

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 8th of July 2011)

Hon'ble Mr. A.K. Bhardwaj, Member (J)

Original Application No.967 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

Smt. Sushma,
Widow of Late Lalloo Lal,
R/o 168-B, Nawal Talab Rai, Kydganj,
Allahabad.

Advocate for applicant : Shri S. Prakash.


..... Applicant

Versus

1. Union of India
through its Secretary,
Ministry of Archeology Survey,
Government of India,
New Delhi.
2. Director,
Archeological Survey of India,
New Delhi.
3. Director,
Archeological Survey of India
Lucknow Circle,
Lucknow.
4. Conservation Assistant,
Archeological Survey of India,
Khushroo Bagh Gateway,
Sub - Circle,
Allahabad.

..... Respondents

Advocate for Respondents : Shri Anil Dwivedi.



ORDER

Husband of applicant late Lalloo Lal was initially engaged as Casual Labourer in Kydganj Cemetery, controlled by Archeological Survey of India. Subsequently he was granted temporary status w.e.f. 01.9.1993 in terms of O.M. dated 10.9.1993. Such casual labourers who are conferred temporary status in terms of said O.M. do not improve their status as casual labourer and the only consequence of conferment of temporary status is that they started getting their daily wages on monthly rate of pay with certain paid holidays.

Para 4 (sub para (i) to (iv) reads as under :-

5. Temporary Status

- i) *Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week).*
- ii) *Such conferment of temporary status would be without reference to the creation/availability of regular Group 'D' posts.*
- iii) *Conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on need basis. He may be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work.*
- iv) *Such casual labourers who acquire temporary status will not, however, be brought on to the permanent establishment unless they are selected through regular selection process for Group 'D' posts.*

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2. In other words even after conferment of temporary status in terms on OM dated 10.9.1993 a casual labourer continues as casual labourer only. As is stated in the Original Application, late Laloo Lal, husband of applicant could pass away on 23.6.2003, as he was suffering from mouth cancer. After death of late Laloo Lal the applicant asked the respondents to appoint her on suitable post in their department on compassionate ground. Acceding to her request, the respondents had given appointment to applicant on Daily wages basis in Kydganj Cemetery. Thereafter, the applicant asked respondents to give employment on compassionate ground either to her or to her daughter on regular basis. She also filed a joint Original Application No. 1407/2004 together with her daughter before this Tribunal seeking direction against the respondents to give employment to one member of bereaved family in terms of instructions in vogue for giving compassionate appointment to dependents of deceased government servant. This Tribunal disposed of said OA No. 1407/2004 directing respondents No. 2 to consider and dispose of the representation of applicant dated 01.06.2004 within a period of three months from the date of receipt of copy of order dated 13.12.2004 passed by it. In compliance of said order passed by this Tribunal, respondents have passed order dated 15.3.2005. In impugned order dated 15.3.2005, the Director, Lucknow Division of Archeological Survey of India, Lucknow Mandal has taken a view that in terms of conditions of service of Government of India dependents of only permanent employees can be employed on regular basis on a suitable post on compassionate ground. In the said order it is further viewed by the Director of Archeological Survey

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of India that the casual labourer with 'temporary status' is purely temporary employee and is not eligible for employment on a permanent post, thus the applicant being widow of a casual labourer with temporary status is not eligible for employment on compassionate ground against a regular post.

3. As has been noted above, even after conferment on temporary status, the casual labourer continue working on daily rate of pay on need basis and conferment of temporary status on him does not bring him to the permanent establishment unless he is selected through regular process for group 'D' post, thus the late husband of applicant was only a daily rated employee.

4. In OM No. G.I., Dept of Per. & Trg, O.M.No. 32/4/98-Welfare, dated the 29th July, 1998, it is categorically provided that a dependent on the family members who passed away while in service is eligible for appointment on compassionate ground. In note II below para 2 of said OM the term government servant has been defined. In terms of said definition, the "Government Servant", for the purpose of eligibility of his dependent for appointment on compassionate ground means the government servant appointed on regular basis on and not working on daily wages or casual or apprentice or adhoc or re-employment basis. *Para II of the said OM reads as under :-*

"2. To whom Applicable

To a dependent family member -

(A) of a Government servant who -

(a) dies while in service (including death by suicide); or

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(b) is retired on medical grounds under Rule 2 of the CCS (Medical Examination) Rules, 1957 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years for Group 'D' Government servants); or

(c) is retired on medical grounds under Rule 38 of the CCS (Pension) Rules, 1972 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years for Group 'D' Government servants); or

(B) of a member of the Armed Forces who -

(a) dies during service; or

(b) is killed in action; or

(c) is medically boarded out and is unfit for Civil employment.

NOTE I. - "Dependent Family Member" means :

(a) spouse; or

(b) son (including adopted son); or

(c) daughter (including adopted daughter); or

(d) brother or sister in the case of unmarried Government servant or member of the Armed Forces referred to in (A) or (B) of this para,

who was wholly dependent on the Government servant/member of the Armed Forces at the time of his death in harness or retirement on medical grounds, as the case may be.

NOTE II. - "Government servant" for the purpose of these instructions means a Government servant appointed on regular basis and not one working on daily wage or casual or apprentice or ad hoc or contract or re-employment basis.

NOTE III. - "Confirmed Work-charged Staff" will also be covered by the term 'Government servant' mentioned in Note III above.

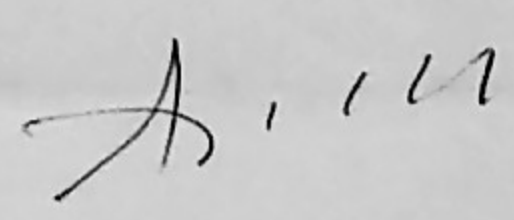
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NOTE IV.- "Service" includes extension in service (but not re-employment) after attaining the normal age of retirement in a Civil post.

NOTE V.- "Re-employment" does not include employment of Ex-Servicemen before the normal age of retirement in a Civil post."

5. In terms of aforementioned instruction, the applicant is not eligible for appointment against a regular vacancy on compassionate ground. Thus, the prayer of applicant for issuance of direction to respondents to give her appointment against suitable post in their department on compassionate ground in terms of afore mentioned OM, is rejected. However, as can be seen from the impugned letter dated 15.3.2005, the Director of Lucknow Division, Lucknow has viewed that the applicant can apply for appointment against a Group 'D' post on availability of vacancy and on her making such application, her candidature could be considered according to rules. In view of such stand taken by Director Lucknow, Archeological Survey of India, a direction is issued to respondents to consider the applicant for her regularisation/regular appointment against a Group 'D' vacancy on availability of vacancy on Group 'D' post. While doing so, the respondents would keep in view the fact that the husband of applicant had worked with them fairly a long period may be as casual labourer and had died while being in service.

6. OA is disposed of. No order as to costs.


(A.K.Bhardwaj)
Member (J)

Shashi/