

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.462/09

Wednesday this the 16th day of June 2010

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

M.Ayyanar,
S/o.Mayandy,
Contingent Employee,
Vandiperiyar Sub Office – 685 533.
Residing at Manchumala, R.B.T.Estate,
Lower Division, Vandiperiyar.

...Applicant

(By Advocate Mr.P Ramakrishnan)

V e r s u s

1. Union of India represented by its Secretary,
Ministry of Communications, New Delhi.
2. Postmaster General,
General Region, Kochi.
3. Superintendent of Post Offices,
Idukki Division, Thodupuzha.
4. Sub Postmaster,
Vandiperiyar, Idukki.

...Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC)

This application having been heard on 16th June 2010 this Tribunal
on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER


This is third round of litigation by the applicant seeking temporary
status. The applicant had first filed OA 936/00. His grievance in the said
OA was that while he was working for 7 ½ hours a day from 1992 onwards,



.2.

all of a sudden his working time was reduced to 272 minutes retrospectively and a sum of Rs.10056/- was recovered from him as excess paid wages. The other grievance was that the respondents were neither treating him as a full time casual labour nor were making any efforts to make him a full time labourer by combination of duties as provided for in the letter of Director General of Posts dated 30.11.1996. His further grievance was that since he had performed full time work during 1991-1992 for 240 days he is entitled to get the benefit of temporary status but that was denied to him. This Tribunal had vide Annexure A-2 order dated 2.9.2002 considered those grievances and held that the respondents could not be faulted for the recovery of the excess amount paid to him. As regards the grant of temporary status was concerned, this Tribunal after examining his case in detail held that the said claim was not tenable as the "Casual Labourer Grant of Temporary Status and Recruitment Scheme" came into force with effect from 29.11.1989 when he was not a full time casual labour and, therefore, no temporary status could be granted to him. However, this Tribunal held that he could legitimately claim full time employment by combination of duties including those attached to ED Posts and since he has been working as Part Time Casual Labour since 1988 he should be given the benefit of full time employment in terms of the aforesaid letter of the Director General of Posts dated 30.11.1996. The operative part of the said order was as under :-

"3. We have carefully gone through the pleadings and other materials placed on record and have heard Shri.Vishnu S Chempazhanthiyil, learned counsel for the applicant and Shri.T.A.Unnikrishnan, Additional Central Government Standing Counsel appearing for the respondents. That the



3.

PHED restored water supply w.e.f. 1.11.98 is not disputed by the applicant although the applicant has stated that despite that he had to carry water. We do not find any merit in that contention. Over-payment was made to the applicant despite the restoration of water supply of PHED was w.e.f. 1.11.98. Wages were paid to him monthly also for carrying water which he did not perform. The undeserved payments having noticed the respondents recovered the overpayment which cannot be faulted. The claim of the applicant for temporary status also is not tenable for when the scheme came into operation, the applicant was not a full time casual labourer. The only benefit the applicant can legitimately claim is one under Annexure A-5 which directs that effort should be made to give full time employment to casual labourers by combination of duties including that attached to ED posts. Since the applicant has been working as a part time casual labourer since 1988, the respondents have to give to him the benefit under Annexure A-5.

4. In the result, while declining to grant the other reliefs the respondents are directed to consider giving the applicant full time work by combination of duties including the duties of ED posts that may arise. No costs."

2. Thereafter, the applicant approached the respondent department vide representation dated 16.7.2007 requesting to reexamine his case for conferring temporary status as he was in full time employment in 1997. As the respondents have not taken any decision on the said representation, he again approached this Tribunal vide OA 107/08 and by Annexure A-8 order dated 26.2.2008 the respondents were directed to consider the said representation and dispose it of by a reasoned and speaking order. Accordingly, the respondents have issued the impugned Annexure A-9 order dated 27.6.2008 stating that they have considered the claim of the applicant that he was working as full time casual labour since 1997 in terms of the Directorate letter No.45-95/87-SPB-I dated 12.4.1991 and held that the temporary status would be conferred on the casual labourers in employment as on 29.11.1989, and who have rendered



.4.

continuous service of one year. Later, the Postal Directorate has clarified vide letter No.45/37/91-SPB-I dated 16.8.1991 that part time casual labourers are not covered under the Casual Labourers (Grant of Temporary Status and Recruitment) Scheme. Therefore, the applicant, being a part time casual labour, was not considered eligible for grant of the temporary status. They have submitted that the Apex Court in the case of Union of India and others Vs. Mohan Pal (JT 2002 (Suppl.1) SC 364 has also held that clause (IV) of the said scheme does not envisage it as an ongoing scheme and in order to acquire temporary status, the casual labourer should have been in employment as on the date of commencement of the scheme and should have also rendered a continuous service of at least one year. The respondents have, therefore, held that the applicant having not fulfilled the aforesaid condition is not entitled for grant of any temporary status.

3. The applicant has submitted that he has been appointed as a full time casual labourer with effect from 7.4.2004 and he is now entitled for temporary status. In this regard he has made Annexure A-5 representation to the 3rd respondent, namely, the Superintendent of Post Offices, Idukki Division, Thodupuzha. In reply to the said letter the 3rd respondent have issued to him the Annexure A-6 letter dated 11.7.2006 stating that one is entitled for temporary status only if he puts in more than three years of continuous service. The contention of the counsel for the applicant is that since the applicant has admittedly completed more than three years as a full time casual labourer with effect from 7.4.2004 the respondents ought to



.5.

have considered him for grant of temporary status in terms of the aforesaid Annexure A-6 letter dated 11.7.2006 of the 3rd respondent which is reproduced as under :-

DEPARTMENT OF POSTS, INDIA

Sri.M.Ayyanar,
Casual Labourer,
Vandiperiyar.

No.A/Casual Labourer/06 dated the 11.7.06 at Thodupuzha

Sub :- Temporary status – reg.

Ref :- Your letter dated 3.7.06

Temporary status is eligible if the official is put in more than three years of continuous service. So at present you are not eligible for temporary status.

Sd/-
Supdt. of Post Offices,
Idukki Division,
Thodupuzha – 685 584

4. We have heard Smt.AK Preetha on behalf of Shri.P Ramakrishnan for the applicant and Ms.Sheela on behalf of Shri.Sunil Jacob Jose,SCGSC for the respondents. This Tribunal has categorically held in OA 936/00 that the applicant was not entitled for grant of temporary status in terms of the Casual Labourers (Grant of Temporary Status and Recruitment) Scheme. The applicant cannot re-agitate the issue once again as the same is hit by principles of res-judicata. As regards the claim of the applicant for full time employment is concerned, admittedly the applicant has been given full time employment with effect from 7.4.2004 and he is continuing as such. Now the only question remains is whether the applicant is entitled for temporary status in view of the fact that he has been serving as a full time casual



.6.

labourer with effect from 7.4.2004 even though the counsel for the applicant has not produced any order based on which he can claim for temporary status. Counsel for the applicant has submitted that in terms of the Annexure A-6 letter of the 3rd respondent that the applicant is eligible for temporary status as he has already rendered more than three years of continuous service.

5. In view of the above position, we direct the respondents to consider the request of the applicant for grant of temporary status on the basis of the aforesaid Annexure A-6 letter dated 11.7.2006 issued by the 3rd respondent. However, we make it clear that if the aforesaid letter is not based on any rules, instructions issued by the respondent department, the applicant will not have any right for grant of any temporary status. In any case, the respondents shall consider the request of the applicant for temporary status in terms of the aforesaid Annexure A-6 letter and to inform him the position within two months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Dated this the 16th day of June 2010)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

asp