

**Central Administrative Tribunal
Ernakulam Bench**

OA No.581/2013

Friday, this the 20th day of June, 2014

CORAM

Hon'ble Mr. George Paracken, Member (J)

R.Radhamony, aged 53 years
W/o Gopinathan
Casual Mazdoor
Kottarakara Head Post Office.
Residing at Thailakshmi Bhavan
Neeleswaram P.O., Ezhukone, Kollam.

Applicant

(By Advocate : Mr. V.Sajith Kumar)

Versus

1. Union of India, represented by
The Secretary to Government of India
Department of Posts
New Delhi-110 001.
2. The Chief Postmaster General
Kerala Circle, Trivandrum-695 101.
3. The Senior Superintendent of Post Offices
Kollam Postal Division, Kollam-691 001.
4. The Post Master,
Kottarakara Head Post Office
Kottarakara-691506.

Respondents

(By Advocate: Mr.S.Jamal, ACGSC)

This application having been heard on 13th June, 2014, the Tribunal delivered the following order on 20/06/2014.

ORDER

In this Original Application, the applicant has sought a declaration that she is entitled to be considered as a full time Casual Mazdoor from 17.02.2009, ie the date on which Sr. Supdt of POs, Kollam Division permitted the IP Kottarakara to combine her duties with those of PTCL Cheppara and PTCL Pallickal-Kta. She has also sought a direction to the respondents to sanction and

disburse the benefits of a full time casual mazdoor by limiting her period of duty as 8 hours and grant all consequential benefits.

2. Brief facts: The applicant was selected for the post of Part Time Scavenger from among the candidates sponsored by Employment Exchange and was appointed in the Sub Record Office, Railway Mail Service, T.V.Division, Kottarakara with daily two hours work, with effect from 07.06.1984 vide order No.SRO/PF/R.Radhamony/PT/Scavenger/84 of the same date. Later, she was appointed as Part Time Sweeper with effect from 01.03.1993 with five hours of work daily. Again, the duration of work hours was further increased to 7.5 hours w.e.f. 01.07.1998. However, when there was a move to reduce the duration of work of the applicant by 1.5 hours for accommodating another individual as part time scavenger, she moved OA No.1711/98 before this Tribunal seeking a declaration that she is entitled to continue as full time sweeper/scavenger and entitled to the benefits of full time service w.e.f. 1.7.98 with all consequential arrears. On the basis of the order of this Tribunal dated 14.12.1998 in the aforesaid OA, the respondents maintained the status quo in respect of the working hours of the applicant. Thereafter, this Tribunal disposed of the OA vide order dated 17th April, 2001 with the following observations:-

"In the additional reply statement, the respondents have stated thus:

'As such the feasibility of adding the work hours of vacant part time scavenger post at Sub Record Office, Kottarakara with that of the work hours of the applicant will be examined.'

The learned counsel appearing for the applicant submitted that in the light of the said submission of the respondents the OA can be closed extending the interim order till the respondents take a decision.

On 14.12.98, status quo of the applicant as on that date regarding the working hours was directed to be maintained.

Accordingly, the Original Application is closed. Interim order will continue to be in force till the respondents take a decision in the light of what is stated in the additional reply statement."

3. Aggrieved by the delay in taking a decision in the matter by the respondents, the applicant filed a Contempt Petition No.7/2005 in the said OA but it was dismissed as withdrawn on 18.03.2005. However, by the Annexure

A2 order dated 14th July 2005, the respondents rejected the request of the applicant. The relevant part of the said order reads as under:-

"The above Original Application came up for final hearing before the Hon'ble CAT on 17.4.2001 and the Tribunal closed the Original Application with a direction that the interim order in the Original Application will continue to be in force till the respondents take a decision in the light of what is stated in the additional reply statement. The Hon'ble Tribunal has also directed that the status quo of the applicant on 14.12.1998 regarding the working hours should be maintained.

In humble obedience to the interim order of the Hon'ble Tribunal dated 14.12.1998, the status quo in respect of the working hours of the applicant was maintained.

The applicant submitted a representation dated 5.6.2001 to the undersigned requesting to consider her case sympathetically and pass necessary orders treating her as full time employee.

In the representation, she had stated that she entered in service as a part time sweeper SRO Kottarakkara with effect from 7.6.1984;

that she had been continuing as part time sweeper with effect from 1.3.1995 with 5 hours duty;

that the post of part time scavenger became vacant with effect from 13.3.1998 and SSRM examined the feasibility of combining both the post of part time sweeper and scavenger to provide full time employment;

that she had been engaged for duty of 8 hours (from 06.30 hrs to 14.30 hrs) with effect from 1.7.1998.

She further alleged that the proposal to take away 1 1/2 hours of work from her was to provide another person as part time scavenger.

Aggrieved by the delay in taking decision by the respondents, the applicant filed a contempt petition under no.7/2005 in OA 1711/98 against the respondents.

When the matter came up for hearing, the learned counsel for the petitioner submitted that he may be permitted to withdraw the contempt petition and the permission was granted. The contempt petition (civil) was dismissed as withdrawn on 18.3.2005.

I have considered the above representation and also the records and facts of the case in the light of the judgment of Hon'ble CAT. SRO Kottarakkara is a small unit under RMS 'IV' Division with 4 clerks. The total area of the office is only 2076 sq.ft. which includes cycle shed also. As per norms, the area prescribed for sweeping is 1250 sq. ft per hour. If this yardstick is applied, duty hours of the applicant for sweeping is to be reduced to 1 hr 40 mts. Moreover, there are only 3 toilets and 2 wash basins for scavenging and cleaning. Even if 15 mts per toilet for scavenging and 10 mts per wash basin for cleaning is allowed, the total hour per day comes to 1 hr 15 mts. Thus, in the present situation, both the



work (sweeping and cleaning) can be done within 5 hrs. Moreover, before 2.3.1992, the said applicant was doing sweeping twice daily since there were two sets (set/I and set/II) of Kottarakara Stg. With effect from 2.3.1992, Kottarakara Stg was converted into an outward Stg office only and is functioning with only one set. Hence from the date onwards, the work of sweeping is done only once a day causing reduction in the working hours of sweeping. Further a proposal for merging SRO Kottarakara with SRO Kollam is in active consideration of the department. Hence it is decided that there is no justification for combining the work of scavenging and sweeping at SRO Kottarakara by providing 7 1/2 hours duty to the applicant and the representation of the applicant to provide 7 1/2 hours duty and treating her at par with full time employee is rejected.

Accordingly the direction of the Hon'ble CAT in OA No.1711/98 to examine the working hours of the applicant is complied with."

4. Against the aforesaid order dated 14/07/2005 rejecting her request, the applicant filed OA No.586/2005 but it was dismissed vide order dated 6th July 2006. The operative part of the order reads thus:-

"The matter has been considered. The hours of work for the sweeper necessarily depend upon the extent of area to be covered. If according to certain norms, the time limit for Sweeper is prescribed and according to the respondents there is no justification for enhancement of the working hours, no legal right of the applicant got violated or denied. As such the application being devoid of merit and the same is dismissed. No costs."

5. Against the aforesaid order passed in OA 586/2005, the applicant moved the Hon'ble High Court of Kerala and vide judgment dated 10th July 2007 in W.P.(C) No.34176 of 2006, the High Court remanded the matter to this Tribunal to re-examine the whole issue afresh. The Hon'ble High Court observed thus:-

"Tribunal in our view has not considered the first relief, that is to quash Annexure A2 order as well as the third relief seeking a declaration that the petitioner is entitled to continue as full time sweeper/scavenger from 1/7/98. Second relief was considered by the Tribunal and was rejected."

6. In the above background, the parties in OA No.586/2005 were reheard and vide order dated 20th June 2008, the Tribunal disposed of the said OA having its relevant part as under:-

"4. When the case was heard after being remanded from the Hon'ble High Court, vide order dated 21-02-2008 it was observed that the office of S.R.O. Kottarakkara has been merged with SRO Kollam, consequent to which the applicant has been shifted to HPO at Kottarakkara, where she has been performing the duties as Part time Casual Labourer. The particulars contained

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in para 10 of Annexure A-2 having thus become less relevant, the respondents were directed to file a fresh affidavit containing the details of the area of the building wherein the applicant is presently performing duties, mainly, in respect of sweeping. Certain other attendant information were also called for in the said order.

5. *In compliance with the above said order, the respondents had furnished the requisite information through an affidavit. The information furnished is as under:-*

"It is submitted that the total sweeping area of Kottarakara HO wherein the applicant is at present performing duties is 837.85 M 2. Area in which the applicant is doing sweeping work at Kottarakara HO is 376.95 M2.

Shri Remanan, another Part Time Casual Labourer is also working at the same premises (Kottarakara HO) with a quantum of work of $7 \frac{1}{2}$ hours per day. No Part Time Casual Labourer is regularized in the recent past.

It is submitted that the total area in which the applicant is doing sweeping work is 376.95 M2. As per norms the area prescribed for sweeping is 118 M2 per hour. If this yard stick is applied duty hours of the applicant for sweeping is 3 hours and 10 minutes. In addition to the above the applicant is performing scavenging one bath room and 2 toilets. Even if 15minutes per toilet for scavenging and 15 minutes for cleaning one bath room is allowed the total hour per day comes to 45 mts. Thus in the present situation both the work sweeping and scavenging can be done within five hours. The present working hours of the applicant at Kottarakara HO is 5 hours.

6. Under the above circumstances, the Applicant's prayers in the Original Application are devoid of any merit and the Applicant is not entitled to get any of the reliefs sought for in the Original Application and the same is liable to be dismissed with cost to the Respondents. "

7. *The above details have not been refuted by the applicant.*

8. *Considering the facts and circumstances of the case, relief (d) is concerned, respondents shall take suitable action as per the provisions of especially the fact that there has been a change in the place of work of the applicant and that there is another Part Time Sweeper working therein, it is clear that there is not adequate work for the applicant to enable the respondents to convert her part time into full time or from reducing the working hours of the applicant. Since the other part time sweeper is doing the same job quantum wise, whatever benefits he is given, shall alone be admissible to the applicant. Consequently, the relief sought for, vide quashing of Annexure A-2, cannot be allowed. Again, since the work load is not that much as to warrant a full time job for the applicant, her relief vide © of para 8 extracted above is also not allowed. In so far as extant rules and while so taking such action, it be ensured that between the two part time scavengers no discrimination takes place. The decision of the Apex Court in respect of the entitlement of part time casual labourers for absorption etc., as discussed in the decision by the Apex Court in the case of Secy. Ministry of Communication vs Sakkubai, (1997) 11SCC 224 be kept in view. It is however, directed that should there be any necessity to engage any other part time worker to work in the same premises or nearby areas, the same be combined with the work of the applicant and it be seen whether the total work accounts for a full time casual labour job.*

9. *With the above observations, the O.A. is disposed of. No cost."*

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7. Thereafter, by the Annexure A-6 letter dated 23.09.2009, the respondents permitted IP Kottarakara to combine the applicant's duty with PTCL Kottarakara and PTCL Pallickal Kottarakara. The said letter reads as under:-

"Department of Posts India
Office of the Sr. Supdt of Pos, Kollam Division, Kollam 691 001
Ph.2742677, 2740278 Fax 2742677 email: sspkollam@gmail.com

To

IP
Kottarakkara

No.A/5

Dated at Kollam the 23.9.09

Sub: Implementation of CAT order in OA No.586/05 filed by Smt Radhamony.
Ref: Your letter No.KTR/PC/Contingent staff dated 25.8.09.

Please refer to the letter cited above. You are hereby permitted to combine the duties of Smt Radhamony PTCL Kottarakkara with PTCL Pallickal Kottarakara.

(Sd)
(Kuruvilla Varughese K)
Sr. Supdt of Pos

Copy to:-

1. Staff II Branch: "Full time status memo may be given to Smt Radhamony, PTCL Kottarakkara in order to implement the CAT order in OA 586/05 filed by her.
2. Postmaster, Kottarakkara
3. SPM Pallickal
4. Spare

(Kuruvilla Varughese K)
Sr. Supdt of Pos"

8. Thereafter, the 3rd respondent issued the Annexure A-7 letter dated 17/02/2009 to the IP, Kottarakkara permitting to combine the duties of the applicant with PTCL Cheppara along with PTCL Pallickal-Kta, and is also reproduced as under:-

"Department of Posts India
Office of the Sr. Supdt of Pos, Kollam Division, Kollam 691 001
Ph.2742677, 2740278 Fax 2742677 email: sspkollam@gmail.com

To

IP
Kottarakkara

No.A/5

Dated at Kollam the 17.2.09

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Sub: Combination of PTCL Cheppara with PTCE Kottarakkara Stg..
 Ref: Your letter No.KTR/PC/Con staff dated 30.11.09.

Please refer to the letter cited above. You are hereby permitted to combine the duties of Smt Radhamony PTCL Kottarakkara with PTCL Cheppara. Now she is also performing the PTCL duties of Pallickal-Kta.

(Sd)
 (Kuruvilla Varughese K)
 Sr. Supdt of Pos

Copy to:-

- 1..Staff II Branch: CAT order in OA 586/05 filed by Smt Radhamony is enclosed herewith for necessary action..
2. Postmaster, Kottarakkara
3. SPM Pallickal
4. SPM Cheppara
5. Spare

(Kuruvilla Varughese K)
 Sr. Supdt of Pos"

9. It is in the above background that the applicant has filed the present Original Application seeking the following reliefs:-

- (i) *To declare that applicant is entitled to be considered as a full time Casual Mazdoor from the date of issuance of Annexure A7 order with all consequential benefits.*
- (ii) *To direct the respondents to sanction and disburse the benefits of a full time Casual Mazdoor to the applicant by limiting her period of duty as 8 hours and grant all consequential benefits.*
- (iii) *Grant such other reliefs as may be prayed for ad as the Court may deem fit to grant, and*
- (iv) *Grant the cost of this Original Application.*

10. The respondents in their reply have stated that even after the combining the duties of various part-time positions, the total work load of the applicant comes to less than eight hours per day and therefore she has to be treated as Part Time Casual Labourer only. The work performed by the applicant is only sweeping and scavenging. These types of work are to be performed and completed in any post office in the morning hours only and that too before the commencement of office hours. Therefore, to that extent the work can be combined with nearby post offices. The duty hours of Pallickal Kottarakkara and PTCL Cheppara were calculated as 1 hour 12 minutes and 1 hour 4 minutes respectively. So even after combining the above duties, the total duty hours of



the applicant along with the 5 hours duty of Kottarakara HO did not make the applicant eligible for FTCL (Full Time Casual Labour) status. They have, therefore, contended that the OA is devoid of any merit and it is liable to be dismissed.

11. In paragraph 10 of the reply, the respondents have stated that as per the latest guidelines issued by the first respondent vide memo dated 19.11.2010 (Annexure R1), the work of sweeper and scavengers should be combined or the same should be outsourced wherever feasible. It was further directed that the duties of waterman, watch & ward, gardening, cleaning etc are now part of the duties assigned to MTS and the existing practice of engaging casual labourers shall be dispensed with, with effect from 01.12.2010. They have further submitted that the 6th CPC had recommended for upgradation of the cadre of Group-D to Group-C with designation "Multi Tasking Staff" (MTS for short). Consequent on this re-designation, MTS working in Post Offices, RMS Offices, Speed Post Centers, Administrative Offices and other offices in the Department have been prescribed the following additional duties:-

- (i) Maintenance of diary/dispatch/movement registers including entry in computer and physical maintenance of records.
- (ii) Submission of periodical statement of routine nature like absentee statement etc.
- (iii) Preparation and submission of indents with the approval of supervisor.
- (iv) Photocopying and sending of fax messages.
- (v) Delivery of Dak within and outside the building.
- (vi) Watch and ward/caretaker duties, opening and closing of rooms, general cleanliness and upkeep of section/unit/office including dusting of furniture, cleaning of buildings, rooms, fixtures, up-keep of parks, lawns, potted plants etc.
- (vii) Other non-clerical work in the section/unit.
- (viii) Driving of vehicles, if in possession of valid driving license.
- (ix) Sale of postage stamps/stationery, assistance in booking of registered/parcel and speed post articles, receipts and dispatch of mails including preparation of mail/registered/parcel lists, preparation of delivery lists for registered articles/money orders.

Further, in accordance with Annexur R1 instructions, some of the duties performed by Shri Remanan were re-allotted to the MTS working at Kotarakara

HO. Accordingly, a review of the duty hours of casual labourers of Kottarakara HO was carried out and the total duty hours of Kottarakara HO was found to be approximately 8 hours. Retaining the existing duty hours of the applicant ie five hours, the work of the remaining three hours was outsourced as per Annexure R1 order. Hence the averment of the applicant that she was overburdened with the work of five hours of her own and five hours of Sri Remanan was frivolous and baseless.

12. I have heard the learned counsel for the parties and perused the documents on record. Admitted fact is that the applicant has been working as a Part Time Casual Labourer (Scavenger) from 1984. Even after 30 years, she is still working in the same capacity. However, it is also a fact that the respondents have progressively increased her duty hours from the initial two hours to 7.5 hours of work w.e.f. 1/7/1998. Finally, after many rounds of litigation, the respondent (Sr. Supdt of Post Offices, Kollam) vide Annexure A-6 letter dated 23/09/2009 directed the IP Kottarakara to combine the duties of the applicant with that of PTCL, Pallickal Kottarakara. The said authority has also directed the Staff II Branch to give full time status to the applicant in implementation of this Tribunal's order dated 20th June 2008 in OA No.586/2005 (supra). The relevant part of the said order is repeated hereunder:-

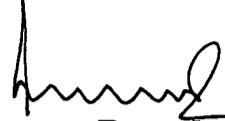
"It is, however, directed that should there be any necessity to engage any other part time worker to work in the same premises or nearby areas, the same be combined with the work of the applicant and it be seen whether the total work accounts for a full time casual labour job."

Instead of doing so, the respondents have arbitrarily reduced the working hours by outsourcing three hours' work which was to be assigned to her.

13. In the above facts and circumstances, I hold that on the basis of the respondents' letter dated 23/09/2009, the applicant should be treated as a Full Time Casual Labourer from the said date with all consequential benefits including pay and allowances. She shall also be paid the up-to-date arrears. The respondents shall implement the aforesaid directions by passing appropriate



orders appointing her as a Full Time Casual Labourer with effect from 23/09/2009 within a period of one month from the date of receipt of a copy of this order. There shall be no order as to costs.



(George Paracken)
Member (J)

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