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Reserved

Central Administrative Tribunal, Allahabad.

REGISTRATION O.A. No. 410 OF 1986

Ram Lakhan Applicant

Vs.

Union of India and 3 others ... Respondents.

Hon.D.S.Misra, AM
Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

This petition under Section 19 of the Administrative Tribunals Act XIII of 1985 was filed before this Bench on 18.8.1986 for ~~his~~ absorption/regularization in class IV cadre of Non Test Category from 10.1.1962 with consequential benefits. During the pendency of this petition, the services of the applicant were terminated vide order dated 27.9.1986 w.e.f. 24.9.1986 and by way of an amendment he has also applied for quashing this order.

2. It is admitted case of the parties that the applicant was appointed as contingency paid (for short CP) Chaukidar in Kutchery Sub Post Office, Allahabad on 10.1.1960 for night duty and he was continuously serving the respondents till the date the present petition was filed. Rule 154(a) of the Manual of Appointments and Allowances of Officers of the Indian Posts and Telegraphs Department (hereinafter referred to as the Manual) governs the appointment and regularization of class IV cadre of the Postal Department and according to the contention of the applicant, he is entitled to be absorbed in the regular class IV cadre of the Postal Department. On the upgradation of Kutchery Sub Post Office as Head Post Office w.e.f. 1.10.1980, one post of its CP Chaukidar was converted into a class IV post of regular establishment and the applicant had applied to the Senior Superintendent of Post Offices- respondent no.3 for his absorption against that post but despite his subsequent reminders no such appointment was given to him. It is further alleged that the Director General of Posts and Telegraphs, New Delhi vide his letter dated 15.9.1964 had directed that the recruitment of class IV employees to regular establishment may not be made for

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out side till eligible casual labours and part time casual labours are available and regularised. Despite putting in unblemished service for a period of about 25 years, the applicant has, however, not been considered for regular absorption and he is being treated differently from regular class IV employees of the Postal Department in several matters which amounts to discrimination. The Post Master Kutchery Post Office Allahabad-respondent no.4 further illegally removed the applicant from service and the said order is liable to be quashed.

3. The petition has been contested on behalf of the respondents. The first reply was filed on behalf of the respondent nos. 1 to 3 by the Sr. Superintendent of Post Offices, Allahabad and it was stated therein that the recruitment to group 'D' category is made in accordance with the Indian Posts and Telegraphs (Class IV Posts) Recruitment Rules 1970 (hereinafter referred to as the Recruitment Rules) and the administrative instructions issued thereunder. Rule 154(a) of the Manual prescribes the category of the employees to be brought on regular establishment on their fulfilling the condition^{of} recruitment. The said rule does not provide automatic absorption without passing the examination. The applicant never applied to appear in the examination prescribed for regular absorption. To qualify in the prescribed examination is a pre-requisite for absorption. No vacancy was left unfilled during the relevant period. The applicant has, therefore, no case for interference by this Tribunal and his petition merits dismissal. In the supplementary reply filed by the respondent no.3 after the amendment in the petition it was stated that the services of the applicant stood terminated w.e.f. 24.9.1986 as he refused to sign the order book. There is no provision for issuing any notice to show cause before terminating the services and the order of termination passed by respondent no.4 is a valid and proper order.

4. In the rejoinder filed by the applicant he reiterated that for the absorption in Non Test Category, no examination has been prescribed under the rules and he is entitled to be absorbed without any examination under the law.

5. During the pendency of this petition, the Hon'ble Supreme Court has handed down two important decisions relating to the casual workers and their service conditions and one of them relates to the daily rated casual labour employed under P&T Department itself and instead of entering into the merits of this case, we would have directed the respondents to deal with the case of the absorption of the applicant in the light of the direction of the Hon'ble Supreme Court given in the said case (Daily Rated Casual Labour Vs. Union of India quoted in U.P. Income Tax Department Vs. Union of India 1(1988) ATC-1), but as the question of setting aside the order of termination of the applicant is also involved in this case, we feel ^{the} necessity of dealing with the facts of this case. Both the parties relied on rule 154(a) of the Manual which states that selected categories of whole time contingency paid staff, such as Sweepers, Bhisties, Chowkidars, Chobdars and such other categories as are expected to work side by side with regular employees or with employees in work-charged establishments, should, for the present, be brought on to regular establishments of which they form adjuncts and should be treated as "regular" employees. This rule does not provide for any examination and its provisions are very clear that whole time contingency paid staff including Chawkidars should be brought on the regular establishment as regular employees. The applicant has filed the copy of DG P&T letter no. 269/142/75/Estd.-I dated 20.2.1976 before us which provides for the absorption of casual Mazdoors in regular class IV category and lays down that the appointment of such persons on absorptions may be made in one of the

six categories prescribed under para 5 of this letter. One of the categories is the Non Test Category class IV. We further find the copy of letter dated 18.12.1986 issued by respondent no.3 to various other officers posted under him calling for a report about the post of Non Test Category Group 'D' cadre in their units clarifying in the letter that the Non Test Category posts include Chaukidars. We, therefore, find force in the contention of the applicant that there is a Non Test Category in class IV and as its nomenclature suggests, ^{that} no test is required for appointment in this category. We are further of the view that the applicant, who was regularly serving the respondents since 1960 without any test or examination should not be required to undergo a test at the fag end of his career for the post of Chaukidar which hardly requires any educational or other qualification except physical fitness. We, therefore, find substance in the case of the applicant that he is entitled to be absorbed in Non Test Category Class IV without any test or examination in accordance with the provisions of Rule 154(a) of the Manual.

5. Further, it is an undisputed case of the parties that a CP staff is treated as casual staff under the rules. The daily rated casual labour employed under the P&T Department went before the Hon'ble Supreme Court in Writ Petition No.372 and 302 of 1986 and the Hon'ble Supreme Court had directed the Union of India in those cases that the workmen employed as casual labourers in the P&T Department be paid wages equivalent to minimum pay in the pay scales of the regularly employed workers in the corresponding cadres w.e.f. 5.2.1986 and the Union of India was further directed 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 P&T Department. It is not necessary for us to say that the applicant too is entitled to the relief granted by the Hon. Supreme Court in the said petition and

it is now the duty of the respondents to make the proper compliance of the orders and directions of the Hon'ble Court.

6. Regarding the termination of the services of the applicant, the applicant has filed the copy of the order dated 27.9.1986 passed by the Post Master, Allahabad Kutchery annexed to his amendment application. This order states that as the applicant repeatedly refused to sign the order book of the Delivery Branch, he is being informed in writing that his services have been dispensed with w.e.f. 24.9.1986 for showing negligence of duty. In the ~~petition~~^{assidavit} filed in support of the application for interim relief, it was stated by the applicant that the respondents became displeased on his filing this petition and pressurised him to withdraw the same and when he did not succumb to their pressure, they ~~illegally~~ devised this way to part with his services illegally though he was regularly attending his duty and never refused to sign the order book or performed his duty in any other manner. In our opinion, the applicant had acquired some status on his serving the Postal Department continuously for a period of about 26 years and his services could not be dispensed with merely on his refusal to sign the order book, assuming the allegation to be true, on the charge of showing negligence of duty. The refusal is stated to have been made on 24.9.1986 but the written order was passed on 27.9.1986 with retrospective effect, which is another factor to show the prejudice of the respondent no.4 against the applicant. The said order is, therefore, not a valid order and deserves to be ignored as void.

7. We accordingly allow the petition and direct the respondents to treat the applicant as CP Chaukidar without any break caused by the impugned order dated 27.9.1986 and to absorb him in group 'D' Non Test Category in accordance with rule 154(a)

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of the Manual and other directions issued from time to time by the DG P&T and the directions of the Hon'ble Supreme Court contained in the case of Daily Rated Casual Labour Employed in P&T Department (Supra), as above, with all consequential benefits. There will be no order as to costs.

Sharma
15.2.88

MEMBER (A)

Sharma
15/2/88

MEMBER (J)

Dated: Feb. 15, 1988
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