

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.165/98

Friday this the 18th day of June,1999.

CORAM:

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

T.B.Abdul Jabbar, S/o.Bava, Aged 30 years,  
Driver, Office of the Superintendent,  
Narcotics Control Bureau, Thykadu P.O.  
Trivandrum-14, Residing at  
Thirunilath House, Edayakunnam,  
S.Chittoor P.O., Cochin-682027.

..Applicant

(By Advocate Mr.V.R.Ramachandran Nair)

vs.

1. Union of India represented by  
the Secretary, Department of Revenue,  
New Delhi.
2. The Director General,  
Narcotics Control Bureau,  
New Delhi.
3. The Zonal Director,  
Narcotics Control Bureau,  
C-3, A.Rajaji Bhavan,  
Basant Nagar, Madras-600090.
4. The Superintendent,  
Narcotics Control Bureau,  
Thykadu P.O.,  
Trivandrum-14.

..Respondents

(By Advocate Mr Govindh K.Bharathan, SCGSC)

The Application having been heard on 26.3.99, the Tribunal on  
18.6.99 delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant was initially engaged as a Casual Driver  
at the Cochin Regional Unit of the Narcotics Control Bureau  
during August,1991. While working as such, when the office was  
shifted to Trivandrum, the applicant was also transferred to  
Trivandrum and was continued to be engaged in the 4th  
respondent's office, where he is still continuing. Though the  
applicant has been continuously working since 1991 and has

completed more than 206 days in a year when the Scheme for Grant of Temporary Status and Regularisation dated 10th September 1993(Annexure A1) came into force , the claim of the applicant for grant of temporary status and regularisation is not being considered by the respondents. He submitted a representation on 8.2.95 (Annexure A2) to the second respondent claiming the benefit of temporary status and regularisation. The applicant states that in the year 1993 he has completed 237 days, in 1994 255 days, in 1995 347 days, in 1996 352 days and in 1997 279 days and that as the office in which the applicant is working is observing 5 days week, on completion of 206 days of service in a year, he is entitled to grant of temporary status, according to the Annexure A1 Scheme. As the applicant did not get any response to the Annexure A2 representation he followed it up with further representations dated 4.5.1995 and 5.2.1996 (Annexures A3 and A4). Finding no response he filed O.A. 861 of 1996 which was disposed of with a direction to the second respondent to give a speaking order on the representation. As the directions of the Tribunal in its order in the above O.A. was not complied with, the applicant made yet another representation dated 27.5.1997 (Annexure A6). The applicant thereafter filed O.A.No.1465/97, but as the second respondent had by then disposed of the representation(Annexure A2) by order dated 16.12.1997(Annexure A7) rejecting the claim of the applicant, the applicant withdrew O.A.No.1465/97 with liberty to file an Original Application challenging the order Annexure A7. In the impugned order Annexure A7, the claim of the applicant for grant of temporary status is rejected on the ground that in view of the


clarification given by the Department of Personnel in its letter dated 12.7.1994(Annexure A9) that the casual labourers not recruited through the Employment Exchange would not be entitled to be granted temporary status, the applicant who was not recruited through the Employment Exchange was not entitled to the benefit of temporary status. The applicant has therefore filed this application aggrieved by the Annexure A7 order and Annexure A9 clarification seeking to have the order as also the clarification set aside and for a direction to the respondents to grant the applicant temporary status with all consequential benefits in accordance with the provisions contained in the Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training O.M. dated 10.9.1993 and the Scheme promulgated thereunder and to consider him for regular appointment as Driver or failing which as a Group-D employee.

2. The respondents do not dispute the fact that the applicant commenced his service as Casual Driver with effect from 1991, that he had worked for number of days mentioned in this application continuously. The claim of the applicant for grant of temporary status and for consideration for regular absorption in service in terms of the provisions contained in the Annexure A1 Scheme is resisted by the respondents on the ground that the applicant having been appointed not through the Employment Exchange in accordance with the clarification contained in the letter of the Government of India, Department of Personnel and Training dated 12.7.1994 wherein it has been clarified that those casual labourers who were not recruited through the Employment Exchange, would not be entitled to the benefit of temporary status. The said clarification is sought to be justified on the ground that limiting the benefit of the scheme to those recruited through the Employment Exchange

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would be in consonance with the principles of Equality enshrined in Articles 14 and 16 of the Constitution and if those who are engaged otherwise than through the Employment Exchange in a pick and choose manner <sup>are conferred the benefit, that</sup> ~~would defeat the equality~~ of opportunity of unemployed persons.

3. I have carefully perused the pleadings and materials placed on record and I have heard at length the arguments of Sri V.R.Ramachandran Nair, the learned counsel of the applicant and Shri Govindh K.Bharathan, Senior Central Govt.Standing Counsel appearing for the respondents. That the applicant was engaged on daily wages as a Driver under the respondents from August 1991 onwards and that he had worked for number of days as mentioned in paragraph 3 of the Original Application are not denied by the respondents. It is not disputed by the respondents that if the applicant had been employed through the Employment Exchange, he would have become eligible for the benefit of temporary status under the scheme for grant of temporary status and regularisation of casual labourers brought into effect with effect from 10th September,1993(Annexure A1). The only ground on which the respondents resist the claim of the applicant for grant of temporary status and for consideration for appointment on a regular basis is that as the applicant was not initially sponsored by the Employment Exchange, he is not entitled to the benefit of the Scheme(Annexure A1) in view of the clarification issued by the Government of India, Department of Personnel & Training in its O.M.No.49014/2/93-Estt(C) dated 12.7.1994 (Annexure A9). In the O.M. dated 10.9.1993(Annexure A1) it has been stated that the guidelines in the matter of recruitment of persons on daily wages in the Central Govt. Offices issued by the Department of Personnel O.M. dated 7.6.1988 has been reviewed in the light of the judgment of the Central Administrative Tribunal, Principal Bench, New Delhi in Rajkamal and others vs. Union of India and it had been decided that while the



guidelines contained in the O.M. dated 7.6.88 would continue in engagement of casual mazdoor, to be followed / the grant of temporary status to the casual employees who were currently working and had rendered one year of service in the Central Government Offices, should be regularised according to the Scheme appended. Paragraph 2 of the Scheme reads as follows:

"This Scheme will come into force with effect from 1.9.1993."

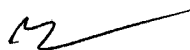
Paragraph 3 reads as follows:-

"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 Railways, Department of Telecommunication and Department of Posts who already have their own schemes."

Sub-para (i) of paragraph 4 reads as follows:

"Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this O.M. 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)."

Nowhere in the scheme or in the O.M. there is a requirement that the casual labourers who were in service as on 1.9.1993 and have rendered one year of continuous service, should have been initially recruited through the Employment Exchange. Further, in the O.M. it has been mentioned that the scheme was promulgated on a review of the extant instructions pursuant to the decision of the Principal Bench of the Central Administrative Tribunal in Rajkamal and others vs. Union of India. In the judgment of the Principal Bench of the Central




Administrative Tribunal in Rajkamal and others vs. Union of India at paragraph 21, it has been observed as follows:-

"The fact that some of them may not have been sponsored by the Employment Exchange should not stand in the way of their absorption. Similarly they should not be considered ineligible for absorption, if at the time of their initial engagement they were within the prescribed age limit."

Since the scheme for grant of temporary status and regularisation(Annexure A1) was evolved on the basis of the directions of the Tribunal in Rajkamal vs. Union of India, it is idle for the respondents to contend that casual labourers who were not recruited through the Employment Exchange, would not be entitled to the benefit of the Scheme because the Tribunal had specifically mentioned in its judgment at paragraph 21 quoted above that the fact that some of the casual labourers had not been sponsored by the Employment Exchange, should not stand in the way of their absorption. It was taking note of this direction of the Tribunal as also the instructions in the guidelines in the matter of recruitment of persons on daily wages etc. contained in the O.M. dated 7.6.88 that the policy was further reviewed and a Scheme was introduced with effect from 1.9.93 deciding to grant temporary status to the casual labourers who were currently employed and had rendered one year of continuous service in the Government on the date of commencement of the Scheme, namely 1.9.93. While this is so, by a clarification issued on 12.7.1994 by the O.M. No.49014/2/93-Estt(C) (Annexure A9), the benefit of grant of temporary status and regularisation cannot be validly denied to the casual labourers who were currently employed and had rendered a continuous service of one year

on 1.9.93 for the reason that they had not been initially recruited through the Employment Exchange, for such a requirement was not there in the scheme. A condition which was not there in a scheme, cannot be later introduced by way of a clarification especially when the scheme was promulgated in obedience to the directions of the Tribunal in Rajkamal's case which include that the benefit of absorption should not be denied to the casual labourers on the ground that they were not initially sponsored by the Employment Exchange.

4. In Excise Superintendent, Malkapatnam, Krishna Distt, A.P. vs. K.B.N. Visweshwara Rao and others, 1996(6) SCC 216, the Apex Court has held that limiting the field of choice for appointment only to the nominees of the Employment Exchange would not be in consonance with the equality provisions enshrined in Articles 14 and 16 of the Constitution and that alongwith the nominees of the Employment Exchange if others who had applied direct were also considered for selection and appointment, the action cannot be held illegal. Here the respondents themselves have engaged the applicant on casual basis in the year 1991 and the applicant continued uninterruptedly. Under these circumstances, to deny to the applicant the benefit of the scheme for grant of temporary status and regularisation on the ground that he was not initially sponsored by the Employment Exchange, is illegal and unjustified. The clarification contained in Annexure A9 O.M. dated 12.7.1994 that "since it is mandatory to engage casual employees through employment exchange, the appointment of casual employees without employment exchange is irregular. Hence such casual employees cannot be bestowed with temporary status" is unsustainable in law inasmuch as it is against the directions of the Tribunal in Rajkamal's case, pursuant to which the scheme (Annexure A1) was evolved.



5. In the light of what is stated above, I allow this application, set aside Annexures A7 and A9 and direct the respondents to grant the applicant temporary status with effect from 1.9.93 on which date he had rendered more than 206 days of continuous service with all consequential benefits and to consider him for regular absorption as a Driver or on a Group-D post in his turn, The order granting the applicant temporary status shall be issued and the consequential benefits given to him within a period of two months from the date of receipt of a copy of this order. There is no order as to costs.



A.V. HARIDASAN  
VICE CHAIRMAN

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List of Annexures referred to in the Order:

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| 1. | Annexure A1 | True copy of the O.M.No.51016/2/90-Estt. dt.10.9.93 of Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training. |
| 2. | Annexure A2 | True copy of the representation dated 8.2.95 submitted by the applicant to the 2nd respondent.   |
| 3. | Annexure A3 | True copy of the representation dated 4.5.1995 submitted by the applicant to the 2nd respondent.   |
| 4. | Annexure A4 | True copy of the representation dated 5.2.1996 submitted by the applicant to the Director, Narcotics Control Bureau, Madras.   |
| 5. | Annexure A6 | True copy of the representation dt.27.5.97.  |
| 6. | Annexure A7 | True copy of the Order No.F No.II/5(5)/96-Estt.dated 16.12.97 issued by the 2nd respondent.  |
| 7. | Annexure A9 | True copy of the Department of Personnel and Training OM No.49014/2/93-Estt(C) dt. 12.7.1994.  |