

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 206 of 2003

Tuesday, this the 9th day of December, 2003

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HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. P. Baby Vinodini,
D/o Gangadharan Vaidyar,
Casual Labourer (Sweeper),
Passport Office, Kozhikode,
Residing at Parambath House,
People's Road, West Hill, Kozhikode.
 2. A.P. Sobhana,
W/o Bhaskaran,
Casual Labourer (Sweeper),
Passport Office, Kozhikode,
Residing at Azhakoth Parambath,
Post Vengeri, Kozhikode-10
-Applicants

[By Advocate Mr. Shafik M.A]

Versus

1. Union of India represented by
Secretary to the Government of India,
Ministry of External Affairs, New Delhi.
 2. The Chief Passport Officer &
Joint Secretary (CPV),
Ministry of External Affairs, New Delhi.
 3. The Passport Officer,
Passport Office, Kozhikode.
-Respondents

[By Advocate Mr. C. Rajendran, SCGSC]

The application having been heard on 9-12-2003, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

Applicants, 2 in number, are working as casual Sweepers in the Passport Office, Kozhikode. They are aggrieved by the refusal on the part of the respondents to regularize their services as Group D or to grant temporary status to them. They are also apprehending that their services are likely to be terminated. The following main reliefs are prayed for:-

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- "(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 1.9.93 and to grant all consequential benefits including regular appointment as Group D, with effect from the date on which the other similarly situated casual labourers were regularized, with arrears of pay;
- (ii) To declare that any proposal to terminate 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 illegal and to quash any order or such proposal; and
- (iii) To declare that the applicants are also entitled to be treated like the casual labourers of the Trivandrum Passport Office and to direct the respondents to continue the applicants also like the casual labourers of the Trivandrum Passport Office and to grant them regularization as Group D employees."

2. It would appear that the 1st applicant, P.Baby Vinodini, joined the Passport Office as a casual Clerk in 1990 and she continued to be so for a brief period. Later on with effect from 10-8-1993 she has been working as casual Sweeper without any break. The 2nd applicant joined the Passport Office as a casual Sweeper with effect from 2-1-1997. Although both of them have current Employment Exchange registration, there was no initial sponsorship by the Employment Exchange in so far as their engagement was concerned. Though the applicants have made several representations seeking regularization of their services as Group D Sweeper or at least for grant of temporary status on the basis of the number of days of service put in by them, the respondents have not only not acceded to their request but their very continued engagement was threatened and the prospects of termination of their service is looming large, according to the applicants. Hence, this application.

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3. Respondents have filed a reply statement opposing the OA stating that the applicants could not be given the benefit of conferment of temporary status, since they were not initially sponsored by the Employment Exchange. In this regard, the respondents rely on the judgement of the Hon'ble Supreme Court in Civil Appeal No.938/1997 arising out of SLP.No.2368/1997 in the case of Passport Officer, Trivandrum & Others vs., Venugopal C & Others, where the Apex Court has held that if the department decides that only those employees who are recruited in normal manner i.e. through the Employment Exchange should be given the temporary status, such decision could not be found fault with. Respondents also would place reliance on Annexure R1 office memorandum dated 12th July, 1994, wherein it is stated that sponsorship by the Employment Exchange is mandatory.

4. Applicants have thereafter filed a rejoinder, wherein it is argued that inspite of the Hon'ble Supreme Court's judgement upholding the decision of the respondents to insist on sponsorship by the Employment Exchange with regard to conferment of temporary status, persons adversely affected by the said judgement still find their place in the seniority list maintained by the respondents. It is shown in Annexure A8 circular dated 5th April, 2000 that Sri C.Venugopal, who was the 1st respondent in the SLP considered in Annexure R2 judgement, is placed at Sl.No.34 in the list of casual labourers prepared for the purpose of filling up of the posts of Record Sorter, Daftry, Peon and Night Watchman in the Southern Zone.

5. I have gone through the pleadings and other material on record and have heard Shri Shafik M.A, learned counsel for the applicant and Shri C.Rajendran, learned SCGSC.

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6. According to Shri Shafik, though the Hon'ble Supreme Court has upheld the respondents' decision to insist on sponsorship by the Employment Exchange for the purpose of conferment of temporary status to casual labourers, the respondents by their own action have shown that the casual employees adversely affected by the Hon'ble Supreme Court's decision are still taken care of in the matter of regularisation in Group D posts as is reflected in Annexure A8 seniority list for Southern Zone. According to him, therefore, the applicants in this case should also receive the same sympathetic treatment in the matter of consideration for appointment to various Group D posts according to their seniority. For this purpose, the seniority list would have to be updated so that the applicants herein also would receive proper consideration and find their appropriate place for absorption in future. In this connection, the learned counsel would invite my attention to the order dated 11-11-2003 of this Tribunal in OA.No.537/2002 wherein, under strikingly similar circumstances, the same respondent organization has been directed to prepare a fresh seniority list by updating it and including the applicants therein according to their seniority positions for purposes of conferment of temporary status and/or regular appointment to Group D posts in their turn.

7. Shri C.Rajendran, learned SCGSC, on the other hand, has relied on the contentions put forward in the reply statement and has maintained that there was no question of conferment of any temporary status on the applicants in view of the judgement of the Hon'ble Supreme Court annexed as Annexure R2. It is also stated that since the applicants in this case did not have the required number of days of service as on 1-9-1993, they could not be considered for conferment of temporary status at

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all and that in any case the scheme is a one time scheme and not an ongoing one. Learned SCGSC would particularly mention that the 2nd applicant was initially engaged only in 1997. He would, therefore, maintain that the OA was devoid of merit and hence calls for no interference.

8. On going through the facts of the case and having regard to the contentions raised by the learned counsel on either side, I find that the facts of this case are fairly similar to those considered by this Tribunal in OA.No.537/2002 by order dated 11-11-2003. The main distinction between the two cases is that the applicants in OA.No.537/2002 had been engaged prior to 1-9-1993, whereas in this case only the 1st applicant happened to be engaged prior to 1-9-1993 and the 2nd applicant was initially engaged only in 1997. In my considered view, there may be a legal difficulty in the matter of conferment of temporary status in view of the decision of the Hon'ble Supreme Court in the SLP cited above. The Apex Court has also held that the scheme of granting temporary status was not an ongoing scheme but a one time measure. However, the fact that the respondents have with due sympathy considered even the cases of those affected parties for purposes of regularization in suitable Group D posts cannot be ignored while dealing with this case also. Annexure A8 circular dated 5-4-2000 reveals the respondents' intention of filling up the Group D posts like Record Sorter, Daftary, Peon, Night Watchman and Sweepers from amongst casual employees. In fact, the seniority list of casual employees of Southern Zone annexed to Annexure A8 circular includes the name of Shri Venugopal.C. who was the 1st respondent in the SLP.No.2368/1997 before the Hon'ble Supreme Court. It is thus fairly clear that the respondents are aware of the legitimate expectations of the unregularised casual employees and the need to regularise them

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in due course. It is, therefore, considered appropriate to mould the relief to be allowed to the applicants herein by directing the respondents to prepare a fresh seniority list as directed to be done as per order in OA.No.537/2002.

9. In view of the facts and circumstances discussed above, I direct the respondents to prepare a fresh seniority list by updating the same and including the applicants herein according to their legitimate seniority position for the purpose of considering them for regularisation in suitable Group D posts in their turn. Respondents shall carry out this exercise within a period of four months from the date of receipt of a copy of this order. Respondents are further directed that status quo as on today with regard to the applicants' position regarding their present engagement under the 3rd respondent be maintained till the matter is disposed of as directed above.

10. The Original Application is disposed of accordingly.
No order as to costs.

Tuesday, this the 9th day of December, 2003


T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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