

Central Administrative Tribunal
Principal Bench

O.A.No.514/2002

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 23rd day of April, 2003

1. All India RMS and MMS Employees' Union
Mail Guard and Group 'D'
Through the General Secretary of the Union
Shri Bhagwan Dass
D-6, Samru Place
Mandir Marg
New Delhi - 110 001.

2. Smt. Mithilesh
aged 54 years
w/o of Ganga Saran Sharma
working as Casual Labour
Delhi Sorting Division
RMS Bhavan
Delhi - 110 006.

3. Shri Virender Pal
aged 36 years
son of Shri Natha Ram
working as Casual Labour
New Delhi Sorting Division
New Delhi Railway Station
New Delhi - 110 055.

4. Shri Ram Charan
s/o Shri Kali Charan
working as Casual Labour
Gol Dak Khana Sorting Office
New Delhi - 110 001.

5. Shri Dharamvir Singh III
s/o Late Shri Nain Singh
working as Casual Labour
Delhi RMS, Delhi - 110 006.

... Applicants

(By Advocate: Sh. E.X. Joseph, Sr. Advocate with
Ms. Arati Mahajan)

Vs.

1. The Union of India
through the Secretary to the Govt.
Ministry of Communications
Sanchar Bhavan
New Delhi - 110 001.

2. The Secretary to the Government
Department of Post
Dak Bhawan
New Delhi - 110 001.
(By Advocate: Sh. R.P. Aggarwal)

... Respondents

1. To be referred to the Reporters or not? YES ✓

2. To be circulated to other Benches of the Tribunal? YES.

S. Raju
(Shanker Raju)
Member (J)

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(By Advocate: Sh. R.P. Aggarwal)

O R D E R

By Shri Shanker Raju, M(J):

All India RMS and MMS Employees' Union and
Others have sought directions to grant them

regularisation from the date of completion of three years temporary status service, including consequential benefits of entitlement of pension, etc. (15)

2. Applicant No.1, Union, is the recognised All India Union of the Group 'D' and Mail Guard employees of the RMS and MMS Divisions of the Department of Posts, whereas applicants No.2 and 3 are casual labourers having temporary status. Applicants have been working for more than 20 years having accorded temporary status during the years 1988 and 1989.

3. Applicants have been working in Railway Mail Service (RMS) and MMS of the Department of Posts on casual basis. They are having a grievance that despite long service, they are yet to be granted regularisation, despite availability of number of vacancies with the respondents in Group 'D'. Because of their non-regularisation, as they are approaching the age of superannuation, they would be deprived of the pensionary benefits.

4. Before dealing with the controversy raised in the present case, the brief background and factual matrix is relevant to be highlighted.

5. Casual labourers working in Railways in open line as well as in Railway projects, sought temporary status which was accorded to them by formulation of Scheme by the Ministry of Railways as

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reflected in the decision of the Apex Court in Inder Pal Yadav & Others v. Union of India & Others, 1985(2) SCC 648. (16)

6. Later on, casual workers on daily wages engaged by Government in different Nehru Yuvak Kendras have been allowed same emoluments and conditions of service as received by Class-IV employees except regularisation which is to be done as per the availability of sanctioned posts by the Apex Court in Dhirendra Chamoli & Others v. State of U.P., 1986(1) SCC 637.

7. Casual Labourers working on daily wages, in the Posts and Telegraphs Department, approached the Apex Court and by an order dated 27.10.1987 observations have been made by the Apex Court that non-regularisation of temporary employees of casual labour, for a long period, is not a wise policy. Accordingly directions have been issued to respondents to prepare a Scheme on rational basis for absorbing as far as possible the casual labourers who had been working continuously for more than one year in Posts & Telegraph Department. This has been reported as Daily Rated Casual Labour Employed under the P & T Department v. Union of India & Ors. and National Federation of P & T employees & Anr. v. Union of India & Anr., 1988(1) SCC 122.

8. In pursuance of the directions of the Apex Court, Department of Personnel & Training, issued letter dated 7.6.1988 for regularisation of Casual

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Labour as a policy decision and interalia all administrative Ministries/Departments have been instructed to undertake a review of appointment of casual labourers in the offices to achieve the target of adjustment of all eligible casual workers against regular posts, and for which Department of Telecommunication a time limit was assigned. As the Department of Posts and Department of Telecommunication failed to review the posts within the stipulated period of one year the employees of Telecom Operators approached the Apex Court where the Department of Telecommunication submitted its Scheme for temporary status and an assurance by the Department of Posts to prepare a Scheme within the time framed. The Apex Court in Writ Petition No. 1119 of 1986, reported in Jagrit Mazdoor Union (Regd.) & Others v. Mahanagar Telephone Nigam Ltd. & Another, 1990(Suppl.) SCC 113, directed that after rendering of three years continuous service with temporary status casual labourers will be treated at par with temporary Group 'D' employees of the Department of Posts and would be entitled of such benefits as are admissible to Group 'D' employees on regular basis.

9. In pursuance thereof, by a letter dated 11.5.1989, Department of Posts issued a Scheme, namely, Absorption of Casual Workers, which interalia provided to re-assess the work of casual labourers in comparison to work handled by the existing regular staff and for this additional regular posts may be worked out. Through the aforesaid Memorandum, a proposal has been sent for creation of posts and accordingly aforesaid decision was intimated to the Apex Court.

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10. Principal Bench of the Tribunal in Decision dated 16.2.1990 - Raj Kamal v. Union of India, issued directions that period of temporary status would be for one year but DoPT instructed the Department of Posts and Telecommunications to follow the decision, and the orders would not apply to P&T Department where temporary status is to be accorded after three years. After hearing the Writ Petition Scheme Dated 12.4.1991 has been submitted which was approved by the Cabinet, and directions of the Apex Court in judgement dated 29.11.1989 that after rendering the three years' continuous service and after conferment of temporary status, casual labourers shall be treated at par with temporary Group "D" employees and are entitled to such benefits as admissible to the Group "D" employees on regular basis, has not been incorporated to in the Scheme. This Scheme known as Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, which was formulated and interalia provided that those casual labourers in engagement as on 29.11.1989 and are continued to be currently employed having rendered continuous service on at least one year would be entitled to increment at the same rate as applicable to Group "D" employees which would be a determined factor for calculating the rate of monthly wages.

11. Ministry of Communications (Department of Posts) issued an order dated 30.11.1992 for regularisation of casual labourers, a reference has been made to the decision of the Apex Court interalia provided that casual labourers after three years of continuous service with temporary status shall be

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treated at par with Group "D" employees of the Department of Posts and would be entitled benefits as admissible to Group "D" employees on regular basis.

12. The Department of Posts by letter dated 30.11.1992 though issued orders in compliance of the directions of the Apex Court but this Scheme did not cover the claim of casual labourers with temporary status of his confirmation and regularisation.

13. Union, in Department of Posts on RMS side, sought regularisation and benefit of retiral benefits but the same has been rejected by the DoPT vide letter dated 10.6.1996 by holding that only those will be entitled to pension by counting 50% of the service rendered by the casual employee on grant of temporary status for retiral benefits after his appointment against regular Group "D" posts.

14. Ministry of Communications (Department of Telecommunications) vide letter dated 3.1.1992 followed the decision of the Apex Court and regularised all the casual labourers those who put in 10 years service with the result the casual workers with temporary status have been made entitled for pensionary benefits. Whereas, in the Department of Posts though there exist a provision for upgrading the posts but the new posts are not created and casual workers had been working for more than 12 years. In the RMS, Extra Department Staff is not very large in number, even then posts are to be taken into account for creation of regular posts.

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15. The Union, Applicant No.1, represented persistently to the respondents for granting regularisation after completion of three years temporary status service, no decision has been arrived at so far.

16. Learned senior counsel, Shri E.X. Joseph appearing with ~~MS~~^h Arati Mahajan strongly support the cause of RMS and MMS workers by contending that whereas in the Department of Telecommunications, the directions issued by the Apex Court, in Jagrit Mazdoor Union's case (supra) has been complied with by according regularisation to all the casual employees who had completed three years continuous service but the similar treatment has not been meted out to applicants which constitutes violation of Articles 14 and 16 of the Constitution of India and law of equality.

17. Shri Joseph further contended that after being accorded temporary status and in the light of the decision of Apex Court applicants have legitimate expectation of regularisation and grant of pensionary benefits.

18. Shri Joseph further contended that as the respondents are bound by the Scheme, it is excepted by them to act fairly as the Department of Posts is under the same Ministry the casual labourers in the Department of Posts cannot be subjected to unfair and hostile discrimination.

19. By resorting to the decision of the Apex Court in Inder Pal Yadav's case (supra), as well as the decision of the Apex Court in State of Haryana v. Piara Singh, AIR 1992 SC 2130, it is contended that if the casual labourer is continued fairly over a long time, a presumption may arise for regular need of his service. Whereas temporary employee in Group 'D' posts gets all the benefits including pension, a casual labourer with temporary status if not regularised against Group 'D' posts, he cannot be given the benefit of 50% of service by counting towards his qualifying service for pensionary benefits for want of regularisation.

20. In so far as the financial constraints are concerned, it is contended that the plea of administrative chaos without any material cannot be a valid defence.

21. On the other hand, respondents' counsel Shri R.P. Aggarwal, at the outset, has not pressed the preliminary objection and made his submissions on merit. According to him, in pursuance of the decision of the Apex Court and in the light of the directions given by the Apex Court in the Judgement dated 27.10.1987, Department of Posts and Telegraphs had formulated a Scheme vide office order dated 11.5.1989 for absorption of casual labourers working in Department of Telecommunication. The All India Postal Employee Union Class-III, Bombay and All India RMS and MMS Employees' Union filed a Writ Petitions No.1623/86 and 1624/86 respectively, where the respondents have apprised the Apex Court for creation of 1000 posts

with the concurrence of nodal Ministry for absorption of casual labourers. Ultimately, a Scheme was framed on 11.5.1989 and as a consequence, Casual Labourers Grant of Temporary Status and Regularisation Scheme dated 12.4.1991, this interalia includes counting of 50% of service rendered by a casual labour on temporary status for the purpose of retiral benefits after regularisation as Group 'D' employee. However, in the Scheme, mere conferment of temporary status does not bestow automatic regularisation which is to be governed by the extant recruitment rules against Group 'D' posts, giving preference to eligible ED employees. By an order dated 1.11.1995 it has been decided that only full-time casual labourers recruited upto 10.9.1993 would be considered for grant of benefits under the Scheme. Although as per Rule 3 of the CCS (Pension) Rules, 1972 service rendered on casual basis cannot be treated as qualifying service yet, by way of clarification issued by DoPT on a special dispensation, 50% of the service rendered by casual employee on grant of temporary status was allowed to be counted for retiral benefits with the conditions that the incumbent is appointed against a regular Group 'D' posts.

22. According to Shri R.P. Aggarwal to count the service on temporary status after three years, would have wide range repercussions, as most of the employees were part-time casual labourers who have been rendered full-time status and in view of the decision of the Apex Court in CA 360-361 of 1994 in Sukhbai Singh v. Union of India, conferment of temporary status to part-time casual labourers was

held to be illegal. Moreover, by referring to a decision of Apex Court in CA 3168/2002, Union of India & Another v. Mohan Pal, 2002(4) Scale 216, it is contended that DoPT's Scheme for accord of temporary status dated 10.9.1993 has been observed to be one time measure and the temporary status is available to only those casual labours who have been in engagement on 1.9.1993. In this conspectus the decision OP No.15650 of 2001(S) in Union of India & Others v. Central Administrative Tribunal & Another of the High Court of Kerala was referred to, to contend that the Scheme formulated by the Department as Casual Labourers (Grant of Temporary Status and Regularisation) Scheme dated 12.4.1991 has been observed to be one time measure. Further referring to a decision in OA 1214/2002 in Pradeep Kumar & Others v. Govt. of NCT, Delhi & Others, decided by this Tribunal on 28.5.2002, it is contended that under the DoPT's Scheme of 1993, casual labourers have a right to be regularised against Group 'D' posts subject to availability of work and vacancies.

23. Respondents' counsel further stated that 325 casual labourers have already been regularised and further in compliance with the instructions of Ministry of Finance and as per the recruitment rules, casual labourers are being considered against available vacancies in the circle particularly in RMS Unit for filling up of Group 'D' posts.

24. Coming to the individual particulars of the applicants, it is stated that this Scheme does not apply to Applicant No.2 as he was made full-time

casual worker w.e.f. 1.6.1997 as well as Applicant No.3 who were not declared as full-time worker on 1.9.1993, as such this Scheme is not applicable to them. However, on the information, it is stated that about 3379 full-time casual labourers were available in various circles on 1.5.2001 out of which 2273 casual labourers have been accorded temporary status.

25. In so far as the grant of pension to full-time casual workers who had been conferred temporary status after three years service, the same was considered in consultation with the DoPT, and as the Apex Court has not ruled that casual employees with temporary status must be given pension irrespective of they are appointed against a Group 'D' posts or not and as grant of temporary status to a casual employee is without any reference to the posts, the decision to accord 50% of service rendered on casual basis after grant of temporary status has already been decided to be counted towards pensionary benefits, and as there is no specific provision in the Scheme for counting of full service of casual employees without temporary status after three years of service, this would have wide repercussions not in the Department of Posts but also in rest of the Ministries. As the casual workers do not held civil posts and their engagement is on need basis, the same cannot be counted for pensionary benefits until such employees are regularised.

26. By referring to the Rule 13 of the CCS (Pension) Rules, 1972, it is contended that eligibility for pensionary benefits commencing from

the date an employee takes charge on the post to which he is substantively appointed.

27. In so far as the discrimination with Department of Telecommunication is concerned, it is contended that these departments are two separate departments having different requirement and there cannot be a comparison between the two.

28. In so far as the decision of the Apex Court is concerned, only directions have been issued to prepare a Scheme on rational basis for absorbing as far as possible the casual labourers who have been continuously working for more than one year in Post and Telegraph Department, but in the Contempt Petition in 289/90 in CWP Nos.302 and 1119/86 the Apex Court dismissed the same by observing that the Judgement of the Court has been complied with and as such no contempt is made out.

29. Shri R.P. Aggarwal further contended that in Department of Posts, Extra Departmental Agents (called Gramin Dak Sevaks) category exists who are maintaining postal network in the rural areas, there is specific provisions for preference of GDSs, as such due preference is to be given to them, as per Recruitment Rules, in Group 'D' posts. However, to provide avenues for regularisation of casual labourer, Department of Posts has recently amended the Recruitment Rules for Group 'D' (test category) posts, and as per these rules, 25% of the vacancies remaining unfilled after recruitment of non test category employee should be filled by selection cum seniority.

30. Lastly, it is contended that grounds raised by applicants are not legitimate neither there

is any illegality nor arbitrariness on the part of the respondents. Accordingly, prayer has been made to dismiss the OA.

31. In the rejoinder applicants have reiterated the contentions taken in the OA and further stated that DoPT has declared to create posts and the directions given by the Apex Court to treat the casual labourers with three years service after having conferment of temporary status at par with Group "D" posts is not implemented in another Department except Department of Telecommunications.

32. The Scheme formulated by DoT was based on the Apex Court order dated 27.10.1987 in Daily Rated Casual Labour of P&T Department, AIR 1987 SC 2342, as such DoPT order dated 10.6.1996 would not apply to Postal Department. It is denied that 1000 posts have been created for regularisation.

33. I have carefully considered the rival contentions of the parties and perused the material on record.

34. On approach to the Apex Court by the Daily Rated Casual Labourers in Posts and Telegraph Department, in Daily Rated Casual Labour case (supra), the following observations have been made:

"9. India is a socialist republic. It implies the existence of certain important obligations which the State has to discharge. The right to work, the right to free choice of employment, the right to just and favourable conditions of work, the right

to protection against unemployment, the right of everyone who works to just and favourable remuneration ensuring a decent living for himself and his family, the right of everyone without discrimination of any kind to equal pay for equal work, the right to rest, leisure, reasonable limitation on working hours and periodic holidays with pay, the right to form trade unions and the right to join trade unions of one's choice and the right to security of work are some of the rights which have to be ensured by appropriate legislative and executive measures. It is true that all these rights cannot be extended simultaneously. But they do indicate the socialist goal. The degree of achievement in this direction depends upon the economic resources, willingness of the people to produce and more than all the existence of industrial peace throughout the country. Of those rights the question of security of work is of utmost importance. If a person does not have the feeling that he belongs to an organization engaged in production he will not put forward his best effort to produce more. That sense of belonging arises only when he feels that he will not be turned out of employment the next day at the whim of the management. It is for this reason it is being repeatedly observed by those who are in charge of economic affairs of the countries in different parts of the world that as far as possible security of work should be assured to the employees so that they may contribute to the maximisation of production. It is again for this reason that managements and the governmental agencies in particular should not allow workers to remain as casual labourers or temporary employees for an unreasonable long period of time. Where is any justification to keep persons as casual labourers for years as is being done in the Posts and Telegraphs Department? Is it for paying them lower wages? Then it amounts to exploitation of labour. Is it because you do not know that there is enough work for the workers? It cannot be so because there is so much of development to be carried out in the communications department that you need more workers. The employees belonging to skilled, semi-skilled and unskilled classes can be shifted from one department to another even if there is no work to be done in a given place. Administrators should realise that if any worker remains idle on any day, the country loses the wealth that he would have produced during that day. Our wage structure is such that a worker is always paid less than what he produces. So why allow people to remain idle? Anyway they

have got to be fed and clothed. Therefore, work such as road making, railway construction, house building, irrigation projects, communications, etc. which have to be undertaken on a large scale. Development in these types of activities (even though they do not involve much foreign exchange) is not keeping pace with the needs of society. We are saying all this only to make the people understand the need for better management of manpower (which is a decaying asset) the non-utilisation of which leads to the inevitable loss of valuable human resources. Let us remember the slogan: "Produce or Perish". It is not an empty slogan. We fail to produce more at our own peril. It is against this background that we say that non-regularisation of temporary employees or casual labour for a long period is not a wise policy. We, therefore, direct the respondents to prepare a scheme on a rational basis for absorbing as far as possible the casual labourers who have been continuously working for more than one year in the Posts and Telegraphs Department."

35. In pursuance thereof, Government has formulated a policy vide Department of Posts' letter dated 7.6.1988 for regularisation of casual labourers, interalia, it provided review of appointment of casual labourers in the offices and a prescribed time limit of one year has been given for Department of Posts and Department of Telecommunications which have been separated but under the common nodal Ministry of Communications. The Department of Communications formulated a Scheme known as Casual Labour (Grant of Temporary Status and Regularisation) Scheme, 1989 and put the same in operation w.e.f. 1.10.1989.

36. Being aggrieved with non-implementation of the directions of the Court and non-formulation of the Scheme in Department of Posts, employees approached the Apex Court in Writ Petitions No.1623 and 1624 of 1986 where learned ASG has made, through an assurance, a statement for formulation of a

separate Scheme within the time frame. It was also stated that the Department has formulated a Scheme and about 1000 justified posts have been created with the concurrence of the nodal Ministry and in view of the Recruitment Rules, Extra Departmental Agents are to be given preference in the matter of absorption of Group "D" Post Man.

37. In Jagrit Mazdoor Union's case (supra), the following observations have been made:

"12. As regards House Rent Allowance, City Compensatory Allowance and Maternity Leave, we see no justification for treating the employees of the Postal Department differently from those covered under the Regularisation Rules in the Telecommunications Department. Temporary status would be available to the casual labourers in the Postal Department on completion of one year of continuous service with at least 240 days of work (206 in the case of officers observing five days' week) and on conferment of temporary status, House Rent Allowance and City Compensatory Allowance shall be admissible. There would be no justification to withhold Maternity Leave as that is an obligation of the employer under the law and the State as an ideal employer fulfilling the Directive Principles of State Policy envisaged in Part IV of the Constitution should provide the same. After rendering three years of continuous service with temporary status, the casual labourers shall be treated at par with temporary Grade "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.

13. So far as the substitutes are concerned, it has been stated to us that orders have been issued for considering their claims against Group "D" vacancies and a copy of the department's letter has been produced. We hope and trust that the direction shall be implemented in its true spirit. The claim on behalf of substitutes ordinarily is not entertainable but we have been told that there are substitutes who work for long periods continuously. We are inclined to agree with counsel for

the petitioners that in such cases their claims should have been appropriately considered by the department."

38. Department of Telecommunication in their Scheme of 1989 incorporated the provisions of treating the casual mazdoor/labour with temporary status after three years service at par with Group "D" employees in all respects, and in this furtherance by a letter dated 3.1.1992 which has reference of decision of the Apex Court dated 29.11.1989 in Jagrit Mazdoor's case (supra) decided to confer the benefits at par with Group "D" employees to the casual labourers after rendering three years continued service with temporary status, and decided to regularise them who were currently working in phased manner in first instance those mazdoors who had put in ten years service or more as on 31.12.1991 would be considered and thereafter on yearly basis.

39. Department of Posts, in compliance of the decision of Apex Court dated 29.11.1989, formulated a Scheme through their letter dated 12.4.1991 known as Casual Labourers (Grant of Temporary Status and Regularisation) Scheme which interalia at Clauses 7 & 8 incorporate treatment of casual labourers at par with Group "D" employees after rendering three years continued service, after conferment of temporary status, would be treated at par for contribution of GPF and also other benefits including Festival Advance, Fled Advance, etc. The aforesaid Scheme does not incorporate provisions for deemed regularisation and confirmation after accord of temporary status.

40. Department of Posts by letter dated 30.11.1992 (Annexure-A4) further provided regularisation to casual labourers but this does not

cover the basic claim of temporary casual labour to get quasi permanency and confirmation as provided and accorded to the casual labourers of Department of Telecommunication.

41. Contempt Petition No.289/90 in Writ Petition No.302 and 1119 of 1986 were dismissed by the Apex Court observing that it is satisfied that the compliance has been made and as such no contempt is made out. Basically it was in the reference and in the circumstances when the Department of Posts have already formulated the Scheme dated 12.4.1991.

42. By a Corrigendum dated 8.11.1995, full-time casual labourers who were engaged till 1.9.1993 have also been considered for grant of benefits under the Postal Scheme.

43. However, in the interregnum, in view of the decision of the Tribunal in Raj Kamal's case, Department of Personnel & Training formulated a Scheme dated 10.9.1993 as one-time measure for accord of temporary status and regularisation of casual labourers who had completed 206/240 days in a year.

44. DOPT was approached by the Postal Departments for grant of pension to the full-time casual labourers who have been conferred with temporary status and completed three years service in the light of the decision of Apex Court in Jagrit Mazdoor's case (supra) by resorting to Rule 13 of the CCS (Pension) Rules, 1972 and the fact that grant of

temporary status is without reference to post and service rendered by a casual worker is not against any substantive post by way of special dispensation, 50% service rendered by the casual employee on grant of temporary status has been allowed to be counted for retiral benefits on appointment against a regular Group 'D' post.

45. As counting of full-time service of casual employee with temporary status after three years of service would have caused wide ranging repercussions in various Ministries and Departments, proposal to treat the applicants at par with casual worker of Department of Telecommunication was turned down.

46. From the pleadings, it transpires that the applicants, who are casual labourers with temporary status, through the Union have raised their grievance of non-regularisation despite completion of more than 20 years service and in view of their retirement, denial of grant of retiral benefits. It is also not disputed that out of 3379 full-time casual labourers in various Circles as on 1.5.2001 only 2273 casual labourers have been accorded temporary status and out of which only 325 have been regularised.

47. In the aforesaid factual matrix, the respondents through their reply, showed their inability to treat the applicants at par with casual workers in Telecommunication on the ground that the Department of Posts and Department of Telecommunications are two separate Departments where

the requirement is different and cannot be compared. One of the pleas taken by the respondents is that under Rule 13 of the CCS (CCA) Rules, 1972, the eligibility for pensionary benefits of a Government servant commences from the date of assumption of charge to a post whereas the casual labour with temporary status are not holder of civil posts and have not been appointed substantively as a special dispensation of 50% of casual service would be counted as qualifying service for pensionary benefits on regularisation against regular Group "D" posts.

48. Respondents have also averred that the applicants are basically part-time casual labourers who have attained status of full-time casual labour much after 12.4.1991 and the Scheme would not apply to them. Moreover, as the preference against in appointment of Group "D" vacancies is to be given as per the Recruitment Rules to the Extra Departmental Agents as the respondents have now amended their recruitment rules, bringing in 25% of the vacancies remaining unfilled after recruitment of non-test category employees should be filled by the selection cum seniority order, the applicants claim would be considered and they have to wait as per their turn to be regularised.

49. In the light of what has been stated by the respondents, it is important to enunciate the principle of equality and treatment of equals equally.

50. The Apex Court has dealt with the case of Maneka Gandhi v. Union of India, 1978(1) SCC 248, in D.S.Nakara's case (supra) at paras 10 to 12, observed as under:

"What is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits.... Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence....

11. The decisions clearly lay down that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, viz., (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii) that that differentia must have a rational relation to the objects sought to be achieved by the statute in question (see Ram Krishna Dalmia v. Justice S.R. Tendolkar). The classification may be founded on differential basis according to objects sought to be achieved but what is implicit in it is that there ought to be a nexus i.e. casual connection between the basis of classification and object of the statute under consideration. It is equally well settled by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.

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51. Moreover, In re Special Courts Bill, 1978, AIR 1978 SC 478 speaking through Chandrachud, CJ, the following observations have been made:

"12. After an exhaustive review of almost all decisions bearing on the question of Article 14, this Court speaking through Chandrachud, C.J. in In re Special Courts Bill, 1978 restated the settled propositions which emerged from the judgments of this Court undoubtedly insofar as they were relevant to the decision on the points arising for consideration in that matter. Four of them are apt and relevant for the present purpose and may be extracted. They are: SCC pp. 424-25, para 72)

* * *

(3) The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

(4) The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

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(6) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act."

52. Further in D.S. Nakara v. Union of India.

1983(1) SCC 305, the following observations have been made:

"13. The other facet of Article 14 which must be remembered is that it eschews arbitrariness in any form. Article 14 has, therefore, not to be held identical with the doctrine of classification. As was noticed in Maneka Gandhi case in the earliest stages of evolution of the constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that Article 14 forbids discrimination and there will be no discrimination where the classification making the differentia fulfils the aforementioned two conditions. However, in E.P. Royappa v. State of T.N., it was held that the basic principle which informs both Article 14 and 16 is equality and inhibition against discrimination. This Court further observed as under: (SCC p.38, para 85)

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From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.

14. Justice Iyer has in his inimitable style dissected Article 14 in Maneka Gandhi case as under at SCR p.728: (SCC p.342, para 94)

That article has a pervasive processual potency and versatile quality, egalitarian in its soul and allergic to discriminatory diktats. Equality is the antithesis of arbitrariness and ex cathedra ipse dixit is the ally of demagogic authoritarianism. Only knight-errants of 'executive excesses' - if we may use current eliche - can fall in love with the Dame of despotism, legislative or administrative. If this Court gives in here it gives up the ghost. And so it is that I insist on the dynamics of limitations on fundamental freedoms as implying the rule of law: Be you ever so high, the law is above you.

Affirming and explaining this view, the Constitution Bench in *Ajay Hasia v. Khalid Mujib Sehravardi* held that it must, therefore, now be taken to be well settled that what Article 14 strikes at is arbitrariness because any action that is arbitrary must necessarily involve negation of equality. The Court made it explicit that where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14. After a review of large number of decisions bearing on the subject, in *Air India v. Nergesh Meerza* the Court formulated propositions emerging from an analysis and examination of earlier decisions. One such proposition held well established is that Article 14 is certainly attracted where equals are treated differently without any reasonable basis.

15. Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of

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legislation which classification must satisfy the twin tests of classification being founded on the intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question."

53. In so far as the burden to affirmative treatment the rational principle on which, classification has been founded, the following observations have been made in D.S.Nakara's case:

"16. As a corollary to this well established proposition, the next question is, on whom the burden lies to affirmatively establish the rational principle on which the classification is founded correlated to the object sought to be achieved? The thrust of Article 14 is that the citizen is entitled to equality before law and equal protection of laws. In the very nature of things the society being composed of unequals a welfare State will have to strive by both executive and legislative action to help the less fortunate in the society to ameliorate their condition so that the social and economic inequality in the society may be bridged. This would necessitate a legislation applicable to a group of citizens otherwise unequal and amelioration of whose lot is the object of State affirmative action. In the absence of doctrine of classification such legislation is likely to flounder on the bed rock of equality enshrined in Article 14. The Court realistically appraising the social stratification and economic inequality and keeping in view the guidelines on which the State action must move as constitutionally laid down in Part IV of the Constitution, evolved the doctrine of classification. The doctrine was evolved to sustain a legislation or State action designed to help weaker sections of the society or some such segments of the society in need of succour. Legislative and executive action may accordingly be sustained if it satisfies the twin tests of reasonable classification and the rational principle correlated to the object sought to be achieved. The State, therefore, would have to affirmatively satisfy the Court that the twin tests have been satisfied. It can only be satisfied if the State establishes not only the rational principle on which classification is founded but correlate it to the objects

sought to be achieved. This approach is noticed in Ramana Dayaram Shetty v. International Airport Authority of India when at SCR page 1034 (SCC p.506), the Court observed that a discriminatory action of the Government is liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

54. If one has regard to the aforesaid rulings, Articles 14 of the Constitution of India forbid unreasonable classification and in the event, the classification is not found to be rested on intelligible differentia and this differentia has no reasonable nexus with the object sought to be achieved, would be an antithesis to ensure fairness and equality of treatment.

55. While dealing on the Writ Petitions, filed on behalf of the Postal employees, though taking note, of their efforts to formulate the Scheme, directions have been issued by the Apex Court that after rendering three years continuing service with temporary status, a casual labourer shall be treated at par with temporary Group 'D' employees of the Department of Posts and would be entitled to such benefits as are admissible to Group 'D' employees on regular basis has not been uniformly applied. Being a nodal ministry, i.e., Ministry of Communication, while formulating the Scheme for the employees of the Department of Telecommunication, have abided by the Judgement of the Apex Court in incorporating the aforesaid provision in their Scheme but no such provision has been incorporated in the Scheme formulated by the Department of Posts. On evaluation of the requirement and other functional requirements,

I find that in both the departments, the issue was regularisation of casual labourers who had continued for number of years, and about their regularisation to be treated at par with Group 'D' employees including their retiral benefits, like pension, etc. No intelligible differentia has been brought out by the respondents, i.e., Department of Posts, except a general statement that the requirement of two Departments is different and cannot be compared is not sufficient in the light of the decision in D.S.Nakara's case (supra). Moreover, it has not been established that how this intelligible differentia has any nexus with the object sought to be achieved. The contention that Rule 13 of the Pension Rules stipulates commencement of qualifying service from appointment to a substantive post is equally applicable in the case of casual labourers working in the Department of Posts and Department of Telecommunication.

56. In so far as the question of the applicants being part-time casual labourers and non-applicability of Scheme, once they have been accorded temporary status by the Department, they are to get the benefit of the Scheme. Respondents have referred to the decision of High Court of Ernakulam in OP No.15650/2001(S) in Union of India & Others v. N.Radhakrishnan, decided on 31.10.2002 where the P&T Scheme of dated 12.4.1991 has been treated as one time measure in the light of the decision of the Apex Court in Union of India & Another v. Mohan Pal & Others, 2002(4) SCC 573. In the aforesaid decision of the High Court, the issue was accord of temporary status

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to the casual labourers who were not in engagement upto 10.9.1993 as per the modification of the Scheme dated 12.4.1991 by a letter issued on 1.11.1995. However, in Mohan Pal's case (supra) the Apex Court has laid down that those who have conferred temporary status, their cases would not be affected by the decision of the Apex Court. Admittedly as the applicants have already been afforded temporary status, the question whether the Scheme is one time measure or would apply to part-time casual labourers, would have no application as the applicants have already been conferred temporary status and are full time casual workers. Accordingly, the decision of the High Court is distinguishable and would not apply to the facts and circumstances of the present case.

57. In so far as the contention that DoPT vide memorandum dated 10.6.1996 issued clarification as to confirmation of regular status upon a casual workers in Postal Department is concerned, and the reliance on Raj Kamal v. Union of India, and a decision by the Tribunal, have no application in the present case as the Scheme of DoPT of 10.9.1993 was in pursuance of decision in Raj Kamal's case which do not pertain to Ministry of Communication or Department of Posts. The Scheme formulated by Department of Posts, is based on the directions of the Apex Court dated 27.11.1987 as well as the decision in Jagrit Mazdoor v. Union of India & Others. Denial of similar treatment to the applicants who are casual labour with temporary status in Department of Posts by the DoPT is unfounded and cannot be sustained.

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58. In so far as unequal treatment meted out to the employees of Department of Posts is concerned, it is on the objections of the applicants when the Department of Posts has formulated the Scheme and assured the Apex Court to formulate Scheme and by creation of 1000 posts whereas the Department of Telecommunications has already formulated the Scheme, directions to treat the casual labourers, on completion of three years after conferment of temporary status upon them, was a common direction pertaining to the employees in Telecommunication as well as Postal Department.

59. By not incorporating the aforesaid provision in the Scheme, and further not considering accord of regularisation as under taken by the Department of Telecommunication through letter dated 3.1.1992, is in my considered view, is denial of equal treatment to the postal employees who are in all respects situated at par with the casual workers in Telecommunication. Having failed to discharge the burden, and in absence of any justifiable reasons, the action of the respondents by not taking a decision as to regularisation of casual workers in postal department after three years from conferment of temporary status smacks of arbitrariness and hostile treatment meted out to them which is an antithesis to the principles of equality and is in violation of Articles 14 and 16 of the Constitution of India.

60. As a model employer and being the State and particularly when the nodal Ministry is one, the respondents should have considered incorporation of

the provision of regularisation akin to the what has been adopted by the Department of Telecommunications in compliance of the directions of the Apex Court. The aforesaid act of the respondents is prejudicial to the interests of the applicants and has an effect of depriving them from the benefits of the long service rendered by them. Most of the postal employees in RMS, MMS have already rendered more than 20 years of service and few of them are at the verge of retirement. In absence of any vacancy in Group 'D' and also preference to the EDAs virtually they have no prospectus of being regularised against Group 'D' posts till they attain the age of superannuation, with the result they would be deprived of the retiral benefits including pension and family pension.

61. The contention of the respondents, i.e., if such a decision is taken this would have a wide ranging repercussions is concerned, once Department of Telecommunication has complied with the directions of the Apex Court and taken a decision to absorb all the casual labourers, such differentiation is irrational and is contrary to the principles of equality.

62. Apex Court in S. Ramanathan v. Union of India, 2001(2) SCC 118 while dealing with the issue of omission on the part of the Central Government to review the strength of the cadre review time limit, on to the plea of administrative chaos held as follows:

"5. Dr. Rajeev Dhavan, the learned Senior Counsel, appearing for the respondent direct recruits, learned Additional Solicitor General Mr. Mukul Rohatgi appearing for the Union of India and Mr. A. Mariarputham, Mrs. Aruna Mathur and Mr. Anurag Mathur appearing

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for the State of Tamil Nadu, on the other hand contended that there has been no definite prayer before the Tribunal seeking a mandamus for having a triennial review in accordance with the relevant provisions of the Cadre Rules and that being the position, the appellants will not be permitted to raise the matter after so many years, which would have the effect of unsettling the settled questions. It was also contended that the appellants having failed in their attempt to get the select list altered, have now come forward through a subterfuge and the discretionary jurisdiction of the Court should not be invoked for that purpose. Mr. Rohatgi, the learned Additional Solicitor General, though candidly stated before us that the appropriate authority should have done the triennial review for fixation of the cadre strength within the time stipulated in the Cadre Rules, but vehemently objected for any such direction being issued for reconsideration of the case of the appellants, more so when the appellants have not approached the Tribunal diligently. Accordingly to the learned Additional Solicitor General, the Tribunal has rightly considered the question of prejudice and has denied the relief sought for. The learned Additional Solicitor General also urged that the situation which should have been made available in 1987 on the basis of the cadre strength, cannot be brought back by a direction for reconsideration and in that view of the matter, neither the equity demands such a direction nor would it be appropriate for this Court to unsettle the settled service position. But to our query, as to how the orders of different Tribunals on identical situations could be carried out without any demur, the learned Additional Solicitor General was not in a position to give any reply. It also transpires from the available records that the Union of India, nowhere has even indicated as to how it would be unworkable if a direction is issued by this Court for reconsideration of the case of promotion to the IPS Cadre on the basis of the additional vacancies which have been found to be available. It would, therefore be not appropriate for this Court to deny the relief to the appellants on the ground of apprehended administrative chaos, if the appellants are otherwise entitled to the same. It is no doubt true that while exercising the discretionary jurisdiction, courts examine the question of administrative chaos or unsettling the settled position, but in the absence of any materials on record, the Court should not be justified

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in accepting the apprehension of any administrative chaos or unsettling the settled position, on the mere oral submission of the learned Additional Solicitor General, without any materials in support of the same. On examining the records of the case, we do not find an iota of material, indicating the so-called administrative chaos, likely to occur in the event any direction is issued for reconsideration of the case of promotion on the basis of the alternation of the cadre strength and, therefore, we have no hesitation in rejecting the said submission of the learned Additional Solicitor General."

63. In my considered view, the classification is arbitrary as no single reason has been put forth which is acceptable or persuade me to arrive at a conclusion that the classification is based on an intelligible differentia having any nexus with the objects sought to be achieved.

64. In so far as the financial implications are concerned, while dealing with the cases of pensioners and the cut off date, the following observations have been made by the Apex Court in D.S. Nakara's case (supra):

"63. The financial implication in such matters has some relevance. However in this connection, we want to steer clear of a misconception. There is no pension fund as it is found either in insurance-linked pensions. Non-contributory pensions under 1972 Rules is a State obligation. It is an item of expenditure voted year to year depending upon the number of pensioners and the estimated expenditure. Now when the liberalised pension scheme was introduced, we would justifiably assume that the government servants would retire from the next day of the coming into operation of the scheme and the burden will have to be computed as imposed by the liberalised scheme. Further Government has been granting since nearly a decade temporary increases from time to time to pensioners. Therefore, the difference will be marginal. Further,

let it not be forgotten that the old pensioners are on the way out and their number is fast decreasing. While examining the financial implication, this Court is only concerned with the additional liability that may be imposed by bringing in pensioners who retired prior to April 1, 1979 within the fold of liberalised pension scheme but effective subsequent to the specified date. That it is a dwindling number is indisputable. And again the large bulk comprises pensioners from lower echelons of service such as Peons, L.D.C., U.D.C., Assistant etc. In a chart submitted to us, the Union of India has worked out the pension to the pensioners who have retired prior to the specified date and the comparative advantage, if they are brought within the purview of the liberalised pension scheme. The difference up to the level of Assistant or even Section Officer is marginal keeping in view that the old pensioners are getting temporary increases. Amongst the higher officers, there will be some difference because the ceiling is raised and that would introduce the difference. It is however necessary to refer to one figure relied upon by respondents. It was said that if pensioners who retired prior to March 31, 1979 are brought within the purview of the liberalised pension scheme, Rs 233 crores would be required for fresh commutation. The apparent fallacy in the submission is that if the benefit of commutation is already availed of, it cannot and need not be reopened. And availability of other benefits is hardly a relevant factor because pension is admissible to all retirees. The figures submitted are thus neither frightening nor the liability is supposed to be staggering which would deflect us from going to the logical and of constitutional mandate. Even according to the most liberal estimate, the average yearly increase is worked out to be Rs 51 crores but that assumes that every pensioner has survived till date and will continue to survive. Therefore, we are satisfied that the increased liability consequent upon this judgment is not too high to be unbearable or such as would have detracted the Government from covering the old pensioners under the scheme."

65. As regards the contention of the respondents that 325 casual labourers have been regularised and they have amended recruitment rules, incorporating 25% of the vacancies, remaining

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unfilled, should be filled by selection-cum-seniority order, the same would not be adequate for the applicants who are 800 in number and are to be regularised as per the observations of the Apex Court in Jagjit Mazdoor's case (supra).

66. Having regard to the discussion made above and reasons recorded, I dispose of this OA with a direction to the respondents to reconsider the issue of accord of grant of regularisation to the applicants who are casual employees with temporary status after completion of three years service and their entitlement to pensionary benefits on completion of this period, in the light of the decision taken by the Department of Telecommunication through letter dated 3.1.1992, within a period of three months from the date of receipt of a copy of this order. In the event, the respondents decide to extend the same treatment to the applicants, as meted out to their counter parts in Department of Telecommunications, necessary steps and follow up action may be taken by the respondents expeditiously. No costs.

S. Raju
(Shanker Raju)
Member(J)

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