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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO.2109 of 2002

New Delhi, this the 14th day of October, 2003

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

1. Sukpal S/o Shri Beni Ram
Waterman Cum Farrash (Temporary Status)
RMS-Kasganj (Etah).

Residential Address:

Sahabwala Pech
Mohalla Mohan Kasganj (Etah),

2. Girish Chandra S/o Shri Banshi Prasad
Waterma Cum Farash (Temporary Status)
RMS-Bareilly.

Residential Address:

Near Tapeshwar Nath Temple,
Subhash-Nagar bareilly.

3. Guru Dayal Saxena S/o Shri Murari Lal Saxena
Waterman Cum Farrash (Temporary Status),
RMS-Bareilly.

Residential Address:

Purani Chandmari Gali No.1
Subhas Nagar,
Bareilly.

..... Applicants

(By Advocate : Shri D.P. Sharma)

Versus

1. Union of India
through Secretary,
Ministry of Communication,
Dept. of Posts – New Delhi.
2. The Postmaster General
Bareilly Region – Bareilly.
3. The Superintendent
RMS “BL” Division, Bareilly.
4. The Head Record Officer,
RMS “BL” Division, Bareilly.
5. The Sub-Record Officer,
RMS – Kasganj (Etah).

....Respondents

(By Advocate : Shri M.K. Bhardwaj for Shri A.K. Bhardwaj)

ORDER (ORAL)

MA 1716/2002 for joining together is allowed.

2. Applicants have impugned the respondents' order dated 29.5.2002 whereby temporary status conferred upon them vide order dated 27.12.2001 is cancelled.
3. The applicants were treated as full time casual labourers in 1998. Thereafter they were conferred the temporary status w.e.f. 1.1.2001. The order passed on 5.2.2002, keeping in abeyance the order passed on 27.12.2001, was represented to by the applicants. Thereafter vide order dated 29.5.2002, the temporary status granted to the applicants was withdrawn giving rise to the present OA.
4. Learned counsel of the applicants - Shri D.P. Sharma by taking resort to the decision of the Apex Court in the case of UOI Vs. Mohanpal (2002(1) SC SLJ 464) as well as the decisions of this Tribunal dated 11.2.2003 in OA No.2118/2002 in the case of Smt. Santra and Anr. Vs. UOI & Ors. and dated 1.9.2003 in OA No.1651/2003 in the case of Mehar Chand Vs. UOI and Ors., contends that the case of the applicants is in all fours covered by the ratio laid down therein. It is also stated that show cause notice was only an empty formality, as the decision has already been taken to withdraw the temporary status from the applicants.
5. On the other hand, respondents' have vehemently opposed the contentions of the applicants and according to them, as the full time casual labourers, who were in position on 1.9.1993, being one time Scheme, were conferred the temporary status. As the temporary status was wrongly conferred upon the applicants, by way of show-cause notice the mistake was rectified, which does not suffer from any legal infirmity.
6. I have carefully considered the contentions of both the parties and perused the material placed on record.

7. In a similar controversy in the case of Smt. Santra & Anr. Vs. UOI and Others in OA No.2118/2002 decided on 11.2.2003 the following observations have been made:-

"11. I have carefully considered the rival contentions of the parties and perused the material on record. Ministry of Communication issued a Scheme for conferment of temporary status and regularisation on casual labours and initially on 12.4.91 casual labours in employment on 29.11.89 and who continued but currently employed having rendered continuous service of at least one year having worked for 240/260 days depending upon the working days of the offices are to be conferred temporary status and on three years continuous service on temporary they are to be treated at par with temporary group 'D' employees for certain benefits and on availability of vacancies are to be regularised in group 'd' posts. By a subsequent modification issued on 1.11.95 full time casual labours recruited after 29.11.99 upto 1.9.93 have been brought within the purview of the Scheme for grant of benefits. Full Bench of this Tribunal in Bhuri Singh's case held as follows:-

"12. Counsel for the respondents have lastly pointed out that as far as the Telecom Department is concerned, it has all along been taking a consistent view that the present scheme is a one time scheme and not an ongoing scheme. It is in this view of the matter that the Department has a number of occasions issued orders extending the scheme in favour of daily wage mazdoors who have been employed even after 1.10.1989. That may be so. The Department has a right to have its views. However, we do not concur with the same. Mere extension of the Scheme by the respondents will not come in the way of construing the aforesaid scheme which has fallen for our consideration. In the circumstances we have no hesitation in holding that the "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of the Department of telecommunications, 1989" is not a one time scheme applicable to such casual

Labourers who were employed prior to and continued to be employed as on 1.10.1989 but the same is a continuous scheme which will be applicable also to casual labourers who are employed thereafter. Aforesaid question is answered accordingly."

12. If one has regard to the aforesaid pronouncement, which is binding on me Scheme of Telecommunication has been held to be a continuous one and not one time measure and as such the contention of respondents that those part time casual labours who have not been conferred with the full time status upto 1.9.93 are not amenable to the Scheme and cannot be conferred temporary status cannot be countenanced. Applicants despite as back as 1992 have conferred upon full time status only on 29.5.97. Being a continuous scheme and not as a one time measure those who have been treated as full time casual labours even after 1.9.93 and were in engagement as part time earlier to this cannot be deprived of the scheme for grant of temporary status.

13. In Mohanpal's case (supra) the Scheme of DOPT which is different from the scheme issued by the Ministry of Communication the Scheme has been observed to be one time measure. On the other hand the Scheme of Telecommunication which has been under scrutiny before the Full Bench (supra) has been held to be continuous and in absence of any decision to the contrary whereby the Scheme has been held to be one time measure Full Bench decision applies to the case of applicants and even such a proposal at the show cause stage is void ab initio and is liable to be set aside.

14. Assuming that the Scheme of Telecommunication is one time measure and those who were full time casual labour on engagement on 1.9.93 are eligible for conferment of temporary status in the light of the decision of the Apex court in Mohanpal's case (supra) where those who were not in engagement on 1.9.93 and have been conferred temporary status the Apex Court has observed that there cases would not be disturbed on the same analogy. Assuming that applicants have been wrongly

conferred temporary status that cannot be disturbed and on this count alone the show cause notices are liable to be set aside.

15. In so far as the contention of applicants regarding post-decisional hearing is concerned, I find that through the show cause notices a decision already taken by the respondents to cancel their conferment of temporary status has been taken and as a formality and post-decisional hearing the show cause notices have been issued, which cannot be countenanced in view of the decision of the Apex Court in Trehan's case (supra) wherein the following observations have been made:

"12. It is, however, contended on behalf of CORIL that after the impugned circular was issued, an opportunity of hearing was given to the employees with regard to the alterations made in the conditions of their service by the impugned circular. In our opinion, the post-decisional opportunity of hearing does not subserve the rules of natural justice. The authority who embarks upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity."

16. Having regard to the reasons recorded above, as the show cause notices issued to applicants per se are illegal, void ab initio the same are not legally sustainable and are accordingly quashed and set aside. The respondents are directed to treat applicants having conferred temporary status as per the Scheme and to further grant them other benefits at par with Group 'D' employees on completion of three years continuous service on temporary status and also to consider their cases for regular appointments in group 'D' posts on availability of vacancies and as per the provisions of the Scheme on 1991. Applicants shall be entitled to all consequential benefits. Respondents are further directed to carry out these directions within a period of three months from the date of receipt of a copy of this order. No costs."

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8. If one has regard to the above, the case of the applicants in all fours is covered by the ratio laid down therein and accordingly, notices issued to the applicants being void ab initio are not sustainable.

9. In the result, for the reasons recorded above, the OA is allowed. The impugned order dated 29.5.2002 is quashed and set aside. The respondents are directed to treat the applicants having conferred temporary status as per the Scheme and the applicants should be considered for regularisation in accordance with rules and in that event, the applicants shall be entitled to consequential benefits. No costs.

S. Raju
(SHANKER RAJU)
MEMBER (J)

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