के.प्र.अ. (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत निः शुल्क प्रति

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Jodhpur, this the 28th day of March, 2014

CORAM

Hon'ble Mr.Justice Kailash Chandra Joshi, Member (Judicial)
Hon'ble Ms Meenakshi Hooja, Member (Administrative)

Original Application No. 195/2013

Babu Lal Moida s/o Shri Narayan Lal Moida, aged about 42 years, b/c Bheel (ST), r/o Vill + Post-Khandu, District Banswara, office address- working as GDSBPM under respondent No.4

.....Applicant

By Advocate: Mr. S.P.Singh

Versus

1. Union of India through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur
3. The Post Master General, Western Region, Jodhpur
4. Superintendent of Post Offices, Dungarpur Division, Dungarpur.
5. Inspector of Post, Banswara (North), Dungarpur Division, Dungarpur.

.....Respondents

By Advocate : Ms. K.Parveen

Original Application No. 196/2013

Dev Chand Bhoi s/o late Shri Govardhan, aged 50 years, b/c Bhoi (OBC) r/o Vill + Post Palaswani, District Banswara, office address - working as GDSBPM under respondent No.4

.....Applicant

By Advocate: Mr. S.P.Singh

Versus

1. Union of India through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur

3. The Post Master General, Western Region, Jodhpur

4. Superintendent of Post Offices, Dungarpur Division, Dungarpur.

5. Inspector of Post, Banswara (South Sub Division), Dungarpur Division, Dungarpur.

.....Respondents

By Advocate : Ms. K.Parveen

Original Application No. 198/2013 with MA No.290/00126/14

Nathu Lal Charpota s/o late Shri Devaji, aged about 46 years b/c Bheel, (ST), r/o Vill + Post- Borkhabar, District-Banswara, office address- working as GDSBPM under respondent No.4

.....Applicant

By Advocate: Mr. S.P.Singh

Versus

1. Union of India through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi.

2. The Chief Post Master General, Rajasthan Circle, Jaipur

3. The Post Master General, Western Region, Jodhpur

4. Superintendent of Post Offices, Dungarpur Division, Dungarpur.

5. Inspector of Post, Banswara (South Sub Division), Dungarpur Division, Dungarpur.

.....Respondents

By Advocate : Ms. K.Parveen

Original Application No. 205/2013

Ganesh Ram s/o Late Shri Rayangaji, aged about 55 years, b/c Bheel (ST), r/o Vill + Post- Amar Singh Ka Gara, District-Banswara, office address- working as GDSBPM under respondent No.4

.....Applicant

By Advocate: Mr. S.P.Singh

Versus

1. Union of India through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi.

2. The Chief Post Master General, Rajasthan Circle, Jaipur

3. The Post Master General, Western Region, Jodhpur

4. Superintendent of Post Offices, Dungarpur Division, Dungarpur.

5. Inspector of Post, Banswara (South Sub Division), Dungarpur Division, Dungarpur.

.....Respondents

By Advocate : Ms. K.Parveen

Original Application No. 206/2013.

Girshar Lal s/o Shri Jawar Singh, aged about 34 years, b/c Gawariya (OBC) r/o Vill + Post-Malpura Bhopa Karapur, District Banswara, office address- working as GDSBPM under respondent No.4

.....Applicant

By Advocate: Mr. S.P.Singh

Versus

1. Union of India through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur
3. The Post Master General, Western Region, Jodhpur
4. Superintendent of Post Offices, Dungarpur Division, Dungarpur.
5. Inspector of Post, Banswara (South Sub Division), Dungarpur Division, Dungarpur.

.....Respondents

By Advocate : Ms. K.Parveen

Original Application No. 225/2013

Laleng Ninema s/o Shri Gulabji Nenema, aged about 37 years, b/c Bheel (ST), r/o Vill + Post-Sakariya, District Banswara, office address- working as GDSBPM under respondent No.4

.....Applicant

By Advocate: Mr. S.P.Singh

Versus

1. Union of India through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur
3. The Post Master General, Western Region, Jodhpur
4. Superintendent of Post Offices, Dungarpur Division, Dungarpur.
5. Inspector of Post, Banswara (North Sub Division), Dungarpur Division, Dungarpur,

.....Respondents

By Advocate : Ms. K.Parveen

Original Application No. 226/2013

Mani Lal Dabi s/o Shri Bemaji Dabi , aged about 45 years, b/c Bheet (ST), r/o Vill + Post- Malana, District Banswara, office address- working as GDSBPM under respondent No.4

.....Applicant

By Advocate: Mr. S.P.Singh

Versus

1. Union of India through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur
3. The Post Master General, Western Region, Jodhpur
4. Superintendent of Post Offices, Dungarpur Division, Dungarpur.
5. Inspector of Post, Banswara (North Sub Division), Dungarpur Division, Dungarpur.

.....Respondents

By Advocate : Ms. K.Parveen

Original Application No. 227/2013

Rup Lal Pargi s/o Shri Bharta Pargi, aged about 40 years, b/c Bheel (ST), r/o Vill + Post-Kajalia, District Banswara, office address- working as GDSBPM under respondent No.4

.....Applicant

By Advocate: Mr. S.P.Singh

Versus

1. Union of India through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur
3. The Post Master General, Western Region, Jodhpur
4. Superintendent of Post Offices, Dungarpur Division, Dungarpur.
5. Inspector of Post, Banswara (North Sub Division), Dungarpur Division, Dungarpur.

.....Respondents

By Advocate : Ms. K.Parveen

Original Application No. 228/2013

Man Singh Gehlot s/o Shri Amaba Lal Gehlot, aged about 51 years b/c Rajput, r/o Vill + Post-Chaupasa, District Banswara, office address- working as GDSBPM under respondent No.4

.....Applicant

By Advocate: Mr. S.P.Singh

Versus

1. Union of India through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur
3. The Post Master General, Western Region, Jodhpur
4. Superintendent of Post Offices, Dungarpur Division, Dungarpur.
5. Inspector of Post, Banswara (North Sub Division), Dungarpur Division, Dungarpur.

.....Respondents

By Advocate : Ms. K.Parveen

ORDER (ORAL)

Per Justice K.C.Joshi, M(J)

Since similar controversy of law and facts is involved in these OAs, therefore, they are being disposed of by this common order.

2. Brief facts, so far as relevant for decision in these cases, are that the applicants are working on the post of Gramin Dak Sevak Branch Post Master (GDS BPM) from different dates mentioned in the respective OAs i.e.

Applicant in OA No.195/2013 w.e.f. 19.4.1992

Applicant in OA No.196/2013 w.e.f. 30.4.1992

Applicant in OA No.198/2013 w.e.f. 27.4.1991

Applicant in OA No.205/2013 w.e.f. 29.12.1992

Applicant in OA No.206/2013 w.e.f. 20.3.1999

Applicant in OA No.225/2013 w.e.f. 28.3.1998

Applicant in OA No.226/2013 w.e.f. 19.7.1989

Applicant in OA No.227/2013 w.e.f. 16.3.1999

Applicant in OA No.228/2013 w.e.f. 6.7.1983

According to the applicants, in spite of serving for such a long period the respondents have not considered their cases for regularization. The applicants have averred that they are in possession of the requisite qualification for the post but the respondents did not consider the case of regularization as GDSBPM which is nothing but a glaring example of arbitrariness and colourful exercise of power and there is no cogent reason to deny the case of applicants. It is further averred that Annual Inspection Report clearly shows the workload as well as the work done by the applicants, and even the respondents admit that the applicants are working on the post of GDSBPM but neither the appointment letter is issued retrospectively nor the benefit of the post is granted. It is further averred that according to the ratio decided by the Hon'ble Apex Court in the case of State of Karnataka vs. M.L.Kesari and Ors. reported in 2010 (2) SCC (L&S) 826 the applicants are entitled for regularization because they have worked for more than ten years as substitute or on provisional basis. The applicants have also relied upon para 53 of the judgment of the Apex Court in the case of Secretary, State of Karnataka and Ors. vs. Uma Devi and Ors. reported in (2006) 4 SCC 1. Therefore, aggrieved of the inaction on the part of the respondents, the applicants have prayed for direction to regularize and issue appointment letters to them on the post of GDSBPM from the date of their initial engagement and also for a direction to consider them for appointment to the post of Group-D/Postman.

3. The respondents by way of reply have denied the right of the applicants and submitted that the applicants were never appointed

substantively as GDSBPM. According to the respondents, even though the applicants may have the requisite qualification for the post but they are not selected as per process of GDS Recruitment Rules, hence they are not eligible for appointment to the post of GDSBPM. It is further submitted that the ratio decided by the Hon'ble Apex Court as cited by the applicants is not applicable to the present case.

4. Heard both the parties.

5. The counsel for the applicants relied upon the judgment of the Hon'ble Apex Court in the case of M.L.Kesari (supra) and contended that the applicants are entitled for regularization because they have worked for more than ten years as substitute or on provisional basis. He further contended that in the case of M.L.Kesari while relying upon para 53 of the Uma Devi's case the Hon'ble Apex Court held that there is an exception to the general principles against regularization enunciated in Uma Devi's case, if the following conditions are fulfilled:-

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In order words, the State government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the persons employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointment are considered to be irregular.

6. The learned counsel appearing for the applicants further contended that in the case of M.L. Kesari (supra), it is further held that Uma Devi's case casts a duty upon the Government to take steps to regularize irregular employees who had put in more than ten years service without the protection of any interim order of courts or Tribunals before the date of decision in Uma Devi was rendered and considered for regularization in view of their long service as a one time measure. In Uma Devi's case it has been directed that such one-time measure must be set in motion within six months from the date of its decision rendered on 10.4.2006. In the above case the Apex Court further held that the object behind the said direction in Para 53 of the case is two fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals (before the decision in Umedevi was rendered) are considered for regularization in view of their long service. Second is to ensure that the department/instrumentalities do not perpetuate the practice of employing persons on daily wage/ad hoc/ casual basis for long period and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment.

7. Per contra, counsel for the respondents contended that the applicants were temporarily appointed without following the prescribed procedure, therefore, they have no right for regularization and the judgments cited by the applicants are not applicable in the present case.

7. Considered the rival contention of both the parties. In these OAs, some of the applicants have rendered service of more than 20 years and some have completed service of more than 10 years, therefore, in view of

the judgments cited by the counsel for the applicants, all the OAs are disposed of with the direction to the respondent department to consider the case of each of the applicants for regularization independently on its own facts as per the ratio decided by Hon'ble Apex Court in para 53 of Uma Devi's judgment and in the case of M.L. Kesari (supra) within a period of four months from the date of receipt of a copy of this order and if the applicants are found eligible as per the above ratio, the respondents shall also pay the arrears to the applicants, as due, for the three years prior to filing of the OAs and notional consequential benefits from the initial date of regularization.

8. All the OAs stand disposed of in above terms with no order as to costs. In view of the order passed in the OAs, no order is required to be passed in MA No.290/00126/14 and the same also stands disposed of accordingly.

[Meenakshi Hooja]
Administrative Member

[K.C. Joshi]
Judicial Member

COMPARED & CHECKED

CERTIFIED TRUE COPY
Dated...24/4/2014

अनुभाग अधिकारी (न्या.)
Section Officer (Judl.)
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
जोधपुर न्यायपीठ जोधपुर
Jodhpur Bench, Jodhpur.