

CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

OA.No.1693 of 1996

Dated New Delhi, this 2nd day of September, 1997.

HON'BLE SHRI K. MUTHUKUMAR, MEMBER(A)

Smt. Roshni
W/o Late Shri Sri Kishan Kaushik
R/o House No.184, Street No.4
Mai Basti, Near Power House
BAHADURGARH. Applicant

By Advocate: Shri B. G. Mainee

versus

Union of India, through

1. The Secretary to the
Government of India
Ministry of Communications
Sanchar Bhavan
NEW DELHI.
2. The Senior Superintendent of
Delhi, Sorting Division
R.M.S. Bhavan
DELHI 110 006. Respondents

By Advocate: Shri M. K. Gupta

O R D E R (ORAL)

The applicant seeks compassionate appointment which has not been granted by the respondents. The applicant is a widow of Late Shri Sri Kishan Kaushik, who worked as a Mailman. It is an admitted position that late Shri Kaushik was initially appointed as a casual labourer in 1981 and he was later granted temporary status with effect from 25.11.89. The respondents issued an order at Annexure A-3 dated 5.1.93 by which 135 casual labourers who were granted temporary status with

h

effect from 25.11.89 and who had completed three years of service in that status, were ordered to be treated at par with temporary Group D employees in pay scale of Rs.750-950 and they would be entitled to such benefits as are admissible to temporary Group D employees on regular basis with effect from 29.11.92. When the widow made a representation and when it was not considered, the applicant approached this Tribunal vide OA.No.1073/93, which was disposed of by a direction to the respondents to treat the application as a further representation and dispose of her representation within three months from the date of the receipt of the copy of the application and the decision should be communicated to the applicant with a reasoned and speaking order. The respondents on the basis of the direction of the Tribunal, disposed of her representation by impugned letter dated 10.7.96. The applicant was informed that as late Shri Sri Kishan Kaushik was not a regular employee of the Department, widow/ward/dependent of a temporary status casual labourer will not be eligible for appointment as casual labour on compassionate grounds. Aggrieved by this order, the applicant has filed the present application.

The case of the applicant is that the respondents have wrongfully rejected her case on the ground that she was a widow of a temporary status casual labourer whereas by an order dated 5.1.93(Annexure-3), it was made clear that the applicant's husband was treated at par with

h

temporary Group D employee and he will be entitled to such benefits as are admissible to temporary Group D employee on regular basis. It is on the strength of this letter itself, the ground taken by the respondents is baseless and, therefore, the applicant prays for a direction to the respondents to offer her a suitable post on compassionate grounds.

During the hearing, the learned counsel for the applicant argued on this pleading and added that the respondents had not treated the applicant's husband late Shri Sri Kishan Kaushik as a casual employee as he was granted temporary status and also specifically ordered to be treated at par with temporary Group D employees and regularised with effect from 29.11.92 itself. The learned counsel for the respondents, however, stated that this order dated 5.1.93 was found to be incorrect on facts and as many Group D employees who had not completed three years of service after the grant of temporary status were included in the said order and therefore a modification order was issued by the respondents by their letter dated 14.6.93. The learned counsel produced a copy of this order and it was also duly shown to the learned counsel for the applicant. On a perusal of the order, the learned counsel for the applicant argued on the following lines:

He contended that the respondents cannot withdraw the benefit already passed by an order and deprive that benefit without appropriate notice to

h

the applicant about the decision to withdraw the earlier benefits. Against this, he relied on a decision in ATR 1989(2) CAT.23 M. Venkaiah Vs UOI & Ors. and also ATR 1988(1)CA1.26 P. V. Pavithran Vs. State of Andhra Pradesh and argued that withdrawal of a benefit conferred earlier without a notice violates the principle of natural justice and, therefore, this modified order cannot be taken into cognizance in the adjudication of the case.

The learned counsel for the respondents argued that when the facts relating to the some of the officials regarding actual service after the conferment of temporary status was verified by the respondents, it was found that as many as 41 officials who had not actually completed three years continuous service were inadvertently got included in the earlier order and, therefore, the respondents had to revise that order by deleting their names. He further argued that the verification was based on actual facts and since it is stated in the counter reply filed by the respondents that these officials including the applicant had not actually completed three years of continuous service in temporary status, there was no question of giving a notice in this case. He also stated that it has also been pointed out in the counter reply that the Recruitment Rules do not provide appointment on compassionate grounds in respect of casual labourers and the applicant was duly communicated the decision by their letter dated 2.9.93 informing her that the case does not come within the Recruitment Rules. He

W

also relied on a decision of the Apex Court in State of Haryana & Ors. Vs Rani Devi & Anr. 1996(5) SCC.308 to point out that the Apex Court has ruled in that case that when the Government circular dated 31.10.85 extends the benefit of appointment to one of the dependents of the "deceased employee" the word 'employee' does not conceive casual or purely ad hoc employee or apprentice. The learned counsel for the applicant, however, strongly objected to the applicability of this decision and he contended that this case related to certain circular issued by the Haryana State Government dated 31.10.95 whereas in the present case the applicant is claiming compassionate appointment under the Central Government under the scheme notified by them for grant of compassionate appointment.

I have heard the learned counsel for the parties and perused the records.

The main thrust of the contention of the learned counsel for the applicant is that respondents cannot alter their very decision passed vide letter dated 5.1.93 and by subsequent modification of the order, they have withdrawn the benefits conferred on the applicant's husband as an employee under the respondents. From the annexures filed by the respondents alongwith the counter reply Annexures R-1 & R-2, the casual labourers are conferred temporary status and conferment of temporary status is based on the rendering of continuous service of at least one year, i.e. for a

period of 240 days in a year. It is provided in the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme notified by order dated 12.4.91 that conferment of temporary status does not automatically imply that the casual labourers would be appointed as regular Group 'D' employee within any fixed time frame and the regular appointment to Group 'D' will continue to be in accordance with Recruitment Rules. It is also provided in the aforesaid Scheme that after rendering three years continuous service after conferment of temporary status, the casual labourers would be treated at par with temporary Group 'D' employee for the purpose of contribution of General Provident Fund and they would also further be eligible for grant of Festival Allowance/Flood Allowance on the same conditions as are applicable to temporary Group 'D' employees. There are certain other conditions also provided in the Scheme regarding conferment of temporary status to casual labourers. One of the important conditions is for the purpose of regular Group 'D' appointment, the casual labourers will be allowed the age relaxation to the extent of service rendered by them as casual labourers. From this, it is clear that after rendering three years continuous service after conferment of temporary status, the casual labourers would be treated at par with temporary Group 'D' employee and they will be entitled for such benefits as are admissible to temporary Group 'D' employee. This would not however mean that they are regular Group 'D' employees. As regards the contention of the learned counsel for the applicant

W

that the respondents have unanimously withdrawn the benefits given by the earlier order and issued subsequent order in January 1993 without adequate notice, it is to be stated that by virtue of the aforesaid Scheme the applicant did not qualify for being treated at par with Group D employees for specific purposes on the basis of the fact that they had not rendered three years service after conferment of temporary status in 1989. There was nothing wrong on behalf of the respondents to have withdrawn the ineligible Group D employees from the earlier list. The cases relied upon by the applicant do not have much application in this case as the vested rights, if any, which have been withdrawn did not arise at all ab initio as the applicant and other employees who were affected by the subsequent order were not found to be fulfilling the qualification of having completed three years of continuous service after conferment of temporary status. Even ignoring the subsequent order, if one has to see the impugned letter itself, i.e. 5.1.93 (Annexure A-3), this order by itself, according to the Scheme, gives the applicant's husband only the status of being treated at par with temporary employees in accordance with the Scheme. It is no doubt true that the order passed in January 1993 did not specifically refer to the Scheme as notified by the Government vide order dated 12.4.91. But that by itself cannot be said to confer rights which have not inherently accrued, and, therefore, even on the basis of the impugned letter dated 5.1.93 without taking into account its subsequent modification, it

h

is noted that the applicant's husband was not a regular Group 'D' employee. In the circumstances, the contention of the learned counsel for the respondents that the applicant did not qualify for being granted compassionate appointment under the Recruitment Rules cannot be faulted as the applicant's husband who was a temporary status casual labourer did not qualify to be treated as a regular Group 'D' employee for the purpose of giving

In the light of the above discussion, there is no merit in this application. However, before parting with this order, ^{it is felt that} the respondents could consider her case for engagement as a casual labourer subject to the availability of work, giving her preference over freshers because of the service rendered by her late husband. It is made clear that this is only by way of general observation.

With this, the application is disposed of.
No order as to costs.


(K. MUTHUKUMAR)
MEMBER (A).