

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**ERNAKULAM BENCH**

**Original Application No. 187 of 2008**

**Thursday, this the 12<sup>th</sup> day of March, 2009**

**CORAM:**

Hon'ble Mr. George Paracken, Judicial Member  
Hon'ble Ms. K. Noorjehan, Administrative Member

C.K. Sathy, Aged 58 years,  
D/o. Lakshmanan, Cheriparambil (H),  
Nachuma, NAD P.O., Aluva,  
Now working as Temporary Casual Labourer  
In Central Excise Division, Ernakulam. ....

**Applicant**

(By Advocate – Mr. P.V. Mohanan)

**V e r s u s**

1. The Commissioner of Central Excise,  
Central Revenue Building, IS.,  
Press Road, Kochi-18.
2. The Assistant Commissioner of Central Excise,  
Central Revenue Building, IS Press Road,  
Kochi-18. ....

**Respondents**

(By Advocate – Mr. TPM Ibrahim Khan, SCGSC)

The application having been heard on 12.03.2009, the Tribunal on the same day delivered the following:

**ORDER**

**By Hon'ble Mr. George Paracken, Judicial Member**

The applicant has sought direction from this Tribunal to the respondents to regularize her service.

2. According to the applicant she was engaged as Casual Labour in 1985 and as seen from Annexure A-1 she was granted temporary status vide the respondents' office order No. 40/94 dated 11.3.1994 (issued in file C.No. II/3/48/93 Estt. IV). The applicant has requested for an earlier decision on her regularization as her date of birth is 5.3.1950 and she will be retiring from service on 31.3.2010. Unless her service is regularised she will not get any pensionary benefits. The learned counsel for the applicant has invited our attention to Annexure A-2 "Seniority list of Temporary status Casual Labourers as on 1.1.2005" and stated that even though she is at serial No. 12 in the list of temporary status casual labourers as on 1.1.2005, persons above her have already been regularized in service and have retired from service and therefore, she is the senior most in the said seniority list and posted against a clear vacancy in Cochin Commissionerate.
3. The respondents on the other hand has disputed the contention of the applicant who

stated that serial Nos. 2, 3 & 6 in the Annexure A-2 seniority list are still working as temporary status casual labourers and they are waiting for their regularization. They have also stated in the additional affidavit that there are only four posts of Safaiwala in Cochin Commissionerate out of which one post is vacant from January, 2008 and it has to be filled by direct recruitment.

4. We have heard learned counsel for the parties.

5. This Tribunal has already considered this issue in OA 283 of 2005 – T.K. Padmini & Anr. Vs. UOI & Ors. The applicants therein are at serial No. 27 & 28 in Annexure A-2 seniority list and they belong to Trivandrum Commissionerate. This Tribunal vide order dated 13<sup>th</sup> December, 2006 directed the respondents to prepare Commissionerate-wise seniority list of casual labourers and to appoint them on regular basis on the basis of their seniority. The operative part of the said order is as under:

"11. The real grievance of the applicants arises out of the policy in force in the Central Excise Department that the regularisation of temporary Casual Labourers will be considered based on the initial date of appointment taking the State as a whole based on a common seniority list instead of taking each office as a unit. Therefore, the real question to be decided is the interpretation of the term "respective office" in Annexure A-2 instruction on the grant of temporary status scheme of Government of India 1989. Para 8 dealing with the procedure of filling up the posts reads as under:

#### 8 Procedure for filling up of Group-D posts.

"Two out of every three vacancies in Group-D cadres in respective offices where the casual labourers have been working would be filled up as per extant recruitment rules and in accordance with the instructions issued by Department of Personnel & Training from amongst casual workers with temporary status. However, regular Group-D staff rendered surplus for any reason will have prior claim for absorption against existing/future vacancies. In case of illiterate casual labourers or those who fail to fulfill the minimum qualification prescribed for post, regularisation will be considered only against those posts in respect of which literary or lack of minimum qualification will not be a requisite qualification. They would be allowed age relaxation equivalent to the period for which they have worked continuously as casual labourer".

12. The applicants have pointed out that the decision of this Tribunal in OA 1166/96 in which the same question arose for consideration in a claim made by a Casual Labourer in the Passport Office, Kozhikode who had more length of service than the 5th respondent therein who was working in Kochi office and the vacancy had arisen in Kochi office. This Tribunal had observed as follows:

"On a careful scrutiny of the pleadings in this case as also the various provisions of the Scheme, we are convinced that the stand taken by the respondents is a correct one. Though the applicant has put in more length of service than the fifth respondent, as the fifth respondent is working in Kochi and the applicant is working in Kozhikode, the applicant has no right to claim any preference over the fifth respondent who is entitled for regularisation in that office. The right of the applicant is for regularization which would arise in Kozhikode only."

13. This decision amounts to ratification of the claim of the applicants herein, the ratio being for appointment, Casual Labourers working in any particular office would be considered for the vacancy arising in that office, irrespective of their overall seniority in the department. The respondents seek to distinguish between

the position that subsists in the Passport Office and the Central Excise Department which has a number of offices scattered all over the State, with many of the divisional and other field formations not having sanctioned posts at all. Therefore, they contend that if the above judgment is to be followed, the casual labourers working in such offices would not get any opportunity for appointment in Group-D post. While this could be correct to some extent, it is true that if the seniority at state level has to be adopted for regularisation it would result in considerable hardship to the Casual Labourers who are initially engaged on local basis from the local Employment Exchange or otherwise. They would not be in a position to move from their native place to distant places in the State thereby defeating the very purpose of the scheme. This is borne out by the statement of the respondents themselves in the reply statement that even though the posts in the Commissionerates are distributed as 4:3:3 in Cochin, Calicut and Trivandrum respectively, the actual working strength is 5 in Cochin and 5 in Calicut and that they have been constrained to make such adjustments "purely on humanitarian consideration" to permit the low paid employees to continue in the station they were rather than transfer them to offices where there are sanctioned strength". This indicates that the respondents themselves are very much aware of the problem that such low paid employees cannot move from one place to another. We do not find any reason why the Central Excise Department cannot take Commissionerate-wise seniority units for appointment of casual labourers in Group-D post. It is understandable that each field office cannot be a unit. But as far as three Commissionerates are concerned as seen from their Annexure R-2 document filed, the allotment of sanctioned strength and fixation of the number of posts of all categories are made Commissionerate-wise. This position is also further borne out by Annexure R-3 documents which shows allotment of the posts after the restructuring exercise undertaken in the Department. The only reason we could see from the additional reply statement filed by the respondents for taking Zonal seniority is that the cadre controlling authority of Kerala Zone is situated in the Commissionerate office at Cochin. This is purely an administrative arrangement and even if the cadre controlling authority is at the Central Excise Commissionerate Cochin, there should not be any difficulty to maintain seniority at each Commissionerate level and the vacancy position can be controlled at the level of Commissionerate by the cadre controlling authority even if he is situated at Cochin. This would ensure that the Casual Labourer would have to move only within the territory of the commissionerate and not across the State. Since the sanctioned posts are also 3 and above in each commissionerate there should not be any difficulty to operate the quota of two out of three vacancies in the group-D cadre. In fact I should think that even the seniority of Group-D employees in the Central Excise Department is being maintained Commissionerate-wise and not State-wise though I have not ascertained the actual position from the respondents. After considering the position as borne out by the records I am of the view that the interpretation that the term "respective offices" of the Central Excise Department would mean the entire Kerala State Zone is not a correct one and the same is not in tune with the intention and purport of the scheme for regularisation of Casual Labourers in Group-D post and as such requires to be revised in accordance with the observations above.

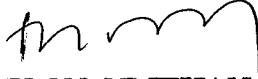
14. Coming to the individual claims of the applicants, their contention that there are vacancies in the office where they are working is not proved to be correct. In fact there are not even sanctioned posts of Safaiwala in the Trichur office. Even if the entire Calicut Commissionerate is taken as one unit as proposed now, there exists no vacancy as five persons are working against three sanctioned posts. It also remains to be seen what position the applicants occupy in the seniority list if it is broken up commissionerate-wise. It could result in prospective improvement of their promotion prospects in the future depending on the vacancies that may arise. The applicants have prayed for review of the promotions made to the group-D cadre. I do not think it would be proper to unsettle the promotions already made in respect of the low paid employees but their lien may be shown against sanctioned strength of each commissionerate irrespective of their deployment elsewhere for administrative convenience, which would also enable proper determination of vacancies in each unit in the future. Any revision of the procedure by redrawing the seniority list commissionerate-wise would have only

prospective effect. Hence, I direct the respondents to undertake this exercise so that Casual Labourers who are awaiting regularisation and are soon crossing the age limit set for consideration for regularisation as Group-D get the benefit of the scheme at Annexure A-2 as envisaged therein. With these directions, the OA is disposed of. No costs.

Dated 13.12.2006."

6. The respondents have challenged the aforesaid order before the Hon'ble High Court of Kerala vide Writ Petition No. 17863 of 2007. Though the said Writ Petition has been admitted and notices have been issued to the parties, the High Court has not stayed the orders of this Tribunal. As a result the respondents have implemented the directions and prepared the Commissionerate wise seniority list for the casual labourers of Trivandrum Division and regularised the services of Smt. Padmini and Smt. Mallika on the basis of their seniority subject to the outcome of the aforesaid Writ Petition pending before the Hon'ble High Court.

7. We are not aware whether the respondents have prepared any such seniority list for Cochin Commissionerate also. In any case, since the respondents have implemented the orders of this Tribunal in OA No. 283 of 2005 (supra), the same procedure shall be followed in the case of Cochin Commissionerate also. Accordingly, they are directed to prepare the Commissionerate-wise seniority of temporary status casual labourers of Cochin Commissionerate, if they have not already prepared. They shall also assess the number of regular vacancies in Group-D including the retirement vacancies up to 31.12.2008 and consider the case of the applicant for regularization. If the applicant is found eligible, her services shall be regularized in accordance with rules subject to the outcome of the Writ Petition pending before the Hon'ble High Court of Kerala as they have done in the case of similarly placed persons like T.K. Padmini & Ors. The aforesaid exercise shall be carried out within a period of four months from the date of receipt of a copy of this order. There shall be no order as to costs.

  
 (K. NOORJEHAN)  
 ADMINISTRATIVE MEMBER

  
 (GEORGE PARACKEN)  
 JUDICIAL MEMBER

"SA"