

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 28th day of August, 2000
Original Application No. 68 of 1996

District : Allahabad

COURT :-

Hon'ble Mr. R.R.K. Tripathi, V.C.

Hon'ble Mr. S. Biswas, A.M.

Jagannath S/o Sri Jaggu Pal,
Chowkidar, Allahabad Kutchery
Post Office, Allahabad.

(Sri K.P. Srivastava, Advocate)

..... Applicant

versus

1. Union of India through
Secretary Posts, Ministry of
Communication, Govt. of India,
New Delhi.

2. The Director General Posts,
Dak Bhawan, Sansad Marg,
New Delhi.

3. The Sr. Superintendent of Post Offices,
Allahabad.

(Sri S.C. Tripathi, Advocate)

.... Respondents

ORDER

By Hon'ble Mr. S. Biswas, A.M.

By this application under section 19 of the
Administrative Tribunals Act, 1985, the applicant has
sought the following reliefs:-

(i) to quash the provisions of the amended
Recruitment Rules dated 24-2-1989 allegedly
contravening Articles 14, 16 and 311 of the
Constitution; and,

(ii) direction to the respondents for absorption
of the applicant in Gr. 'D' Cadre of regular

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establishment against Gr. 'D' vacancies arising during the period of 1985-95 in favour of quota of C.P. and casual workers as co-sharers of the scheme.

2. The brief facts of the case are that applicant was engaged as a casual paid Farash in the Kutchery Head Post Office on 28-8-1984 and he was given temporary status w.e.f. 29-11-1989 under SSPoS Memo. dated 30-7-1991 (as averred in Para 4.3 of the OA) He was placed at Serial No.1 of the list of temporary status holders.

3. The applicant has ~~not~~ tried to make out his case for claiming an early absorption by raising the question of constitutional validity of the impugned amendment to rules dated 24-2-1989 No. 66-6/87 SPD-1, after he declined to accept an offer of a Gr. 'D' Sweeper post. The learned counsel for the applicant submits that the Hon'ble Supreme Court vide its order dated 27-10-1987 directed the deptt. to "evolve a rational scheme" for absorbing the casual workers in the deptt. Accordingly, the scheme was announced by DG Posts No. 2-10/88 PE-1 dated 11-5-1989 (Annexure-4 to the OA). But at the same time, the extant Recruitment Rule was amended on 24-2-1989 without providing for any specific quota for any category. The amendment sought to classify the candidates into three categories and they were placed in order of priority. The vacancies would flow down to the second and third category if there are no qualified persons in the first category, who are Extra Departmental Agents awaiting absorption in the Gr. 'D' services. Similarly, if there are no qualified persons in the category 2 which is casual labourers (full time

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and part time) of the recruiting Division & Unit, the vacancies would be offered to EDA of the neighbouring unit/Division and so on. The nominees of the Employment Exchange would get third preference.

4. The applicant's counsel has contended this framing of the flow of surplus from the top to bottom category is discriminatory and violative of the constitutional safeguard to ~~equity~~ equality in employment. Hence, the impugned amendment has been sought to be quashed and a quota to be fixed for the casual workers seeking absorption in Gr. 'D' posts.

5. We have heard the parties on both facts ^{and law.} We find that as the applicant was not permanently absorbed or regularised as a Gr. 'D' employee for a long time, the applicant filed an OA No. 1312 of 1996 before this Tribunal. The said OA was disposed of on 26-9-1994 with direction to the respondents that his representation for early regularisation be disposed of within three months. The Hon'ble Tribunal, while disposing the petition, had observed that the applicant could not show any rule under which the casual employee having attained temporary status shall be regularised within a specific time.

6. The learned counsel for the respondents has clarified in Paras 9 and 16 of the OA that in compliance with the direction of the Hon'ble Tribunal dated 26-9-1994 the applicant's representation was duly considered and as there was no category of regular vacancy in the Gr. 'D' ~~was~~ available, he was asked to give his consent for a Sweeper's post in Gr. 'D', on 27-2-1995. It has also been contended that there is no rule to regularise a temporary status holder within a specific time without waiting for a vacancy to arise.

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7. The applicant has evaded the issue of non-acceptance of the offer of a Gr. 'D' post. In Para 24 to the RA the applicant has averred that this offer was a 'deliberate disregard' of a CAT's direction, which we are not able to agree. The respondent has made a reasonable offer to the applicant but he has forfeited the chance by declining to accept it.

8. We also take note of the fact that the applicant did not file any contempt proceedings against the respondents for any non-compliance of the Tribunal's directions. Instead, a second application has been filed on the same facts, after the respondents offered a Gr. 'D' Sweeper's post as ^{was} available with them for accommodating him and he conveniently evaded to accept the same.

9. As regards the alleged amendment of the rule on 24-2-1989, we are not able to accept the submissions of the learned counsel for the applicant that it is discriminatory. It is not his case that the said rules were egalitarian before amendment in any special way and there was any specific quota in favour of the casual workers in the rules. The applicant has not pointed out how and where the amended rules have taken away the prospects of regularisation of the casual workers.

10. In Para 13 of the rejoinder affidavit the applicant has submitted that by the amendment 100% reservation for EDA was done away with, though no quota for ^{any} ~~each~~ category was provided in the amended rules. Consequently, the regularisation of the applicant has been delayed.

11. The learned counsel has himself acknowledged the fact that the unamended Recruitment Rules were heavily

in favour of the EDA who are also an independent category of employees in the postal deptt. waiting for regularisation Gr. 'D' Category with higher pay scale. In our view, the rationale behind the question of "rationalisation" of the extant rules as per Hon'ble Supreme Court's decision in this behalf, has been grossly misunderstood by the learned counsel. In one breathe, the applicant's counsel has stated that the amended provisions in the rule are not helpful to the applicant as no quota has been earmarked for each category of casual employees waiting for regularisation. At the same time he has appreciated that the erstwhile position of 100% advantage to the EDAs has been done away with. We are not able to accept the plea that the rules have become discriminatory after amendment when he admits that 100% reservation in favour of EDA casuals has been removed by the amendment. A constitutional right for ~~equity~~ does not arise from the amendment which has rationalised the recruitment policy for casual employees on the wait list and removed the anomaly of regularisation of the EDAs only to Gr. 'D'. In fact this could be stated as a bold step for regularisation of different categories of Gr. 'D' who were not hitherto at par with EDAs. The learned counsel grossly oversighted the fact that EDAs are senior casual workers in the waiting list for regularisation in Gr. 'D' with higher pay packet.

12. In the scheme for regularisation of casual workers with temporary status dated 1-9-1993 (Annexure-7 to the OA) of DOPT, it was clearly envisaged to earmark 2/3 of the vacancies in the Gr. 'D', jobs for regularisation of the temporary status holders in the casual stream. But regular Group 'D' staff rendered surplus for any reason will have to be accommodated first. The EDAs evidently enjoyed an independent status in the rules all through

and, therefore, if they were engaged earlier, the priority as envisaged in the amended rules cannot be legally denied. It is not the case of the applicant that these EDAs who rank first in the categorisation of priority are junior to him. Hence, we do not find any force in the argument to upset the priority categorisation on the basis of existing temporary and casual grades and their date of engagement.

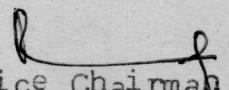
13. In the present case the applicant has tried to suggest that he stands delayed in getting regularised in Gr. 'D' job of his choice for want of quota for the casual paid workers vis-a-vis EDAs. We are not able to accept the plea that there has been any discrimination against the applicant by this delay and for not fixing any quota. He himself refused to accept a Gr. 'D' post of same pay scale.

14. From a close perusal of inter departmental correspondence and orders on the subject, we are convinced that the respondents have made sincere effort to implement the order of the Hon'ble Supreme Court. Casual jobs are created only when the existing regular Gr. 'D' staff are not able to cope up with the increasing work load. But to have necessary sanction of posts against these jobs is time taking. Secondly, when the sanctions are obtained after satisfying the preconditions, it becomes obligatory to first absorb those who are already there like the EDAs with temporary or lower pay status. Hence, we find nothing wrong and discriminatory in fixing a priority flow chart as has been effected by the amendment of the rules. Delay in absorption cannot be a good ground for quota fixation as given after fixation of quota non-sanction of post or freezing of posts can again

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create the same bottleneck. As the applicant has only sought for quashing, not direction to expedite creation of posts for absorption, we would abstain from issuing any direction out of context.

15. In view of the foregoing, the OA is dismissed as devoid of merits. No costs.

S. Bains
Member (A) 
Vice Chairman

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