

7 (6) 12/2

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No.1070 of 1987

Shri Basudev Applicant

Versus

Union of India & 4 others Respondents

Hon. Mr. K. Chayya, Member(A)

Hon. Mr. S.N. Prasad, Member(J)

(By Hon. Mr. S.N. Prasad, Member(J))

The applicant has approached this Tribunal Under Section 19 of the Administrative Tribunal Act 1985 with the prayer for directing the respondents to regularise the services of the applicant into class IV cadre of the employee in regular establishment from the very date when he joined the services of the department as Contingency Paid Darban and to give all consequential benefits to the applicant.

2. Briefly stated the facts of the above case, are that the applicant had been appointed as Contingency Paid Darban at City Post Office Allahabad vide order dated 18.1.1975(Annexure 1 to the application) and the applicant joined his duty w.e.f. 3.2.1975 and had been working regularly on the said post even on every Sunday and holidays without any break and without any compensation(vide Annexure A4 to the application). The applicant

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has also been employed as Chaukidar (C.P.) in D.P.S. office from 9.9.82 to 23.3.83 for 195 days regularly. The applicant is employed as full time employee and he is giving 8 hours duty every day; and the applicant has completed his services of more than 13 years satisfactorily without any complaint; and as per rules the services of the Contingency Paid Staff should be regularised atleast after completing the regular services of 2 years but the services of the applicant ~~have~~ not been regularised so far despite his continuous service of long period of 13 years; and the representation of the applicant dated 22.11.85 and his representation dated 11.2.87 to the authorities concerned proved ineffective hence the applicant has approached this Tribunal

3. In the Counter affidavit filed by the respondents, it has, inter alia, been contended that the senior superintendent Post offices Allahabad had sanctioned post of Darban for Allahabad City Post Office vide memo dated 18.1.75 and cost of that post was to be met from the contingencies and thereafter the applicant was engaged on the post of purely temporary basis vide memo dated 3.2.1975 and since then the applicant has been working Contingency Paid Darban at Allahabad City Post office except the period from 10.9.82 to 23.3.83 during which period he was as Contingency Paid Chaukidar in the office of the Regional Director of Postal Services Allahabad and under instant rules such employees are treated as part time casual labour and are entitled to appear in the

examination for selection of Group 'D' cadre if they apply and pass the examination. The applicant did not appear in such selections for appointment to group 'D' cadre, hence he is not entitled to any benefit asked for. It has further been contended that the appointment of the applicant was of part time casual labour and the applicant was engaged on Contingency Paid Staff for 8 hours duty only. In view of the above circumstances the applicant is not entitled to the relief sought for.

4. We have heard the learned counsel for the parties and have thoroughly and carefully gone through the records of the case. Though in the counter-affidavit it has been contended that as per rules such employees as that of the applicant are treated as part-time Casual Labour and are entitled to appear in the examination for selection to Group 'D' Cadre if they apply and pass examination and since the applicant did not appear in such selection for appointment to group 'D' cadre, he is not entitled for the relief sought for; but during the course of arguments and after perusing the judgment dated 15-2-88 passed by this Tribunal in ~~XXXXXX~~ No. O.A. No.410 of 1986

self Ram Lakhan (Applicant) Vs. Union of India & Others (respondents) *which is Annexure RAI* the learned counsel for the respondents *are considered* and that the post of the applicant comes *has conceded* under the category of Group 'D' non-test and its nomenclature *it* suggests that no test is required for appointment in this category. The main contention of the Counsel for the respondents is that the applicant is not entitled for backwages as the facts of the instant case are different from the facts of the above O.A.No.410/86 as the order for consequential benefits was passed by this Tribunal in that case because of the fact that the applicant of that case was ~~that he was~~ removed from service as per order dated 27-9-86 w.e.f. 24-9-86; and in support of his arguments the learned counsel for the ~~applicant~~ *respondents has* placed reliance on the following ruling :-

1992 Supreme Court Cases (L & S) 394

(1992) 2 SCC 29

Karnataka State Private College Stop-gap
lecturers Association (Petitioners)

Vs.

State of Karnataka and
Others.

(Respondents)

5. The learned Counsel for the applicant has argued that since the applicant has rendered about 13 years service, the applicant is entitled for being absorbed and regularised as an employee of the respondents and he is entitled for all backwages also as regular employee of the respondents, and has further argued that the facts of this case are in resemblance with the facts of the above O.A. No.410/86 as referred to above, which was decided on 15-2-1988.

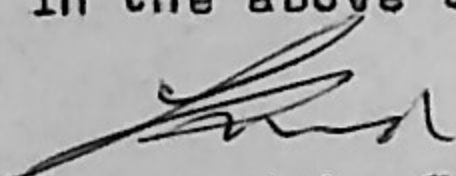
6. We have carefully perused the pleadings of the parties of this instant case and have also carefully perused the above judgment of this Tribunal dated 15-2-88 and we find that the facts of the instant case are different and distinct from the facts of the above O.A. No.410/86 as in that case the applicant was terminated on 27-9-86. From the scrutiny of the entire material on records, particularly in view of the judgment of this Tribunal dt. 15-2-88 in O.A. No.410/86 we find that the applicant is entitled to be absorbed and regularised in Group 'D' services of non-test category in accordance with the rule 154(A) of the Manual and Other Directions issued from time to time by the D.G., P. & T.

7. We have perused the above rulings and have considered the principles of law as enunciated therein and keeping in view all the facts and circumstances of this instant case we find that the above ruling relied upon by the learned counsel for the respondents goes a long way in supporting

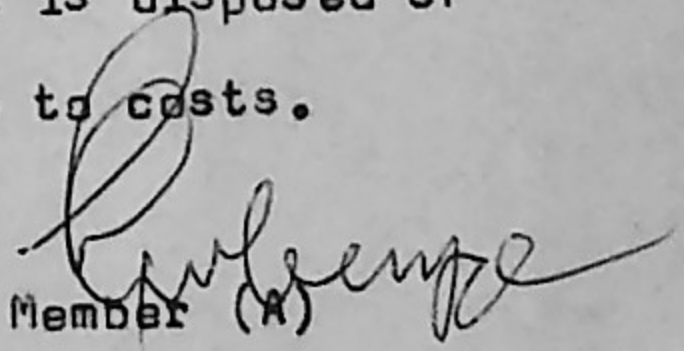
the above arguments of the learned counsel for the respondents; whereas the Rulings (Judgment dated 15-2-88 passed in O.A. No.410 of 1986 as referred to above) relied upon by the learned counsel for the applicant does not appear to be of any avail to the applicant so far as the payment of backwages are concerned.

8. Consequently we direct the respondents to treat the applicant as C.P. Chowkidar and to absorb him in Group 'D' non-test category in accordance with the extant rules, regulations and procedures, without any examination of the applicant, within a period of one month from the date of receipt of the copy of this order. It is made clear that the period of past services rendered by the applicant shall be taken into consideration for all other purposes excepting for backwages; and the plaintiff is not entitled for backwages.

9. The application of the applicant is disposed of in the above terms without any order as to costs.


Member (J)

27.5.92


Member (A)

Dated 27th May, 1992, Allahabad.

(tgk)