

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.105/1997

MONDAY THIS THE SIXTH DAY OF OCTOBER, 1997.

CORAM:

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR.S.K.GHOSAL, ADMINISTRATIVE MEMBER

M.John Rose,
Temporary Status-Group 'D'
Head Record Office,
Railway Mail Service,
Trivandrum.

..Applicant

(By Advocate Mr.Thomas Mathew)

vs.

1. Senior Superintendent,
Railway Mail Service,
Trivandrum Division, Trivandrum.
2. Deputy Director,
Postal Accounts,
Trivandrum-695 010.
3. Chief Postmaster General,
Kerala Circle, Trivandrum.
4. Director General,
Department of Posts, New Delhi.

..Respondents.

(By Advocate Mr.K.S.Bahuleyan)

The Application having been heard on 9.9.1997, the
Tribunal on delivered the following:

O R D E R

HON'BLE SHRI S.K.GHOSAL, ADMINISTRATIVE MEMBER:

The applicant who has been granted the temporary status of a Group 'D' employee under the first respondent, i.e., the Senior Superintendent, Railway Mail Service, Trivandrum Division, Trivandrum has sought for a declaration that he may be considered as eligible for regularisation against a vacant post in Group 'D' in the

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office of the second respondent i.e. the Deputy Director, Postal Accounts, Trivandrum. He apprehends that the respondents may fill up the post ignoring his legitimate claim for regularisation even though he is fully entitled to be regularised in terms of the Scheme of the Ministry of Communication, Department of Posts, conveyed through the letter No.45-95/87-SBP-I dated 12.4.91 at R1(b)(hereinafter called "the Scheme" for short).

2. Initially the applicant had alleged that the 5th respondent who was another casual worker and who had been granted similarly a temporary status as a Group 'D' employee, but who was junior to him, was likely to be regularised against the vacant post mentioned above. Subsequently, however, in the light of the specific statement made on behalf of the respondents that the order, posting the 5th respondent to the said vacant post, has since been cancelled, the applicant has deleted the 5th respondent from the array of respondents.

3. The respondents have contested the relief sought by the applicant. However, they have specifically admitted in the reply statement that the applicant was granted temporary status of a Group 'D' employee w.e.f. 29.11.89 and that he has been treated on par with a temporary Group 'D' employee w.e.f. 29.11.92 and further that he is the seniormost temporary Group 'D' employee. The main ground advanced by the respondents while resisting the relief sought by the applicant is that in terms of the existing Recruitment Rules and those of the policy of the department framed and conveyed in the context of the same scheme for the grant of temporary status and regularisation of casual labourers, on which

the applicant has relied, the case of the applicant has to fail. It is because if a casual worker has to be considered for regularisation against a vacancy in Group 'D' post, which is outside the recruiting Division/Unit where he has been working, the policy of the Department prescribes that the ED(Extra Departmental) Agents will have to be given preference over such casual workers for appointment to such posts. This would be so, according to that policy, even if such ED Agents have not been working in the same recruiting Division or Unit, but have been working in a neighbouring Division or Unit. In this connection, the respondents have relied upon the clarification furnished by Govt. of India, Ministry of Communication, Department of Posts in their letter No.45/37/91-SPB-I dated 16.8.91(at R.1(B)) on certain points raised in the process of implementation of the scheme mentioned above. The respondents have also pointed out that in terms of the specific provisions of the recruitment rules called "Indian Posts and Telegraphs (Group 'D' Posts) Recruitment (Amendment) Rules,1989" prescribed under Article 309 of the Constitution, though the casual labourers working in the recruiting Division or Unit will normally enjoy precedence over ED Agents of neighbouring Divisions or Units, ED Agents of a neighbouring Division or Unit will have to be accommodated in preference to casual labourers, when there are no casual labourers, either full-time or part-time, working in the same recruiting division or Unit, for the purpose of appointment to a regular Group 'D' post. These recruitment rules have been annexed at R1(c) to the reply filed by the respondents.



4. At the time of hearing, learned counsel for the applicant has specifically drawn our attention to the provision of the scheme in paragraph 12 of the said scheme, i.e, R1(b). We reproduce below the said paragraph:

"12. Casual labourers may be regularised in units other than recruiting units also, subject to availability of vacancies."

On the other hand, learned counsel for the respondents has pointed out the provisions in paragraph 7 of the same scheme again at R1(b), which reads as follows:

"7. Conferment of Temporary Status does not automatically imply that the casual labourers would be appointed as a regular Group'D' employee within any fixed time frame. Appointment to Group'D' vacancies will continue to be done as per the extant recruitment rules, which stipulate preference to eligible ED employees."

5. We have carefully considered the pleadings in this case and heard the arguments advanced by the learned counsel on either side. The basic facts stated in the application have not been denied. However, as we have already noted, the respondents object to the grant of relief sought by the applicant for regularisation against the vacant post of Group 'D' employee on the ground that both in terms of the provisions of the scheme at R1(b) read with subsequent clarification in respect of the same scheme dated 16.8.91, also marked as R1(b), and those of the recruitment rules at R1(c), the relief of regularisation cannot be granted legally in favour of the applicant.



6. In our view there is doubtless some conflict between the provisions of paragraph 12 of the scheme vis-a-vis those of paragraph 7 of the same scheme, which we have quoted verbatim in a preceding paragraph. Further, we observe that there is a similar conflict between the provisions of paragraph 12 of the scheme and the provisions of Rule 2 of the Recruitment Rules at R1(c). It may be necessary at this stage to quote verbatim the relevant provisions of the recruitment rules at R1(c):

"By means of a test, as prescribed by the Director General, Department of Posts, from time to time, from amongst the categories specified and in the order indicated below. Recruitment from the next category is to be made only when no qualified person is available in the higher category.

- (i) Non-test category officials mentioned at Item II.
- (ii) Extra departmental agents of the Recruiting Division or Unit, in which vacancies are announced.
- (iii) Casual labourers (Full-time and part-time) of the Recruiting Division or Unit.
- (iv) Extra departmental agents of neighbouring Division or Unit.
Explanation- For Postal Division, the neighbouring Division will be the Railway Mail Service Sub Division and vice-versa.
- (v) Nominees of the Employment Exchange."

However, we are of the considered view that the overwhelming consideration that has to govern a decision in resolving the matter equitably will be to ensure that the basic purpose of the scheme is first achieved and to examine and interpret these provisions in the light of the specific purpose for which this particular scheme

was prepared by the department in compliance with the directions issued by the highest Court in the land, i.e., the Supreme Court of India.

7. We observe in this context that the scheme at R1(b) was prepared making special and beneficial provisions for the grant of temporary status and then regularisation in favour of the casual labourers and was accordingly promulgated, in compliance with the directive of the Supreme Court of India. We also find that thereafter the scheme was brought into effect which was admittedly subsequent to the coming into force of the relevant Recruitment Rules, here the Indian Posts and Telegraphs(Group D Posts) Recruitment (Amendment) Rules,1970. In these circumstances, we are of the considered view that the provisions of such a special and beneficial scheme must be deemed to have fused with the fabric of the Recruitment Rules. We are also convinced that while further interpreting the different provisions of such a scheme itself, the construction which is evidently in furtherance of the specific purpose for which the scheme has been prepared will be the best construction in the circumstances.

8. In that view of the matter, the provisions of paragraph 12 of the scheme, namely, that the casual labourers may be regularised against Group 'D' posts in units other than the recruiting units, where they are working, subject to availability of vacancies in such other units, should have effect, notwithstanding the provisions of paragraph 7 of the same scheme which says in general terms that while appointing casual labourers to

a regular Group 'D' vacancy, the existing recruitment rules which provide preference to eligible ED employees will still hold good. Any other interpretation, as we have pointed out above, will make the scheme unnecessarily and extremely restrictive and in effect completely take away the specific benefits conferred under that paragraph, i.e., para 12 of the scheme. According to us, that course of action is not permissible in law.

9. Further, if the scheme underlying the above provisions of the Recruitment Rules governing regularisation against a Group 'D' post is understood to mean that if a vacancy in the Group 'D' post arises outside that recruitment division or unit, where such a casual labourer has been working then, such casual workers lose all their priority. This is for the reason that after exhausting the category of ED Agents of neighbouring division or unit for appointment to such posts, the administration is obliged, in terms of these Recruitment Rules, to fall back on the nominees of the Employment Exchange. Such an interpretation of the Recruitment Rules would make the other specific and explicit provisions of paragraph 12 of the scheme, for grant of temporary status and regularisation to casual workers, completely nugatory. Therefore, a more harmonious interpretation of the provision of the Recruitment Rules and the provisions of the scheme which advances the spirit of the scheme has to be adopted, in the absence of an amendment to the Recruitment Rules in the wake of the scheme promulgated by the Government at the directive of the Hon'ble Supreme Court. Thus, according to us, when casual labourers of other recruiting units are to be considered for regularisation, as provided for in paragraph 12 of the scheme, they should have the same order of priority as casual labourers of the recruiting unit where



vacancies exist but immediately below the casual labourers of the same recruiting unit and above E.D. Agents of neighbouring division or unit. That is for the reason that the said paragraph 12 of the scheme specifically lays down that casual labourers may be regularised even against vacancies in units other than the concerned recruiting units, subject of course to availability of such vacancies.

10. In the event, we allow the application and issue directions to the respondents to treat the applicant as eligible for regularisation against the vacant post of Group 'D' employee in the office of the 2nd respondent, ie., the Deputy Director, Postal Accounts, Trivandrum, in the order of priority above the E.D. Agents of neighbouring division or unit. The respondents are directed to consider the applicant for regularisation against a Group 'D' post vacant in the office of the second respondent, giving him the benefit of the scheme as explained above and if he is otherwise found not unsuitable, to regularise him. Orders in this regard shall be issued by the concerned respondent within a period of three months from the date of receipt of a copy of this order. We make it clear that without considering the regularisation of the applicant along with the similarly situated casual labourer if any, the post or posts, shall not be filled by resorting to Rule 38 - Transfer. There will be no order as to costs.

Dated this the 6th day of October, 1997.


S.R. GHOSAL
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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LIST OF ANNEXURES

1. Annexure R1(B): A true copy of the Scheme Letter No.45-95/87-SPB-I dated 12.4.1991 issued by the Government of India, Department of Posts, New Delhi.
2. Annexure R1(C): A true copy of the Recruitment Rules No.66-82/87-SPB-1 dated 24.2.1989 issued by the Government of India, Department of Posts.

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