

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 247 of 2003

Friday..., this the 15th day of September, 2006

C O R A M :

**HON'BLE MR JUSTICE G. SIVARAJAN, VICE CHAIRMAN
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

K. Reghunathan,
Tea Maker, Tiffin Room,
Head Post Office,
Neyyattinkara, Residing at :
Sabari Bhavan, Karakachivila,
Athiayannu, Aralumood P.O.,
Thiruvananthapuram.

.. Applicant.

(By Advocate Mr. M.R. Hariraj)

v e r s u s

1. The Senior Superintendent of Post Offices,
Thiruvananthapuram South Division,
Thiruvananthapuram.
2. The Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
3. Union of India, represented by
The Secretary to Government of India,
Ministry of Communications,
Department of Posts, New Delhi. .. Respondents.

(By Advocate Mr. T P M Ibrahim Khan, SCGSC)

**ORDER
HON'BLE MR. JUSTICE G. SIVARAJAN, VICE CHAIRMAN**

The applicant who was appointed as Tea Maker on daily wage basis in the year 1986 by the Postmaster, Neyyattinkara H.O, and is

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continuing as such has filed this O.A. seeking the following reliefs:

- (i) Declare that the applicant is entitled to be appointed as Tea maker with the status of a Central Government employee with all benefits with effect from 1.10.1991.
- (ii) Direct the respondents to appoint the applicant as Tea Maker with effect from 1.10.1991 with all consequential benefits.
- (iii) Alternatively, direct the respondents to regularise the applicant in the post of Tea Maker by appointing him with effect from 29.11.1992 and to grant all benefits including arrears of pay and bonus.
- (iv) Grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant, and.
- (v) Grant the of this Original Application.

2. Applicant's grievance is that he has not been treated as a Government servant with effect from 1.10.1991 as contemplated under the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) O.M. dated 29.01.1992 (Annexure A/1). For the same reliefs, the applicant had earlier filed O.A. No. 373/1997 before this Tribunal and the same was disposed of by order dated 14.3.1997 (Annexure A/2). It was specifically noted in the order that the grievance of the applicant is that he has not been treated as a Government servant with effect from 1.10.1991 and given the benefits accordingly. In the light of submissions made by the learned counsel for parties, the Tribunal issued a direction to the 1st respondent to consider the

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representation dated 9.9.1996 in the light of the rules, rulings and other instructions on the subject and a speaking order be given to the applicant. Based on the said directions, the Superintendent of Post Offices, Trivandrum, issued a communication dated 15.5.1997 (Annexure A/3) conferring temporary status to the applicant with the approval of the 2nd respondent. This was followed by another communication dated 20.5.1997 (Annexure A/5) from the same authority stating that since the applicant was being engaged for working in the Canteen on casual basis, he was not due to be treated as Central Government servant with effect from 1.10.1991 in view of the instructions vide para 2(i) of Director of Canteen letter dated 22.8.1995 (Annexure R/1). The applicant is aggrieved by Annexure A/5 communication dated 20.05.1997 and sought for the reliefs as already extracted in the opening paragraph. Here, it is to be noted that the applicant did not seek to quash the communication Annexure A/5 but only sought for a declaration of his entitlement for being treated as Government Servant with effect from 1.10.1991.

3. The respondents took the stand, based on the letter dated 10.11.1995 (Annexure R-1) of the Director General, Department of Posts, New Delhi, that since the applicant was engaged for the work in the Canteen on casual basis he is not entitled to be treated as a Government servant as provided in Annexure A/1 order. They have also taken the stand that the applicant was granted temporary status being

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satisfied with the requirement for grant of such status. The Tribunal disposed of this OA by order dated 19.5.2003. The Tribunal considered the matter thus :

"2. We have carefully gone through all the materials placed on record and have heard Shri M.R. Rajendran Nair, learned counsel for the applicant and Shri C. Rajendran, learned SCGSC, appearing for the respondents. A mere scrutiny of the documents produced by the applicant, viz. Annexure A1 O.M. of the DOP&T, Annexure A3 order by which the applicant was informed that as a casual labourer he was not entitled to be treated as a regular Central Government servant but was entitled only to the grant of temporary status with effect from 29.11.1989 and the claim of the applicant made in Annexure A6 representation for Productivity Linked Bonus on par with temporary Group 'D' employees on completion of three years of service as a temporary status mazdoor, establish that there is absolutely no basis or bonafide in the claim of the applicant in the present Original Application that he is entitled to be appointed as a regular Tea Maker with effect from 1.10.1991. The benefit which was due to employees in Non-statutory Department/Cooperative Canteen/Tiffin Rooms by Annexure A/1 O.M. dated 29.1.1992 was the status of comparable Central Government employees. The applicant was a Casual Tea maker in the Tiffin Room and the comparable status in the Government is that of a casual labourer under the Government of India. The said status was given to him and the benefit of temporary status under the said Scheme was also accorded to him by Annexure A3 order. The applicant was told that he was not entitled to be treated as a regular Government servant with effect from the date he claimed by Annexure A3 order itself in the year 1997. Not only that he did not challenge the non-granting the status of a regular Central Government employee, but he accepted the same and claimed the the consequential benefit of being treated on par with temporary Group 'D' employees on completion of 3 years' service as temporary status mazdoor in his representation A6. Having accepted the position of temporary status casual mazdoor and claimed the benefit of treatment on par with temporary Group D employee on completion of 3 years' service after grant of temporary status with effect from 29.11.1989, the applicant is estopped from claiming that he is entitled to be appointed as regular Tea Maker with effect from 1.10.1991 or 29.11.1992. The

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application is misconceived, untenable and filed without any just cause of action."

4. The applicant being aggrieved by the aforesaid order, had filed W.P.(C) No. 7522 of 2004 before Hon'ble High Court of Kerala. The said Writ Petition was disposed of by the judgement dated 22.06.2005. The order of the Tribunal was set aside and the case was remanded to the Tribunal for fresh disposal on merits in accordance with law. It was specifically provided therein that the parties would be given opportunity to supplement pleadings as well as evidence before the Tribunal. Respondents have filed a reply statement dated 27.3.2006 and also produced documents as Anenxures R1 to R3. The applicant has filed a rejoinder. Alongwith the rejoinder, he had filed additional documents as Anenxures A8(a) to A12. The respondents, thereafter, filed an additional reply statement.

5. Mr. M.R. Hariraj, learned counsel for the applicant, with reference to the documents produced in this case, submitted that the applicant was appointed to the post of Tea maker on daily wage basis on 22.09.86 (Annexure A9) pursuant to the communication dated 11.8.86 [Annexue A8 (a)] issued by the Welfare Officer in the Office of the Postmaster General, Kerala Circle, Trivandrum, sanctioning the establishment of a Departmental Tiffin Room at Neyyattinkara Head Post Office specify the categories,

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number and wages admissible for the staff or the Tiffin Room. Counsel submitted that in the Neyyattinkara Head Post Office one post of Tea/Coffee Maker was provided and the wages were fixed on daily wage basis. Counsel also submitted that the applicant's name was sponsored by the Employment Exchange and he was selected and appointed only after due process as could be seen from the appointment order itself. The counsel further submitted that the Postmaster General, Kerala Circle, Trivandrum had issued a letter dated 23.8.85 [Annexure A8(b)] conveying approval for the functioning of a Type 'A' Tiffin Room for Thycaud HPO and that pursuant to the said approval, two persons by name, S/Shri R. Rajasekharan Nair and A. Rajendran were appointed as Tea Maker and Dish cleaner respectively as per order dated 23.8.85. Counsel further submitted that the said two persons are similarly placed as the applicant and that in their cases, both of them were given the benefit of Annexure A1 Government order, vide order dated 17.9.96 (A/11) pursuant to the memo dated 3.10.96 (A/10). The counsel submits that the said two persons were also appointed in the Tiffin Room at Thycaud on daily wages basis as in the case of the applicant as could be seen from Annexure A8(b). Counsel further submitted that in the additional reply filed by the respondents it has been stated that the said two persons were given the benefit consequent on implementation of the order dated 15.11.95 of this Tribunal in O.A. No. 396/95 and also as per approval of the 2nd respondent vide letter dated 13.9.96. Counsel submits that the

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respondents in their additional reply statement has further stated that the applicant has been working as casual mazdoor and he has been conferred with the temporary status with effect from 29.11.1989. Counsel also pointed out that temporary status is being conferred only to full time casual employees and not to part time casual employees as held by Hon'ble Supreme Court in V. Sakku Bai's case. Counsel submitted that the applicant is entitled to the benefit of Annexure A/1 Government order directing to treat the employees of Non statutory Departmental/Co-operative Canteens/ Tiffin Rooms located in Central Government offices as Government servants with effect from 1.10.1991.

6. Mr. T.P.M. Ibrahim Khan, learned Senior Central Government Standing Counsel for the respondents, based on the pleadings of the respondents, submitted that the applicant was only a causal mazdoor and that casual mazdoors are not entitled to the benefit of Annexure A/1 Government order in view of the clarification issued by the Government itself, vide letter dated 10.11.1995 of the Director General, Department of Posts, New Delhi (Annexure R/1). SCGSC submitted that as per the said letter all canteen employees who were working on regular basis (other than those appointed on ad hoc/casual basis) prior to 1.10.91 will be deemed to be appointed on regular basis with effect from 1.10.91 in their respective grades. He further submitted that the applicant has been granted temporary status on being satisfied that he has fulfilled all the

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requirements for grant of such status. The SCGSC further submitted that the case of Tea Maker in Thycaud HPO is different in that they were treated as Government servants pursuant to the order of this Tribunal in OA No. 396/95.

7. We have considered the rival contentions. We find that a number of OAs regarding implementation of Annexure A1 Government order based on the decision of the Hon'ble Supreme Court in M M R Khan and Others vs. Union of India and Others, 1990 Supp. SCC 191, were filed before this Tribunal and all those OAs were disposed of by a common order dated 15.11.1995. S/Shri R. Rajasekharan Nair and A. Rajendran, Tea Maker and Dish Cleaner respectively, at Thycaud HPO were the applicants in OA No. 396/1995. The Tribunal, having regard to the insufficiency of pleadings in regard to various matters in issue, had issued a declaration that employees working in the Departmental/Cooperative Canteens/Tiffin Room located in the Central Government Offices should be treated as Government servants with effect from 1.10.1991 in the light of the decision in M M R Khan's case (supra). The Tribunal had clearly noted that the the applicants before Hon'ble Supreme Court sought for treating them as Government servants wherein the Apex Court held:

"The workers engaged in the statutory canteens as well as those engaged in non-statutory recognised canteens in the Railway establishments are Railway employees, and they are entitled to be treated as such they would be entitled to

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all the benefits as such Railway employees with effect from the said date....".

“ The Tribunal also noted the relevant portion of the Government order Annexure A/1 which says that :

“..... consequent on the said judgement employees of non-statutory departmental/cooperative canteens/tiffin rooms located in Central Government offices should be treated as Government servants with effect from 1.10.1991. The employees of these canteens may therefore, be extended all benefits as are available to other Central Government employees of comparable status from 1.10.91 except GPF, Pension.....”

The Tribunal further noted the contention of the respondents that the canteen workers are entitled to be treated as Government employees with effect from 1.10.91.

8. The respondents had implemented the said declaration and had granted the reliefs to all the applicants therein including the applicants in OA No. 396/95, namely, M/s. R.Rajashekharan Nair, Tea Maker and A Rajendran, Dish Cleaner, as is evident from the Annexure to A/10 order. It is based on this order that the Postmaster, Thycaud HPO had issued order dated 17.9.96 (Annexue A/11) granting the benefit of Annexure A1 order to the aforesaid two persons. Here, the dates are very relevant. The Annexure to A/10 order implementing the orders of the Division Bench of this Tribunal in the batch cases was rendered on 15.11.1995 and the



same was implemented as per order dated 3.10.96. The applicant had approached this Tribunal for the very same relief by filing OA No. 373/97 wherein the parties had submitted before the Tribunal that the representation filed by the applicant would be considered and decision taken. It is in that view of the matter, the said OA was disposed with direction by order dated 14.3.1997. When the respondents had chosen to accept the decision of the Tribunal rendered in the batch cases and without anything more had passed orders granting benefits of Government Order at Annexure A1 to Tea Maker / Dish Cleaner of Thycaud HPO who were also appointed on similar circumstances as that of the applicant as is evident from A/8(a) and (b), we are unable to understand the rationale for taking a different view in the case of the applicant. As already noted, the stand taken by the respondents is based on the Government Order at Annexure R/1, wherein it is stated that only those canteen employees who were working on regular basis prior to 1.10.1991 is entitled to the benefit of Annexure A1 order. If S/Shri R. Rajasekharan Nair, Tea Maker, and A. Rajendran, Dish Cleaner of Thycaud HPO appointed on similar circumstances can be treated as working on regular basis, how can the applicant alone be treated as working on casual basis. If such a view is taken, that will tantamount to a clear discrimination and violative of Articles 14 and 16 of the Constitution.

9. The respondents in their additional reply had justified the

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discrimination in para 5 as follows:

"5. With regard to para 7 and 8, it is submitted that the applicant has been working as a casual mazdoor and he has been conferred with temporary status with effect from 29.11.1989. he is not entitled to be treated as Central Government servant with effect from 1.10.1991. In view of the instructions contained Director of Canteens, new Delhi, letter No. 3-2/95-Dir(c) dated 22.8.1995, Shri R. Rajasekharan Nair and A. Rajendran employed in Tiffin Room at Thycaud HPO were given the benefit consequent on the implementation of the order dated 15.11.1995 of this Bench of the Tribunal in Original Application No. 396/95 and also as per the approval of CPMG in letter No. WLF/8/15/93 dated 13.09.1996. The applicant has been working as a casual mazdoor and he has been conferred with temporary status with effect from 29.11.1989. He is not entitled to be treated as Central Government servant with effect from 1.10.1991 in view of the instructions contained in Director of Canteens, New Delhi, letter No. 3-2/95-Dir (C) dated 22.08.1995."

10. The only reason we could find is that the Tea Maker and Dish Maker of Thycaud HPO were granted the relief based on the order of this Tribunal in O.A. No. 396/95 and the orders of the second respondent. It must be noted that there was no specific direction regarding the applicants in OA No. 396/95 but there was only a declaration regarding the entitlement of the benefit of Annexure A1. The 2nd respondent had decided to grant the benefit to the Tea Maker and Dish Cleaner of Thycaud HPO and they were also granted the benefit. After having done so it will not be fair or open to the 2nd respondent to deny the said benefit to the applicant. It would appear from the contention of the respondents based on the note to Annexure A8(a) order that 'since the tiffin room is not

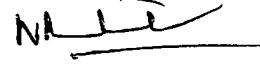
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functioning for the full duty period of its employees' the applicant is only a part time employee. In such a case, there was no justification for grant of temporary status to the applicant. Hon'ble Supreme Court in Secretary, Ministry of Communications vs. Sakku Bai (1997) 11 SCC 224, has categorically held that the Tribunal was not right in coming to the conclusion that the Scheme for conferring temporary status on full time casual labourers is also applicable to part time casual labourers in the Postal Department.

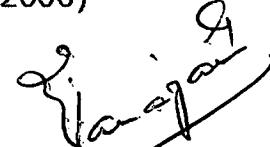
11. For all the above reasons, we are of the view that the applicant is also entitled to the benefit of Annexure A1 order and all consequential benefits as ordered in the case M/s. R. Rajasekharan Nair, Tea Maker of Thycaud HPO (vide Annexure A-11). The respondents will do all that is required for granting the said benefits to the applicant within a period of four months from the date of receipt of this order.

12. The OA is allowed as above. In the circumstances, there will be no order as to costs.

(Dated, the 15th September, 2006)



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



JUSTICE G SIVARAJAN
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 247 of 2003

Monday, this the 19th day of May, 2003

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. K. Raghunathan,
S/o Kumarapillai,
Tea Maker, Tiffin Room,
Head Post Office, Neyyattinkara
residing at Sabari Bhavan,
Karakachivila, Athiayannu, Aralumood PO,
Thiruvananthapuram.Applicant

[By Advocate Mr. M.R. Rajendran Nair]

Versus

1. The Senior Superintendent of Post Offices,
Thiruvananthapuram South Division,
Thiruvananthapuram.

2. The Chief Post Master General,
Kerala Circle, Thiruvananthapuram.

3. Union of India, represented by the
Secretary to Government of India,
Ministry of Communications,
Department of Posts, New Delhi.Respondents

[By Advocate Mr. C. Rajendran, SCGSC]

The application having been heard on 19-5-2003, 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 by order dated 22-9-1986 (Annexure A8) engaged as a daily-rated Tea Maker under the 1st respondent in the tiffin room. Seeking the benefit under Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training's O.M. dated 29-1-1992 (Annexure A1), which conferred on the employees in Non Statutory Departmental/Cooperative canteen/tiffin rooms located in Central Government offices the status of Central Government

Servants of comparable status, the applicant filed OA No.373/1997 for a declaration that he was entitled to be treated as a Government Servant with effect from 1-10-1991 and for the consequential benefits. The OA was disposed of, as agreed to by the counsel on either side, directing the respondents therein to consider the pending representation of the applicant. In obedience to the above direction, the applicant was served with the order dated 15-5-1997 (Annexure A3) informing him that he could not be treated as a regular Government Servant as he was engaged only on casual basis, but was in terms of the existing rules and schemes granted temporary status with effect from 29-11-1989. The applicant thereafter obtained the benefit flowing from temporary status. The applicant was also told by an order dated 20-5-1997 (Annexure A5) that the order granting him temporary status has already been issued to him. The applicant on 27-10-2002 made a representation claiming that he was entitled to get the Productivity Linked Bonus for the year 2000-01 on par with regular Group D employees as he had completed 3 years of service as a temporary status mazdoor. His claim in that regard had already been taken up by the All India Postal Employees Union, Postmen & Group D, Thiruvananthapuram South Division (Annexure A7). The applicant has now filed this Original Application for a declaration that he is entitled to be appointed as Tea Maker with the status of a Central Government employee with all benefits with effect from 1-10-1991 and for a direction to the respondents to appoint him as Tea Maker with effect from 1-10-1991 with all consequential benefits and in the alternative, a direction to the respondents to regularize him in the post of Tea Maker by appointing him with effect from 29-11-1992.

2. We have carefully gone through all the materials placed on record and have heard Shri M.R.Rajendran Nair, learned counsel of the applicant and Shri C.Rajendran, learned SCGSC appearing for the respondents. A mere scrutiny of the documents produced by the applicant, viz. Annexure A1 O.M. of the DOP&T, Annexure A3 order by which the applicant was informed that as a casual labourer he was not entitled to be treated as a regular Central Government Servant but was entitled only to the grant of temporary status with effect from 29-11-1989 and the claim of the applicant made in Annexure A6 representation for Productivity Linked Bonus on par with temporary Group D employees on completion of 3 years of service as a temporary status mazdoor, establish that there is absolutely no basis or bonafide in the claim of the applicant in the present Original Application that he is entitled to be appointed as a regular Tea Maker with effect from 1-10-1991. The benefit which was due to the employees in Non Statutory Departmental/Cooperative canteen/tiffin rooms by Annexure A1 O.M. dated 29-1-1992 was the status of comparable Central Government employees. The applicant was a casual Tea Maker in the tiffin room and the comparable status in the Government is that of a casual labourer under the Government of India. The said status was given to him and the benefit of temporary status under the scheme was also accorded to him by Annexure A3 order. The applicant was told that he was not entitled to be treated as a regular Government Servant with effect from the date he claimed by Annexure A3 order itself in the year 1997. Not only that he did not challenge the non-granting of the status of a regular Central Government employee, but he accepted the same and claimed the consequential benefit of being treated on par with temporary Group D employees on completion of 3 years' service as temporary status mazdoor in his representation A6. Having accepted the position of

temporary status casual mazdoor and claimed the benefit of treatment on par with temporary Group D employee on completion of 3 years' service after grant of temporary status with effect from 29-11-1989, the applicant is estopped from claiming that he is entitled to be appointed as regular Tea Maker with effect from 1-10-1991 or 29-11-1992. The application is misconceived, untenable and filed without any just cause of action.

3. In the result, the Original Application is rejected under Section 19(3) of the Administrative Tribunals Act, 1985. No costs.

Monday, this the 19th day of May, 2003



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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