

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 199/2013

Reserved on: 15.03.2016

Jodhpur, this the 30th day of March, 2016

CORAM

Hon'ble Ms. Praveen Mahajan, Administrative Member

Jitendra Vaishnav s/o Shri Ramesh Vaishnav, aged about 32 years,
R/o H.No.95, Subhash Colony, Jodhpur (Raj.) (worked as
Waterman at Jodhpur HO, Postal Department).Applicant

By Advocate: Shri S.P.Singh

Versus

1. Union of India through Secretary, Government of India,
Ministry of Communication, Department of Post, Dak
Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur-
302007.
3. The Post Master General, Western Region, Jodhpur
4. Senior Superintendent of Post Offices, Jodhpur Division,
Jodhpur
5. Senior Postmaster, Head Post Office, Jodhpur
6. Deputy Postmaster, Head Post Office, Jodhpur

.....Respondents

Neha

ORDER

This Original Application has been filed by the applicant u/s 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- a. That the impugned order vide Memo No.B2/CAT/Jitendra/2012 dated 6.9.2012 forwarded by respondent No.4 and impugned order vide Memo No.B1-1/10/Casual Labour/Rfg/10-11 dated 1.1.2011 forwarded by respondent No.5 may kindly be declared illegal, unjust and deserves to be quashed and set aside.
- b. The respondent may kindly be directed to regularize the service of applicant on Group-D post and all consequential benefits may kindly be granted in accordance with law.
- c. That any other direction or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- d. That the costs of the application may be awarded to the applicant.

2. Brief facts, as stated by the applicant, are that the applicant was initially appointed as Waterman on 21.08.2000 and the competent authority vide letter dated 17.01.2006 admitted that the wages are paid through Accounts Section and also issued experience certificate from time to time. The applicant moved an application to enhance his salary and the respondents have enhanced his salary vide letter dated 3.12.2007. The applicant has further stated that the respondents vide letter dated 18.10.2007

He also possesses the qualification of Matriculation and has licence of driving Motor Vehicle as well as computer knowledge. Further, the respondents have also, published a letter dated 27.01.2011 clarifying that 25% vacancies are to be filled up by appointment of Casual Labourers. The applicant has further stated that earlier he approached this Tribunal because the respondents did not consider his case for regularization and this Tribunal vide order dated 08.07.2011 has directed to consider his case for regularization within a period of two months, but nothing has been done. Thereafter the applicant has also filed OA No.230/2012, which was disposed of vide order dated 29.05.2015 (Ann.A/14) with direction to treat the OA as representation and after consideration take necessary action vide means of speaking order within two months. But the respondents vide order dated 06.09.2012 rejected the case of the applicant for regularisation of his services. In support of his averments, the applicant has also placed reliance on Para 53 of the judgment of the Hon'ble Supreme 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 action on the part of the respondents, the applicant has approached this Tribunal for the reliefs elaborated above.

worked as part-time contingency paid Waterman at Jodhpur H.O. on contingent allowance basis from 21.08.2000. He worked continuously as Part-Time Contingent Paid Waterman upto 23.10.2009 but willingly absented himself from the engagement for the period from 24.01.2009 to 25.05.2010. He remained absent from his engagement for 7 months and after that he approached respondent No.5 to allow him to join duties to the post of Part-Time Contingent Paid Waterman. This was allowed and he worked continuously upto 31.12.2010. The respondents have further stated that the applicant was discontinued/disengaged in compliance of Para (iii) of DG (P) letter dated 19.11.2010 w.e.f. 1.1.2011 as the applicant was not a Casual Labour but actually he was engaged to serve water to the officers/officials working in Jodhpur HO as Part-Time Contingent Paid Waterman. So far as engagement of the applicant is concerned, the officer who issued the order dated 17.01.2006 while working as Sr. Post Master, Jodhpur appointed the applicant as Part-Time Waterman from 21.08.2000 to 17.01.2006 and is personally responsible for the same, since post of the applicant was Part-Time Contingent and not a regular post. Further, the orders passed by this Tribunal dated 08.07.2011 and 29.05.2012 have already been complied with in true spirit. The respondents have further submitted that the ratio laid down by the Hon'ble Supreme Court in the case of Uma

not applicable to the facts and circumstances of the present case. The Hon'ble Supreme Court in that case as read with subsequent clarification judgment of the Hon'ble Supreme Court delivered in the case of M.L.Kesari held entitled to be considered for regularization to only those persons who have worked for more than 10 years as on 10.04.2006 (the date of decision in Uma Devi's case) without the protection of any interim order of any Court or Tribunal in vacant posts and possessing the requisite qualification. In the present case, the applicant has neither completed 10 years of service as on 10.04.2006 nor was he working against any vacant post as there is no sanctioned post of Waterman in the office concerned and, therefore, he is not entitled to regularization of his services in view of the judgment of the Hon'ble Supreme Court. Therefore, the respondents have submitted that the OA deserves to be dismissed.

4. The applicant has filed rejoinder reiterating the averments made in the OA and enclosing documents at Ann.A/19 to A/23.
5. After carefully considering the contentions of both sides, I find that the ratio of Uma Devi's case (cited supra) referred to by the applicant is not applicable to the facts and circumstances of the case. However, the respondents cannot get away by saying that the officer who issued the appointment letter to the applicant



that of a part-time contingent and was not a regular post. It has been admitted by the respondents that the wages were paid through Accounts Section and the competent authority also issued experience certificate to him from time to time. This is evident from the documents on record. The respondents have also enhanced the salary of the applicant (on his application) from Rs. 1700+ DA to Rs. 2550 + DA w.e.f. 01.03.2007. However, the employees have no enforceable right to be absorbed in a Government Department, hence no direction can be issued to the Government to make them permanent. However, wherever there are irregular appointments or/and employees have continued to work for more than 10 years, steps should be taken to post them on the places where daily wagers are currently being employed.

6. The respondents are, accordingly, directed to try and accommodate the applicant wherever daily wagers are now being employed. Such employment will obviously depend on availability of vacancies etc.

7. The OA stands disposed of in above terms, with no order as to costs.


(PRAVEEN MAHAJAN)
Administrative Member