

Central Administrative Tribunal
Principal Bench

OA No.760/2001

New Delhi this the 4th day of October, 2001.

Hon'ble Mr. Shanker Raju, Member (J)

1. Nagender Singh,
S/o Sh. Shish Pal Singh,
R/o 266-G, Mohalla Shiban Pura,
Meerut Road, Ghaziabad.
2. Raj Bala,
W/o Nagender Singh,
R/o 266-G, Mohalla Shiban Pura,
Meerut Road, Ghaziabad.Applicants

(By Advocate Shri S.K. Gupta)

-Versus-

1. Union of India through
Secretary,
Ministry of Agriculture,
Department of Rural Development,
Krishi Bhawan, New Delhi.
2. Joint Marketing Advisor,
Directorate of M&I,
Branch Head Office,
Nagpur.
3. Chief Chemist,
Agmark Laboratory,
Directorate of M&I,
Department of Rural Development,
Ministry of Agriculture,
Ghaziabad.Respondents

(By Advocate Shri R.V. Sinha)

ORDER (ORAL)

MA for joining together is allowed. The claim of the applicants who have been accorded temporary status on 26.3.96 in pursuance of the decision of this court is pertaining to non-payment of productivity linked bonus (for short PLB), festival advance, accord of one day leave after completion of 10 days as well as regularisation against Group 'D' posts. Briefly stated the applicants have approached this court and this court issued directions to accord them temporary status in OA-1639/94. The respondents

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in compliance thereof accorded temporary status to the applicants on 26.3.96. Since then they had completed three years service. By placing reliance on DOPT Scheme of 1993 and more particularly clause (iv) it is stated that casual labour having temporary status are entitled for leave on pro rata basis at the rate of one day after every 10 days and they are also entitled to carry forward their leaves at their credit on their regularisation. It is also stated that the applicants are also entitled for PLB at a rate applicable to casual labour and there is no requirement of rendering service for any particular period or days. It is also stated that as per the scheme two out of three vacancies in Group 'D' cadre in respective offices where casual labours have been working would be filled up as per the extant recruitment rules and in accordance with the instructions. In this backdrop, it is stated that though the respondents have not accorded leave to his account on rendering 10 days working with them as well as applicant No.1 is yet to be paid PLB whereas the applicant No.2 has been paid the same for the year 2000. It is also stated that though the applicants have requested for festival advance on account of 2nd October the same has not been allowed to them. As regards regularisation is concerned, the applicants have made specific averment that despite having vacancies at different places, viz. New Delhi, Jodhpur, Chennai, Kalikat, Calcutta, Nasik Road, Raj Kot, Hyderabad, Amritsar etc. the respondents are deliberately not filling up the same and the posts are lying vacant against whom the applicants have a right to be considered in the ratio of 2:3. As regards the eligibility is concerned, the

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learned counsel for the applicants states that as they have already been accorded temporary status the pre-requisite of sponsorship through Employment Exchange is no more a valid eligibility criteria and on this account their claim cannot be denied. The learned counsel of the applicants by further placing reliance on the Annexures to the counter-reply stated that by an OM dated 23.10.2000 the guidelines issued by the Ministry of Finance have been reviewed and it has been decided to fill up the posts which are lying vacant for less than one year and are to be filled up by promotion. As far as filling up of the vacancies by direct recruitment is concerned, proposal in this regard is, to be referred to the Ministry of Finance for approval if the vacancies are less than one year old. By further placing reliance on the OM dated 5.8.99 it is stated that in case of unavoidable proposal for creation of the planned posts, including Group 'D' and 'B' posts, Ministry of Finance should be approached for approval. The respondents having failed to approach the Ministry of Finance are keeping these posts vacant so that after one year the same be abolished and the new posts shall be created on which there has been a ban just to circumvent the right of the applicants.

2. On the other hand, strongly rebutting the contentions of the applicants, the learned counsel for the respondents contended that on being accorded temporary status the applicants are entitled for the benefits which are attached to temporary status and as envisaged under the DOPT Scheme as well as the memorandum issued to the applicants while according

them temporary status. It is also stated that the applicants have not come up with clean hands as PLB has already been accorded to applicant No.2. As regards PLB to applicant No.1 is concerned, the same has been examined and it is found that the applicant who has not put in requisite days of service and has remained absent unauthorizedly is not entitled for accord of the same. As regards festival advance is concerned, it is stated that as two sureties have not been furnished by the applicants as such they are not entitled for the same on account of non-fulfilment of the requisite criteria. As regards regularisation of the applicants against Group 'D' posts is concerned, learned counsel for the respondents has drawn my attention to the fact that there has been a ban on creation of Group 'D' posts as per the departmental letter dated 5.8.99. It is also stated that the Ministry of Agriculture has implemented the above order by issuing an order dated 24.7.2000 whereby 10% cut in the establishment of Group 'C' and Group 'D' cadres has been effected. It is further stated that in pursuance of Ministry of Finance OM dated 23.10.2000 the respondents have been instructed to fill up only those posts which have been vacant for less than one year and are to be filled up by promotion. As far as filling up of the vacancies through direct recruitment and other modes are concerned, the matter should be referred to the Ministry of Finance for approval if these vacancies are less than one year old. Since the direct recruitment of the posts under the control of the respondents are more than one year old the instructions of the Ministry of Finance are applicable

and as such till the ban is lifted there is not question of regularising the applicants against the Group 'D' posts.

3. I have carefully considered the rival contentions of the parties and perused the material on record. From the perusal of the DOPT Scheme as well as the memo issued to the applicants on 27.3.96 bestowing them the benefit of temporary status in pursuance of the directions of the court, I find that the leave entitlement to a casual labour having temporary status on pro rata basis at the rate of one day for every 10 days work is not at all dependent on the days he has put in as casual worker after accord of temporary status. No provision under the DOPT scheme indicate that to be entitled for leave a casual labour has to work for a specific number of days. The only provision is accord of temporary status after having completed 206 days in case establishment is observing five day week. As such the contention of the respondents that the applicants have not been accorded leave at a rate of one day after every 10 days of work on the ground that they have not rendered requisite service as casual labour on temporary status is not sustainable.

4. As regards PLB is concerned, what has been provided under the scheme is that after rendering three years continuous service after conferment of temporary status casual labour is to be treated at par with Group 'D' employees for the purpose of contribution to GPF and is also entitled for festival advance in case he furnishes two sureties from two

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permanent Government servants and further only the casual labour having temporary status is entitled to PLB only at the rates applicable to casual labour. Nothing in the provisions suggest that the pre-requisite for accord of PLB is number of days to be rendered by a casual labour on temporary status. In absence of any specific provision the casual labour who attains temporary status and till he is regularised is entitled to PLB at the rates applicable to casual labours irrespective of the fact whether he renders the requisite days as contended by the respondents. In this view of the matter the contention of the learned counsel for the respondents that the PLB is proportionate to the requisite days of service rendered by a casual labour after attainment of temporary status cannot be countenanced and is not legally sustainable too.

5. As regards the regularisation is concerned, no doubt the scheme under clause (viii) provides regularisation against Group 'D' posts of casual labour having temporary status in accordance with the extant recruitment rules and in the proportion of 2 out of every three vacancies occurring in the Group 'D' cadre. The contention of the learned counsel for the applicants that the posts are lying vacant at different places has not been controverted by the respondents in their reply. The only defence which has been taken by them is resorting to Govt. of India's memorandum dated 5.8.99 wherein there has been a ban on creation of non-planned posts and any unavoidable proposal for the creation of posts, including Group 'C' and 'D' posts should be referred

to Ministry of Finance for approval. The other provision which has been placed reliance by the learned counsel of the respondents is that in pursuance of the Ministry of Finance letter dated 5.8.99 they had imposed a cut of 10% in the staff strength as on 1.1.92. Further resort of the respondents' counsel and on OM dated 23.10.2000 to contend that if the vacancies are more than one year old for the purposes of direct recruitment there is no need for sending a proposal unless the ban is lifted. In my considered view OM dated 5.8.99 applies only when the post is to be created for a non-planned or a planned group like Group B and D. This will have no effect in a situation where admittedly vacancies are there and the posts are lying vacant as admitted by the respondents. In order to fill up those posts it is incumbent for the respondents to have sent a proposal to the Ministry of Finance for their approval to fill up the same. The Ministry of Finance OM dated 5.8.99 does not create an absolute ban on filling up of the vacancies or the posts lying vacant with the respondents. The only pre-requisite is approval to be sought from the Ministry of Finance in order to fill up the posts which are lying vacant with the respondents. They have not acted legally. In this view of the matter, I am of the considered view that the respondents should send a proposal to the Ministry of Finance with regard to the filling up of the posts lying vacant with them in the ratio of 2:3 for the purpose of regularising the casual labour having temporary status after completion of three years service on temporary status.

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6. Having regard to the reasons recorded above, the present OA is disposed of with the direction to the respondents to consider the applicants for accord of PLB, entitlement of leave at the rate of one day after every 10 days work without pressing on the requirement of having rendered a requisite period of service after accord of temporary status. In case it is found that the applicants are not accorded the benefits the same shall be paid to them. As regards festival advance is concerned, in the event the applicants make applications, furnishing two sureties of permanent Government servants the same shall be considered by the respondents in accordance with the instructions on the subject and if the applicants conform to the eligibility criteria the same shall be accorded to them.

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7. As regards the regularisation is concerned, the respondents shall send a proposal to the Ministry of Finance seeking their approval for filling up posts which are admittedly lying vacant with them for the purpose of regularising the applicants against Group 'D' posts after they have attained temporary status and continued for more than three years and subject to their being conforming to all other eligibility criteria. The aforesaid directions shall be complied with by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju

(Shanker Raju)
Member (J)

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