Rs. 1800/-, and in terms of Clause 6 of the said memo, he was placed under "New Pension Scheme". Unfortunately, the applicant's husband died on 20.03.2016 [Annexure-A/3].

The applicant submitted that erroneously her husband was placed under New Pension Scheme since the conditions of service of Temporary employees of the Central Government are regulated under the provisions of the Central Civil Services [Temporary Service] Rules, 1965 and a Govt. Servant becomes entitled to pension, retirement gratuity/death gratuity, family pension benefits under the CCS [Pension] Rules, 1972 only when he is confirmed on any post.

3. The applicant submitted that she approached the departmental authorities and requested them to make payment of family pension as well as other retiral/death benefits, like DCRG, GPF, Leave Encashment, Compulsory Insurance etc. but nothing has been done till date.

4. In support of her case, the applicant placed reliance on an order passed by the Hon'ble High Court of Judicature at Patna in C.W.J.C. No. 4475/2007 dated 07.11.2007 [Annexure-A/6]. In this writ petition, the applicant, Laxman Sah had worked under temporary status for a period of 14 years and after examining different case laws on the point observed that the applicant was entitled to family pension. Accordingly, the Tribunal directed the respondents to provide family pension to the applicant. In the aforesaid CWJC, the Hon'ble High Court held that casual workers acquiring status of a substitute after working for more than one year after his death, his widow would be entitled to a family pension, and in the aforesaid situation, the writ petition filed by the respondents was dismissed.

The applicant has also placed reliance on the orders passed by this Tribunal in OA No.164/2008 dated 20.03.2013 [Annexure-A/7 series]. Further, the applicant placed reliance on the judgment rendered in CWJC No.10978 of 2017, Union of India vs. Kritnarain Singh, wherein the Hon'ble High Court held that as per clause-6 of their own Scheme dated 15.05.1991, 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after regularization as regular Group-D officials. The applicant has also relied upon a decision rendered by Hon'ble Patna High Court in CWJC No.11435/2017, Union of India & Ors. vs. Smt. Ram Kali Devi dated 11.09.2017, wherein the Hon'ble High Court categorically held that the stand of the Union of India that the employee never got regularized. The Court is not impressed by such a submission for the reason that it was failure on the part of the Postal Department not to regularize the service of the husband of the private respondent in 23 years of service

after having been granted temporary status at par with Group-D employees. The failure is on the part of the Postal Department authorities, whose conduct cannot be appreciated or ignored.

The applicant also brought to the notice of the Tribunal Annexure-A/5 – “Benefits for Temporary Employees”, which stipulates that – “A Government Servant becomes entitled to pension, retirement gratuity/death gratuity, family pension benefits under the CCS [Pension] Rules, 1972, only when he is confirmed on any post.

5. The respondents filed their written statement and contested the case. According to them the husband of the applicant, Sri Amar Deo Prasad was engaged as Casual Labour w.e.f. 25.11.1982 on being sponsored by District Employment Exchange, Katihar and was deployed at SRO Katihar under RMS ‘NB’ Division, Samastipur. Subsequently, he was granted temporary status w.e.f. 01.01.2001 and thereafter, in pursuance of recommendations of DPC held on 14.03.2016, Shri Amar Deo Prasad was selected for appointment in MTS Cadre in Pay Band of Rs. 5200-20200 [PB-1] with grade pay of Rs.1800/- under the 6th Pay Commission, vide memo dated 17.03.2016 but he could not join in MTS cadre at SRO Barauni due to his death on 20.03.2016.

6. The respondents further pleaded that as per Government of India policy, the new entrants, except Armed Force Services appointed on or after 01.01.2004 will automatically fall in New Pension Scheme and the same policy was followed in the instant case too as he was appointed after 01.01.2004.

7. The respondents referred to DOPT OM dated 26th February, 2016 and submitted that 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits in respect of casual labourers who have been regularized and Shri Amar Deo Prasad died before joining in MTS cadre in the Department, vide Annexure-R/2, therefore, the applicant is not entitled to any death or terminal benefits, like family pension, DCRG, Group Insurance etc.

8. Heard the learned counsel for the parties and gone through the records.

9. We have carefully considered the submissions of both the parties and examined the materials on record as also gone through the judgements relied upon by the Id. Counsel for the applicant. In view of the orders passed by the Hon'ble High Court of Patna as also by this Tribunal, and as per clause-6 of their own Scheme dated 15.05.1991, 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after regularization as regular Group-D officials.

10. In view of the aforesaid discussions and in the light of the judgment passed by Hon'ble High Court of Patna in the aforesaid writ petitions [supra] and the order passed by this Tribunal, we are of the considered opinion that this OA can be disposed of with directions upon the respondents to pass speaking and reasoned orders taking into consideration the decisions for qualifying service of the applicant's husband.

11. Accordingly, this OA stands disposed of with directions upon the respondents to pass appropriate reasoned and speaking orders taking into consideration the judgements of the Hon'ble High Court of Patna, Tribunal and their own circular dated 15.05.1991, within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-
[Dinesh Sharma]
Administrative Member

Sd/-
[Jayesh V. Bhairavia]
Judicial Member

mps.