

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 451/2000 & O.A. No. 134/2001

THURSDAY THIS THE 27th DAY OF SEPTEMBER, 2001

C O R A M

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

O.A. No. 451/2000

1. C. RAJESH CASUAL LABOUR,
PASSPORT OFFICE, KOZHIKKODE
2. ANOOOP BABU CASUAL LABOUR,
PASSPORT OFFICE, KOZHIKKODE
3. KP BINDU CASUAL LABOUR,
PASSPORT OFFICE, KOZHIKKODE
4. SHEEJA T CASUAL LABOUR,
PASSPORT OFFICE, KOZHIKKODE
5. VIJY V CASUAL LABOUR,
PASSPORT OFFICE, KOZHIKKODE
6. REMLATH P CASUAL LABOUR,
PASSPORT OFFICE, KOZHIKKODE

..Applicants

By Advocate Mr. Shafik M.A.

1. DDI R/B SECRETARY
M/O EXTERNAL AFFAIRS
SOUTH BLOCK, NEW DELHI
2. CHIEF PASSPORT OFFICER & JS(CPV)
M/O EXTERNAL AFFAIRS SOUTH BLOCK,
NEW DELHI
3. PASSPORT OFFICER
KOZHIKKODE

By Advocate Mr. P. Vijayakumar, ACGSC

No: 134/2001

1. RADHAKRISHNAN E.K.
CASUAL LABOURER,
PASSPORT OFFICE
KOZHIKKODE
2. K.P. KRISHNANANDAN
CASUAL LABOURER,
PASSPORT OFFICE
KOZHIKKODE

Applicants

By Advocates Shri Shafik M.A., Shri Fayaz. M.A.,
Shri Shihabudin M.A. & Smt. Safiya Shafik

Vs

..2..

1. UOI R/B SECRETARY,
GOVT. OF INDIA
MINISTRY OF EXTERNAL AFFAIRS,
NEW DELHI

2. CHIEF PASSPORT OFFICER
AND JOINT SECRETARY,
MINISTRY OF EXTERNAL AFFAIRS
NEW DELHI

3. THE PASSPORT OFFICER
PASSPORT OFFICE,
KOZHICODE

By Advocate Mr. C. Rajendran, SCGSC

The Applications having been heard on 4.9.2001, the Tribunal delivered the following on 27.9.2001.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

As the issues involved in both the above Original Applications were similar, they were heard together and are disposed of by this common order.

2. The six applicants in O.A. No.451/2000 filed the said O.A. aggrieved by the refusal of the third respondent to continue their service as Casual Labourers at the Passport Office, Kozhikode even though their juniors were continued. According to them they were Casual Labourers doing the duties of Group-C and Group-D employees of the Passport Office wherein they joined as Casual daily rated employees during 1992 consequent to their sponsorship from the Employment Exchange after an interview. They had worked in the Passport Office at Kozhikode for a period of more than one year during 1992-93. The particulars of service of the applicants were as under:

1st applicant From 7.12.92 to .3.94
8.10.99 to 2.3.2000

IIInd applicant- From 1.1.93 to 6.12.93
18.10.99 to 2.3.2000

IIIrd applicant From 7.12.92 to 6.12.93
27.9.99 to 2.3.2000

IVth applicant From 7.12.92 to 6.12.93
22.11.99 to 2.3.2000

Vth applicant From 7.12.92 to 6.12.93
22.11.99 to 2.3.2000

Vith applicant From 2.3.92 to 7.11.94
8.9.99 to 2.3.2000

When the respondents took steps to terminate their services along with similarly situated casual labourers they approached this Tribunal in O.A. No. 2233/93 which was disposed of by this Tribunal directing the department to bring out a seniority list of casual labourers of all the three passport offices in Kerala State and to engage them from the said list in accordance with their seniority based on lengths of service. Government of India, Ministry of Personnel brought out a scheme annexed to A-3 OM dated 10.9.93 for granting temporary status to the casual labourers who were in service and had completed 240 days of service as on 1.9.93. According to the applicants, the benefit of the said scheme was not extended to them or any persons in the passport office Kozhikode. The applicants were again engaged during 1999. A-4 is true copy of the order dated 4.10.99 issued to the first applicant. Respondents had not taken any steps to grant temporary status to them inspite of the applicants being persons who had worked for more than the required 240 days of service and who were having the same even before their termination in 1993. They were asked not to come to the office w.e.f. 2.3.2000 without even giving them a written order in this behalf. According to the applicants the refusal of the respondents to confer temporary status to the applicants inspite of having the required service specified by the scheme was illegal, arbitrary and violative of the principles of natural justice. The services of the applicants were sought to be terminated for no apparent reasons at all. The reasons for the proposal to

terminate them had also not been disclosed. Even though the third respondent had taken up the matter with the second respondent for continuing the services of the applicants, immediately thereafter he had asked the applicants not to attend office without waiting for the response of the second respondent which was arbitrary, illegal and unwarranted. Applicants sought the following reliefs:

(i) To declare that the applicants are entitled to be conferred with the temporary status as per the Annexure A-3 scheme, since they have the requisite conditions specified therein and to direct the respondents to confer such temporary status to the applicants with effect from the date on which they completed 240 days of service.

(ii) To declare that termination of the services of the applicants in order to deny them the rights conferred by the Annexure A-3 scheme is illegal arbitrary and ab initio void and to quash any order (oral or written) or proceedings by which the applicant's services are sought to be terminated and to direct the respondents to reinstate the applicants in service with all consequential benefits.

(iii) To issue such other appropriate orders or directions this Hon'ble Court may deem fit, just and proper in the circumstances of the case.

(iv) To grant the costs of this Original Application.

3. Respondents filed reply statement resisting the claim of the applicants. According to them the claim of the applicants were time barred. Whereas the applicants were seeking the benefits under A-3 scheme, what the said scheme envisaged was a one time measure which was conferment of temporary status on casual labourers who were on employment on the date of the OM i.e. 10.9.93 and who had put in one years continuous service. The applicants were admittedly terminated w.e.f. 6.12.1993 by A-2 order. Thus the claims of the applicants made in this O.A. on 25.4.2000 i.e. after six years of their termination for protection under A-3 was clearly hit by limitation. Further, the applicants had approached this Tribunal with O.A. 258/2000 wherein they

challenged their disengagement and sought regularisation claiming protection of the judgment in O.A. 795/93 of this Tribunal in which O.A. the applicants themselves had admitted that pursuant to the judgment of this Tribunal in O.A. 795/93 and connected cases the Staff Selection Commission conducted an examination in the year 1994 and as most of the applicants did not have the necessary qualifying service to appear for the examination in the year 1994 they could not be regularised on that basis. The sixth applicant who alone was eligible though was permitted did not appear for the examination. Hence all the applicants were disengaged from casual service along with those who failed in the examination by A-2 order. Annexure A-3 scheme envisaged conferment of temporary status on casual labourers as a one time measure subject to the condition that the casual labourer must have been in employment on the date of the OM i.e. 10.9.93 and he must have rendered a continuous service of one year. Applicants 1 to 5 did not satisfy the conditions. In the case of the sixth applicant she voluntarily abandoned her services in the meanwhile as also she did not turn up for the examination. The fact that they did not challenge their non-conferment of temporary status any time earlier itself would show that they also originally did not consider themselves entitled for the same. Merely because applicants were again considered for engagement as casual workers would not confer any right for regular and continuous engagement nor would revive rights for conferment of temporary status. Since there was some arrears of work in Passport Office, Kozhikode, the third respondent was permitted to engage an additional work force of 10 casual workers for a limited period of six months only, to clear the arrears of work. Under the circumstances, for expeditious enlistment of workers applicants whose names figured in the

list of casual labourers prior to 6.12.1993 were also offered with the work instead of recruitment through employment exchange. Such engagement of casual workers was permitted strictly for a maximum period of six months and not beyond. Accordingly the arrears of work were cleared and the services of casual workers including the service of applicants were dispensed w.e.f. 1.3.2000. The applicants did not get any right to continue in service beyond the said period and on completing the limited work. The applicants have already been disengaged w.e.f. 1.3.2000. The Original Application was bereft of merits and was to be dismissed with costs.

4. Applicants two in number working as Casual Labourers in the Passport Office Kozhikode filed Original Application No. O.A. 134/2001 aggrieved by A-1 memorandum dated 23.1.2001 issued by the third respondent refusing to confer them with temporary status on the basis of A-5 scheme even though they had the requisite number of days of service in 1993 itself and also on the apprehension that they would also be terminated from service as had been done to other Casual Labourers. The applicants joined service of the respondents as casual daily rated employees during 1992 consequent on being sponsored by the employment exchange after an interview. When the respondents initiated steps to terminate the services of the applicants they along with another similarly placed candidate approached this Tribunal in O.A. 2233/93 which was disposed of by this Tribunal directing the respondents to bring out a seniority list of casual labourers of all the three passport offices in Kerala State and to engage the casual labourers from the said list in accordance with their seniority based on their lengths of service. The applicants continued upto 6.12.93 on which date they were terminated as per A-1 order dated 6.12.93. The applicants

were again engaged as per A-6 orders of the third respondent dated 7.9.99 consequent to which they were again engaged w.e.f. 15.9.99. Respondents had not taken any steps to grant temporary status to the applicants even at this time even though they had worked for more than 240/206 days of service even before their termination in 1993. When the applicants were asked not to come to office w.e.f. 2.3.2000 onwards, they approached this Tribunal by O.A. 280/2000 praying for a declaration that they were entitled to be conferred with temporary status as per A-5 scheme and for consequential reliefs. By A-8 order dated 4.7.2000 this Tribunal disposed of the O.A. directing respondents to verify the correct number of days of work and to take a decision on the question of granting reliefs to the applicants. In compliance with the said direction A-1 Memorandum was issued by the third respondent. Aggrieved by A-1, applicants filed this O.A. on similar grounds as raised by the applicants in O.A. No. 451/2000. Further it was submitted that the action to terminate their services without disclosing the reasons was only to deny their rightful claim to confer with temporary status. They sought the following reliefs:

- (i) To call for the records relating to Annexure A-1 to A-8 and to quash A-1 being illegal, arbitrary and violative of the rules relating to the subject
- (ii) To declare that the applicants are entitled to be conferred with the temporary status as per the Annexure A-5 scheme, since they have the requisite service and conditions specified therein and to direct the respondents to confer such temporary status to the applicants with effect from the date on which they completed 240 days of service.
- (iii) To declare that any proposal to terminate the services of the applicants in order to deny them the rights conferred by the annexure A-5 scheme is illegal arbitrary and ab-initio void and to quash any order or proceedings by which the applicants' services are sought to be terminated.

(iv) To issue such other appropriate orders or directions this Hon'ble Court may deem fit, just and proper in the circumstances of the case

(v) To grant the costs of this Original Application.

5. Respondents filed reply statement resisting the claim of the applicants raising pleas similar to the ones raised in O.A.451/2000. According to them the applicants were not eligible for grant of temporary status as they had not completed 240/206 days of work in terms of the instruction contained in A-5 scheme dated 10.9.93 and as per R-3(A) letter dated 3.2.98 of the DOPT. Further the service rendered after 10.9.93 could not be counted towards conferment of temporary status. According to them the first applicant had worked for 217 days and the second applicant had worked for 196 days the details being as in Annexure R-3(B). Further as the applicants had worked for only 4 and 5 days respectively in June, 1993 and the same constituted a clear break in their service and the criteria of continuous service stipulated in A-5 order dated 10.9.93 and further reiterated in R-3(A) U.O. dated 3.2.98 were not met by the applicants and therefore they were ineligible for conferment of temporary status. Ten Casual Labourers were engaged w.e.f. 15.9.99 for only a limited and restricted period of six months when these two applicants were also engaged and on completion of arrears of work all the casual labourers were disengaged w.e.f. 1.3.2000. However, the applicants were working on the strength of stay order granted by this Tribunal on 21.3.2000. There was no backlog of passport applications in Calicut office that would warrant services of casual labourers as alleged in the O.A. The O.A. was devoid of merits and is liable to be dismissed with costs.

6. Applicants filed rejoinder reiterating the points raised in the Original Application and also referring to the orders of this Tribunal in O.A. No. 54/97.

7. Heard learned counsel for the parties. Shri Shafik appearing for the applicants in both the O.As took me through the pleas taken in O.A. NO. 134/2001. Relying on the orders of this Tribunal in O.A. No. 481/2000, 985/95, 1117/97, 1523/97, 2233/93 and 56/94 he submitted that the applicants are entitled for the reliefs sought for in these two Original Applications. Shri C. Rajendran, SCGSC and Shri P. Vijayakumar, ACGSC appearing for the respondents in O.A. 134/2001 and 451/2000 respectively took me through the pleadings in the respective O.As and submitted that the Original Applications were liable to be dismissed.

8. I have given careful consideration to the submissions made by the learned counsel for the parties as well as the rival pleadings and have perused the documents brought on record.

9. I find that the applicants are relying on the "Department of Personnel & Training, Casual Labourers (Grant of Temporary Status & Regularisation) Scheme" sent as Appendix to the OM dated 10.9.93 (A-3 in O.A. No. 451/2000 and A-5 in O.A. 134/2001) - hereinafter referred to as the 'scheme' dated 10.9.93. The said scheme is also relied on by the respondents to deny the claim made by the applicants. In this context it is worthwhile to go through the scheme contained in this OM to find out as to whom the same is applicable. Paras 2, 3 and 4(i) of the scheme read as under:-

2. This scheme will come into force w.e.f. 1.9.1993.

3. This scheme is applicable to casual labourers in employment of the Ministries/Departments of Government of India and their attached and subordinate offices on the date of issue of these orders. But it shall not be applicable to casual workers in Railway, department of Telecommunication and Department of Posts who already have their own schemes.

4. Temporary Status.

(i) Temporary status would be conferred on all casual labourers who are in employment of the date of issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week.).

10. Referring to the scheme, this Tribunal in O.A. 54/97 in para 8 held as under:

8. The respondents have pointed out that most of the casual workers including the applicants will not be eligible for the scheme brought in to force by the Government of India w.e.f. 1.9.93 called "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993" in the light of further clarification furnished by the same Government of India Office Memorandum dated 12.7.94 which they have annexed to their reply at R-1(H). In fact on a number of earlier occasions this Bench has held that as long as the casual workers were originally sponsored by the Employment Exchange a fresh insistence on their being sponsored by the Employment Exchange once again at the time of consideration of their cases for regularisation against Group 'D' posts would not be necessary. On the scope of relaxation of age limit for the purpose of regularisation, the Government of India have clarified that for the purpose of grant of temporary status no age limit has been prescribed. It is, therefore, clear that the casual workers who satisfy the criterion of 240 days of 206 days of work as the case may be in a year in future, or if they have already done so, in the first instance will be eligible for the grant of temporary status as a Group 'D' employee, i.e. an unskilled worker. Thereafter, in conformity with the same Government of India scheme mentioned above, as amended from time to time they will have to be regularised against the vacancies in Group 'D' posts treating 2/3rd of the vacancies in Group 'D' posts reserved for such casual workers already conferred with the temporary status of Group 'D' employees. There cannot be, in our opinion, any different interpretation of the combined effect of the orders passed by this Bench in the three OAs referred to above in particular and the operation of the scheme of the Government of India, Department of Personnel and Training which became effective on 1.9.93 also mentioned above.

11. Again referring to para 4(i) of the scheme dated 10.9.93 this Tribunal in O.A. No. 1117/97 held as under:

8.1 It is evident from the above para that there is no stipulation that a casual labourer should have rendered a continuous service of 240 days. What is stated is that a casual labourer should have rendered a continuous service of at least one year and one year has been defined as at least 240 days of engagement in a year (206 days in case of offices observing 5 days week).

12. In the light of the provisions contained in the scheme as reproduced above and interpreted by this Tribunal in the above referred two Original Applications, in my view the conditions which are to be satisfied by casual labourers for conferment of temporary status can be stated as follows:

(i) They should have been in employment on 10.9.93

(ii) They should have rendered continuous service of atleast one year, the one year being defined as working for at least 240 days in the year (206 days in the case of offices observing five days a week).

13. What is required to be examined is whether the applicants in these two Original Applications fulfil the above condition in order to be eligible for being conferred with temporary status. But before doing so, as the respondents have raised a preliminary plea of limitation in O.A. No. 451/2000 regarding the claim of the applicants for conferment of temporary status, the same needs to be examined first.

14. No rejoinder was filed in O.A. 451/2000 by the applicants resisting the plea of limitation raised by the respondents. During the Course of the arguments, the learned counsel for the applicant drew my attention to the order

dated 4.7.2000 of this Tribunal in O.A. 280/2000 (A-8 in O.A. 134/2001) and submitted that in the light of what is held in paras 7 and 8 therein the plea of limitation is to be rejected. In para 7 and 8 in O.A. 280/2000 this Tribunal held as under:

7. The bar of limitation, raised by the respondents, is on the ground that the applicants cannot claim any benefit of the casual work they have done in the year 1992-93 after a period of 7 years. When the respondents say that the applicants cannot claim any benefit of the casual work done by them in 1992-93 after a period of 7 years, it implies that the applicants were approved casual labourers.

8. Though the services of the applicants were terminated as per A2 dated 6.12.1993, they were re-engaged admittedly and they continued on the strength of the re-engagement. Now the applicants are aggrieved by non-conferment of temporary status to them and also on account of the oral order of termination. According to the admitted case of the respondents, the services of the applicants they have terminated with effect from 1.3.2000. This OA was filed on the 10th of March, 2000. That being so, this OA cannot be held to be barred by limitation and is within time.

15. I have considered the rival submissions. I find that the reliefs sought for in the above O.A 280/2000 as stated in para 1 of A-8 order is as follows:

Applicants seek to declare that they are entitled to be conferred with temporary status as per A-3 scheme and that any proposal to terminate their service in order to deny them the rights conferred by A-3 scheme is illegal and liable to be quashed.

In the context of the reliefs sought for therein as reproduced above, this Tribunal has held that the OA was within time.

16. In the present Original Applications the reliefs sought include quashing of oral/written orders of termination and the direction to the respondents to reinstate the applicants. Thus the cause of action to approach this Tribunal through these O.As is the termination of services of the applicants on 1.3.2000 after their engagement in

September/October, 1999. In the above circumstances, the plea of limitation should be examined with reference to the benefits if any available to the casual labourers in the matter of termination once they are conferred with temporary status i.e. it should be examined as to whether conferment of temporary status will alter in any way the procedure for termination of services of casual labourers.

17. Para 7 of the scheme dated 10.9.93 reads as under:

7. Despite conferment of temporary status, the services of a casual labourer may be dispensed with by giving a notice of one month in writing. A Casual labourer with temporary status can also quit service by giving a written notice of one month. The wages for the notice period will be payable only for the days on which such casual worker is engaged on work.

18. From the above it is clear that the services of a casual labourer with temporary status can be terminated, but in such a case he is entitled for a notice of one month when his services are proposed to be terminated. The engagement of the applicants in these OAs in 1999 was by virtue of their earlier services in 1992-93 and by virtue of their names being included in the seniority list dated 3.4.95 prepared pursuant to the order of this Tribunal dated 5.4.94 in O.A. 2233/93 and other connected cases. Under such circumstances, I am of the view that the claim for conferment of temporary status revives when termination of services is contemplated or effected without such notice after a subsequent engagement i.e. to say it is a recurring cause of action and therefore this O.A. cannot be said to be barred by limitation. Further, the respondents had accepted the order of this Tribunal in O.A. 280/2000 in the matter of limitation. O.A. 451/2000 has also been filed under the same circumstances. In view of the above, I reject the plea of limitation raised by the respondents. At the same time I hold that if the

applicants succeed in their claim for conferment of temporary status they would be eligible for only those benefits for which they were eligible in relation to the subsequent engagement/termination i.e. those effected/contemplated in 1999/2000 in this case.

19. Now coming to the merits, I find that the applicants in both these O.As have admittedly been in service on 10.9.93 as seen from the service particulars given in the OAs. Respondents have not denied the same. Thus, the applicants are satisfying the first condition laid down in the scheme dated 10.9.93 and mentioned above. As regards the second condition I find from the averments in O.A. 451/2000 that except the sixth applicant all others had been appointed on 7.12.92 or later. This would indicate that they had not completed one year of service on 10.9.93 or even on 6.12.93 when their services were terminated. Similarly applicants in O.A. 134/2001 had also not completed one year on 10.9.93 as they were appointed only in November, 1992 as is evident from A-2 produced by the applicants in that O.A. However, they have completed one year on 6.12.93 when their services were terminated. In the light of the above factual position, the case of only the sixth applicant in O.A. 451/2000 and the two applicants in O.A. 134/2001 are only to be examined with regard to the reliefs sought for in these two Original Applications.

20. As far as the sixth applicant in O.A. 451/2000 is concerned, while it is a fact that she has completed 274 days as on 6.12.93 as per the seniority list of casual labourers dated 3.4.95 (Sl. NO. 164 in A-3 in O.A. 134/2001), the number of days she had put in as on 10.9.93 has not been given by the applicants or the respondents. To determine

whether she is entitled for conferment of temporary status from 1.9.93, the second condition of working at least for 206 days in one year prior to 10.9.93 is also required to be verified. The only information that can be culled out of A-3 in O.A. 134/2001 and the pleadings in O.A. 451/2000 is that she had worked for 274 days from 2.3.92 to 6.12.93. This is not sufficient to determine whether she satisfies the second condition and further even if she satisfies, the date from which she would be eligible for conferment of temporary status. As far as the applicants in O.A. 134/2001 is concerned the dates on which they were first engaged had not been indicated either by the applicants or by the respondents. However, I find from A-2 and R-3(b) that these two applicants had been engaged as Casual Labourers under the respondents for the first time in November, 1992 and they had put in 284 and 267 days respectively as on 6.12.93. In the absence of their dates of first engagement, it is not possible for this Tribunal to declare as to from which date they ~~would~~^{be} entitled for conferment of temporary status except to hold that prima facie they are eligible for conferment of temporary status under the scheme dated 10.9.93.

21. On examination of the orders relied on by the learned counsel for the applicants, I find that the dates of engagement of the applicants in O.A. 481/200, 1523/97 and 1117/97 were earlier than 10.9.92 i.e. they were in service for more than one year prior to 10.9.93 and the applicant in O.A. 985/95 belonged to the Postal Department and the said order does not have any applicability to the applicants herein as the OMs for conferment of temporary status on the casual labourers of P&T and Passport Departments are

different. Thus only the sixth applicant in O.A. 451/2000 is similar to the applicants in three of the OAs cited by the learned counsel for the applicants.

22. Respondents in O.A. 134/2001, in A-1 impugned order have referred to DOPT U/O No. 58/98 Estt(C) dated 3.2.98 kept at R-3(a) to reject the claim for conferment of temporary status on the applicants in the said O.A. The learned counsel for the applicants drew my attention to para 14, 15 and 16 of order dated 4.7.2000 in O.A. 280/2000 (A-8 in O.A. 134/01) and submitted that in the light of the said direction A-1 memorandum was liable to be quashed and the applicants were entitled for temporary status under the scheme dated 10.9.93. Paras 14, 15 and 16 of A-8 reads as under:

14. The learned counsel appearing for the applicants submitted as per A-3 scheme, temporary status could be conferred in the absence of the exact number of days put in by the applicant as on 10.9.93 I hold that this applicant is prima facie eligible for conferment of temporary status under the scheme dated 10.9.93. The exact date on which the temporary status is to be conferred is to be decided taking into account the factual position by the appropriate competent authority. The applicant in O.A. 985/92 belonged to the Postal Department and the said order does not have any applicability to the applicants herein as the OMs for conferment of temporary status on the casual labourers of P&T and Passport Departments are different. It is to be conferred on a casual labourer who was in employment on the date of issuance of the scheme and who has rendered a continuous service of 240/206 days in the year 1993. A-3 provides for conferment of temporary status on casual labourers provided the condition laid down therein is satisfied. The question here is purely factual whether the applicants have completed the requisite number of days as stipulated in A-3 scheme for conferment of temporary status. A-8 would go to show that applicants have worked for 284 and 267 days respectively from or immediately after 23.11.1992, till 6.12.1993, when read in the light of A-1. In O.A. 54/97, this Bench of the Tribunal has held that the casual workers who satisfy the criterion of 240 days or 206 days of work as the case may be in a year in future, or if they have already done so, in the first instance will be eligible for the grant of temporary status as a Group-D employee, i.e. an

unskilled worker. The factual aspect is to be ascertained with reference to the relevant records. As far as factual adjudication is concerned, in any event for the first instance, it is to be done by the administration.

15. Accordingly, the competent authority is directed to consider the case of the applicants for conferment of temporary status as per provisions of A-3 scheme and pass appropriate orders within two months from the date of receipt of a copy of this order. The interim order dated 21.3.2000 shall continue to be in force till orders are passed by the competent authority.

16. The Original Application is disposed of as above. No costs.

23. It is evident from the above that this Tribunal gave the directions as contained in para 15 above- i.e. to consider the conferment of temporary status on the two applicants in accordance with the scheme dated 10.9.93- in the light of what was held by this Tribunal in its order in O.A.54/97 which had been referred to in para 14. I have referred to the order of this Tribunal in O.A. 54/97 while laying down the conditions to be fulfilled by the casual labourers for conferment of temporary status under the scheme dated 10.9.93. After considering the factual position, I have also found that the two applicants in O.A. 134/2001 prima facie are eligible for conferment of temporary status under the scheme dated 10.9.93.

24. As regards R-3(a) U.O dated 3.2.98 relied on by the respondents to reject the claim of the applicants, I find that the same is a copy of the notes exchanged between the Ministry of External Affairs and the Department of Personnel and Training. On going through the said R-3(a) I find that the Administrative Officer CPV, Ministry of External Affairs had sought clarification of the Department of Personnel & Training Establishment (c) Section as to whether Casual Labourers engaged after 10.9.93 through Employment Exchange would also be eligible for conferment of temporary status on

completion of one year and the Desk Officer of the DOPT had replied the same stating that grant of temporary status was a one time affair and was available only to those Casual Labourers who were in service on the date of the notification of the scheme and have rendered 240 days or 206 days as the case may be on that date. As it is an admitted fact that the applicants in these two OAs had been engaged in 1999 by virtue of their service in 1992-93 pursuant to the common orders of this Tribunal in O.A. 2233/93 and other connected cases, I am of the view that the clarification given by the DOPT contained in R-3(a) U.O. dated 3.2.98 has no applicability in this case.

25. I have also held that even if a casual labourer is conferred with temporary status, in accordance with para 7 of [the scheme dated 10.9.93, the services of such a casual labourer with temporary status can be terminated but such a casual labourer is entitled for a notice of one month when his services are proposed to be terminated. Admittedly no such notice had been given to the applicants in these two OAs.

26. According to the respondents their engagement was only for a limited and restricted period. Applicants have not denied this averment of the respondents even though a rejoinder was filed by them in O.A. 134/2001 and in O.A. 451/2000 they have not filed any rejoinder at all. What I find from A-4 letter dated 14.10.99 produced by applicants in O.A. 451/2000 and A-6 letter dated 7.9.99 in O.A. 134/2001 that at the time of their engagement the applicants had been specifically advised that their engagement was for a limited

period. Moreover, from the pleadings in the two Original Applications, I find that the applicants were trying to persuade the Tribunal that there was necessity of continued engagement of casual labourers under the respondents. This leads me to hold that the applicants were fully aware that their engagement in 1999 was only for a limited and restricted period. When such is the case the termination cannot be said to be only for the purpose of denying the applicants the benefit of the scheme dated 10.9.93. Moreover, assessment of work load and the need or otherwise of engagement of casual labourers are areas of executive decision making, generally not susceptible to judicial review. In this case sufficient materials have not been produced before me to come to any conclusion regarding the need to engage/continue the casual labourers. Hence, there is no material to conclude that the termination of the service of the applicants as arbitrary and illegal.

27. In the light of the detailed analysis given above,

(i) I set aside and quash A-1 order dated 23.1.2001 in O.A. 134/2001.

(ii) I declare that two applicants in O.A.134/2001 prima facie are entitled for conferment of temporary status under the scheme dated 10.9.93.

(iii) I direct the second respondent in O.A.No. 134/2001 to consider the matter afresh and decide the dates from which the two applicants in O.A. 134/2001 would be entitled for conferment of temporary status in accordance with the scheme dated 10.9.93 as clarified in the foregoing paragraphs.

(iv) I declare that in O.A. No. 451/2000 no applicant is eligible for conferment of temporary status under the scheme ^{by virtue of their work in 1992-1993} dated 10.9.93 except the sixth applicant whose case needs to be further considered on the basis of factual position.

(v) I direct the second respondent to consider the case of the sixth applicant in O.A. 451/2000 for conferment of temporary status under the scheme dated 10.9.93 on the basis of the factual position as to whether she had worked for 206 days in a period of one year prior to 10.9.93 or between 10.9.93 and 6.12.93. If on consideration by the second respondent sixth applicant is conferred with temporary status, she shall be reinstated with all consequential benefits at par with her junior the second applicant in OA 134/2001. and

(v) I declare that any action taken by the respondents to terminate the services of the two applicants in O.A. 134/2001 other than in accordance with the provisions in the scheme dated 10.9.93 as null and void.

28. The two Original Applications O.A. Nos. 451/2000 and 134/2001 are disposed of as above with no order as to costs.

Dated the 27th September, 2001.

Sd/-
(G RAMAKRISHNAN)
ADMINISTRATIVE MEMBER

List of Annexures referred in these OAs

O.A. 134/2001

- A1 True copy of the memorandum No. 1(35)AD/KZD/93(Vol.III) dated 23.1.2001 issued by the 3rd respondent.
- A2 True copy of the call letter No.1(1)AD/KZD/91(Part-III) dated 17.11.92 is; sued by the 3rd respondent.
- A-3 True copy of the relevant extract of the seniority list of the casual labourers of the passport offices in Kerala prepared as per directions in OA 2233/93
- A-4 True copy of the order No. 1(35)AD/KZD/93 dated 6.12.93 issued by the 3rd respondent.
- A-5 True copy of OM No. 51016/2/90-Estt (C) dated 10.9.93 issued by the Ministry of Personnel, Public Grievances & Pensions
- A-6 True copy of the Order NO. 1(35)AD/KZD/93 dated 7.9.99 of the 3rd respondent.
- A-7 True copy of the representation dated 24.11.99 submitted before the second respondent.
- A-8 True copy of the judgment dated 4.7.2000 in OA 280/2000 of the Tribunal
- R-3A Photo copy of the order of M/o External Affairs
- R-3B Photo copy of the statement showing the number of days the applicants worked.

O.A. 451/2000

- A1 True copy of th call letter No. 1(16)AD/KzD/91 (Part III)(25) dated 1.12.92 issued to the first applicant.
- A2 True copy of the order No. 1(35)ADL/KZD/93 dated 6.12.93 issued by the 3rd respondent.
- A-3 True copy of OM NO. 51016/2/90-Estt(C) dated 10.9.93 issued by the Ministry of Personnel, Public Grievances & Pension.
- A-4 True copy of Order No. 1(35)AD/KZD/93 dated 4.10.99 of the 3rd respondent.
- A-5 True copy of the representation dated 11.1.2000 submitted before the second respondent.
- A-6 True copy of letter No. Viv/851/1/98 dated 21.1.2000 of the second respondent.
- A-7 True copy of the representation dated 24.11.99 submitted before the second respondent.

CERTIFIED TRUE COPY

Date

Deputy Registrar