

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 112 OF 1989
~~T.A.NO.~~

DATE OF DECISION 29.9.1997

Dineshkumar B. Adhikari Petitioner

Mr. P.H. Pathak, Advocate for the Petitioner [s]
Versus

Union of India & Ors. Respondent s

Mrs. P. Safaya Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman.

The Hon'ble Mr. T.N. Bhat, Judicial Member.

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ? *rw*
- 2, To be referred to the Reporter or not ? *rw*
- 3, Whether their Lordships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ? *rw*

Dineshkumar B. Adhikari
General Post Office,
Chandi Bazar, Jamnagar.

..... Applicant.

(Advocate: Mr. P.H. Pathak)

versus

1. Union of India, through
Inspector of Post Office,
Jamnagar Sub Division,
Rajendra Road, Jamnagar.

2. Post Master,
Rajendra Road, Jamnagar.

3. Senior supdt, of Post Offices,
Rajendra Road,
Jamnagar.

..... Respondents.

(Advocate: Mrs.P.Safaya)

ORAL ORDER

O.A.No. 112/1989

Date: 29.9.1997.

Per: Hon'ble Mr.V. Ramakrishnan, Vice Chairman.

We have heard Mr. Pathak for the applicant and
Mrs. Safaya for the respondents.

2. The applicant, who is even now working as
Chowkidar in General Post Office at Jamnagar in the
postal Department, has prayed for a direction that he
should be treated as permanent employee from the date
of his employment and that he should be paid salary and
allowances accordingly.

3. During the hearing, the Tribunal had given an
interim direction dated 10.4.96 to the effect that if
the applicant made a representation for regularisation

with a period of two weeks from the date of the receipt of the order, the Department shall take a decision on the representation latest by 12.6.96 and shall communicate the same within seven days. The applicant was expected to submit a representation bringing out his contentions regarding full time work and also praying for regularisation and relaxation of educational qualifications prescribed for the post. The applicant did submit a representation on 19.10.96 which was received by the Department on 6th November 1996. We find from the reply affidavit filed by the Superintendent of Post Offices Jamnagar that the Department took the view that the representation was to have been submitted within two weeks and the decision thereon was to have been taken on 12.6.96. As the applicant had not submitted his representation within the time limit as directed by the Tribunal, the subsequent follow-up action could not be taken. It seems from this that in view of the belated filing of representation, the Department did not take any action in terms of the interim direction of the Tribunal.

4. In the O.A. the applicant had urged a number of grounds including the contention that the provisions of I.D. Act are not complied with. However, this ground is no longer relevant as the Postal Department is not an industry as held by the Hon'ble Supreme Court. The main ground on which the relief to the applicant has not been extended by the Department is that according to them he has not been engaged as full time casual labourer. Mrs. Safaya submits that his name was not sponsored by

the Employment Exchange initially and he is also over-aged at that time for consideration for employment in group D. She also submits that he was paid from contingency. According to her, he also does not possess the requisite educational qualification.

5. Mr. Pathak contends that the applicant has been engaged as casual labour Chowkidar right from 1984 and he is working as such even at present. He does not agree that he was not given full time work. He says that the normal working hours of a Chowkidar would not be less than eight hours which is ^{reported} ~~reported~~ as whole time employment. It is also his contention that the applicant is not concerned as to whether he has been paid from contingency or from other sources. He also refers to the decision of the Supreme Court in the case of Bhagwatidevi & Ors. V/s. Delhi State Mineral Development Corporation, (1990) 1 SCC p.361, para 6 in particular where there is an observation "once the appointments were made as daily rated workers and they are allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications". It is Mr. Pathak's stand that the applicant is clearly entitled for the benefit of the scheme of the Postal Department particularly the orders issued by D.G. Post dated 12.4.91 which took effect from 29.11.1989.

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6. We have carefully considered the contentions of both sides. We find a scheme has been prepared by the Department in compliance with the order of the Hon'ble Supreme court and which is conveyed by the letter dated 12.4.91. It envisages conferment of temporary status for these casual labourers in employment on 29.11.89 and who continue to work on 12.4.91 provided they had been engaged for 240 days in a year. It provides for relaxation of age to the extent of service rendered by them as casual labourers. It also makes it clear that the conferment of temporary status has no relation to availability of sanctioned regular Group D post. It states that no recruitment from open market except compassionate appointment will be done till the casual labourers with the requisite qualification are available to full up the posts in question.

7. The present applicant has been in service on 29.11.89 and also on 12.4.91 as it is not disputed that he was engaged in 1984 and has been working continuously since then. Mr. Pathak says that when he was engaged in 1984 he was well within the age limit. The main issue that ^{needs} ~~meet~~ to be resolved is whether he was full time or part time casual labourer and whether he had worked for eight hours in a day besides the points raised by Mrs. Safaya referred to earlier.

8. We find from the pleadings that the applicant was in fact engaged initially as casual labourer on 24 hours basis and the applicant was working as whole time employee. It is stated in the written statement that

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subsequently he applied for reduction of some work and the work regarding watering plants and electric fitting and other articles of stores and furnitures was taken out of his duties. It is thus seen that apart from functioning as Chowkidar he had also been engaged for some additional work which are independent of the duties of Chowkidar. The Department had issued an order bringing out his revised duties for five hours a day. He was required to guard the post office main gates at morning from 7-00 to 10-00 and in the evening from 17-00 to 19-00 hrs. He was also to maintain of two new bore-wells and operate the motors etc. He should check all doors and windows of Post Office building at the time of closing of the office and to help the Sr. postmaster, Jamnagar HO in opening of main gate of Post Office in morning and in closing at evening etc. While issuing the order revising his duties it is the admitted position that the applicant was not given any opportunity to putforth his case. He is stated to have asked for reduction of work but that seems to be in the context that he was overburdened with lot of additional work apart from the duties of Chowkidar and not because he wanted to become a part time ^{worker} ~~work~~. This order ~~order~~ ^{has} would adversely affected ^{been} as a scheme was in operation what envisaged grant of certain benefits to casual labourers who are engaged as full time basis. ^{As} ~~As~~ the so called reduction of work without giving an opportunity would be against the principle of natural justice. We are also not convinced that the applicant was in fact made to work only for five hours and that

there have been a reduction in the quantum of work as compared to work he had performed earlier. The respondents have stated that his emoluments were revised (fixed) from Rs. 400/- to Rs. 390/- plus Dearness Allowance which is much more and his emoluments were not reduced. The order purporting to reduce duty hours seems to have been done more with a view to change his status from a full time casual labour to part time casual labour and to deny him certain benefits. In the circumstances, we are of the view that the applicant should be treated on the same footing as a whole time labourer.

The fact that the applicant was paid from contingent and not given regular salaries does not make any difference. The scheme itself clearly provides that the conferment of temporary status have no relation to availability of sanctioned regular Group D post. We also note that the applicant was engaged in 1984 and was well within the age limit on that time. Mr. Pathak says that the applicant is literate as he has passed Class VI and also is entitled to relaxation of educational qualification on the basis of the Supreme Court decision in Bhagwati Prasad case referred to earlier. Mrs. Safaya brings out that in the postal Department priority is given to Extra Departmental Agents for regular recruitment of Group D and casual labourers will come only after the claims of the ED Agents. ^{like note this submission} ~~That~~ will be relevant at the time of considering regularisation of the applicant.

9. In the circumstances, we hold that the applicant is entitled to be considered in terms of the scheme

prepared by the DG post dated 12.4.91 which took effect from 29.11.89. We accordingly direct the Department to grant to the applicant whatever benefits are available to him in terms of the scheme in particular the conferment of temporary status. He should be considered for regular appointment in terms of the scheme and the policy of the Department from the time he becomes due and as per his turn. The Department will implement the above direction within a period of three months from the date of the receipt of a copy of this order.

10. With the above direction, the O.A. is finally disposed of. No costs.



(T.N. Bhat)
Member (J)



(V. Ramakrishnan)
Vice Chairman

vtc.