

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00013/2019

Reserved on : 20.02.2020

Jodhpur, this the 5th March, 2020

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

Rewant Singh S/o Late Sh. Kalu Singh, by caste Rajput, aged about 48 years, resident of VPO Balai, Tehsil Shiv, Dist Barmer. Presently working as Casual Labour in Barmer HO Posts, Tehsil & Dist. Barmer.

.....Applicant

By Advocate : Mr M.S. Godara.

Versus

1. Union of India through, the Secretary, Ministry of Communication and Information, Department of Post, Dak Bhawan, New Delhi - 110001.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. The Post master General, Western Region, Rajasthan, Jodhpur.
4. Superintendent of Posts, Barmer Division, Barmer.

.....Respondents

By Advocate : Mr K.S. Yadav.

ORDER

The present Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking following relief(s) :

1. That the communication dated 24.12.2018 (Annexure A/1) including any other minutes of DPC or communication to this effect issued by the respondents rejecting the candidature of the applicant, may kindly be quashed and set aside.
2. That the respondents may kindly be directed to consider the candidature of the applicant against one vacancy available in Barmer Division for promotion on the post of MTS and looking to the educational qualification and the factum of fulfilling the criteria provided under the MTS rules, respondents may kindly be directed to appoint/promote the applicant on the post of MTS immediately from the day when the other casual labours were accorded such appointment in other divisions with all consequential benefits.
3. Any other order or direction, which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case, may kindly be passed in favour of the applicant and cost of the OA may kindly be awarded in favour of the applicants.

2. Brief facts of the case, as stated by the applicant, are that the applicant was appointed as a casual labour vide memo dated 03.08.1992 (Annex. A/2). Initially, he was a part time casual labour but later on by assigning additional duties his total duty hours were brought to the extent of 7.30 hours along with ½ hour lunch time. Therefore, his total working hours remained 8 hours w.e.f. 25.08.1998 and in fact, he became a full time casual labour w.e.f 25.8.1998. His initial date of appointment is 03.08.1992. The applicant is working as casual labour on daily wage basis fixed from time to time by Central Government since then. It is the case of the applicant that respondent no.3 issued

notification dated 14.12.2018 for filling up 25% vacancies by promotion from casual labour in which one vacancy was earmarked for Barmer Division. As per the provisions contained in Column No.10 of the Schedule appended to MTS Recruitment Rules under Point 2 (iii), it is clear that out of 9 vacancies shown in Barmer Division, (1) one vacancy is required to be filled up by appointment of a casual labour (Annexure A-4). As per the Recruitment Rules namely Department of Posts (Multi Tasking Staff) Recruitment Rules, 2015 in short (MTS) Rules 25% posts were required to be filled up by way of appointment amongst casual labours working in the division/unit concerned . Part II of the Schedule vide Col. No. 7 to 10 appended to the MTS Rules consisted of provisions regarding eligibility , age and other qualifications for the post prescribed to be filled up from Casual Labour. Clause II provides that there shall be no upper age limit for GDS and casual labour. Also, educational qualification clause is not applicable for a casual labour for the purpose of appointment under MTS Rules. It is further submitted that as per Column 10 clause (iii) sub-clause (a) which provides that 25% posts shall be filled up by appointment of casual labours of the recruitment division/unit conferred with temporary status on the basis of seniority cum fitness, failing which, sub clause (b) provides to fill up such posts by casual labour engaged on or before 01.09.1993 working for full 8 hours in a day and failing which, sub clause (c) provides to fill up such posts by appointment of part time casual labour engaged on or before 1.09.1993 and even failing which unfilled vacancies shall be added to the number of vacancies to be filled up by way of promotion on the basis of Limited Departmental Competitive Examination restricted to Gramin Dak Sevak of the recruiting division (Annexure A-5). The applicant stated that in pursuance

of the Notification dated 14.12.2018, respondent no.4 prepared minutes of DPC in which name of the applicant stands at serial no.1 with his initial date of appointment as 3.08.1992 and having work load of 7.30 hours w.e.f 25.08.1998 and discharging duties of pump driver / gardener and waterman of division office under Respondent no.4. The applicant is aggrieved that though his name stands at serial no.1 in the seniority list but his name is rejected/ declined to be considered on the ground that no casual labour appointed on or before 1.09.1993 is available under respondent no.4 vide communication dated 24.12.2018 (Annexure A-1). Feeling aggrieved by the said rejection by the DPC, the applicant made a representation to respondent no.3. Since no action has been taken by the respondents yet, he has approached this Hon'ble Tribunal for directing the respondents to consider his candidature against one vacancy available in Barmer Division for promotion on the post of MTS amongst the casual labours as published vide communication dated 14.12.2018 immediately from the date when other casual labours were accorded such appointments in other divisions with all consequential benefits.

3. The respondents filed reply dated 3.07.2019 stating therein that the applicant is working as part time contingency paid casual labour from 3.08.1992 for 4 hours 30 minutes per day vide SPO's Barmer Memo dated 3.08.1992.(Annexure R-1). Thereafter, he was engaged for 6 hours per day on daily wage basis vide Memo dated 25.08.1998 (Annexure R-2). In addition to the same, 1 hour and 30 minutes were added to his work as Paniwala. Therefore, total working hours of the applicant comes to 7 hours and 30 minutes from the year 1998 as per combined duty order dated 1.11.2004(Annexure R-3). Respondents further stated that as per the minutes of the DPC dated 20/21.12.2018, there is no casual labour available in Barmer Division, therefore,

the applicant has approached this Hon'ble Tribunal for seeking appointment against the said 25% vacancies for the year 2018 by appointment of casual labour on the basis of seniority –cum-fitness against one vacancy which has remained unfilled. The main contention of the respondents is that the applicant has put in only 7 hours and 30 minutes, therefore, he could not be considered as full time casual labour since 1992. As such, the applicant has not completed 26 years of continuous service as full time contingent paid employee, therefore, he cannot claim temporary status as a matter of right. Respondents further added that the applicant is not working for full 8 hours in a day since on or before 1.09.1993, therefore, he is not entitled to be considered for the said post. Also, the applicant submitted his representation dated 24.12.2018 to the respondent no. 3 and in the meantime, he approached this Hon'ble Tribunal without waiting for its outcome. It is further added in compliance of order dated 15.01.2019, one post of MTS from casual labour quota in Barmer division is kept vacant. Thus, the applicant has no merit in his case and the present OA deserves to be dismissed.

4. Heard Shri. M. S. Godara, learned counsel for the applicant and Shri. K.S. Yadav, learned counsel for the respondents and perused the material available on record.

5. Learned counsel for the applicant stated that out of the five persons whom the DPC considered, the applicant stands at serial number 1 in the said seniority list. He further stated that though the DPC considered his name but the same was not approved by the DPC. He further stated that it is not fair on part of the respondents to state that the applicant is casual labour with workload of only 7 hours and 30 minutes, therefore,

he is not a full time casual labour. He further added that half an hour lunch break is justified and therefore he completes 8 hours and is a full time casual labour and half an hour lunch time is already mentioned under Clause II of OM dated 12.04.1991. He further stated that he fulfils the eligibility criteria as per RR column 10 clause (iii). He further stated that his candidature has been rejected by the DPC on flimsy ground that no casual labour appointed on or before 1.09.1993 is available under respondent no.4 as informed by respondent no.4 vide communication dated 24.12.2018 (Annexure A-1). He, therefore, prays that his case is justified to be considered in the available vacancy from casual labour quota to MTS as he fulfils all criteria as per RRs and stands first in the seniority list also.

6. The respondents on the other hand reiterated their stand on the ground that the applicant is a part time casual labour and is working only for 7 hours and 30 minutes and not for complete 8 hours . The applicant has also not got temporary status and as such, he has not completed continuous service of 26 years as full time contingent employee. Therefore, the case of the applicant does not need any consideration and the same deserves to be dismissed.

7. I have considered contentions of rival parties and perused the record. The actual matrix of the case is that the respondent no. 3 issued notification dated 14.12.2018 for filling up 25% vacancies of MTS from casual labour in which one vacancy was earmarked for Barmer Division. It is clear that out of 9 vacancies shown in Barmer Division, (1) one vacancy is required to be filled up by a casual labour as 25% posts required to be filled up by way of appointment amongst casual labours working in the division/unit concerned. It is seen that as per the provisions

contained in Column No.10 of the Schedule appended to Department of Posts (Multi Tasking Staff) Recruitment Rules, 2015 under Point 2 (iii), applicant is fulfilling the criteria required for the said post, but respondents have rejected/declined to consider the case of the applicant on the ground that no casual labour appointed on or before 1.09.1993 is available under respondent no.4 as per communication dated 24.12.2018 (Annexure A-1). It is seen that the applicant has been putting in 7 hours and 30 minutes work, yet he has not been considered as full time casual labour since 1992. As per Clause II of OM dated 12.04.1991, half an hour lunch time is already mentioned and therefore, the applicant completes 8 hours for considering him as a full time casual labour. In pursuance of the Notification dated 14.12.2018, respondent no.4 prepared minutes of DPC in which name of the applicant stands at serial no.1 with his initial date of appointment as 03.08.1992 and having work load of 7.30 hours w.e.f 25.08.1998. If his half an hour lunch break is taken into consideration as per OM dated 12.04.1991, the applicant completes 8 hours a day. Thus, in my view, the respondents should have no hesitation to consider the applicant's working as full time casual labour. As per the RR, it is clear that the applicant otherwise fulfils requirement under sub clause (b) and (c) of clause (iii) of Column 10, therefore, the DPC should not have rejected/declined the case of the applicant against the vacancy of Barmer not treating his working of 07 hours 30 minutes as full time. Accordingly, non-consideration of case of the applicant for appointment on the post of MTS against 25% quota of Casual Labourers is arbitrary and unjust.

8. In view of the above observations, impugned communication dated 24.12.2016 is hereby quashed and set aside. Respondents are directed to consider the case of the applicant

afresh treating him full time casual labour against one available vacancy in Barmer Division for appointment on the post of MTS. The respondents shall consider appointment of the applicant on the post of MTS notionally from the date when other such similarly situated casual labourers were appointed by them, if applicant is otherwise found fit. This exercise shall be completed by the respondents within 3 months from the date of receipt of a certified copy of this order.

9. In terms of above directions, OA is allowed with no order as to costs.

**[Hina P. Shah]
Judicial Member**

Ss/-