

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.18/03

Friday this the 6th day of February 2004

C O R A M :

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.H.P.DAS, ADMINISTRATIVE MEMBER

P.Satheeshkumar,
S/o.Prabhakaran,
Chowkidar, Office of the
Assistant Defence Estates Officer,
Thiruvananthapuram - 14.

Applicant

(By Advocate Mr.Vishnu S Chempazhanthiyil)

Versus

1. Assistant Defence Estates Officer,
Vellayambalam, Thiruvananthapuram.
2. Principal Director,
Defence Estates,
Southern Command, Pune - 1.
3. The Director General,
Defence Estates, West Block-IV,
R.K.Puram, New Delhi - 66.
4. Union of India represented by
its Secretary, Ministry of Defence,
New Delhi.

Respondents

(By Advocate Mr.P.M.M.Najeebkhān,ACGSC)

This application having been heard on 6th February 2004
the Tribunal on the same day delivered the following:


O R D E R

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

The applicant was initially engaged as a Casual Chowkidar in the Office of the 1st respondent by Annexure A-1 order. Although initial appointment was for a period of six months the applicant was continued with artificial breaks of one or two days. The initial payment to the applicant was made at the rate of Rs.25 per day, later it was enhanced to Rs.1700 and then to Rs.3647.p.mThe applicant submitted a claim for grant of temporary status and regularisation pursuant to the Casual Labour grant of

Temporary Status and Regularisation Scheme evolved by the Department of Personnel and Training by order dated 10.9.1993 and the applicant applied for regularisation on 20.6.1994. The case of the applicant and another part time Sweeper was taken up for the grant of benefit under the scheme by the 1st respondent vide letter dated 20.1.1995. However the applicant did not get any response to his representation. The applicant again submitted a representation to Director General, Defence Estates, New Delhi on 6.11.1995 claiming temporary status and regularisation which also remained unanswered, although the same was forwarded by the 1st respondent vide his letter dated 11.12.1995 (Annexure A-4). While so, coming to know that the office of the Assistant Director Estates Officer, Thiruvananthapuram was to be merged with the Assistant Director Estates Officer, Cochin as is mentioned in Annexure A-13 order the applicant has filed this application apprehending that he would be thrown out of employment and his claim for temporary status and regularisation would not be considered, for a declaration that he is entitled to be conferred with temporary status under Annexure A-11 and for a direction to the respondents to confer temporary status on him and to deploy the applicant in an appropriate post under the respondents elsewhere in case of winding up of the establishment of the 1st respondent as also to consider Annexure A-12 representation addressed to the 3rd respondent.

2. The respondents resist the claim of the applicant on the ground that the applicant having been engaged only as a part time Chowkidar and as his candidature was not sponsored by the Employment Exchange he is not entitled to be granted temporary status or regularisation in accordance with the scheme for grant




of temporary status and regularisation (Annexure A-11). They further contend that the claim of the applicant for regularisation has been answered by Annexure R-3 order dated 12.1.1996.

3. The applicant has produced all the documents in his possession to show that his engagement has not been as a part time casual labour but only as a sole Chowkidar. The applicant filed an M.A.967/03 for a direction to the respondents to cause the production of a letter from the Ministry of Law and Justice in which he alleged that it was advised that the applicant was to be granted temporary status and alternate employment. As the M.A. was allowed the respondents have produced an advise memo/DE letter dated 15.9.2003.

4. We have perused the entire material on record including the DE letter referred to above and heard Shri.Vishnu S Chempazhanthiyil, learned counsel of the applicant and Shir.P.M.M.Najeebkhan,ACGSC. The counsel of the applicant also stated that since Feb.2003 the applicant is not being engaged.

5. The questions that arises for consideration are (i) whether the applicant is a full time casual labourer as averred by the applicant or a part time casual labourer ? (ii) if the applicant is a full time casual labourer, is he entitled to the benefit of the scheme for grant of temporary status and regularisation evolved by the Ministry of Personnel, Public Grievances and Training and (iii) what relief the applicant is entitled?

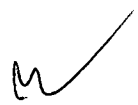


6. On the first point the learned counsel of the applicant invited our attention to Annexure A-1 order by which the applicant was initially engaged for six months which shows that the engagement of the applicant was only as a Chowkidar with no mention that it was on a part time basis. Learned counsel further invited our attention to Annexure A-2 the letter from the 1st respondent to the Director, Defence Estates, HQ. Southern Command taking up the case of the applicant, a Chowkidar and also of a part time Sweeper for grant of temporary status and regularisation and argued that in the case of Sweeper, "Part Time" was specifically mentioned, the applicant, if he was a part time Chowkidar, that also would have been specifically mentioned. Then the counsel referred us to Annexure A-5 order by which the applicant's remuneration was fixed at Rs.1700 per month and Annexure A-6, Annexure A-7, Annexure A-14 and Annexure A-15 fixing his remuneration as Rs.3647 p.m. wherein the applicant was described only as Chowkidar and not as part time Chowkidar. The counsel then invited our attention to the Attendance Register Annexure A-8, Annexure A-9 and Annexure A-10 where against the applicant's name the designation is shown as Chowkidar whereas in the case of Smt.Omanakrishnan Kutty "Part-time Sweeper" was mentioned. Relying on these documents the learned counsel argued that the contention of the respondents that the applicant is a part time Chowkidar is neither true nor sustainable. He further invited our attention to the affidavit filed by E.K.Janardanan and P.Suresh Babu (Annexure A-19 and Annexure A-20) in which they have shown that the applicant had been posted as the sole Chowkidar and has been working from 5:30 P.M. to 9:00 A.M. Learned counsel for the respondents on the other hand referred to Annexure R-2 order by which sanction was accorded for creation of

M ✓

a post of a part time Chowkidar and argued that since appointment has been made under this authority the appointment of the applicant could have been treated only as part time. We are unable to agree with this argument of the learned counsel for the respondents. The Annexure R-2 was never brought to the notice of the applicant nor reference has been made to it in any of the orders issued to him. In all the orders by which the applicant's engagement was periodically extended there is no reference to Annexure R-2 or to the fact that the appointment was of a part time nature. From the preponderance of probabilities of this case that the office does not have any other Chowkidar would show that the applicant had been the sole Chowkidar and he was working from 5:30 P.M. to 9:00 A.M. The Exhibits Annexure A-6, Annexure A-7, Annexure A-14 and Annexure A-15 show that he has been paid wages as if he has been working full time and not on hourly basis. Further in the Attendance Register Annexure A-8 to Annexure 10 while against the designation of Sweeper "part time" is specifically mentioned in the case of the applicant he has been described only as Chowkidar. We are convinced by these preponderance of probabilities that the contention of the respondents that the applicant is not a full time Chowkidar but only a part time is far from truth and is not sustainable.

7. The next question is whether the applicant would be entitled to any benefits under Annexure A-11 scheme. We have found that the contention of the respondents that the applicant is a part time Chowkidar is not tenable. The learned counsel for the respondents argued that since the applicant was not sponsored by the Employment Exchange he would not be entitled to the benefit of the scheme for grant of temporary status and



regularisation (Annexure A-11). We have gone through the Annexure A-11 in full. No distinction is made between the casual labour sponsored by the Employment Exchange and not sponsored by the Employment Exchange for the benefit of temporary status and regularisation. The requirement under the scheme is that temporary status would be conferred on casual labourers who have been currently in engagement from the date of commencement of the scheme and have completed 240 days of service. Admittedly the applicant who was engaged and had already completed more than 240 days since the first year of engagement. Even if the appointment of the applicant on 16.9.1988 was not through Employment Exchange as there is no case for the respondents that he had a backdoor entry and as the applicant has been allowed to continue, and since the Apex Court has in Excise Superintendent Malkapatnam Vs.K.B.N.Visweshwara Rao & Ors. reported in (1996) 6 SCC 216 held that appointment of a person who has directly applied cannot be held to be illegal, we are of the considered view that the applicant by continuing in service has become entitled to the benefit of the scheme. Therefore we are of the considered view that the applicant is entitled to the grant of temporary status and regularisation under the scheme.

8. The applicant has since been disengaged from Feb.2003 on account of the merger of the Office of the Assistant Defence Estate Officer, Thiruvananthapuram with the office in Cochin. The applicant is a casual labour who commenced his service in the year 1988 and he is entitled to be conferred temporary status and eventual regularisation on a Group D post, on account of the merger of the two offices, the post of Chowkidar in the office of ADEO, Thiruvananthapuram had become non est and presently the

✓

applicant is out of job. It is seen from the DE letter dated 15.9.2003 issued from the Ministry of Law and Justice, Department of Legal Affairs that the applicant is entitled to get temporary status and in case the office or the department being wound up he would be entitled to get alternative employment. We are also convinced that the applicant who has attained temporary status though not conferred by a specific order is entitled to be accommodated in alternative employment in any office under the 3rd respondent presently as temporary status attained casual labour and then be considered in his turn for regularisation in a Group D post.

9. In the result the application is allowed. We declare that the applicant is to be conferred with temporary status under Annexure A-11 with effect from the due date and direct the respondents to confer temporary status on applicant with effect from 10.9.1993 to deploy him as such in any office under the 3rd respondent and to consider the applicant for absorption on a Group D post in his turn. The order deploying the applicant as a temporary status casual labour shall be issued as expeditiously as possible at any rate within a period of three months from the date of receipt of a copy of this order. No costs.

(Dated the 6th day of February 2004)


H.P.DAS
ADMINISTRATIVE MEMBER


A.V.HARIDASAN
VICE CHAIRMAN

asp