

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

Original Application Nos. 16 & 17/2002
Cuttack, this the 3rd day of May, 2004

CORAM :

HON'BLE SHRI B.N.SON, VICE-CHAIRMAN

AND

HON'BLE SHRI M.R.MOHANTY, MEMBER (J)

IN O.A. NO. 16/2002

Gouri Shankar Acharya, aged about 30 years, S/o. Bakim Chandra Acharya, Group-D (Temporary Status) at present working as M.M.S.Driver, Office of the Senior Superintendent of Post Offices, Bhubaneswar Division, At/P.O. Bhubaneswar, Dist. Khurda.

..... Applicant

By the Advocate Mr. H.P.Rath

Vrs.

1. Union of India, represented by the Secretary to Government, Department of Posts, Dak Bhawan, New Delhi-110001.
2. Chief Post Master General, Orissa Circle, At/P.O. Bhubaneswar, Dist. Khurda.
3. Senior Superintendent of Post Offices, Bhubaneswar Division, At/P.O. Bhubaneswar, Dist. Khurda.
4. Senior Post Master, Bhubaneswar, General Post Offices, At/P.O. Bhubaneswar, Dist. Khurda.

..... Respondents

By the Advocates Mr. S.Bhera, M/s. K.C. Kanungo & Others (For intervenor)

IN O.A. NO. 17/2002

Shri Bijaya Kumar Rout, aged about 28 years, S/o. Prahalad Chandra Rout, At-Kaithapal, P.O. Dashipur, Dist. Kendrapara,

At present working as Mail Man, Group-D(Temporary Status),
Office of the Senior Superintendent of Post Offices, Bhubaneswar Division, At/P.O. Bhubaneswar, Dist-Khurda.

..... Applicant

By the Advocate Mr. H.P.Rath

Vrs.

1. Union of India, represented by the Secretary to Govt., Department of Posts, Dak Bhawan, New Delhi-110001.
2. Chief Post Master General, Orissa Circle, At/P.O. Bhubaneswar, Dist. Khurda.
3. Senior Superintendent of Post Offices, Bhubaneswar Division, At/P.O. Bhubaneswar, Dist. Khurda.
4. Senior Post Master, Bhubaneswar, General Post Offices, At/P.O. Bhubaneswar, Dist. Khurda.

..... Respondents

By the Advocates Mr. S.B.Jena (R-1 to 4)
M/s. K.C.Kanungo and
others (For intervenor)

O R D E R

SHRI B.N.SOM, VICE-CHAIRMAN

Since both the O.A. Nos. 16/02 and 17/02 pertain to common question of facts and law, we dispose of both the O.A.s. through this common order.

2. For the sake of convenience, we may as well refer to O.A. No. 16/02, which has been filed by Shri Gouri Sankar Acharya, seeking a direction from this Tribunal to quash the impugned order dated 28.12.01 issued by

Respondent No. 3 annulling the temporary status granted to him for regularization in Group-D cadre.

3. The case of the applicant is that the Respondent No.3 had appointed him as casual helper, Mail Motor Service, on 13.3.96. Thereafter, his service has been retained giving appointment on short spells from time to time. Thus, he has been continuing since May, 1996 and has rendered 240 days of service every year from 1996 to 2002. He is a matriculate and possesses valid driving licence for driving heavy vehicles. He was, therefore, engaged as driver by order dated 5.9.2000 in Bhubaneswar Division from the month of August, 2000 (The post of driver is a Group-C post). He has also been allowed pay and allowances on the minimum of the scale of pay attached to the post of the driver (Gp. C).

4. While he was so working, the Respondent Department had introduced a temporary status scheme for the casual workers, vide the circular issued by Respondent No.1 dated 12.4.91 for regularization of casual labourers. He was also granted temporary status for regularization in Group-D post in Mail Motor Organization by order of Respondent No. 3 dated 25.8.2000 (Annexure-3). However, the same authority sometime after his appointment, issued a show-cause notice dated 24.9.01 to him to state as to why the order of temporary status passed in his favour should not be cancelled. He submitted his representation opposing the proposal and took the plea that he, having enjoyed, the aforesaid benefit for three years (by July, 2003) if his status is now recalled

it will be prejudicial to his future prospect and deprive him of the benefit of absorption as a regular Group-D in the department after working for so many years. Respondent No.3, however, by his order dated 28.12.01 cancelled the temporary status granted to him. Being aggrieved by this order, he has come up in this O.A.

5. The Respondents have opposed the O.A. They have, however, admitted the facts of the case. They have admitted that he has worked continuously on daily wage basis for over four years, when he was considered by the Respondent No.3 for conferment of temporary status. But, later on, when it was found that the said decision was not in conformity with the rules in force for grant of temporary status to casual workers, the order was withdrawn, vide Annexure-7 to the O.A.

6. We have heard the Ld. Counsel for both the parties and have perused the records placed before us.

7. The question raised in this O.A. is whether the action of Respondent No.3 by denying temporary status to the applicant had acted within his jurisdiction and whether the applicant is entitled to any service/monetary benefit for the long period of casual service that he had rendered in the Respondent department. The undisputed fact of the case is that the applicant was appointed as a casual worker (through not sponsored by the Employment Exchange) from May, 1996, first as casual mail man and then from

August, 2000 as mail motor driver. It is also not denied that a post of ED Mail Man and a post of Mail Motor Driver were available when the applicant was engaged as casual mail man/casual driver. It is also an admitted fact that Respondent No.3 had granted temporary status to the applicant vide his order dated 25.8.2000. However, the Respondents have pointed out that the said order passed by Respondent No.3 was without jurisdiction in as much as this temporary status scheme benefit covered the casual labourers recruited after 29.11.89 and up to 10.9.93. Grant of temporary status was introduced by the Respondent Department as a one time measure. In other words, the benefit of the scheme was available only to those casual labourers who were recruited on or after 29.11.89 and up to 10.9.93. In this case, admittedly, the applicant was engaged as casual worker only in May, 1996. It has already been held by the Apex Court that the scheme for grant of temporary status is not an on going scheme. In the circumstances, there is no doubt that the order passed by Respondent No.3 on 25.8.2000 was not assailable in the eye of law.

8. In a catena of cases, it has been held by the Courts that the administration has got inherent power to rectify its errors. In this regard, we would refer to the Full Bench decision of Hon'ble Punjab & Haryana High Court in the case of Sunder Lal and others Vs. State of Punjab and Others, 1970 SLR 59, where it has been held that where

the Government has taken a decision which later turns out to be not correct, it could not be said that the mistake must be allowed to be perpetuated and that the Government has no power to rectify that mistake even after the same is discovered. Similar view was taken by a Full Bench of the Patna High Court in the case of S.A.F. Abbas and others Vs State of Bihar and others, AIR 1970 Patna 397. In the case of Ranjit Singh Vs President of India, 1971 SLR 561, a Division Bench of the Hon'ble High Court of Punjab and Haryana, relying on Sunder Lal's case (supra) and S.A.F. Abbas's case (supra) has held that every administrative authority has an inherent right to rectify its own mistake unless there is some specific provision of law which prohibits such a course.

9. We, therefore, hold that the applicant having been recruited as casual labourer after 10.9.93 can not claim the benefit of that scheme for grant of temporary status.

10. Now, we would like to proceed to answer the second issue regarding service/financial entitlement of the applicant for the long years of casual service that he has rendered against a sanctioned post. The applicant has claimed that the Respondents have not disputed that he has been continuing since May, 1996 and every year he has worked more than 240 days. Law is well settled that casual labourers who have worked for 240 days a year and have continued for

Several years are entitled to regularization. This position of law does not vary because of emergence of the concept of grant of temporary status. Infact, the scheme for grant of temporary status only gives greater security to the casual workers to exercise their right to regularization in the department at a future date and claim certain service benefits like leave, PF etc. not available to a casual worker otherwise. These casual labourers who do not enjoy the safety net of temporary status scheme, however, do not lose their right of regularization if they have worked for more than 240 days a year for successive years. The applicant, therefore, fulfills one of the most important criteria for regularization of casual worker, that he has been working for 240 days or more a year for several years. Further, as it is admitted by the Respondents that he has been working either as a casual mail man or as a mail motor driver against a sanctioned post. As there is a post to regularize the applicant and as he has acquired right under law to be considered for regularization having worked 240 days per year for several years, we have no hesitation to hold that the Respondents are bound under the law to consider the case of the applicant for regularization against the post of driver or mail man, subject to fulfilling other conditions of recruitment for the posts. We also direct the Respondents to take action for regularization of the applicant within a period of four months.

from the date of receipt of this order.

11. In view of our finding as stated above, both the O.A.S. succeed. No costs.

12. One Shri Alekh Chandra Behera had filed an M.A. No. 316/04 with a request to allow him to be impled as a party in the O.A.; as he was also working as a casual driver in the Respondent Department. After considering this M.A., we, by our order dated 5.5.04, had decided that the Intervention Petition will be taken up for consideration at the time of final disposal of the case. Now, by filing a memo dated 28.9.04, the petitioner has disclosed that he is no longer willing to contest the case since in the meantime he has got an employment under the Airport Authority of India Ltd. In consideration of above submission of the intervenor, the M.A. 316/04 is dismissed as infructuous.

Sd/- M. R. MOHANTY
MC3

(M.R.MOHANTY)
MEMBER (JUDICIAL)

Sd/- B. N. SONI
VICE-CHAIRMAN

(B.N.SONI)
VICE-CHAIRMAN

RK/SD