

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.04/2011

Jodhpur, this the 10th day of February, 2015

Reserved on 13.01.2015

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Om Prakash Sharma S/o Shri Vijay Raj Sharma, by caste Sharma, aged about 49 years, R/o Behind Dak Bungalow, Near Ramdeo Chakki, Bikaner (Rajasthan), as a Waterman (Casual Labour) working under respondent No.4.

.....Applicant

By Advocate: Mr. Manoj Bhandari.

Versus

1. The Union of India through the Secretary, Government of India, Ministry of Communication, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. The Chief Post Master General, Circle Jaipur-302 007.
3. The Post Master General, Western Region, Jodhpur.
4. Superintendent, Railway Mail Services 'ST' Division, Jodhpur.

.....Respondents

By Advocate : Ms. K.Parveen

ORDER

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, seeking the following relief(s):-

(i) By an appropriate order or direction, the respondents be directed to grant full time casual labour status to the applicant with all consequential benefits and implement the order passed by the Hon'ble Tribunal with all consequential benefits.

- (ii) *By an appropriate writ, order or direction, the respondents be directed to grant full time casual labour status to the applicant forthwith with all consequential benefits.*
- (iii) *By an appropriate writ, order or direction, the respondents be directed to confer the temporary status to the applicant in the department of posts with all consequential benefits.*
- (iv) *Any other appropriate order or direction which this Hon'ble Tribunal may deem fit just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicants.*

2. The brief facts of the case as averred by the applicant are that the applicant was initially engaged as Waterman w.e.f. 01.06.1980 in the office of the Railway Mail Service, Bikaner vide order dated 27th June, 1980 and appointment letter is at Annexure-A/1. He was given the designation of a part time Waterman as his duty was for 6 hours per day. He was working as a part time employee right from the year 1980 and he made several representations to confer on him the status of Group-D employee. In this regard, he was assured in the year 1985 vide communication dated 03rd October, 1985 (Annexure-A/2) that since there was a ban for creation of new posts, he shall be considered as against the post of Mail Man which is a permanent post of Group-D in the recent future. Further, the applicant was working for 7 hours per day in the year 1989 in pursuance of the order issued on 04th September, 1989 (Annexure-A/3). It has been further submitted that the applicant was working in the split duty system and even while discharging the duties of Waterman he used to be summoned on two or three occasions per day. A policy decision was taken in the year 1989 to absorb the casual workers in pursuance of the judgment of the Hon'ble Apex Court rendered in the year 1987 and the communication dated 11th May, 1989 (Annexure-A/4) was issued, which also provided for creation of posts taking into account split duty, but despite all the efforts, the applicant was neither granted temporary status nor was granted the status of even a full time casual

labour though he had been working for at least 7 hours a day for two years i.e. in the year 1989 and 1990 respectively.

3. It has been further averred that the applicant earlier filed an OA no.202/2000 before this Tribunal for regularization of this services in the department of RMS, which was decided on 06th July, 2001 (Annexure-A/5). As per the said order, directions were given to the respondents to consider the case of the applicant for full time employment in terms of Standing Order dated 30.11.1998 (Annexure-A/6) issued by the Director General, Posts, New Delhi after receiving necessary communication from the Chief Post Master General Jaipur. The applicant submitted a representation on 21.08.2001 (Annexure-A/7) in pursuance of the judgment of the Hon'ble Tribunal dated 06.07.2001 to consider his case for grant of full time casual labour status and subsequently regularize him against Group-D post.

4. It has also been averred that from time to time various schemes have been laid down by the Department of Posts for conferring regular status and full time casual labourers status to the part time casual labourers working in the Postal Department. In this context, reference has been made to the letter of Director General Posts dated 17th May, 1989 (Annex.-A/8) in which it has been clarified that even the casual labourers who are engaged for less than 8 hours a day should be described as part time casual labourers and such part time casual labourers for computation of eligible service, half of the service rendered as part time casual labour should be taken into account, therefore, if a casual labourer completes 2 years of services, he will be treated for the purpose of recruitment to have completed one year of service as full time

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casual labour. It was also laid down that the temporary status can be conferred on the casual labourers in employment as on 29.11.1989 vide letter dated 12th April 1991 (Annexure-A/9).

5. It has been further averred that as far as the applicant is concerned, his representation dated 21.08.2001 (Annexure-A/7) with reference to judgment of the Tribunal in OA No.202/2000 was rejected by the Chief Post Master General, Jaipur vide his order dated 15th October, 2001 (Annexure-A/10). As per this order, the Chief Post master General held that there is no feasibility of combination of duties of existing two part time casual labourers to form a full time casual labourer and since there is only a part time labour namely Safaiwala in Bikaner, he cannot be combined due to heavy work. It was further observed that there was no ED Post (Extra Department Post) vacant. The plea of the applicant to regularize him against the Group D post was rejected.

6. It has been averred that the Director General of Post vide letter dated 16.09.1992 (Annexure-A/11) addressed to all the concerned Post Offices communicated that the part time casual labourers who are working, shall be converted into full time basis counting their 50% of service and they shall be made full time casual labourers by readjustment or combination of duties and it was clarified further again vide letter dated 28.04.1997 (Annexure-A/12) that the full time employment should be conferred to the part time casual labour whenever it is feasible. It was also clarified in the said circular that the feasibility of adding working hours of vacant ED Post for this

purpose may be examined and suitable action for forming full time casual position be taken.

7. Thereafter, after passing of order dated 15th October 2011 (Annexure-A/10) the applicant made several representations on 26th December, 2011, 31st May 2002 for regularization of his services by adding part time working with ED working or for other category working by 2 hours per day to existing 6 hours per day in pursuance of the aforesaid circulars. At that time the post of EDs were vacant as may be seen in the official statement as at Annexure-A/14 dated 25.07.2002, and another fell vacant on 05th December 2001 on promotion of Shri Kailash Meena as Group D .

8. However, when nothing was done by the respondents, the applicant filed another OA bearing OA No.238/2002.

9. It has been further averred by the applicant that the post of Group-D has to be filled to the extent of 75% from amongst non-test category and remaining 25% from amongst (i) casual labour with temporary status, (ii) full time casual labour, (iii) full time casual labour of the division and (iv) by part time casual labour. The applicant should have been considered as Group-D employee as he had completed 23 years of service at the time of filing earlier OA and now 30 years as on date, but the respondents not only rejected the applicant's case for consideration of being regularized against Group-D post, but also for the purpose of treating him as a full time casual labour by adding the hours from the vacant ED posts, which were admittedly vacant. It has been further submitted that now the applicant had been offered to work as GDS MM (which was earlier known as EDMM i.e. Extra

Departmental Agent), which should have been conferred upon him way back in the year 1990 in the non-test category in pursuance of the communication dated 17.09.1990 (Annexure-A/15). It has been further averred that the offer was made in the year 2004-2005 whereas the applicant should have been made the Extra Departmental Agent way back in the year 1990 and had he been made the Extra Departmental Agent in the year 1990, he would have attained the regular status of Group-D employee. Not offering the applicant ED post in the year 1990 is highly arbitrary and appointing him as GDS MM by counting him on a part time employment is highly unreasonable.

10. It has been further averred that the OA No.238./2002 filed by the applicant was disposed of by this Tribunal vide its judgment dated 11.01.2005 (Annexure-A/16) and that the Hon'ble Tribunal specifically came to the conclusion that there is no justification of not counting the hours when the post of EDMM had been vacant and even he has not been appointed as EDMM, it was also concluded that since the applicant is working for a period of more than 23 years, at least two hours of a vacant ED Post, may be added to make him full time casual labour and therefore it was directed to explore the feasibility of having one full time job and to convert the part time status of the applicant into full time casual labour status or for regularization as expeditiously as possible.

11. Thereafter the applicant again made a representation dated 01.02.2005 (Annexure-A/17) in pursuance of the judgment to make its compliance, but when nothing was done by the respondents, the applicant preferred contempt petition before this Tribunal bearing CP No.30/2005. It has been averred

that the respondents did not consider the case of the applicant for conversion of the part time casual labour status to full time casual labour status afresh in pursuance of the orders of the Tribunal and in order to frustrate the Contempt Petition, it was pointed out before the Tribunal that they are ready to give him appointment to the applicant as ED (Extra Department Agent) now called as Gramin Dak Sewak, which is also an appointment on part time basis. It has been further averred that initially the applicant refused to accept the said appointment and therefore the contempt petition was disposed of vide its judgment dated 08.05.2007. The applicant challenged the order of the rejection of the contempt petition before the Hon'ble High Court by filing DB Civil Writ Petition No.2321/2008, which was rejected by the Hon'ble High Court on the ground that the applicant is having remedy for filing writ petition before the Hon'ble Apex Court. The applicant has further submitted that despite the fact that contempt petition was rejected on the ground that offer has been given to the applicant to work as GDS under the Railway Mail Service, and the applicant accepted the offer of appointment on 15th June, 2007 and joined the duties on 18th June, 2007 but the post of GDS MM is still a part time job and it is not the post where the applicant shall be treated as full time casual labour. It has been further averred that the post of Safaiwala at Bikaner and Waterman at Jodhpur are lying vacant and therefore the same can be utilized for the combination of two posts creating one post of full time casual labour. Though the applicant has been conferred the status of ED employee, which is also a part time post but the applicant has been put to a loss because his post would have been converted as full time casual labour and after working of 30 years, his 15

years i.e. $\frac{1}{2}$ of the 30 years has to be considered for the purpose of regularization as against Group D post because the same could have fallen in the non-test category which is to be given first preference for being considered for regularization as against Group D cadre. It has been further averred that all the circulars and memorandum issued by the Department of Posts hold that the part time casual labourers who are working for more than 5 hours or more, they may be made full time by readjustment of combination of duties and the applicant who is a part time employee, half of the service shall be taken into account while considering him for grant of temporary status. But the action of the respondents in not considering him as being treated full time casual labour or for being granted temporary status is highly unreasonable and discriminatory and the applicant had to accept the employment as GDS MM for the reason that if he would not have accepted the appointment, he would have been out of employment and therefore the same cannot be said to act as an estoppel in claiming relief of being granted the temporary status after being appointed as full time casual labour. In such circumstances, the applicant deserves direction at least to be conferred him the temporary status after giving appointment as a full time casual labour in the Department of Posts and accordingly prayed for the relief(s) as mentioned in para No.1.

12. By way of reply, the respondents have denied the claims of the applicant and submitted that the applicant was appointed temporarily as part time Waterman on temporary basis vide memo dated 27.06.1980 with effect from 01.06.1980 and the post of Waterman in SRO Bikaner where the applicant was appointed and working is part time contingent paid post and

requested by the applicant. Presently, there is one part time casual labour having duties at 07:00 hours which cannot be combined due to work."

14. Against the said rejection order, the applicant filed another OA No.238/2002 which was decided vide order dated 11.01.2005 wherein it was observed by this Tribunal to give preference to the applicant while considering his case for appointment on the post of ED looking into his long service. In these circumstances, the case of the applicant was again considered by the competent authority but before the same could be decided finally, the applicant filed a Contempt Petition No.30/2005, which was decided by this Tribunal vide order dated 08.05.2007 and wherein the applicant was given liberty to make an application for appointment on the post of GDS MM within a period of 15 days from the date of receipt of a copy of the order and if the vacancy is available then the department will try to adjust the applicant. It has been further averred that during the pendency of the proceedings of the contempt petition, the applicant was given an opportunity to submit his consent vide letter dated 18.03.2007 for getting the appointment on the post of GDS, which he submitted under protest on 05.06.2007. Thus, after dismissal of the contempt petition, the applicant was appointed on the post of GDS MM w.e.f. 18.06.2007 in pursuance of the order dated 15.06.2007.

15. It has been further averred that the applicant had also approached the Hon'ble High Court against dismissal of his contempt petition by way of filing a writ petition No.2321/2008 wherein also the Hon'ble High Court declined to interfere into the order passed by the competent authority and

now the applicant has filed the present OA for the same relief which has already been adjudicated by this Tribunal as well as the Hon'ble High Court holding the entire action of the respondents just and proper and further averred that as the applicant approached this Tribunal again for the same relief for which the present OA is not maintainable. It has also been submitted that presently the applicant is not working on the post of any kind of casual labour as he is working on the post of ED agent which has separate set of rules of 2001 and under the rules of 2001, the promotional avenue is also provided for the ED agents subject to fulfilment of certain conditions. Thus, in these circumstances, the services of the applicant cannot be regularized on the post of Group-D nor he can be granted the status of full time casual labour when he is not working even on the post of casual labour.

16. It has been further submitted that the services of the applicant cannot be regularized as Group-D post as was only one vacancy of OC category in Group D in the year 2003, which was to be filled on the basis of seniority from GDS MM category and as per rules, the applicant being part time casual employee was not eligible. It has been further averred that one Group D post was again filled up in the month of June/July, 2005, but that was of ST category and was filled up from the GDS MM of SRO Sriganganagar vide SRM ST Division, Jodhpur vide memo dated 14.07.2005. It has also been submitted that as per the directions of the Tribunal dated 11.01.2005, the applicant was offered appointment on vacant post of GDS MM at SRO, Sriganganagar but he refused vide his letter dated 10.06.2005 and he was again offered an appointment on vacant post of GDS MM at HRO, Jodhpur but he again submitted his unwillingness vide his letter dated 13.03.2006, as

such the contention of the applicant for not offering ED post is not tenable. Hence, it has been averred that the decision of the respondents is perfectly just and proper in accordance with the rules and the applicant is not entitled to get any relief from this Tribunal and the OA filed by the applicant deserves to be dismissed being devoid of merit and substance.

17. In the rejoinder to the reply it has been reiterated that the applicant has not even been conferred full time status of casual labour by readjustment of combination of duty and the directions of the Hon'ble Tribunal have not been implemented and no efforts have been made to appoint him as Group D despite his long service and circulars of the Department in this regard.

18. The applicant has further filed an additional affidavit stating that during the pendency of this OA, the respondents while held the selection and promotion to the cadre of Multi Task Staff (MTS) which is a group -D post. The respondents declared seniority list of EDMM, GDS as on 01st July, 2008 (Annexure-A/19) on the basis of which promotions have been made on 17th October, 2013 (Annexure-A/20). In this, the person junior to the applicant i.e. Ishwar Singh was promoted as MTS i.e. Group D post against the vacancies of the year 2013 and the vacancies of 2010-2011 were also filled up but the applicant was not considered. It has been further averred that as the respondents have undertaken the process of regularization and the promotion as MTS and the applicant became of 50 years of age in the year 2011 the case of the applicant should have been considered in December, 2011 and for the vacancies of the year 2011-12 and 2012-13 for which the

applicant was entitled and eligible as the DPC takes into consideration vacancies to be determined for 1st April 2011 to 31st March, 2012.

19. In reply to the additional affidavit, the respondents have stated that Shri Ishwar Singh was selected for the vacancy of the year 2013 but the case of the applicant was also put up before the DPC held on 04.10.2013 but due to overage, the applicant was not approved by the DPC and the earlier vacancy pertaining to the years 2010 and 2011 were filled up by persons senior to the applicant as approved by the DPC.

20. Heard both the parties. Counsel for applicant contended that the applicant was appointed as part time Waterman w.e.f. 01.06.1980 vide order dated 27.06.1980 (Annexure-A/1) and when he made a request to be made permanent he was informed vide letter dated 03.10.1985 (Annex. A/2) that there are already 5 Mailman surplus in SRO, Bikaner and there is ban on creation of new posts and recruitment, therefore, your matter will be considered after removal/lifting of ban. He then referred to Circular of DG, Posts No. 2-10/88-PEI dated 11.05.1989 (Annexure-A/4) regarding absorption of casual workers and especially referred to para 3 and 4 of the DoPT Guidelines wherein it has been provided that "the work now being done by casual labourers both full and part time and EDAs may also, therefore be examined and the number of justified departmental posts for creation by clubbing duties and replacing the casual labours/EDA may be worked and further para 4 provided that it may so happen that the two spells of duties under split duty may exceed for a stretch of 12 hours which is not permissible under the existing orders. This provision may be relaxed where

the part time duties extending over a stretch of 12 hours could be combined."

Keeping in view these provisions he further referred to circular dated 30.11.1998 (Annex. A/6) regarding part time casual labourers and instructions of split duty which gives directions to provide full employment to part timers by combining two or more part time casual labour positions and also explore the feasibility of adding work hours of vacant ED posts. In the context of this circular dated 30.11.1998, the applicant filed OA No. 202/2000 which was decided vide order dated 06.07.2001 (Annex. A/5 page 42) with the following directions :

"The application is disposed of with the direction to the respondents to consider the case of the applicant for full time employment in terms of letter dated 30.11.1998, Annexure A/9 issued by the Director General (Posts) New Delhi after receiving the necessary communication from Chief Post Master General, Rajasthan Circle, Jaipur".

The applicant submitted a representation to the authorities for implementation of this order of the CAT vide letter dated 21.08.2011 (Annex. A/7) and the same was rejected vide Memo dated 15.10.2011 (Annex. A/10) wherein it was observed as under :

“The Hon'ble CAT Jodhpur Bench while disposing of the applicant's prayer has issued the direction to the respondent to consider the case of the applicant for full time employment in terms of DG (Posts) letter of even no. Dated 30.11.1998.

The judgment of the Hon'ble CAT and the letter issued by the Dte on 30.11.1998 were examined thoroughly and considered by this office and found that there is no feasibility of combination of duties of existing two part time casual labourers to form a full time casual labourer as requested by the applicant. Presently, there is one part time casual labour namely Safaiwala in SRO Bikaner having duties of 7 hours, which cannot be combined due to heavy work. However the request of applicant would be considered as soon as the workload of the post justifies full day hours as such no additional work can be assigned to the part time casual labourer. Hence the request of the applicant to regularise him on the post of Group D cannot be acceded to in the light of DG (Posts) letter dated 30.11.1998 and is accordingly rejected.”

21. Counsel for the applicant contended that this order did not take into account the existing provisions of D.G.(Posts) letter No. 45-24/88-SPB-1 dated 17.05.1989 (Annexure-A/8) which specifically provides at para 3 (iii)

that "Casual labourers (full time or part-time) for computation of eligible service, half of the service rendered as part time casual labourer should be taken into account. That is, if a part time casual labourer has served for 480 days in a period of 2 years, he will be treated, for purposes of recruitment, to have completed one year of service as full-time casual labourer." Thus, though the applicant has put in long years of service from 1980, by this computation of his part time service he should have been regularized but his case was rejected wrongly vide Annex. A/10 dated 15.10.2001. Hence after rejection of the representation the applicant filed another OA bearing No. 238/2002 before this Tribunal which was decided on 11.01.2005 (Annex. A/16). In this regard, counsel for applicant drew attention to para 6 and 7 of the judgment wherein reasons for not converting the service of applicant into full time casual labourers have not been found convincing and the OA was allowed in part and the respondents were directed to explore feasibility of having one full time casual labour job as per aforesaid observations and consider the case of the applicant for converting him full time casual labour/or for regularisation as expeditiously as possible. When nothing was done by the respondents the applicant also filed a contempt petition No.30/2005 in the reply to which the stand taken vide order dated 15th October, 2001 was reiterated without exploring possibilities of connecting part time labour to full time labourers, even though posts of ED were vacant and it was also submitted by the respondents that they are ready to give him post of ED (now GDS). The contempt petition was disposed of vide judgment dated 05th May, 2007 and the writ petition filed against the said order was rejected. However, it was contended that the respondents, instead

of giving him full time casual labour or regularizing him against Group 'D' post, offered him the post of ED of GDS MM (earlier designated Extra Departmental Agents) w.e.f. 15.06.2007.

22. The order appointing him on post of Gramin Dak Sevak (GDS) MM was submitted by counsel for applicant during course of the arguments. The applicant accepted and joined this job though under protest because he had no other choice as he would have been out of job but as may be seen from the GDS (Conduct & Employment) Rules, 2001, the GDS is a part time post because the GDS is not required to perform duty beyond a maximum period of 5 hours a day and it is outside Civil Service of the Union and a Sevak shall not be claimed to be at par with the Govt. Servant. In this way the appointment as GDS MM does not provide the applicant required relief and he is entitled to be declared as a casual labourers and regularised as Group D.

23. Counsel for applicant further contended that as brought out in the additional affidavit, that even the case of the applicant for promotion to MTS (Group D) from ED GDS MM was wrongly rejected because as per seniority list as on 1st July, 2008 (Annexure-A/19) his name finds mention at S. No. 14 as Other Category community (OC) but vide order dated 17.10.2013 (Annex. A/20) though he was not overage for vacancies of 2011 and was eligible for being considered for Group 'D' MTS cadre, Shri Mahendra Kumar belonging to SC category was appointed against the Other Category for the year 2011 and this is against the provisions because the applicant belonged to Other Category and was eligible to be considered and appointed. Thus, respondents have rejected his genuine claim as casual labourer status and

thereby deprived of being regularized to Group D and offered him ED / GDS job belatedly which is also part time and which he accepted under protest there being no alternative as he could have been out of job and even his case for promotion against 2011 vacancy from GDS MM to MTS (Group D) was not considered though he was otherwise eligible in the year 2011 and belonged to Other Category for which there was a vacancy. Counsel for applicant placed reliance on judgments of this Tribunal in OA Nos. 184/2004 dated 09.08.2005, 162/2009 dated 22.04.2010, 04/2011 dated 04.12.2011 and para 53 of Apex Court judgment in Uma Devi (2006) 4 SCC in support of his arguments. Counsel for applicant, thus, prayed that the applicant may be conferred casual labour status as due on the basis of provisions of the circulars referred and order of the Tribunal and regularized as Group D on that basis and certainly he may be given promotion from GDS to MTS (Group D) against 2011 vacancy of Other Community category, for which he is fully eligible.

24. Per contra, counsel for respondents while reiterating the points raised in the detailed reply, and reply to the additional affidavit, contended that the applicant had OAs filed twice earlier in this matter and as per directions contained in the orders of the Tribunal, the respondent-department has considered his case and decided it in accordance with the prevailing rules on subject. Thus, the respondent-department had complied with the directions given by the Tribunal in the OA No.202/2000. She further contended that in pursuance of orders of the Tribunal in OA No. 238/2002 and while dismissing the contempt petition NO. 30/2005 filed in this regard, directions vide order dated 08.05.2007 were given that "however, the applicant is given

liberty to make an application for appointment for the post of GDS MM within a period of 15 days from the date of receipt of copy of the order if the vacancy is still available with the respondents. The respondents shall try to adjust the applicant." In this regard the applicant was asked vide letter dated 18.03.2007 to submit his willingness on the post of GDS which he submitted under protest on 05.06.2007 and vide HRO RMs 'ST' Division Memo dated 15.06.2007 he was appointed as GDS MM and he joined duties on 18.06.2007 in pursuance of order dated 15.06.2007. She further referred to para 4.7 of the reply wherein the applicant was earlier offered the appointment on vacant post of GDS MM SRO Bikaner but he refused vide letter dated 10.06.2005 and was again offered the post of GDS MM at HRO Jodhpur but he again submitted his unwillingness vide his letter dated 13.03.2011.

25. Counsel for the respondents further contended that as brought out in the reply to the additional affidavit the applicant was not eligible to be considered for promotion from GDS MM to Group 'D' MTS post because at that time he had already crossed 50 years of age, therefore, he was over age and the applicant is not entitled to the relief as claimed for and prayed for dismissal of the OA.

26. Considered the rival contentions of both the parties and perused the record. It is an admitted fact the applicant was appointed as a part time Waterman in the office of the Railway Mail Service, Bikaner w.e.f. 01.06.1980 vide order dated 27th June, 1980 with 6 hours of duty per day. In view of his appointment from 1980, the applicant made representations

for being made full time casual labour conferred temporary status and being regularized as a Group D employee. In the OA and during the arguments, counsel for the applicant has referred to several circulars and communication of the respondent department including the Annexure-A/4 dated 11.05.1989, Annexure-A/8 dated 17.05.1989, Annexure-A/9 dated 12.04.1991, Annexure-A/11 dated 16.09.1992 and Annexure-A/12 dated 28.04.1997, Annexure-A/6 dated 30.11.1999 in which there are provisions for combination of duties in case of person who are working for less than 08 hours even in cases of split duty and for counting temporary services to the extent of 50% i.e. one year for every year two years put in and thereby conferring full time casual labour status and temporary status and enabling such individuals to be eligible for group D employment. It was contended that despite such provisions when his services were not regularized the applicant filed OA No.202/2000 which was decided on 06th July, 2001 in which the following directions were given: “*The application is disposed of with the direction to the respondents to consider the case of the applicant for full time employment in terms of letter dated 30.11.1998 Annexure-A/9 issued by the Director General (Posts) New Delhi after receiving the necessary communication from Chief Post Master General, Rajasthan Circle, Jaipur*”. In pursuance of this order, the applicant filed a representation dated 06.10.2001 (Annexure-A7), which was rejected by the respondents vide order dated 15th October, 2011 (Annexure-A/10) in the following terms:-

“*The Hon’ble CAT Jodhpur Bench while disposing of the applicant’s prayer has issued the direction to the respondent to consider the case of the applicant for full time employment in terms of DG (Posts) letter of even no. Dated 30.11.1998.*

The judgment of the Hon'ble CAT and the letter issued by the Dte on 30.11.1998 were examined thoroughly and considered by this office and found that there is no feasibility of combination of duties of existing two part time casual labourers to form a full time casual labourer as requested by the applicant. Presently, there is one part time casual labour namely Safaiwala in SRO Bikaner having duties of 7 hours, which cannot be combined due to heavy work. However the request of applicant would be considered as soon as the workload of the post justifies full day hours as such no additional work can be assigned to the part time casual labourer. Hence the request of the applicant to regularise him on the post of Group D cannot be acceded to in the light of DG (Posts) letter dated 30.11.1998 and is accordingly rejected."

27. Against the said order of the respondents, the applicant filed OA No.238/2002, which was decided by this Tribunal on 11.01.2005 with the following directions:-

"8. In the circumspect of the aforesaid discussion, the Original Application is allowed in part and the respondents are directed to explore the feasibility of having one full time casual labour job as per aforesaid observations and consider the case of applicant for converting him into full time casual labour/ or for regularisation as expeditiously as possible. However, in the facts and circumstances of this case, the parties are directed to bear their respective costs."

28. Thereafter the applicant filed a representation dated 01.02.2005 (Annexure-A/17) for compliance of the order of the Tribunal dated 11.01.2005 and also filed a contempt petition No.30/2005, which was disposed of vide order dated 08.05.2007 wherein the applicant was given liberty to make an application for appointment on the post of GDS MM within 15 days from the date of receipt of a copy of the order and if the vacancy is available with the respondent department, the respondents is directed to adjust the applicant. The applicant approached the Hon'ble High Court by way of filing a writ petition No.2321/2008 but the Hon'ble High Court declined to interfere with the order passed by the Tribunal.

29. The applicant was given an opportunity to submit his consent vide letter dated 18.03.2007 for getting the appointment on the post of GDS, which he submitted under protest on 05.06.2007. Thus, after disposal of the contempt petition, the applicant was appointed on the post of GDS MM

w.e.f. 18.06.2007. The respondents have also mentioned in their reply that the applicant was also offered an appointment on vacant post of GDS MM at SRO Sriganganagar but he refused vide letter dated 10.06.2005 and again he was offered appointment as GDS MM at HRO, Jodhpur but he again submitted his un-willingness vide letter dated 13.03.2006.

30. From the above position, it appears that as far as the claim of the applicant regarding being granted full time casual labour status or temporary status or being regularised on the post of Group 'D' in view of his long services as part time Waterman has already been adjudicated upon in two OAs i.e. OA No. 202/2000 & OA No.238/2002 and the contempt petition with reference to OA No.238/2002 has already been decided (with certain directions) vide order dated 08.05.2007 and in the writ petition filed against the decision in the contempt petition the Hon'ble High Court declined to interfere. Thus, there appears no ground for any fresh adjudication on almost the same reliefs and the judgments and citations referred to by the counsel for the applicant are not applicable to the specific position of the applicant.

31. Further the applicant has been claimed in this OA that he should have been offered the ED post (now called GDS) way back from 1990. This does not appear tenable in view of the fact that in the OANo.238/2002 (which was filed by him against the rejection order dated 15.12.2001) which was decided by this Tribunal vide order dated 11.01.2005 and in pursuance of that order as well as the directions given in the contempt petition, the applicant was offered GDS MM. He was offered GDS MM at SRO Ganganagar which he refused vide letter dated 10.06.2005 and again offered GDS MM of HRO,

Jodhpur for which he gave his unwillingness vide letter dated 13.03.2006 but later he joined as GDS on 18.06.2007, though under protest, when appointed on the post vide order dated 15.06.2007.

32. However, from a perusal of the additional affidavit filed by the counsel for the applicant and reply to the additional affidavit filed by the respondents, it appears that the applicant was eligible and not overage for being considered for promotion to MTS (Group D) in the year 2011. From a perusal of communication dated 17.10.2013 (Annexure-A/20) which are the merits of the DPC meeting, one Mahendra Kumar, who was SC category was selected against the vacancy of OC vacancy for the year 2011. It is not clear from the record available as to why the applicant who belongs to OC category was not considered for the same, when he was eligible and had not crossed the age limit of 50 years. In view of the above position, as the applicant as GDS MM was eligible for consideration for appointment to the cadre of MTS (Group D) vacancy, which remained unfilled in the year 2011, it is deemed just and proper to give certain direction to the respondents. Accordingly, it is directed that the respondents may communicate to the applicant, within a period of two months from the date of receipt of a copy of this order, the details of whether the applicant was considered for promotion for the post of MTS (Group D) against the OC vacancy for the year 2011 and, if so, the reasons for his not being selected for the same.

33. Accordingly, the OA is disposed of as above with no order as to costs.


[Meenakshi Hooja]
Administrative Member

Recd
Postcard
12/2/15
for K. Pervez
Suleman

R/C
Ans
(3/2/15)