

**Central Administrative Tribunal
Principal Bench**

OA No.540/1997

New Delhi this the 12th day of November, 2008.

Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Dr. R.C. Panda, Member (A)

Brij Gopal Asthana S/o Devi Pd. Asthana,
C.P. Wireman Mathura Head Post Office,
Mathura (U.P.).

-Applicant

(By Advocates Shri V.N. Jha with Sh. M.K. Jha)

-Versus-

1. The Union of India,
through Secretary,
(Deptt. Of Posts),
Ministry of Communication,
New Delhi.
2. The Postmaster General,
Pratap Pura Agra Region Agra (UP).
3. The Sr. Supdt. Post Offices, Mathura Dn.,
Civil Lines Mathura (U.P.)
4. The Sr. Postmaster,
Civil Lines Mathura (U.P.)

-Respondents

(By Advocate Shri M.L. Verma)

ORDER

Mr. Shanker Raju, Member (J):

Applicant, a full time casual labour and temporary status holder in P&T department, by virtue of this OA, had sought fixation of his salary in the pay scale of Rs.950-1500 w.e.f. 29.11.1989 and interest thereof.

2. A coordinate Bench of this Tribunal by an order passed on 5.9.1997 stating that on an earlier occasion a similarly situated person was regularized as temporary status group 'D' employee and was eligible for consideration against a group 'C' post as and

when vacancy arises. The above order of the Tribunal was challenged in Writ Petition (Civil) No.364/1998 and by an order passed on 29.3.2008 the High Court of Delhi found the order of the Tribunal vague and remitted the matter for reconsideration on merits in accordance with rules.

3. Learned counsel of applicant would contend that the applicant was functioning as Wireman for which he has produced several documents. According to him, right from 1985 when he had been performing the work of Wireman, a group 'C' post, from the date of grant of temporary status in 1989, he is liable to be paid in the pay scale of Rs.950-1500 meant for Wireman. Non-accord is in violation of the Rules.

4. Learned counsel would also contend alternatively with the permission of the Court as to consideration for regularization against a group 'D' post as per the Department of Posts grant of temporary status and Regularization Scheme of 1991 and further consideration against group 'C' post. The dicta of the Apex Court in a constitution Bench decision in **Secretary, State of Karnataka and others v. Umadevi (3) & others**, 2006 (4) SCC 1, has been relied upon to contend that being an irregular appointee having continued for 10 years, applicant has a right to be considered as per the OM of the Department of Personnel and Training issued in November 2006 for consideration, as one time measure, for regularization against a group 'D' post.

5. On the other hand, learned counsel of respondents vehemently opposed the contentions and stated that the applicant was appointed as Assistant Wireman-cum-Pump Attendant w.e.f.

29.11.1989, as such the post of Wireman being group 'C' post, applicant could not have been recruited as a casual worker.

6. Shri M.L. Verma states that Scheme of P&T issued in 1991 does not stipulate consideration for regularization and while referring to the decision of the Apex Court in **Nagendra Chandra Etc. Etc. v. State of Jharkhand and others**, 2007 (3) SCALE 491, it is stated that appointment in violation of the recruitment rules is violative of Articles 14 and 16 of the Constitution of India. A similar plea is raised by placing reliance on the decision of the Apex Court in **State of Haryana and another v. Tilak Raj and others**, JT 2003 (5) SC 544. Learned counsel has lastly relied upon the decision of the Apex Court in **State of West Bengal and others v. Pantha Chatterjee and others**, AIR 2003 SC 3569.

7. On careful consideration of the rival contentions of the parties, it is trite that a casual worker does not hold either a designation or work against a regular post. Merely because applicant was working as Wireman would not bestow upon him a right to be regularized or appointed directly as Wireman being group 'C' post as regularization is not a mode of appointment. However, another aspect of the matter is that pursuant upon the decision of the Apex Court in Department of Post a Scheme was promulgated vide Director General (Post) letter dated 17.5.1989 where those casual labours who were engaged for not less than 8 hours have been described as full time casual labour and as per the Scheme, one who had worked at least for one year on full time basis is to be accorded temporary status and after rendering three years' continuous service after conferment of temporary status is

to be treated at par with temporary group 'D' government employee as per G.I. DoP&T letter dated 12.4.1991.

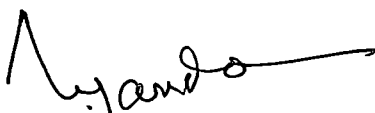
8. As regards benefit of casual labour on completion of three years, as per G.I. DoP&T letter dated 13.11.1992 on being treated at par with temporary group 'D' government employee, on regularization as per the recruitment rules in vogue service on temporary status has to be allowed for the purpose of qualifying service for pension and retiral benefits. However, superannuation age for temporary status casual labour is 60 years. In our considered view the Scheme does not debar a casual labour with temporary status in Postal Department to be considered for regularization but subject to eligibility. As per the averment made by the learned counsel of respondents that as the applicant is still on casual basis, without prejudice to the right of the applicant for consideration for regularization as per the Scheme and grant of temporary status in **Umadevi's** case (supra) those casual labour who had been without the intervention of the Court had continued on being appointed irregularly Government is under obligation, as a one time measure, to regularize them against group 'D' posts. The initial engagement of the applicant was not illegal and his continuance on temporary status by an order passed under the Scheme was also not illegal, as such having continued from 1989 till date as a casual worker with temporary status the dicta of the Apex Court and OM of DoP&T issued in November 2006 applies on all fours to the applicant to be considered for regularization.

9. Though we are conscious of the fact that applicant in this OA has prayed for a pay scale but on his oral request we allow,

which has not been seriously disputed by the respondents, claim of applicant for consideration for regularization. Moreover, when we impart justice, technicality should not come in the way to accord complete justice to the parties. Dragging a litigant, a lowly and poorly paid employee, to the Tribunal again and again would be an *antithesis* to the rule of law.

10. In the above view of the matter, though we do not accede to the request of applicant to be paid the pay scale of Wireman, however, we direct the respondents to consider the claim of applicant for regularization against group 'D' post, as per our observations above, within a period of three months from the date of receipt of a copy of this order.

11. With the above observations the OA stands disposed of, but without any order as to costs.


(Dr. R.C. Panda)
Member (A)


(Shanker Raju)
Member (J)

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