

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH: CALCUTTA

O.A. No. 1122/96

Date of decision: 17-12-04

The Hon'ble Mr. Mukesh Kumar Gupta, Judicial Member.

The Hon'ble Mr. M.K. Misra, Administrative Member.

Ranju Das and others

vs.

Union of India and others.

Mr. S.K. Dutta : Counsel for the applicants

Mr. M.S. Banerjee: Counsel for the respondents.

ORDER

Per Mr. Mukesh Kumar Gupta, Judicial Member

By the present application the applicants have sought the following reliefs:

- a) In order quashing and /or setting aside the appointment made against the 45 Group D posts under the Director of Accounts (Postal) by holding interview between 24.0.96 and 30.05.96.
- b) An order directing the respondents to consider the case of the applicants for the aforesaid Group D posts under the Director of Accounts (Postal) and/or any other suitable Group D posts under the respondents taking into account their service as casual employees as per instant rules/circular of the Postal department.
- c) An order directing the respondents to pay to the applicants HRA, CCA with effect from the date when the applicants attained temporary status and the arrears thereof and further directing the respondents to pay to the applicants other advances as well as interim relief from the date when such interim relief is being granted to similarly placed casual employees of the Park Street Post Office.
- d) An order directing the respondents to extent all other benefits like medical Air to the applicants as well as the LTC and bonus which the applicants are entitled as per D.G. post No. 66-9/91 SPB dated 30.11.92 and further directing the respondents to all other benefits admissible to the applicants as per the departmental circular dated 12.04.91 and 30.11.92.



e) Any other order or further order or orders as to this Hon'ble Tribunal deem fit and proper.

2. The facts as stated are that the three applicants are working as part time casual employees with temporary status and duly qualified for the posts in Group 'D' category. Applicant Ranje Das is working as casual mazdoor since 14.02.90 and attained temporary status in the year 1992. Applicant Ashish Kr. Chakraborty joined initially as Extra Departmental Stamp Vendor with effect from 04.04.83 and served in the said capacity till December 1985. Thereafter he was appointed as daily rated contingent paid Watchman with effect from 15.02.90 and is working without any break. Madan Pal was initially appointed as daily rated mazdoor in January 1989 and worked upto December 1989. He was subsequently appointed as contingent paid part time cleaner and continues to serve in the said capacity. It is contended that though several vacancies in Group 'D' non text category were available with the respondents, they were not considered for absorption despite they are being eligible, whereas E.D. employees were considered and regularised by giving them preference, although as per rules, the question of preference arises only in cases of filling up of posts in test category Group 'D' posts and not otherwise. In other words, it is stated that ED employees are not entitled to any preference in test category of Group D posts. On an earlier occasion, similarly placed persons had filed O.A. No. 834/93, which was disposed of vide order dated 17.09.93 with the following observations:

" 4. As the respondents in the reply have clearly admitted that they will be given the benefit of absorption of Group D employees in terms of the provisions of the rule, then we are of the view

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that we can dispose of this application at the stage of admission itself with this order that the case of the applicants for permanent absorption shall be taken up by the respondents strictly in terms of the rule framed by the postal department in terms of the Supreme Court judgement in Jagrit Mazdoor Union 's case and also regard being had to the seniority for working as part time contingent staff. So far as the payment of the minimum salary is concerned, as the respondents have in the reply clearly stated that they are being paid minimum pay of Group D employees together with all allowances and as the applicants are entitled to get the minimum pay scale with admissible allowances on prorata basis, if the respondents do not pay at such rate, then the applicants will be at liberty to move this Tribunal in contempt. In the meantime so long as the vacancy for the applicants for the post of Part time contingent staff shall remain in the department, they shall be given such appointment regard being had to their seniority in preference to juniors and strangers. "

It is contended that despite the aforesaid order, the applicants have not been regularised in a most arbitrary manner which is violative of Art. 14 and 16 of the Constitution of India.


3. The respondents contested the application stating that the applicants have not acquired temporary status. They themselves admitted that they were appointed as contingent paid part time employees. It is further contended that the applicants do not come under the purview of circular dated 12.04.91 and therefore they cannot be treated as casual employees with temporary status. It was also contended that the applicants are not eligible to be considered for appointment/regularisation in Group D posts and therefore the question of considering them for regularisation in Group 'D' posts does not arise.

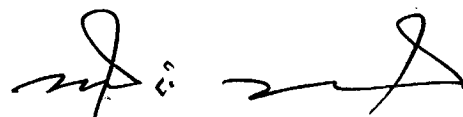
4. We heard the learned counsel for the parties and perused the pleadings. Shri S.K. Dutta, learned counsel for the applicants has relied upon the judgement in Secretary

M/o Communications & ors vs. Sakku Bai and anr. 1998 (1) SC SLJ 180

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wherein it has been held that par time casual labourers are not eligible for the grant of temporary status and regularisation under the scheme and the benefit of absorption in Group 'D' conferred upon them vide notification dated 24.02.89 and the scheme does not take away the benefit of absorption. Hence the scheme framed by the department Telecommunications dated 12.04.91 certainly would not be applicable to part time casual labourers and therefore the applicants cannot be governed by the said scheme of 1991. The said judgement indeed would go to show that they are eligible to group D posts under notification dated 24.02.89, as noticed in para 6 of the said judgement. Such being the case, we are unable to accede to the respondents contention that the applicants are not entitled to regularisation in Group D posts. Though we may note that the part time casual labourers have limited avenue for absorption under the non test category and such being the case, the applicants should be considered for regularisation in terms of para 6 to 8 of the aforesaid judgement. Hence as and when vacancies are available in Group 'D' the respondents are directed to regularise them as mentioned in the preceding paras. The application is disposed of accordingly. No costs.


(M.K. Misra)
Administrative Member


(Mukesh Kumar Gupta)
Judicial Member

jsv.