

OA No. 260 of 2008

K.Krishnaya Applicant
Versus
UOI & Ors. Respondents

1. Order dated 3rd September, 2009,

C O R A M
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (ADMN.)

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By filing this Original Application, Applicant seeks direction to the Respondents to grant him temporary status in pursuance of the scheme formulated by the Government of India vide notification under Annexure-A/4 dated 12.04.1991. He has also sought direction to the Respondents to grant him all consequential service and financial benefits retrospectively.

2. Applicant's case is that he has been continuing as Mail escorts in Jeypore (K)-Viziangaram 3rd Mail Motor Service on daily wage basis with the minimum scale of Group D regular employee of the Department since 21.08.1985 is not in dispute. However, according to the Applicant he has been appointed by the Respondents and receiving the wages from the Department of Posts. But according to the Respondents he is engaged and paid by the authority of the OSRTC and the payment made to the applicant has been reimbursed from the Respondents by the OSRTC subsequently.

3. Learned Counsel appearing for the parties, have reiterated the stand taken in their respective pleadings. Having

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heard them at length, perused the pleadings as well as materials placed on record.

4. This is the **fourth round of litigation** filed by the Applicant. Earlier to this, he had approached this Tribunal in OA No. 230 of 1994 along with another seeking direction to the Respondents to regularize their services in the posts of Mail Escort. The aforesaid OA was disposed of by this Tribunal in order dated 12.08.1994 holding that whenever any work is available in any section under Jyppore Postal Division the Respondents should give preference to the Applicants in providing them with work. Thereafter, he approached this Tribunal once again in OA No. 689 of 1997 along with another seeking the same relief as claimed in earlier OA. This Tribunal disposed of the matter on 21st July, 2000. Relevant portion of the order of this Tribunal is extracted herein below:

“5. ...Moreover, the respondents have been engaged as Mail Escorts for a period from the date of their initial engagement till OSRTC staff decide to again take up the work of exchange of mail in their buses in lines in which their buses ply. Once OSRTC staff takes up the work, there would not be any need for providing Mail Escorts. In view of this, it is clear that the engagement of the applicants is only till such time when the normal practice of exchange of mail by OSRTC staff is reintroduced. The respondents have, in this connection, enclosed copy of minutes of a meeting held on 25.2.1983 between the State Government, Orissa State Road Transport Corporation and the office of Post Master General. In this meeting it was decided that the postal authorities should continue to employ a person, i.e. a Mail Escort to accompany the Mail Bags till such time as Orissa State Road Transport Corporation make alternative arrangement to ensure safety of Mail Bags. It was also decided that while making payment to OSRTC for carriage of Postal Bags, P & T Department should deduct the cost of persons employed for escorting Mail Bags. In

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other words, the applicants are being paid by the Postal Department on daily wage basis and the payment made to the applicants is being deducted from the carriage charges for Mail Bags paid to Orissa State Road Transport Corporation. Thirdly, the applicants have not been engaged as Group D staff. They have been engaged on daily wages. For such engagement also they have not come through any selection process. Because of the above, we hold that the applicants cannot seek regularization straightaway in Group D posts under the Department.

5. The other aspect of the matter is that the applicants have stated in paragraph 4.1 of the OA that they are continuously working without any break from the date of their initial engagement in 1986 and 1985. This has not been denied by the respondents in their counter. It is thus clear that the applicants are working as Mail Escorts for the last twelve years on daily wage basis. It is also seen from Annexure-R/1 that for Nowrangpur-Vizianagaram line and Vizianagaram-Nowrangpur Line, posts of two Class IV staff have been sanctioned in the order dated 23.1.1974 at Annexure-R/1. The respondents have also mentioned in paragraph 3 of their counter that these two applicants are being engaged as Mail Escorts in Nowrangpur-Vizianagaram Line and also in some other lines. It is thus clear that they have been working as daily wage workers against the two Class IV posts created in the order at Annexure-R/1. As they have been working for the last twelve years, they have a right to be considered for posts as and when the departmental authorities take steps to fill up such posts. The posts mentioned at Annexure-R/1 have been created in order dated 23.1.1974, i.e. about twenty five years ago. Against two such posts these two applicants are working on daily wage basis. In case those Group D posts are continuing, the departmental authorities should consider if they should not fill up these Group D posts on regular basis. In case they decide to fill up these two posts on regular basis, then the cases of the applicants should be considered along with others for selection against such posts and while considering the candidature of the applicants, they should be given age relaxation to the extent of the service rendered by them already according to the usual procedure."

5. Thereafter, by filing RA No. 20 of 2002 the Respondents sought review of the aforesaid order. The said RA

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was dismissed by this Tribunal in order dated 15.09.2003.

Being unsuccessful, the Respondents carried the matter to Hon'ble High Court of Orissa in WP (C) No.6765 of 2004. The Hon'ble High Court of Orissa in order dated 27.04.2006 disposed of the matter. Relevant portion of the order of the Hon'ble High Court is extracted here in below:

“Any how since no vacancy of Class IV category exists, there is no question to fill up the posts, therefore, we dispose of this writ petition with the direction that in case any vacancy occurs in future in Class IV category and the petitioners decide to fill up those vacancies on regular basis, the cases of the opposite parties shall also be considered along with others for selection against such posts with age relaxation subject to fulfillment of other eligibility conditions as mentioned by the Tribunal in its final order dated 21.7.2000 passed in the aforesaid Original Application.

The impugned order passed by the Tribunal as well as the orders passed in the aforesaid Original Application stands modified to the above extent.”

Thereafter by filing OA No. 403 of 2007 Applicant sought direction for conferment of temporary status. On being pointed out by this Tribunal whether the applicant ever requested the authorities for conferment of the benefit of the scheme under Annexure-A/4. The answer being negative, the aforesaid OA was dismissed as withdrawn on 14.11.2007 by granting liberty to the applicant to first approach his authority. Thereafter, by making representation dated 10.12.2007 he sought conferment of temporary status and there being no order passed thereon, he has approached this Tribunal in the present OA. The Respondents both in the counter as also in course of hearing opposed the prayer for conferment of temporary status.

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6. No reason has been stated by the applicant in this Original Application as to why he did not approach the authorities either by making representation or in the event of no action, before any court of law soon after the scheme came into force in the year 1991. This scheme does not envisage that it is an ongoing scheme. It has been held by the Hon'ble Apex Court in the case of **Controller of Defence Accounts, Dehradun and others v Dhani Ram and others** (2008) 1 SCC (L&S) 1101 that this scheme does not appear to be a general guideline to be applied for the purpose of giving temporary status to all the casual workers, as and when they complete one year's continuous service. No where in the pleadings it has been stated by the Applicant that his initial engagement on casual daily rated basis was through employment exchange. On the focused question whether his initial engagement was through employment exchange, Learned Counsel for the Applicant was not able to give any satisfactory answer. This Bench of the Tribunal in many cases in the past, by placing reliance on the decision of the Hon'ble Supreme Court in the case of **Passport Officer, Trivandrum and Others v Venugopal C & Ors** held that one cannot claim conferment of temporary status unless the initial engagement has been through employment exchange. The Applicant having failed to get any favourable order for regularization in all the OAs, has now come up with this OA seeking direction for conferment of temporary status. In view of the discussions made above, I find no justifiable ground to grant the relief claimed in this OA.

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7. In the result, this OA stands dismissed by leaving
the parties to bear their own costs.

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(C.R.Mohapatra)
Member (Admn.)

