

(2022) 11 CAT CK 0018

In the Central Administrative Tribunal

Case No : Original Application No. 330, 00535 Of 2016

Jai Prakash Asthana

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 09-11-2022

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2022) 11 CAT CK 0018

Hon'ble Judges : Om Prakash VII, Member (J)

Bench : Single Bench

Advocate : Ajay Kumar Singh, Sarita Singh, A.K. Gupta

Final Decision : Allowed

Judgement

Om Prakash VII, Member (J)

1. The present O.A has been filed by the applicant under section 19 of Administrative Tribunal Act, 1985 seeking following reliefs:-

"8.1 That the impugned order dated 26.10.2015 passed by the respondent No. 5 (Annexure No. A-1 of Compilation No.1) may kindly be set aside.

8. 2 That the respondents may kindly also be further directed to provide pension to the applicant at an early date, in accordance with law.

8. 3 That this Hon'ble Tribunal may be pleased to provide any other relief to the applicant which this Hon'ble Court deems and proper in the circumstances of the case.

8. 4 Award the costs of the applicant".

2. The brief facts of the case are that the applicant was appointed as a temporary Mail Man in the Department of Posts by the respondent No. 5 and in this regard, an appointment order dated 15.06.1994 was issued. Respondent No. 5 passed an order dated 26.09.2014 informing the applicant that his services will

be dispensed with on 03.11.2014 i.e., that day he will attain superannuation. Subsequently, the applicant made a representation dated 18. 02.2015 before the respondent No. 5 submitting that he retired from service on 03.11.2014 after attaining the age of superannuation but his pension is not being paid by the Postal Department and accordingly requested to provide him pension at an early date. A reminder in this regard was also preferred by the applicant on 16.03.2015. When no decision was made upon on the representation of the applicant, he filed an Original Application No. 330/00662/2015 before this Tribunal, which was disposed of by the Tribunal vide order dated 28.08.2015 with a direction to the respondent No. 5 to take a decision on the representation dated 18.02.2015. After receiving the order dated 28.08.2015, the Respondent No. 5 vide impugned order dated 26.10.2015 rejected the claim of the applicant on the ground that under the rules, a casual labour is not entitled to get pension.

3. By way of the present original application, the applicant has challenged the aforesaid impugned order dated 26.10.2015 on the ground that the applicant had done service in the Postal Department regularly without any break till his retirement and hence he is entitled to get pension but the respondent No. 5 has not considered this fact and passed the impugned order in an illegal and arbitrary manner. Applicant further claims that he had served in the Postal Department for more than 35 years and hence he is fully entitled to get the pension claiming that he fulfills all eligibility criteria for consideration of regularization of his services as Group – D/MTS Cadre in terms of order of Government of India as well as various Office Memorandum and also in terms of direction given by the Hon'ble Apex Court in Secretary Government of Karnataka Vs. Uma Devi (2006) 4 SSC 1 as in that case, the applicants appointed as per Rule & Procedures and being granted temporary status is being treated at par with temporary employees since last 20 years. And therefore, the learned counsel for the applicant submits that the applicant must be accorded the pensionary benefits.

4. Per contra, learned counsel for respondents in the counter affidavit states that in pursuance of the Hon'ble Supreme Court's order dated 29.11.1989, the casual labourers who have done regular duty as casual labourers for 3 years in the Department of Posts will be conferred temporary status casual labour at par with Group 'D'. Accordingly, Department of Posts issued circular dated 30.11.1993 wherein following facilities were provided to TSCL at par Group 'D' viz. Leave, Insurance, GPF, CGHS, LTC etc. equivalent to permanent Group 'D' employee. Whereas for pension to TSCL at par with Group 'D', it was mentioned that if any clear vacancy arises and the employee has completed 3 years regular service as TSCL at par Group 'D' and thereafter if appointed on permanent post as regular employee then he will be entitled for pension. But in this case, the applicant was TSCL at par Group 'D' when his service was dispensed and he was not appointed on permanent post and thus his claim for pensionary benefits is baseless. Respondents further submitted that respondents have rightly rejected the application of the applicant vide order dated 26.10.2015 because the services of the applicant as TSCL at par Group 'D' was dispensed with after attaining the age

of 60 years and hence no pension is payable for such TSCL at par Group 'D'. Learned counsel for the respondents further submitted that since appointment of the applicant was not against any permanent post, his services were dispensed with on attaining the age of 60 years.

5. Rejoinder affidavit has also been filed in which the applicant has reiterated the facts as stated in the OA and denied the contents of the counter affidavit.

6. Supplementary counter affidavit has also been filed by the respondents in which respondents have reiterated the facts as stated in the counter affidavit and denied the contents of the rejoinder affidavit. As per the impugned order, the applicant retired from the post as temporary status casual labour at par Group 'D' but as per pension rules, no pension can be given to the casual labour who was not appointed on regular post. Accordingly, the applicant is not entitled for pension.

7. I have heard Sri Ajay Kumar Singh, learned counsel for the applicant and Shri A.K. Gupta, learned counsel for the respondents and perused the record.

8. Learned counsel for the applicant argued that the applicant is seeking pension on the ground that several other employees junior to him have been granted pension and therefore, he is entitled for the same however he has been discriminated against by the department. Learned counsel for the applicant further argued that respondents have not denied that they have taken work from the applicant on a regular basis without objection and/or finding 'deficiency' in the discharge of duties by the applicant for about two decades. The respondents granted 'temporary status' to the applicant thereby extending all benefits including contribution to G.P.F. at par with other regular employees (as contemplated under relevant Rules) except for issuing formal order of regularization. Learned counsel further argued that respondents have themselves admitted that they have engaged the applicant and allowed him to work for long time till he attained superannuation, etc., treating him at par with regular employees as the applicant continued serving with all incidences of regular employee (except formal order). Furthermore, the applicant was paid regular salary with periodic increments and even contributed to GPF (a privilege of permanent employee). It is a settled law that if a Daily Rated Worker/Casual Labour or Temporary employee has been working since long period without objection on any score; the said employee may acquire all antecedents of a regular employee and he should be treated as such. He also argued that in these facts, the applicant is deemed to be regularized and be treated as regular employee of the department and is accordingly entitled for pension as per relevant statutory rules in force. Learned counsel for the applicant has placed reliance on the decision of Central Administrative Tribunal in the case of Raghu Nath Prasad and others Vs. Union of India and others decided on 3.8.2018 the operative portion of which reads as under:-

"16. Accordingly, this OA stands allowed subject to the extent mentioned above.

Respondents are directed to ensure payment of all post retiral benefits as directed above as expeditiously as possible but not beyond the period of three months in accordance with law. No costs”

9. Learned counsel for the respondents vehemently argued that no TSCL at par Group 'D' is entitled for pension until and unless he is absorbed against a permanent Group 'D' post. Since the applicant was not appointed against a permanent Group 'D' post, hence as per rules he is not entitled for any pensionary benefits.

10. I have considered the rival submissions and have gone through the record carefully including the case laws relied upon by the parties as well as lay laid down by the Hon'ble Supreme Court in Uma Devi (supra).

11. From perusal of record it is clear that the applicant was appointed as a temporary mail man in Group D cadre in the Department of Post and an appointment letter dated 15.06.1994 was issued to him to join the service at SRO Jaunpur with immediate effect. Applicant was working continuously as Mail Man and receiving allowances as revised from time to time like other employees of the Postal Department. The respondents granted 'temporary status' to the applicant thereby extending all benefits including contribution to G.P.F. at par with other regular employees (as contemplated under relevant Rules) except for issuing formal order of regularization. Applicant retired from service on 30.11.2014 after attaining the age of superannuation but his pension has not been paid by the Postal Department. Post and Telegraph Ministerial Manual Establishment Rule 154 (a) provides that "selected categories of whole time contingency paid staff, such as Sweepers, Bhisties, Chowkidars, Chobdars, Mails or Gardeners, Khalassis and such other categories as are expected to work side by side with regular employees or with employees in work charged establishment, should, for the present, be brought on to regular establishment of which they form adjuncts and should be treated as "regular employees".

12. In the case of Union of India and others Vs. Shyam Lal Shukla and another in Civil Misc. Writ Petition No. 60272 of 2009 decided on 23.12.2011, Hon'ble High Court of Allahabad has observed as under:-

"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.

It is admitted case that the respondent No.1 from his initial engagement i.e. 10.04.1982 till his date of superannuation i.e. 30.06.2003 has worked uninterruptedly and to the entire satisfaction of the Department as has been stated in the Counter affidavit, Supplementary Counter Affidavit before the Tribunal and in the Writ Petition before this Court and there is no mention that the work of the respondent No.1 was unsatisfactory.

The Tribunal has also relied on the order of the Supreme Court in Special Leave to Appeal dated 13.1.1997 arising out of the Original Application NO. 159/93 of Tribunal, in the case of (Ram Lakhan Vs. Union of India and others) as well as order dated 2nd September, 2005 in Original Application No. 917/2004 (Chandi Lal Versus Union of India). The aforesaid orders were on the record of the Tribunal as Annexure AR-2 and AR-3 with affidavit filed on 26.08.2008 in similar facts.

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."

13. The aforesaid judgment of the Hon'ble High Court was challenged before the Hon'ble Supreme Court in SLP No. 12664/2012 which was dismissed by vide order dated 6.8.2012. Hence, the judgment of the Hon'ble High Court attained finality.

14. Thus, relying upon the judgment passed by the High Court as well as by the Hon'ble Apex Court, the O.A. is allowed. The impugned order dated 26.10.2015 is hereby quashed and the respondents are directed to ensure payment of pension and other post retiral benefits 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.