

(2019) 10 CAT CK 0035

In the Central Administrative Tribunal

Case No : Original Application No. 1789 Of 2018

Jagbiri Devi

APPELLANT

Vs

Secretary, Ministry Of Communication & IT And Ors

RESPONDENT

Date of Decision : 15-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 21

Citation : (2019) 10 CAT CK 0035

Hon'ble Judges : Pradeep Kumar, Member (A)

Bench : Single Bench

Advocate : S.K. Gupta, Rajinder Nishchal

Final Decision : Allowed

Judgement

1. One Shri Prem Chand was employed as a Chowkidar in the Department of Posts w.e.f. 01.10.1974 on daily wage basis under respondent no.4. Vide orders dated 30.09.1991 he was granted temporary status w.e.f. 29.11.1989. He unfortunately died while in service on 30.11.2000 before he could be regularized.

2. The applicant is the widow of said Shri Prem Chand. She claims that she is totally illiterate and was not aware of the rules, regulations etc. When she became aware about her rights, a legal notice was sent to the respondents on 12.12.2017, through her counsel, for releasing family pension. This request was forwarded on 18.01.2018 by the Assistant Director, Legal Cell, which is an office under respondent no.3, to respondent no.4 for necessary action. The said letter reads as under:

"Sub:- Notice from Shri Surinder Kumar Gupta, Advocate, Supreme Court of India, New Delhi on behalf of Smt. Jagbiri Devi Bulandshahar, UP.

Kindly find enclosed herewith a Notice dated 12-12-2017 received from Shri Surinder Kumar Gupta, Advocate, Supreme Court of India, New Delhi and forwarded from Postal Directorate New Delhi IR No.33/CAT/SPB-I dated 10-01-2018 on the above mention subject.

In this regards, I have been directed by competent authority to request you kindly take appropriate necessary action immediately as per rule and regulation of the Department and action taken report may be sent to the Directorate under intimation to this office."

3. The applicant pleads that no action has been taken so far on this notice and feeling aggrieved the instant OA has been filed. The following relief has been sought:

"(i) direct the respondents to confer the benefit of family pension in terms of CCS (Pension) Rules to the applicant w.e.f. the due date and award all arrears of family pension along with the interest at the rate of 10% p.a. from the date when the amount became due until the payment is made."

4. The applicant pleads that upon grant of temporary status, the General Provident Fund (GPF) deductions were started from monthly salary of her husband from January, 1993 and such deductions continued up to the year 2000. The applicant pleads that as all benefits due to a regular employee were conferred upon her late husband as soon as he was granted temporary status, she be granted family pension.

5. The applicant relied upon a judgment passed by the Hon'ble High Court of Delhi on 25.04.2013 in W.P. (C) No.3018/2012 (Sharda Devi v. Union of India). It is brought out that the late husband of Smt. Sharda Devi was employed on 01.02.1978 in Department of Posts and Telegraph, and was granted temporary status on 29.11.1989 and expired on 25.12.2006 after rendering 28 years of service and before regularization. Smt. Sharda Devi claimed the benefit of family pension initially before the Tribunal where OA was dismissed. Thereafter, she filed a Writ Petition No.3018/2012 before the Hon'ble High Court wherein the Writ Petition was allowed vide judgment dated 25.04.2013 and directions issued to release family pension from a date her husband died along with arrears.

6. The applicant also relied upon a judgment by the Tribunal in OA No.4226/2015, pronounced on 31.01.2018 in Smt. Kuntesh v. Union of India & Anr., represented by Ministry of Health and Family Welfare.

The Tribunal relied upon a judgment by Hon'ble Apex Court in the case of Yashwant Hari Katakhar v. Union of India & Ors., [(1996) 7 SCC 113] on the basis of which the Hon'ble High Court of Delhi had allowed the Writ Petition in the case of Smt. Sharda Devi (para-5 supra). In Yashwant Hari Katakhar. (supra) the Hon'ble Apex Court had observed as under:

"3. Dr Anand Prakash, learned Sr. Adv. appearing for the Union of India, has contended that on 7/3/1980 when the appellant was prematurely retired he had put in 18 1/2 years of quasi-permanent service. According to him, to earn pension it was necessary to have a minimum of 10 years of permanent service. It is contended that since the total service of the appellant was in quasi-permanent capacity he was not entitled to the pensionary benefit. 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 1/2 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 1/2 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. No costs."

The Tribunal also relied upon another judgment by the Allahabad Bench of the Tribunal in the case of Khacheru Singh v. Union of India & Ors., [OA No.1847/2012 decided on 11.11.2016] wherein the OA was allowed, treating the deceased employee to be deemed regularized and a direction was issued to the respondents to ensure payment of family pension and other post-retiral benefits along with interest @9% per annum from the date it became due till the date of actual payment as expeditiously as possible. The relevant parts of this judgment were also quoted by the Tribunal, while adjudicating the OA for Smt. Kuntesh and the same read as under:

"9. The defence set up by the respondents? department in the said OA No.1626 of 2005 and the defence of the respondents? department in the present OA is one and the same that the applicant was not regularized in Group "D? cadre as there was no vacancy. This defence was rejected by this Tribunal in its order dated 2.9.2005, which was confirmed by the Hon'ble High Court Allahabad by its judgment dated 23.12.2011 in the aforesaid Writ Petition No.60272 of 2009.

10. In view of these facts, the question that arises for consideration in the present O.A. is that whether postal employee who was conferred temporary status in pursuance of the D.G. Post letter No.45-49/87/SPB-I dated 12.4.1991 is entitled for pensionary benefits or not is no more res integra. Hence, argument of the learned counsel for the respondents is not tenable.

11. In view of the facts that the service particulars of the applicant, as claimed by him, are admitted by the respondents, the applicant is deemed to have been regularized and consequently required to be treated as ?regular employee? of the respondents? department and accordingly, I am of the view that the case of the applicant is at similar footing as the case of the applicant in OA No.917/2004 and OA No.1626/2005. Hence, it is hereby declared that the applicant is entitled to all post retiral benefits as per relevant statutory rules in force and the applicant is entitled for payment of interest as per rules. It is further ordered that the post

retiral benefits shall be paid along with 9% per annum interest from the date it become due till the date of actual payment..."

The Tribunal also relied upon another decision rendered by the Hon'ble High Court of Delhi on 01.03.2016 in a Writ Petition filed by the petitioner therein against the Tribunal's order dated 28.03.2014 in her OA No.144/2013, wherein the Hon'ble High Court has observed as under:

"8...However, we notice that there is a decision of this Court dated 4th November, 2015 in W.P.(C) No.10382/2015, titled Union of India & Ors. vs. Babita, wherein a temporary employee, who had worked for 20 years, had died in service and request for compassionate appointment was declined. The Tribunal in the said case had allowed the OA and had directed the Union of India to consider the legal heir's case for compassionate appointment. The High Court in the said order has referred to the nature and character of temporary status under the aforesaid Scheme and has observed that once the temporary worker had rendered three years of continuous service, he was entitled to certain benefits and was virtually treated in similar manner as regular employees..."

Relying upon above judgments, the Tribunal gave the following directions in OA-4226/2015 on 31.01.2018:

"9. Accordingly, the O.A. stands allowed. The impugned order dated 05.12.2014 passed by the respondents is quashed and set aside. The respondents are directed to consider the claim of the applicant for grant of family pension w.e.f. 28.03.2012 in the light of the above observations and judicial pronouncements and ensure that payment of pension and other post-retiral benefits along with interest @ 8% per annum from the date it becomes due till the date of actual payment is paid to the applicant as expeditiously as possible within a period of three months from the date of receipt of certified copy of this order. There shall be no order as to costs."

6.1 This decision by Tribunal was challenged by the respondents by filing a Writ Petition in Hon'ble High Court of Delhi vide W.P. (C) No.10013/2019 (Union of India & Anr. v. Kuntesh), wherein judgment was pronounced on 18.09.2019. The Hon'ble High Court dismissed the Writ Petition with the following directions:

"14. We see no reason why the respondent should not get benefit of the same view as taken by the Supreme Court, the Delhi High Court and the Allahabad Bench of the Tribunal in the afore-cited cases. In view of the foregoing discussion, we find no infirmity in the Tribunal's order and no merit in this writ petition. The writ petition is accordingly dismissed.

15. Let the order dated 31.01.2018 passed by the learned Tribunal be now complied with, within 8 weeks from today."

7. It was accordingly pleaded by the applicant that once the applicant's husband was conferred temporary status on 29.11.1989, he acquired all the benefits due to a regular employee. He had served for a total of 26 years, out of which he was

having the temporary status for a period of 11 years. After conferment of temporary status applicant's husband served for a period exceeding three years as was laid down by DG (Post) in directions dated 30.11.1992 (para 8.3 below) and thus he was entitled to all benefits due to a regular employee. Applicant, being the widow of such an employee, she needs to be granted family pension.

8. Per contra, the respondents opposed the OA. It was pleaded that the OA is barred by limitation as the death of applicant's husband had occurred on 30.11.2000 whereas the OA has been filed in the year 2018 and no reasons for delay have been forwarded. Neither has any application been preferred to seek condonation of delay.

8.1 It was further pleaded that the applicant's husband was granted temporary status on 29.11.1989. However in the entire jurisdiction of respondent no.4, no vacancy arose during the period 1991-2004 in any of the regions. Accordingly, no such employee could be regularized in any of the 08 regions under the entire jurisdiction of respondent no.4, namely, Bulandsahar, Agra, Aligarh, Mathura, Jhansi, Etah, Etawah and Mainpuri regions.

8.2 It was pleaded that none of the junior employees to late Shri Prem Singh (applicant's husband) was regularized and that the judgment relied upon by the applicant in Smt. Sharda Devi (para-5 supra) is in the context when one of the junior employee namely Shri Bakshi, was granted regularization and accordingly family pension was granted to Smt. Sharda Devi, the widow of an employee who was senior to Shri Bakshi but still not regularized. As against this, in the instant case there is no such junior employee who was regularized and hence there is no discrimination.

8.3 It was further pleaded that the Director General of Posts vide his letter dated 30.11.1992 had issued the following policy directives:

"1. Vide this office circular letter No.45-95/87-SPB-I dated 12.4.1991, a scheme for giving temporary status to casual labourers fulfilling certain conditions was circulated.

2. In their judgment dated 29.11.1989, the Hon'ble Supreme Court have held that after rendering three years of continuous service with temporary status, the casual labourers shall be treated at par with temporary Group 'D' employees of the Department of Posts and would thereby be entitled to such benefits as are admissible to Group D employees on regular basis.

3. In compliance with the above said directive of the Hon'ble Supreme Court it has been decided that the casual labourers of this Department conferred with temporary status as per the scheme circulated in the above said circular No.45-95/87-SPB-I dated 12.4.1991 be treated at par with temporary Group 'D' employees with effect from date they complete three years of service in the newly acquired temporary status as per the above said scheme. From that date they will be entitled to benefits admissible to temporary Group 'D' employees

such as:

- (a) All kinds of leave admissible to temporary employees.
- (b) Holidays as admissible to regular employees.
- (c) Counting of service for the purpose of pension and terminal benefits as in the case of temporary employees appointed on regular basis for those temporary employees who are given temporary status and who complete 3 years of service in that status while granting them pension and retirement benefits after their regularization.
- (d) Central Government Employees Insurance Scheme.
- (e) G.P.F.
- (f) Medical Aid
- (g) L.T.C.
- (h) All advances admissible to temporary Group D employees.
- (i) Bonus.

Further action may be taken accordingly and proper service record of such employees may also be maintained."

It was pleaded that these policy directives are in the context of those who were granted temporary status and the facilities which were required to be extended to them. This letter does not mention grant of pensionary benefits, gratuity and leave encashment to any such staff who is not regularized. In the instant case, applicant's husband late Shri Prem Singh was not regularized and as such no such benefit can be extended.

8.4 It was pleaded that the OA is without merit and is required to be dismissed.

9. In response to some of the pleas put-forth by the respondents, the applicant pleaded that she is an illiterate lady not aware about the rules and regulations. In respect of limitation plea put-forth by the respondents (para-8 supra), the applicant drew attention to a judgment by Hon'ble Apex Court in S.K. Mastan Bee v. General Manager, South Central Railway & Anr., [(2003) 1 SCC 184], where the Hon'ble Apex Court ruled as under:

"6. We notice that the appellant's husband was working as a Gangman who died while in service. It is on record that the appellant is an illiterate who at that time did not know of her legal right and had no access to any information as to her right to family pension and to enforce her such right. On the death of the husband of the appellant, it was obligatory for her husband's employer, viz., Railways, in this case to have computed the family pension payable to the appellant and offered the same to her without her having to make a claim or without driving her to a litigation. The very denial of her right to family pension

as held by the learned Single Judge as well as the Division Bench is an erroneous decision on the part of the Railways and in fact amounting to a violation of the guarantee assured to the appellant under Article 21 of the Constitution. The factum of the appellant's lack of resources to approach the legal forum timely is not disputed by the Railways. Question then arises on facts and circumstances of this case, the Appellate Bench was justified in restricting the past arrears of pension to a period much subsequent to the death of appellant's husband on which date she had legally become entitled to the grant of pension? In this case as noticed by us herein above, the learned Single Judge had rejected the contention of delay put forth by the Railways and taking note of the appellant's right to pension and the denial of the same by the Railways illegally considered it appropriate to grant the pension with retrospective effect from the date on which it became due to her. The Division Bench also while agreeing with the learned Single Judge observed that the delay in approaching the Railways by the appellant for the grant of family pension was not fatal in spite of the same it restricted the payment of family pension from a date on which the appellant issued a legal notice to the Railways i.e. on 1.4.1992. We think on the facts of this case inasmuch as it was an obligation of the Railways to have computed the family pension and offered the same to the widow of its employee as soon as it became due to her and also in view of the fact her husband was only a Gangman in the Railways who might not have left behind sufficient resources for the appellant to agitate her rights and also in view of the fact that the appellant is an illiterate. The learned Single Judge, in our opinion, was justified in granting the relief to the appellant from the date from which it became due to her, that is the date of the death of her husband. Consequently, we are of the considered opinion that the Division Bench fell in error in restricting that period to a date subsequent to 1.4.1992.

7. In the said view of the matter, we allow this appeal, set aside the impugned order of the Division Bench to the extent that it restricts the right of the appellant to receive family pension only from 1.4.1992 and restore that right of the appellant as conferred on her by the learned Single Judge, that is from the date 21.11.1969. The Railways will take steps forthwith to compute the arrears of pension payable to the appellant w.e.f 21.11.1969 and pay the entire arrears within three months from the date of the receipt of this order and continue to pay her future pension."

It was pleaded that in the ratio of this judgment, the plea of limitation is not applicable in the case of instant applicant, she being an illiterate lady and non-grant of family pension is a continuous cause of action. Accordingly, the OA needs to be allowed on merits.

9.1 The applicant also relied upon a judgment by Hon'ble Apex Court in *Prabhavati Devi v. Union of India & Ors.*, [(1996) 32 ATC 515]. The Hon'ble Apex Court has held in this judgment that even a substitute acquires certain rights and privileges and the same cannot be denied even though he may not be

regularized. The relevant part of this judgment is reproduced below:

"4. The deceased kept working as a 'substitute' till 5.1.87 when he died. But, before his demise, he came to acquire certain rights and privileges under Rule 2318 of the Rules applicable to Railway Establishments. The said rule provides that substitutes shall be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time, on completion of 6 months' continuous service. Indubitably, the deceased had worked beyond 6 months and that too continuously. Having become a temporary servant in this manner, he became entitled to family pension under sub-rule 3(b) of Rule 2311, whereunder it is provided that the widow/minor children of a temporary Railway servant, who dies while in service after a service of not less than 1 year continuous (qualifying) service shall be eligible for a family pension under the provisions of para 801 of the Manual of Railway Pension Rules. Further, in their case the amount of death gratuity admissible will be reduced by an amount equal to the employee's 2 months' pay on which the death gratuity is determined. The Railways have paid to the appellant gratuity under this sub-rule, but have denied to her the family pension. Her claim before the C A T, Patna Bench, Patna, was dismissed which has culminated into this appeal.

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6. We, thus, allow this appeal; set aside the impugned orders of the Tribunal and allow the claim to family pension as projected by the appellant. We also direct the railway to work out the pension due within 2 months from today and deliver the pension as also the arrears to the appellant within 15 days thereafter, if not earlier and also pay interest at the rate of 12% per annum from the date it was due till payment."

It was pleaded that in the instant case also applicant's husband was granted temporary status and it was none of his fault if he was not regularized. He worked for 11 years as a temporary status employee which is more than the three years period required before regularization. Accordingly the widow applicant cannot be denied the benefit of family pension.

9.2 The applicant also relied upon a judgment by the Tribunal in OA No.1842/2016 (Smt. Shashi v. Union of India & Ors.) wherein decision was pronounced on 09.10.2017. This judgment is also in a similar case of a widow whose husband was in Department of Posts and was granted temporary status on 29.11.1989 and he died on 05.07.2015 before being regularized after completing 26 years of service. The request in respect of grant of family pension, was allowed. The relevant parts of this judgment are reproduced below:

"2. The facts of the case are that the applicant is the widow of late Shri Ravi Shankar, who was appointed as a casual worker with the respondents. He acquired temporary status w.e.f. 29.11.1989. He expired on 05.07.2015 after rendering 26 years of service. After the demise of her husband, the applicant approached the respondents for payment of his dues.

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4. In their counter, the respondents admit that the applicant's husband was given temporary status w.e.f.29.11.1989. The respondents contend that the applicant could not be regularised in Group 'D' cadre until his death i.e. 05.07.2015 due to non-availability of vacancy in Group 'D' cadre, hence, he was not entitled to retiral benefits i.e. Pension, Gratuity and leave encashment as applicable to other permanent Group 'D' employees. It is further stated that as per the clarification issued by Director General Posts, New Delhi No.66-9/91-SPB-I dated 30.11.1992 (Annexure A-8), the casual labourers conferred with temporary status and completing three years of service after conferment of such temporary status were allowed to be treated at par with temporary Group 'D' employee for grant of following benefits such as

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10. In view of the discussions above, it is clear that the issue is not res integra and has been dealt with exhaustively at different points of time by different judicial fora with the Hon'ble Apex Court, holding the same view. Hence, I hold that the husband of the applicant, who had acquired temporary group 'D' status & had rendered more than 3 years service after that, was entitled to all the benefits available to Group 'D' employee on regular basis. The respondents are directed to process the claim of the applicant by treating the deceased employee as a regular employee as per relevant statutory rules, as per law. The OA is allowed. The respondents are directed to decide the case of the applicant within three months from the date of receipt of a certified copy of this order. No costs."

It was pleaded that in view of the foregoing adjudication and there being similarity in instant OA, the same needs to be allowed on merits.

10. The matter has been heard at length. Shri S.K. Gupta, learned counsel represented the applicant and Shri Rajinder Nishchal, learned counsel represented the respondents.

11. The instant case is of a widow of a deceased employee who rendered 26 years of total service, out of which 11 years was after he was granted temporary status, and the earlier 15 years was in his capacity as a casual employee. In terms of the policy directives dated 30.11.1992, certain rights were extended to such temporary status employees (para-8.3 supra).

Even on a repeated query as what is the benefit which is available to a regular employee and which is not extended to an employee in the temporary status, the respondents only pleaded that letter dated 30.11.1992 is silent about gratuity, pension and leave encashment, and thus these are the three items not available to those who are not regularized.

12. The applicant is an illiterate widow of a Group 'D' employee. In this context, the ratio of judgment by Hon'ble Apex Court in para-9 supra, is attracted. Accordingly, the plea of limitation raised by the respondents is not acceptable.

The same is over-ruled and the OA is taken up for adjudication.

13. The subject matter of a temporary status employee, who died in harness before he could be regularized and grant of family pension to his spouse in such cases, had already been adjudicated and allowed in many judicial pronouncements, as brought out by the applicant in paras 5 & 6 supra and in some cases, it was affirmed by Hon'ble High Court also, e.g. in para 6.1 supra. A similar issue in Department of Posts was also adjudicated and allowed by the Tribunal in Smt. Shashi (para 9.2 supra). Many other cases allowed in similar circumstances have also been cited by the Tribunal in this judgment (para 9.2 supra).

The ratio of these judgments is attracted in instant case also, it being similar and with same Department of Posts. This Bench is in respectful agreement with the ratio arrived at in these judgments. There is no reason to take a different view in the instant case when underlying conditions are similar.

14. The husband of the applicant herein had rendered a total of 26 years of service out of which 11 years was temporary service and earlier 15 years was casual service. It is not considered appropriate that the widow of the late employee, be denied family pension simply because the said employee was not regularized even after rendering 11 years of temporary status service. The policy directives dated 30.11.1992, very clearly confer all the benefits as were due to a regular employee and especially so after rendering 03 years of service as a temporary status employee. Non-mention of gratuity, pension and leave encashment in this letter dated 30.11.1992, cannot lead to denial of these benefits to applicant.

15. Accordingly, the OA is allowed. The respondents are directed to treat late Shri Prem Singh, husband of the applicant herein as deemed regularized with effect from the date of his death, i.e. 30.11.2000 and grant gratuity, leave encashment and family pension along with arrears, and release all payments, within a period of 03 months from the date of receipt of a certified copy of this order. Arrears, if not paid to the applicant within this 03 months time, will draw interest @ GPF rates till the date of actual payment, period of delay being counted w.e.f. 30.11.2000. No costs.