Central Administrative Tribunal
Principal Bench, New Delhi

Regn. Nos. 1. OA-1920/88
2. OA-1923/88
3. OA-1924/88
4. OA-1922/88
5. OA-1808/88
6. OA-1789/88
7. OA-1111/89
8. OA-1921/88

Date: 15.12.1989.

1. Shri Netra Pal Singh
2. Shri Bharat Singh
3. Shri Ashok Kumar
4. Shri Ishwar Dayal
5. Shri Paras
6. Shri Madan Lal
7. Shri Sunil Kumar Sharma
8. Shri Nand Kishore

Applicants

Versus

Union of India & Another .... Respondents

For the Applicants .... Shri Sant Lal, Advocate

For the Respondents .... Shri K.C. Mittal, Advocate.

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri D.K. Chakravorty, Administrative Member.
Whether to be reported or not? yes

(Judgement of the Bench pronounced by Hon'ble Shri P.K. Kartha, Vice-Chairman)

In this batch of applications filed under Section 19 of the Administrative Tribunals Act, 1985 by the Casual Labourers of the Railway Mail Service (R.M.S.) Division of the Department of Posts, Ministry of Communications, common questionsof law have been raised in regard to their regularisation in Group 'D' posts and the applicability of the provisions of the Industrial Disputes Act to them. In view of this, it is proposed to deal with them in a common judgemant.

2. We have carefully gone through the records of these cases and have heard the learned counsel for both

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the parties. We may, at the outset, discuss the legal position applicable and thereafter the relief to which the applicants are entitled to in the light of the facts and circumstances of each of these applications. A Full Bench of this Tribunal has held in Rehmat Ullah Khan & Others Vs. Union of India & Ors., 1989(2) SLJ 293, that although a Casual Labourer does not hold a civil post, he is in the service of the Union and, consequently, this Tribunal has the jurisdiction to entertain the cases of Casual Labourers for adjudication. The Full Bench has, however, left open the question as regards the relief that a Casual Labourer may be entitled to in a given case. This is in view of the fact that the rules applicable to them vary from service to service.

3. In these applications, we are concerned with the Casual Labourers engaged by the Department of Posts in the Ministry of Communications. In the well-known case of Daily Rated Casual Labour Employed under P & T Vs. Union of India & Others, 1987 (2) SCALE 844, the Supreme Court has observed that non-regularisation of temporary employees or Casual Labour for a long period, is not a wise policy. The Court, therefore, directed the respondents to prepare a scheme on a rational basis for absorbing, as far as possible, the Casual Labourers who have been continuously working for more than one year in the Posts & Telegraphs Department.

4. In the aforesaid case, the Supreme Court did not have occasion to consider whether the protection under the Industrial Disputes Act, 1947 is also

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available to the Casual Labour employed in the P & T Department. In Kunjan Bhaskaran V.s. Sub-Divisional Officer, Telegraphs, Changanassery, 1983, Lab. Ic. 135, the Kerala High Court observed that the Posts & Telegraphs have nothing to do with the constitutional functions of the State. It was further observed as follows:-

> ".....it stands as a separate department, discharging functions analogous to trade or business even in a commercial sense. In my opinion, all the precedents are in favour of holding that the department (P&T) is an industry directly and specifically covered by the Act (I.D. Act)."

5. Similarly, in M.A. Bukhari Vs. Union of India & Others, 1989 (9) A.T.C. 218, the Ahmedabad Bench of this Tribunal has held that Letter Box Peons/Coolies in the Posts & Telegraphs Department are workmen and are, therefore, entitled to the protection of the Industrial Disputes Act. The Bench followed the decision of the Kerala High Court mentioned above. The decision of the Allahabad Bench dated 30.5.1986 in Hari Sharma Vs. Union of India & Others is also to the same effect.

6. In Tapan Kumar Jana Vs. General Manager, Calcutta Telephones & Others, 1980 (2) (L&N) 334, it was held that the employees of the Telegraphs Department are workmen within the meaning of Industrial Disputes Act, 1947 and the Telegraphs Department is an industry within the meaning of Section 2(j) of the Industrial Disputes Act. The S.L.P. filed against the aforesaid judgement was dismissed by the Supreme Court (vide circular letter issued by the Department of Posts No.86-2/85-SPB-II dated 27.3.1986).

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7. The consequences which follow from the applicability of the protection of the Industrial Disputes Act, 1947 to the workmen are that such a workman who has actually worked for a period of 240 days, is entitled to the protection of Section 25-F and that for the purpose of computing the period of 240 days in a year, Sundays and other paid holidays could also be included (see also H.D. Singh Vs. Reserve Bank of India, 1985 SCC (L&S) 975). The contention of the applicants in these cases is that their cases for regularisation should be considered in the light of the decision of the Supreme Court in the case of Daily Rated Casual Labour employed under the P & T Department and that in computing the period of 240 days in a year, Sundays and other paid holidays should also be included in view of the interpretation of the Industrial Disputes Act by the Supreme Court in H.D. Singh's case.

8. As against the above, the respondents have relied upon the decision of the Punjab & Haryana High Court in Writ Petition No.7897/76 (Union of India through Postmaster General, Ambala Cantonment Vs. the Presiding Officer, Labour Court & Another) wherein it was held that the Posts & Telegraphs Department is not an industry and the employees thereof are not workmen.

9. We have carefully considered the aforesaid rival contentions. We respectfully follow the decision of the Kerala High Court in Kunjan Bhaskaran's case, of the Ahmedabad Bench in M.A. Bukhari's case, of the Allahabad Bench in Hari Mohan Sharma's case, and of the Calcutta High Court in Tapan Kumar Jana's case, mentioned above. and hold that the Industrial Disputes Act, 1947 apply

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to the P & T Department and consequently, P & T Department is "industry" and the employees of P & T Department are "workmen" within the meaning of the said enactment.

10. We also hold that in computing the period of 240 days in a year during which Casual Labourer has worked, Sundays and other paid holidays should also be added in view of the interpretation of the Industrial Disputes Act by the Supreme Court.

11. The applicants in some of these applications have not been regularised on the ground that they are over-age. In this context, the respondents have contended that the crucial date for computing the service/age limit for the purpose of eligibility would be the last date upto which the Employment Exchange is asked to submit the names of candidates for recruitment. The applicants have relied upon the guidelines issued by the respondents for regularisation of Casual Labourers vide their circular No.DOT-269-29/87-SPN dated 18.11.1988 which provide, inter alia, that Casual Labourers may be regularised without insisting on the eligibility with reference to their age and that upper age-limit in respect of such Casual Labourers may be treated as relaxed and an entry to this effect be made in the Service Book of the official.

12. We have considered the aforesaid rival contentions. In our opinion, the crucial date would be the date of initial recruitment of a person as Casual Labourer for computing the age-limit and not his age at the time of regularisation. If, at the time of initial engagement

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he was within the age-limit prescribed under the relevant instructions, the fact that he became over-age while his case for regularisation came up for consideration, should not stand in the way of regularisation.

13. A question has been raised in some of these applications as to how the period of 240 days has to be computed. According to Section 25-B (2) (a) of the Industrial Disputes Act, 1947, it is sufficient that a workman has actually worked for not less than 240 days during the period of 12 calendar months (vide Surender Kumar Verma & Others Vs. Industrial Tribunal, 1980 (4) S.C.C. 443). We, therefore, agree with the contention of the applicants that it would suffice for the purpose of regularisation of their services if they had actually worked for not less than 240 days during the preceding period of 12 calendar months. All the applicants before us fulfil the same.

14. In the light of the foregoing, the applications are disposed of with the following findings and directions:-

Findings and Directions

(i) OA-1920/88 and OA-1923/88

The respondents are directed to consider the regular absorption of the applicants in Group 'D' Cadre from the due date according to their seniority on the basis of the literacy test for recruitment of Group 'D' staff held in 1988. The results of the test should also be published forthwith.

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(ii) OA-1808/88, OA-1922/88 and OA-1924/88

(a) The respondents are directed to consider the applicants for regular absorption in Group 'D' Cadre from the due date according to their seniority on the basis of the literacy test for recruitment of Group 'D' staff held in 1988. The results of the test should also be published forthwith. They must be considered to have put in service for a period of 240 days for this purpose. The respondents are further directed to treat them as within the age-limit prescribed for the purpose of regularisation as they were within the prescribed age-limit at the time of their initial engagement.

(b) As regards OA-1808/88, we further quash the impugned orders dated 1.9.1988 and 5.9.1988 whereby the services of the applicant were terminated. We direct the respondents to reinstate him in service forthwith. He would also be entitled to all consequential benefits including full back wages.

(iii) OA-1789/88

We quash the impugned orders dated 1.9.1988 and 5.9.1988 whereby the services of the applicant were terminated. We direct that the respondents shall reinstate him in service forthwith. He would be entitled to all consequential benefits, including full back wages. The respondents are

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directed to consider his regularisation in service in Group 'D' Cadre from the due date according to his seniority on the basis of the literacy test for recruitment of Group 'D' staff held in 1988. The results of the test should also be published forthwith. The respondents are also further directed to treat him as within the age-limit prescribed for the purpose of regularisation as he was within the prescribed age-limit at the time of his initial engagement.

(iv) OA-1111/89 and OA-1921/88

The respondents are directed to consider regularisation of the applicants in Group 'D' Cadre from the due date according to their seniority on the basis of the literacy test for recruitment of Group 'D' staff held in 1989/1988. The results of the test should also be published forthwith. They must be considered to have put in service of 240 days for this purpose.

15. Let a copy of this order be placed in each of the 8 case files.

There will be no order as to costs.

(D.K. Chakravorty)
Administrative Member

(P.K. Kartha)
Vice-Chairman(Judl.)