

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 2487 of 1992

New Delhi, dated this the 3rd September 1998

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HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

S/Shri

1. Virender Kumar,
S/o Shri Mala Ram,
2. Surender Kumar,
S/o Shri Baldev Prasad

C/o Shri Sant Lal, Advocate APPLICANTS

(By Advocate: Shri Sant Lal)

Versus

1. Union of India through
the Secretary,
Ministry of Communications,
Dept. of Posts,
Dak Bhawan, New Delhi.
2. The Chief Postmaster General,
Delhi Circle, Meghdoot Bhawan,
New Delhi.
3. The Sr. Superintendent,
New Delhi Sorting Div.,
Meghdoot Bhawan,
New Delhi-110001.

. RESPONDENTS

(By Advocate: Shri M.K. Gupta)

ORDER

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicants pray for quashing of the verbal orders of termination and reinstatement, together with consequential benefits including back wages, continuity of service, seniority, wages for weekly off days/Sundays and national holidays, and other benefits granted by the Tribunal in similar cases, including O.A. No. 1788/89; O.A. No. 2502/89; O.A. No. 1300/90 and 1990 ((2) ATJ 71.

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2. Applicants assert that they were registered with Employment Exchange in December, 1989 and Dec. 1983 respectively and were engaged as Mailmen on daily wages in Speed Post Centre under New Delhi Sorting Div. w.e.f. 29.6.91 and 13.6.91 respectively. They assert that they worked continuously for about 300 days w.e.f. 6.7.92 and 3.6.92 respectively after which they were disengaged verbally without assigning any reasons, although vacancies were available and other employees were put on over time duty. Applicants also assert that they were denied the benefit of paid weekly offs and national holidays admissible to them falling during this period, and their personal requests as well as written representations in this regard to respondents has proved of no avail, compelling them to file this O.A.

3. Respondents in their reply challenge the O.A. They contended that applicants were hired as daily wage labourers from open market without being sponsored by Employment Exchange and since they were paid from contingency charges, details of their actual period engagement were not maintained. They further stated that no appointment letters were issued to applicants; there were no sanctioned posts against which they were appointed and as they were engaged from time

to time for work of an occasional nature, the question of granting weekly offs and benefits of national holidays etc. did not arise.

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4. Many of these contentions were denied by applicants in their rejoinder. They asserted that they were engaged for work of a regular nature, and were disengaged after having put in nearly 300 days of continuous service, which could not be termed work of occasional nature. Applicants also averred that it was false and misleading on the part of respondents to contend that details of their actual engagement were not maintained because all daily wage casual labourers were paid out of contingencies and details of their engagement were maintained by all Departments including Postal Dept.

5. After pleadings had been completed and the matter was to be heard, applicants filed M.A. No. 169/96 for production of certain records including (i) details of their engagement from June, 1991 till their disengagement in June/July 1992 and payment of wages made to them ((ii) Number of vacancies in Group D during the period June, '91 to 1995-96 and the number of persons engaged on daily basis as well as those engaged on Over Time basis during the said period (iii) D.G. Posts' orders dated 1.11.95 regarding grant of temporary status to casual labourers engaged after 29.11.89 upto 10.9.93.

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6. In reply to MA-169/96 respondents stated that applicant No.1 had been engaged only from 29.6.91 to 5.7.91 and from 16.7.91 to 13.7.91 and Applicant No.2 was engaged only from 22.6.91 to 30.6.91 and from 1.7.91 to 3.7.91. It was denied that applicants had put in the required number of days for grant of temporary status under the Scheme and it was also asserted that applicants were calling upon the Tribunal to conduct a roving inquiry which was not its function.

7. Thereupon applicants filed M.A. No. 1286/96 praying for appointment of a Commission to determine whether applicants had been working continuously since June, 1991 and had put in the required days of continuous service for grant of temporary status. This prayer was opposed by respondents on the ground that it constituted a roving inquiry which was not contemplated in law. Counsel for both sides were heard on MA-1286/96 and by order dated 11.11.96 the Director, Postal Services himself was directed to inspect the relevant records and file an affidavit as to the actual dates of appointment of each of the applicants and the number of days of actual service put in by them, to determine whether they qualified for grant of temporary status or not.

8. Pursuant to that order the Director, Postal Services filed an affidavit on 10.2.97 and an additional affidavit on 7.4.97.

9. Thereupon applicants filed M.A. No. 1298/97 alleging that the affidavits filed by respondents regarding the number of days and continuous service put in by them were false and were knowingly and forcibly intended to mislead the Tribunal. It was prayed that action be initiated u/s 340 Cr.PC to prosecute them for perjury.

10. After hearing both parties on MA-1298/97 orders were passed on 31.7.97 directing Chief PMG to verify the documents and other evidence in possession of applicants along with their own records to determine the genuineness of applicants' claim. MA-1298/97 was listed for further hearing after this exercise was completed.

11. The Chief PMG submitted two affidavits, one dated 7.10.97 and the other dated 9.1.998. In affidavit dated 7.10.97 he stated that as per records Applicant No.1 had been engaged for 256 days in a year (1991-92) while Applicant No.2 had been engaged for only 129 days in a year (1991-92). In the affidavit dated 9.1.98 which was more comprehensive he stated that applicant No.1 had been engaged for 257 days in a year (1991-92) while applicant No.2 had been engaged for 138 years in a year (1991-92). He expressed deep regret at the different stands taken by respondents from time to time on the number of days worked by applicants, and further stated that

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this variation was neither intentional nor deliberate, but was occasioned by the fact that the exercise was made time and again based upon material as and when they became available.

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12. Meanwhile applicants had also filed their reply to Chief PMG's affidavit dated 7.10.97 challenging his averments as false.

13. M.A. No. 1298/97 was finally heard and disposed of by order dated 15.3.98. While rejecting M.A. No. 1298/97 after holding that there were no good grounds to initiate action u/s 340 Cr.PC against respondents, as it could not be concluded that there was any criminal intent on their part to file false affidavits, the Bench took note of the Chief PMG's averments that while applicant No.1 did have the required number of days of service in a year to qualify for grant of temporary status, applicant No.2 did not have the requisite number of days of service, and some of the documents produced by him appeared to be not genuine.

14. I have heard Shri Sant Lal for applicant and Shri M.K. Gupta for respondents. I have also perused the materials on record.

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15. The question whether or not a Casual Labourer has put in the required number of days of service in a year to qualify for grant of temporary status in accordance with Dept. of Posts Letter dated 12.4.91 (Ann. A-7) as amplified from time to time, is a question of fact. In the present case Respondents themselves admit that Applicant No.1 has put in more than 240 days of service in a year. Accordingly they should issue appropriate orders regarding grant of temporary status to applicant No.1 with consequential benefits within two months from the date of receipt of a copy of this order, and subject to availability of work if they engaging Casual Labourers, they should consider applicant's case for such engagement in preference to juniors and outsiders. He, however, shall not be entitled to any backwages for the period he was out of job.

16. Regarding Applicant No.2 he is not able to conclusively establish that he has put in the required number of days of service for grant of temporary status. However, in the event that applicant No.2 is able to furnish additional materials in support of his claim that he has put in the required number of days of service for grant of temporary status it will be open to him to represent to the respondents with the aforesaid materials on receipt of which, the same should be examined by respondents and they should thereafter

pass a detailed, speaking and reasoned orders on his prayer for grant of temporary status in accordance with rules and instructions under intimation to him within two months from the date of receipt of such representation. (61)

17. As observed by the Division Bench in its order dated 15.3.98 on MA No. 1278/97 respondents should have exercised greater caution and should have verified the details properly before filing their affidavits. In fact much of the confusion regarding the number of days of service put in by Casual Labourers could be avoided if records are maintained properly. In this connection I had asked for the casual labourers register but was told by respondents' counsel that none was available. However, Director of Posts' letter dated 18.9. 1990 (Ann. A-4) specially directs for the maintenance of a Register in respect of Dehari Mazdoors (Daily Wage Labourers) giving the date of initial engagement, number of days actually worked in each month etc. Had the same been maintained properly the question regarding the number of days of service put in by Applicant No.1 & 2 would have been beyond the scope of controversy. Respondent No.1 should take effective and immediate steps for proper maintenance of records regarding casual labourers in all concerned subordinate formations which should be enforced through inspections and other means.

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18. This O.A. is partly allowed in terms of what has been stated in Paras 15 & 16 above.

No costs.

S.R. Adige
(S.R. ADIGE)
VICE CHAIRMAN (A)

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