

CENTRAL ADMINISTRATIVE TRIBUNAL**CHENNAI BENCH****OA No. 310/00762/2017****Dated Friday ,the 31st day of January, 2020****PRESENT****Hon'ble Mr. T.Jacob , Member(A)**

Mrs. T. Rathinam,
W/o. Shri. K.Munian,
44, Anna Street,
Sri Raghavendra Nagar,
Madambakkam,
Guduvancherry – 603 202,
Kanchipuram Dist.

...Applicant

(By Advocate M/s P.R.Satyanarayanan)

Vs

1. Union of India represented by the
Postmaster General,
Chennai City Region,
Chennai 600 002.
2. Senior Superintendent of Post Offices,
Chennai City Central Division,
Chennai 600 017.

....Respondents

(By Advocate Mr. S.Nagarajan)

ORDER

(Pronounced by Hon'ble Mr.T.Jacob, Member (A))

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"I. To call for the records relating to (i) proceedings No. B4/TR/Dlgs. Dated 22.09.2016 (ii). Proceedings No. B4/TR/Dlgs. Dated 14.10.2016 passed by the second respondent and (iii) proceedings STB/3GDS/Central/2017/CCR dated 09.03.2017 passed by the first respondent rejecting the claim of the applicant for conferment of 'temporary status' and quash them as arbitrary and illegal and direct the respondents to grant 'temporary status' to the applicant w.e.f 29.11.1989 as per 'Casual Labourers (Grant of Temporary Status and Regularisation) Scheme formulated by GOI, Department of Posts in O.M.No.45-95/87-SPB-I dated 12.04.1991 with all consequential benefits...."

2. The brief facts of the case as submitted by the applicant are as follows:

The applicant herein was first engaged in Chennai City Central Postal Division as a casual labourer on 27.01.1987 and had been performing the duties of regular Grade D/Postman in regular and leave vacancies. The name of the applicant appears at Serial No.212A in the 'dove-tailed' list prepared by the second respondent in August, 1995. By circular No.45-95/87-SPB-I dated 12.04.1991, the Postal Department introduced a new scheme called 'Casual Labourers (Grant of Temporary Status and Regularisation) Scheme', according to which 'Temporary Status' would be conferred on the casual labourers in employment as on 29.11.1989 and who continue to be employed and have rendered continuous service of at least one year with specific direction that they would be treated on par with Group 'D' and all the facilities like yearly increment, Earned Leave etc., would be extended to them. The

applicant was engaged as a full time 'casual labourer' at T.Nagar HPO even in the year 1987 and she had completed 240 days and also satisfied all the eligibility conditions prescribed in circular dated 12.04.1991 issued by Postal Department for grant of 'temporary status', w.e.f 29.11.1989 but she has not been granted 'temporary status' so far. Between 28.11.1989 and 17.09.1998, at least 12 similarly placed officials have been granted temporary status. Therefore, she represented to the second respondent herein on 12.09.2016 seeking conferment of 'temporary status' as per the circular dated 12.04.1991 issued by Postal Department. But the said request was rejected by the second respondent by letter No.B4/TR/Dlgs. dated 22.09.2016 informing that the scheme is not applicable to any person working on casual basis in Group 'C' posts. The applicant once again represented on 01.10.2016 to the second respondent seeking reconsideration. But by letter No.B4/TR/Dlgs. dated 14.10.2016, her request was rejected. The applicant preferred a detailed appeal on 16.11.2016 followed by a reminder dated 27.02.2017 to the first respondent explaining the circumstances in which she was forced to work in different posts and sought conferment of 'temporary status' as per the scheme. But without appreciating the facts in the proper perspective, the first respondent also rejected the claim of the applicant on the same ground. The applicant was not exclusively engaged to work in the vacant places of Postman and she continues to perform duties in vacant posts as assigned by the head of the office and she continues to serve as 'casual labourer' even today but however, deprived of her legitimate placement as 'Temporary Status Gr. D'. Hence she has filed this OA seeking the above reliefs inter-alia on the following grounds:-

- i. The impugned orders (I) No. B4/TR/Dlgs. Dated 22.09.2016 (ii) No. B4/TR/Dlgs. Dated 14.10.2016 passed by the second respondent and (iii) No. STB/3-GDS/Central/2017/CCR dated 09.03.2017 passed by the first respondent rejecting the claim of the applicant are totally arbitrary and illegal.
- ii. The applicant satisfied all eligibility conditions for absorption as regular Group 'D' as per the 'Casual Labourers (Grant of Temporary Status and Regularisation) Scheme' formulated by Postal Department, in circular No. 45-95/87-SPB-I dated 12.04.1991 and non-regularisation of the applicant as Group 'D' is highly arbitrary and unreasonable.
- iii. The applicant entered as Casual labourer as early as 27.01.1987 and while the later entrants have been conferred with 'Temporary Status' and have also been regularised subsequently, the respondents have not even considered the applicant for grant of 'temporary status' in spite of her repeated representations.
- iv. The applicant has been working as 'casual labourer' in clear vacant posts for the past for more than 30 years as per the directions of her superiors, the claim of the applicant for grant of 'temporary status' has been rejected citing extraneous reasons.
- v. The applicant was initially engaged as 'casual labourer' in the year 1987 to work in casual vacancies and she used to perform jobs assigned to her on the given day and the applicant was not selected to perform in any particular post viz. Gr.D or Gr.C posts.
- vi. The applicant was assigned Gr.D/Postman duties depending upon the exigencies of service on a given day and the applicant performed the duties assigned to the post as a 'casual labourer' only and was also paid wages as such and the same cannot be sole reason to deny conferment of 'temporary status' to the applicant based on his eligibility as prescribed in the circular No. 45-95/87-SPB-I dated 12.04.1991 issued by Postal Department.
- vii. The several such officials who worked as Gr.D and also as Postman on certain occasions have been conferred with 'Temporary Status' long back and

have also been regularised as MTS in Chennai City Central Division and the applicant alone has been left out citing inappropriate reasons, and the action of the respondents are therefore discriminatory in nature.

3. The applicant has relied upon the following citations in support of his submissions:-

- i. Order of the Supreme Court dated 29-04-2002[2002 (4) SCC 573]
Union of India and Anr Vs Mohan Pal.
- ii. Order of the Central Administrative Tribunal – Delhi dated 05-07-2012
Shri Vijender Singh Vs Union of India.

4. The respondents have filed a detailed reply statement in which it is stated that the applicant Smt. T. Rathinam was engaged as an outsider in January 1987 to work in the leave vacancies of Postman/Group 'D'. The Scheme of dovetailed list was formulated by the Office of Chief Postmaster General, Tamil Nadu Circle in letter No.REP/84-73/93 dated 23.12.1993 as an one time measure for considering absorption in GDS posts, according to which the names of substitutes and outsiders engaged in short term vacancies prior to 11.02.1988 and completed 240 days in any 2 years would be included in the list. Treating the applicant as outsider substitute engaged prior to 11.02.1988 and completed 240 days of service in 2 years, her name was included in the dovetailed list of Chennai City Central Division dated 16.08.1995 for considering regularization in GDS post as per her position in the 'dovetailed' list. She could not be offered GDS posts immediately for want of vacancies and she has not expressed her willingness for the offer of absorption in other divisions. However, as per her turn her case was considered for the post of GDS PKR, Teynampet for which she was asked to submit her willingness and she also submitted conditional

acceptance stating that without prejudice to her right to claim for grant of temporary status, she is willing to join the post. The respondents have considered her willingness for the post of GDS and she was engaged as GDS Packer with effect from 12-03-2018 vide this office Memo No.GDS/Appt/Dlgs/T.R/2018 dated 07-03-2018. However, since she was not engaged as a casual labourer but only as an outsider substitute, her claim for grant of temporary status is not maintainable. The scheme of granting temporary status in Group – D Post is not applicable to any person working on casual basis in Group “C” Posts vide GOI, Department of Posts Letter No.45-37/91-SPB I dated 05-06-1991. But the applicant had worked for 240 days both in Postman (Group C) and Group D leave vacancies. Only those who were covered by the scheme were granted temporary status subject to fulfilment of all conditions. The relief sought for by the applicant for grant of temporary status is not entertainable, since the scheme of temporary status is meant for casual labourer and the applicant was not engaged as such, but only as a substitute to work in the leave vacancies of Postman/Group 'D'. It is therefore, submitted that the applicant was considered for regularization as GDS as per dovetailed list and her claim for conferring temporary status is not justified. Hence the respondents pray for dismissal of the OA.

5. The respondents have also relied upon the following citations in support of their submissions:-

- i. Order of the Hon'ble Supreme Court (2005 AIR SCW 3594) Union of India Vs Gagan Kumar.
- ii. Order of the Hon'ble Supreme Court (2005 SCC (L&S) 292 Dhampur Sugar Mills Ltd Vs Bhola Singh.

iii. Order of the Hon'ble Tribunal dated 24.07.2011 in the OA No. 300/2010 filed by Shri. S.Karunakaran.

6. The applicant has filed rejoinder and the respondents have filed reply to the rejoinder almost reiterating the averments made therein.

7. Heard the learned counsel for the respective parties and perused the pleadings and documents on records.

8. The short question that is involved in this OA for consideration is whether the applicant is entitled for conferment of temporary status.

9. Admittedly, the applicant was engaged as an outsider in the year 1987. She was not sponsored through Employment Exchange, no pre-recruitment formalities were observed at the time of her engagement and she was not appointed as a part time casual labourer. She was utilised as an outsider in the short term leave vacancies of Postman / Group 'D' and GDS and not appointed as casual labourer against any sanctioned post. There is no provision in the rules for regularisation of the services of outsiders who were not appointed as per the Recruitment Rules and who were not engaged through Employment Exchange or any other employment agency. The benefit of temporary status is available only to those casual labourers who were in employment as on 01.09.1993 and grant of temporary status is not permissible after that date. For there is a clear distinction between substitute and casual labour. Substitute is in the place of person already working but gone on leave etc. He is already in the sanction strength while the casual labour is on account of requirement of additional hand in excess of the existing strength. Substitutes job will come to the

end on the joining of the individual in whose place substitute is posted. The continuance of the casual labour corresponds to requirement of the additional work. The continuous requirement of additional work crystallises into regular post in due course, and this warrants grant of temporary status to casual labourers on completion of 240 days in a year followed by treating him as a temporary Group 'D' employee (now Group 'C') after prescribed number of years of such temporary status which entails regularisation.

10. As per the Directorate's letter dated 12.04.1991, the following conditions are prescribed for conferment of temporary status to a casual labourer:

"1. Temporary status should be conferred on the casual labourers in employment as on 29.11.89 and who continued to be currently employed and have rendered continuous service of at least one year. During the year they must have been engaged for a period of 240 days.

After rendering three years continuous service after conferment of temporary status, the casual labourers would be treated at par with temporary Group 'D' employees.

11. As per OM dated 10.09.1993, those casual employees who were not sponsored through Employment Exchange or engaged through employment agency can be bestowed with temporary status. As such, the applicant is not eligible for regularisation/conferment of temporary status as per rules and instructions on the subject. The Casual Labour (Grant of Temporary Status and Regularisation) Scheme of Government of India was a one time measure and was applicable only to the casual labours working in the year 1993 and was not an ongoing Scheme and in view of the said Scheme, the applicant cannot claim the benefit of temporary status or claim

status at par with the workmen having temporary status. The said Scheme has been considered by the Hon'ble Supreme Court in the case of Union of India vs. Mohan Pal reported in 2002(4) SCC 573, Union of India vs. Gagan Kumar reported in AIR 2005 SC 3594, Director General, Doordarshan vs. Manas Dey and Ors., reported in AIR 2006 SC 263 and Controller and Defence Accounts vs. Dhani Ram and Ors. reported AIR 2007 SC 2650. Further reference has been made to the case of State of Rajasthan vs. Daya Lal by the Hon'ble Supreme Court. In the case of Secretary to Government, School Education Department, Chennai vs., R. Govindaswamy and others reported in 2014 (4) SCC 769 wherein it has been held as under:-

“(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme under/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be litigious employment. Even temporary, ad hoc or daily wage service for a long number of years, let alone service for one or two years, will not entitle such employees to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

iii. Even where a scheme is formulated for regularisation with a cut off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut off dates), it is not possible to others who were appointed subsequent to the cut off date, to claim or contend that the scheme should be applied to them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive cut off dates.

iv. Part time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuation of part time temporary employees.”

As such, the judgements referred to by the counsel for the applicant are not relevant to the facts of the present case.

12. It could be seen on perusal of the records that the applicant has been engaged in T.Nagar HO as outsider since January 1987 to work in the leave vacancies of Postman / Group 'D'. As per the scheme of temporary status and regularisation ordered by the Postal Directories in letter No.45-95/87-SPB I dated 12.04.1991, grant of temporary status was applicable only to the casual labourers appointed as such and as clarified in Directorate Letter No.65-24/88-SPB I dated 17.05.1989 that substitutes engaged against absentees should not be designated as casual labourers. Hence the applicant's claim for grant of temporary status is not entertainable. Further, the name of the applicant has been included in the 'dovetailed' list. As per that, the applicant case was considered for the post of GDS-PKR, Teynampet and she is presently working as Gramin Dak Sevak (GDS). Hence, there is no justification in her claim for conferring temporary status.

13. In the conspectus of the above facts and circumstances of the case and the orders/instructions on the subject, I do not find any merit in the claim of the applicant warranting interference of this Tribunal. The OA is liable to be dismissed and is accordingly dismissed.

14. No costs.

(T. JACOB)
MEMBER(A)
31-01-2020

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