

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 180/2006

Dated Tuesday the 27th November, 2007

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

P.U. Ammini W/o PO Ukkuru
Contingent Employee
Kunnamkulam Post Office
Kunnamkulam
residing at Palangil House
Near Senor Ground, Kunnamkulam PO

Applicant

By Advocate Mr. G. Sasidharan Chempazhanthiyil & Vishnu
S. Chempazhanthiyil

Vs.

- 1 PostMaster
Kunnamkulam PO
Kunnamkulam
- 2 Senior Superintendent of Post Offices
Trissur Division, Trissur
- 3 Postmaster General
Central Region, Kochi-18
- 4 Union of India represented by its Secretary
Ministry of Communications,
New Delhi.

Respondents

By Advocate Mr. George Joseph, ACGSC

O R D E R

HON'BLE MRS SATHI NAIR, VICE CHAIRMAN

The applicant is working as a Contingent Employee under the
first respondent. She commenced service as a Part-time Casual

Labhourer (PTCL for short) on 25.2.1981 and she was allotted six hours work per day. Subsequently the hours of work was revised to three hours 45 minutes per day and another PTCL working in the same office was given work for the same period. This arrangement continued for several years. Instructions existed in the department for combination of duties to make a PTCL a Full Time Casual Labourer and since there was no action on the part of the respondents in the matter, she approached this Tribunal in O.A. 824/02 which was disposed of with a direction to the first respondent to reconsider the entire matter in the light of Annexure A-2 letter of Director General of Posts (DGP for short) advising extension of the benefit of full time employment to the PTCLs. However, the respondents in purported compliance of the directions have issued the impugned orders at Annexures A-4 and A-5. The applicant has averred that by Annexure A-5 order the respondents only fixed the working hours of the applicant as follows:

7 a.m. To 11.a.m.	4 1/2 hours
3 p.m. To 6 p.m.	3 hours
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	7 1/2 hours

and by the above fixation the applicant still remained a part-time employee. Hence this O.A. seeking the following reliefs:

- (1) Call for the records leading to the issue of Annexure A-5 and set aside the same to the extent the same does not provide for 1/2 hour lunch break whereby the applicant is denied the benefit s as a full time contingent employee.

(2) Call for the records leading to the issue of Annexure A-4 and set aside the same to the extent the same does not treat the applicant as a full time employee.

(3) Declare that the applicant is entitled to have her working hours fixed taking into account ½ hour lunch break and direct the respondents to extend to her all the benefits including payments due as a full time employee and consequential benefits like mandatory weekly paid off.

(4) Direct the respondents to treat the applicant as full time contingent employee w.e.f. 1.4.2005 and grant her all the consequential monetary benefits.

(5) Any of of other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.

(6) Award the cost of these proceedings.

2 The respondents have filed reply and additional reply statements. They have submitted as follows:-

During 1981 the Kunnamkulam Head Post Office was functioning in two buildings and for sweeping and cleaning of these two buildings two Sweepers were engaged. Smt. P.U. Ammini the applicant was working as a Part-time Contingent staff in one of the buildings and her daily duty hours had been fixed as six hours. Subsequently w.e.f. 29.1.1983, all branches of the post office started functioning in one of the above buildings after taking additional space. The two PTCL Sweepers already in place had to be continued as otherwise it would have resulted in termination of services of one of them. The total sweeping/cleaning work in the Head Post Office thus was distributed between the two existing PTCL Sweepers. In the year 1989, the Kunnamkulam Head Post Office was shifted to the present building. A review of the workload was made

based on the prescribed norms and the total workload of 5 hours 32 minutes was distributed between the two Sweepers in 1991-92. Subsequently in the year 1992 further revision was made consequent on the decision taken to have the public place and delivery hall swept twice daily. The total work was assessed as 7 hours 30 minutes and was distributed equally between the existing two Sweepers and both of them were paid wages proportionate to 3 hours 45 minute each. This engagement was continued for years together. In 1999, the applicant filed O.A. 557/99 before this Tribunal impugning the order by which the working hours were allotted as three hours 45 minutes. The O.A. was disposed of with a direction to the respondents to dispose of the representation with a speaking order. The applicant was given a personal hearing and the order was issued on 22.7.1999 and not satisfied with the reply the applicant filed O.A. 912/99 which was dismissed by this Tribunal by order dated 20.12.01. Aggrieved by the decision of the Tribunal the applicant filed OP 7310/2002 before the Hon'ble High Court of Kerala. The Hon'ble High Court in its judgment dated 8.4.2002 directed the 3rd respondent to consider the claim of the petitioner once again. Accordingly the petitioner submitted a representation on 29.5.2002 and after examining the claim it was rejected by order dated 2.8.02. O.A. 370/2002 filed by the applicant before the Tribunal claiming consideration for appointment to a Group-D post was also rejected by this Tribunal by order dated 5.6.2002. Further, the applicant filed O.A. 824/02 before this Tribunal seeking to quash the order dated 2.8.02 passed by the third respondent in compliance

with the order of the Hon'ble High Court in O.P. NO. 7310/2002, O.A. 824/2002 was disposed of directing the 3rd respondent to reconsider the entire matter again keeping in view the other Casual Labourer is old and sick, is incapable of doing the job and also to consider the issue of combination of duties of PTCLs and to consider the claim of the applicant for giving her full time duties. In compliance of the said order, the third respondent has issued the order dated 14.2.2005 (Annexure A-4) giving directions for discharging the other PTCL Sweeper from service to the Postmaster Kunnamkulam Head Post office who is the appointing authority who in respect of the PTCL Sweeper has also fixed the working hours as per Annexure A-5 order. According to the respondents the working hours have been fixed as per the nature of the sweeping work and it was not possible to give continuous working hours. The respondents have further submitted that the above fixation of workload is made as a temporary measure without assessing the actual area now being swept by the applicant. The actual area to be swept by the Sweeper has been further reassessed fixing the present workload of the Sweeper based on departmental norms and the time required has been calculated as 5 hours and 45 minutes. The matter has been taken up with the third respondent for a final decision. As the issue is not yet finalised the representation of the applicant has not been replied to. The duty hours of the applicant has to be fixed keeping in fact that the sweeping of the counter portion of the office, etc. has to be completed before the functioning of the office starts. Hence the time has been fixed as early as 7 a.m. The duty hours of the applicant

provide a break from 11.30 a.m. to 3 p.m. Therefore, it was not found necessary to provide separate lunch break. Providing full time employment to the applicant by combining of duties as envisaged in Annexures A1 and A2 is not feasible, as the posts of GDS, Stamp Vendor etc. in the Head Post Office are not vacant and their duty hours are different from that of the applicant.

3 The applicant filed a rejoinder stating that she is in fact doing duty for 7 hours and 30 minutes for which there is justification. The contention of the respondents that the fixation of her workload is a temporary measure, is not correct as the impugned order does not refer to it as a temporary measure. Besides sweeping work, the applicant is doing other menial job as scavenging, carrying water etc. and half an hour lunch break could be added to the existing workload as the applicant is present in the office from 7 a.m to 6 p.m. For almost 12 hours.

4 The applicant has also filed M.A. 607/07 to accept an additional document Annexure A-9 which is an order dated 24.10.2000 fixing the working hours of Smt. G. Savithri in the office of the Senior Supdt. RMS TV Division, Trivandrum which provides for lunch break of half an hour and it was allowed and on that basis it is contended that the claim of the respondents that lunch break cannot be given in the case of Casual Labour on par with regular staff is disproved.

5 We have heard learned counsel Shri Vishnu S. Chempazhanthiyil for the applicant and Shri George Joseph ACGSC appearing for the respondents.

6 The learned counsel for the applicant argued that the applicant has been forced to knock at the doors of the Tribunal a number of times because of the respondents' adamant stand, although specific directions have been given in Annexure A-3 order of the Tribunal pointing out the instructions of the Department in Annexure A-2, and in purported compliance of the order, the impugned order has been passed, without considering these instructions in its letter and spirit. The respondents' counsel maintained the stand that the working hours of the PTCL was fixed in accordance with certain norms and that in terms of the detailed work assessment of the applicant she is not found eligible to be made a full time casual labourer.

7 We have given due consideration to the arguments of the learned counsel on both sides and perused the material produced before us. As admitted specifically by the respondents themselves, this is the fifth round of litigation as far as the applicant is concerned on the very same prayer to consider her claim for giving her full time duty. Admittedly the applicant had been working as a part time Sweeper in the Kunnamkulam Head Post Office from 1981 when it was functioning in two buildings. Although the two offices started functioning in the same building from 1983, when the workload

could have been combined, it is admitted by the respondents in the reply that the appointments of two PTCLs were continued with a view to giving employment to both of them. According to the respondents, the workload of the PTCL underwent changes number of times from 1989 onwards. In 1994, consequent to the decision of the office to have the public space and delivery hall swept twice daily, the total workload was assessed as 7 hours 30 minutes which is continuing till date. This workload was being taken care of by two Sweepers by distributing the work equally between them. In 1999, the applicant filed O.A. 557/99 challenging the said arrangement and requesting for treating her as a full time employee. Further O.A. 912/99 filed by the applicant also did not succeed as every time the respondents rejected the claim of the applicant. Even the direction of the Hon'ble High Court also met with the same fate. Thereafter O.A. 824/02 was filed and while adjudicating the matter it came to light that the other PTCL was old and sick and was not actually doing the work and work was being got done through others. The Tribunal recorded these findings stated that the instructions do not permit work to be done by agents of a PTCL on long term basis. The Tribunal directed as follows:

"In the conspectus of facts and circumstances, we set aside Annexure A-3 order and direct the 3rd respondent to reconsider the entire matter, keeping in view that the other casual labourer who is old and sick is in capable of doing the part-time job that in government office it is not permissible to allow another person to perform the duties of a part time labourer as her agent on a long term basis, that the applicant had been working as a part time casual labour since 1981, that in terms of Annexure A2 letter of DG Posts efforts should be made

to give part time casual labourers fulltime work if possible by combination of duties whether scavenging, cleaning, sweeping gardening and watering can be done during office hours also and to issue an appropriate speaking order within a period of two months from the date of receipt of a copy of this order. No order as to costs."

8 It was also noticed by the Tribunal that DG Post's letter at Annexure A-2 instructing subordinate offices to make all efforts to grant full time work to PTCLs if possible by combination of work should be complied with and it was directed to issue a speaking order within a period of two months. However, a perusal of the impugned orders in this O.A. would show that the respondents have not paid any attention to the said direction of the Tribunal because by Annexure A-4 the Senior Supdt. Of Post Offices has been directed to take action to discharge the other part-time CL who was over 70 years old it has been also confirmed in the reply statement that the lady has since been discharged from service. This part of the Tribunal's direction only has been complied with. Once the part time service of the one of PTCLs has been dispensed with the total working hours of 7 hours and 30 minutes which has been assessed should be allotted to the applicant who is the only remaining contingent Casual Labour. In Annexure A-5 order the applicants working hours have been fixed as stated above, which though total upto 7 hours and 30 minutes, but nothing has been mentioned about whether her employment is treated as full time or part time and the order also does not prescribe the nature of the duties namely sweeping, scavenging collecting water, etc. The applicant has

contended that since the very nature of the duties demand her presence in the office from 7 a.m. To 6 p.m., that is, she has to start work before the office opens and she is also required to remain half an hour after the office hours. No reasons have been furnished in this order to show that the claim for full time employment has been considered and it was not found feasible to agree to the same. The Tribunal's direction required the respondents to pass a speaking order. This has not been done. On the other hand, the casual treatment of her claim by the cryptic order at Annexure A-5 only fixing the time of work substantiates the contention of the applicant that the respondents are only trying to circumvent the direction of the Tribunal to reconsider the issue of giving the employee a full time job by combination of duties. Though the applicant has been given working hours of 7 hours and 30 minutes, she still remains a part time employee after 27 year of service. In DG Post's letter dated 17.5.89 available at Annexure R-2 in O.A. 824/2002 a clarification has been given to which class of workers should be given full time or part time. Para 2 thereof is extracted below:-

"2 It is here by clarified that all daily wagers working in Post Offices or in RMS offices or in Administrative Offices or PSDs or MMS under different designations (mazdoor, casual labourer, contingent paid staff, daily wager,daily rated mazdoor, outsider) are to be treated as casual labourers. These casual labourers who are engaged for a period of 8 hours a day should be described as full time casual labourers. These casual labourers who are engaged for a period of less than 8 hours a day should be described as part time casual labourers. All other designations should be discontinued."

9 In terms of this clarification above, all Casual Labourers who are engaged for a period of less than 8 hours would continue to be part time casual labour. The working time of the applicant has been fixed as 7 hours 3 minutes. Hence the applicant is requesting that if the half an hour lunch break is also added to the same, she could be treated as a full time employee. The respondents have submitted that granting a lunch break for a casual labourer is not permissible. However, when confronted with the Annexure A-9 document produced by the applicant issued in respect of another contingent employee in the office of the Senior Supdt. of Post Offices, TV Division, Trivandrum in which the lunch break has been provided, it has been submitted that the order in respect of Smt. Savithri was issued on the directions of the Tribunal in O.A. 1086/00 filed by that individual. On going through this case file, we find that Smt. G. Savithri who was treated as a full time casual Labourer had approached this Tribunal to quash the order fixing her working hours on combination basis without lunch break and the Tribunal had directed to issue amended orders incorporating specific lunch break. It was also noticed therein that the applicant in that case was required to be present for working before the regular office hours and that if a specific lunch break is not given it would amount to asking the employee to manage work without lunch. The respondents had challenged the order unsuccessfully before the Hon'ble High Court and a Contempt Petition was filed by the applicant. The respondents then issued orders dated 30.1.2003 fixing the quantum of work as 8 hours and 30 minutes and incorporating the lunch break of 30

minutes as under:

"In accordance with order dated 16.03.2001 of Hon'ble CAT, Ernakulam Bench in OA No.1086/2000 read with order dated 12.11.2002 of Hon'ble High Court of Kerala in OP No.16485/2001 and Circle Office letter NO.GEN/CC-5/155/2000 dated 29.01.2003, the working hours of Smt. G.Savithri, Casual Labourer, Office of Senior Superintendent, RMS 'TV' Dn. Thiruvananthapuram-33, are revised as detailed below.

1. Sweeping and Cleaning	5.00 Hours
2. Scavenging and Gardening	3.00 Hours
3. Lunch Break	0.30 Minutes
Total : 8 Hours and 30 Minutes	

2. Consequently, the quantum of work of Smt. G. Savithri will be 8 hours and 30 Minutes from 08.30 to 17.00 hours with lunch break between 12.30 to 13.00 hours.

3. This order will take effect from 10.01.1998, the date on which Smt. G.Savithri was declared as Full time Casual Labourer.

4. Smt.G.Savithri is entitled to all the consequential benefits arising out of this order.

Sd/- Shobha Madhale
Senior Superintendent."

10 It would thus appear that the A-9 order was subsequently modified as above to change the working hours to 8 hours and providing half an hour lunch break.

11 In the light of these facts, however, the contention of the respondents that lunch break cannot be incorporated in the orders fixing the working hours of a PTCL is found to be unsustainable. In the case of Smt. Savithri, she was working in an administrative office, whereas the applicant herein is working in a Post office and hence the difference in the working hours.

12 The main contention that the respondents are now taking to deny the applicant although on earlier occasions they have not furnished any such reasons in the impugned orders, is that the workload of the PTCL Sweeper in the office has been reassessed



and it is now calculated as only 5 hours and 45 minutes. This assessment according to them is made in a most realistic manner through the AE(Civil) by preparation of sketch plans, etc. and as it is not possible to combine the duties of the GDS, Stamp Vendors with the applicant's work the claim of the applicant to treat her as a full time casual Labourer is not maintainable. This explanation is not acceptable as any fresh assessment of the working hours to be made can have only prospective effect. We do not deny that the respondents have every right to reassess the work if there is any change in the actual area to be swept. It is however, not borne out from the statement of the respondents that the actual area has undergone any change after 1994 since the office moved in to the present building. According to the the policy decision taken then, that the common area used by the public and the delivery counter have to be swept twice during the day, the working hours were fixed. There appears to be no reason for changing the policy decision. No reason is given also. In any case this contention of the respondents is irrelevant for considering the claim of the applicant in accordance with our direction in O.A. 824/2000. As already stated any such change in the working hours has to be seen as a prospective exercise only if at all it is to be done in accordance with the rules laid down.

13 The applicant is a low paid Casual labourer working in the office since 1981. She is the sole contingent employee available in  the office for doing all the work of sweeping, scavenging, carrying

water, etc and the working hours had been assessed as 7 hours 30 minutes. It could be reasonably concluded that such an employee would have to be present in the office during the working hours as well as before and after the working hours. Therefore providing her with lunch break of half an hour should not for all purposes be considered as any unpardonable transgression from the rules but at the same time it would give the benefit to the contingent worker for being treated as a full time employee which indeed is the spirit behind the Annexure A-2 instruction of the Department itself. The applicant had been approaching this Tribunal time and again. The instructions are worth reproducing below:

Sub: Part time Casual Labourers -instructions of split duty.

The question of providing full time employment to part time casual labourers working in the department has been under consideration for some time. Although instructions have already been issued vide this office memo of even number dated the 16.9.92 and 28.4.97 in order to provide fulltime employment to part timers by combining two or more part time casual labourers positions and also to explore the feasibility of adding work hours of vacant ED posts for this purpose and suitable action for forming full time casual labour positions it is seen that there are still many part time casual labourers who could not be provided full time employment.

You are therefore requested to consider the feasibility of deploying a part time casual labour in split duty as per existing orders on the subject to form a full time casual labour position. Part time casual labourers who were engaged upto 1.9.1993 will only be considered under the scheme.

The above instructions may be implemented without any delay. The other terms and guidelines stipulated in our earlier letter cited above will remain unchanged. It should also be noted carefully that no fresh engagement of casual labourers in any position is permissible vide this Office letter No. 2-10/88-PE-1 dated 4.2.97 and these stipulations should be observed very strictly and without any deviation whatsoever.

This issues with the concurrence of integrated Finance vide their Dy. No. 2665/98 dtd. 28.10.98

Sd/ R. Srinivasan
Asst. Director General (SPN)

14 A reading of the above would show that the intention behind these instructions is wherever feasible, suitable action should be

taken for adding working hours for providing full time employment by combining two or more part time Casual Labour and even a periodical report has been prescribed so as to monitor the progress as to how many part time Casual Labourers remain who could not be given full time employment. It is well settled law that any beneficial / welfare measure for the employees should be construed in a liberal manner while implementing. Here the respondents have chosen to deny the benefit which could have been provided to a low paid employee who has been working with them from 1981. As stated earlier, the applicant had been knocking on the doors of the Tribunal from 1999 onwards and several times we had given directions to the respondents to consider the case in the proper perspective keeping the spirit of the instructions in Annexure A-2. Such directions are not taken in the proper spirit by the respondents. They have chosen to reject the claim every time on technical grounds. Hence we are of the considered view that any further reference to the respondents to consider the matter will be of ^{any} avail.

15. We are therefore inclined to grant the prayer of the applicant and accordingly direct the respondents to treat the applicant as a full time contingent employee in terms of Annexure A-2 instruction w.e.f. 1.4.2005 or the date from which the services of the other part time contingent employee was dispensed with and the entire work was entrusted to the applicant. The respondents shall issue specific orders on the lines of the orders issued in the case of Smt. G. Savithri reproduced supra, taking into account 8 hours of work and fixing the working hours accordingly. The applicant will be eligible

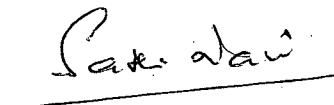
for all consequential monetary benefits. These directions shall be implemented within a period of three weeks from the date of receipt of this order. However, we make it clear that these directions shall not stand in the way of the respondents to reassess the workload of the employee on a future date in accordance with the rules.

16 The O.A. is allowed as above. No costs.

Dated 27th November, 2007.



GEORGE PARACKEN
JUDICIAL MEMBER



Sathi Nair
SATHI NAIR
VICE CHAIRMAN

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