

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.311/1997

"Dated Tuesday this the 8th day of April, 2003.

C O R A M

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

E.Manoj
Casual Mazdoor
Vallakadavu P.O.
Thiruvananthapuram-8

Applicant.

(By advocate Mr.Vishnu Chempazhanthiyil)

Versus

1. Sub Postmaster
Vallakadavu
Thiruvananthapuram-8.

2. Senior Superintendent of Post Offices
North Division
Thiruvananthapuram.

3. Chief Postmaster General
Kerala Circle
Thiruvananthapuram.

Respondents

(By advocate Mr.C.Rajendran, SCGSC)

The application having been heard on 8th April, 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 who claims to have rendered casual service under the respondents from 1989 onwards and to have put in 245 days of casual service in the year 1995 and 269 days in 1996 has filed this application for a declaration that he is entitled to be conferred with temporary status and for a direction to the respondents to take action accordingly and to consider the claim of the applicant for temporary status as contained in A-5 representation.

2. The respondents resist the claim of the applicant, contending that he is neither a casual labourer nor has he put in 245 and 269 days of casual service during the years as claimed by him. The Original Application was dismissed by the Tribunal by its order dated 12.2.1999 with costs of Rs.1000/-. Aggrieved by the order, the applicant carried the matter before the Hon'ble High Court of Kerala in O.P.No.16975/99. The Hon'ble High Court of Kerala vide its order in the O.P. held that the scheme for grant of temporary status was not an ongoing scheme as has been held by the Apex Court in Union of India Vs. Mohanpal [2002 (4) SCC 573]. However, stating that the applicant had a case that he had put in 240 days of casual service in the year 1995 and that the High Court had in O.P.32078/2000 and connected cases held that the scheme had been extended upto 5.11.95, remanded the matter to this Bench of the Tribunal for a fresh disposal of the OA after considering that case.

2. When the matter came up for hearing, we have heard Sh.Vishnu Chempazhanthiyil, the learned counsel of the applicant and Sh.C.Rajendran, the learned counsel of the respondents. The learned counsel for the respondents argued that even assuming that the scheme is to be extended till 5.11.95 as has been observed by the Hon'ble High Court of Kerala, the applicant has not completed 240 days during the years as claimed by him. The learned counsel of the applicant, under instructions from his client, conceded that the applicant did not have 240 days of service as a casual labourer even on 5.11.95. Since the applicant admittedly does not have the required length of service as a casual labourer to be entitled to the grant of temporary status, even on 5.11.95, we do not find any merit in this application.

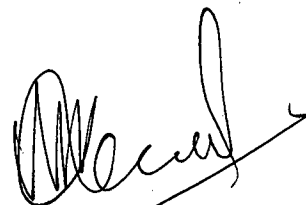
3. In the light of what is stated above, the application fails and is dismissed, leaving the parties to bear their respective costs.

Dated 8th April, 2003.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

aa.



A.V. HARIDASAN
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 311/97

Friday, this the 12th day of Februry, 1999

CORAM

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

E. Manoj,
Casual Mazdoor,
Vallakadavu P.O.,
Thiruvananthapuram-8.

...Applicant

By Advocate Mr G. Sasidharan Chempazhanthiyil.

Vs

1. Sub Postmaster,
Vallakadavu,
Thiruvananthapuram-8.
2. Senior Superintendent of Post Offices,
North Division,
Thiruvananthapuram.
3. Chief Postmaster General,
Kerala Circle,
Thiruvananthapuram.

...Respondents

By Advocate Mr MHJ David.J, Addl.CGSC.

The application having been heard on 28.1.99, the
Triibunal delivered the following on 12.2.1999.

O R D E R

Applicant seeks to declare that he is entitled to be
conferred with temporary status and to direct the 2nd respondent
to consider his claim for temporary status and pass appropriate
orders.

2. Applicant says that he has been working as a Casual
Mazdoor under the 1st respondent for more than 8 years.
According to him, he has worked for 245 days in the year 1995
and for 269 days in the year 1996.

3. Respondents contend that the applicant was only a substitute
engaged in leave vacancies of Postmen/Group 'D'. He was never
appointed as a casual labourer. The Sub Postmaster who has


issued A-1 certificate has no power or authority to issue such a certificate. The details as to the number of days of duty performed by the applicant shown in A-4 are inclusive of Sundays and Holidays and as the number of days worked would come only 221 days the applicant is not eligible for conferment of temporary status even if he is treated as a casual labourer.

4. Applicant is relying on A-1, A-4 and A-7 in support of his claim that he has worked as a casual mazdoor and is entitled to get temporary status by virtue of the fact that he has worked for more than 240 days.

5. Though the applicant claims that he has worked in the year 1995 for 245 days, there is no iota of evidence on this aspect.

6. A-1 dated 23.12.93 is the certificate issued by the Sub Postmaster, Vallakadavu stating that the applicant is working as casual labourer at Vallakadavu Post Office with effect from 3.1.1989 and is continuing. Respondents have denied the authority of the person who has issued A-1. According to respondents, the person who has issued A-1 has no right or authority to issue the same and the proper authority to issue such a certificate like A-1, is the 2nd respondent. Though two rejoinders are filed by the applicant, this contention of the respondent is not denied. No authority is also shown that the person who has issued A-1 has got the right or authority to issue the same.

7. A-4 and A-7 are produced by the applicant to prove the number of days he has worked as casual labourer. A-4 and A-7 relate to the year 1996. From A-4, it is not possible to know the nomenclature of the document. It is really funny to go through it. In A-4, the total number of days worked by the



applicant is shown as 269. The number of days worked in each month is also shown in A-4. On simple arithematical calculation the number of days shown in A-4 is found to be less than 269.

8. It is shown in A-4 that the applicant worked on 31.2.96. It is something very strange. What Calendar the applicant is following is not known.

9. In the reply statement it is specifically stated that the number of days shown in A-4 are inclusive of Sundays and Holidays on which dates the applicant has not performed any duty and the actual number of days deducting Sundays and Holidays comes only to 221 days. In one of the rejoinders filed it is stated that:

"Even granting (and not admitting) that the Sundays should be excluded it comes to 269 days"

This is not a specific denial. What is not specifically denied to be taken as admitted. Hence, excluding Sundays out of the days shown in A-4, the number of days comes only to less than 240. That being so, the applicant is not entitled to be considered for conferment of temporary status.

10. It is stated in A-4 that from 1.2.96 to 11.2.96 the applicant has worked for 12 days. It can never be more than 11 days. So also, it is shown that from 17.4.96 to 28.4.96 he has worked for 13 days. It can never be more than 12 days. Again, it is shown that from 13.5.96 to 18.5.96, he has worked for 7 days. It is practically impossible. It can never be more than 6 days.

11. Further in A-4 it is shown that he has worked from 25.6.96 to 28.6.96 for 4 days and again it is shown that from 25.6.96 to 29.6.96 he has worked for 5 days. So, according to applicant,


from 25.6.96 to 29.6.96 he has worked for 9 days. Again, it is shown that from 23.9.96 to 28.9.96 he has worked for 7 days. How it can be for 7 days the applicant alone knows. There are various such other instances also. I am stopping quoting one more instance. It is shown in A-4 that he has worked on 19.10.96 for 3 days.

12. It is thus clear that the number of days comes to less than 240 only as per A-4..

13. If A-4 is true and genuine, it should tally with A-7. It does not tally with A-7. This makes very clear that absolutely no reliance can be placed on A-4 and A-4 has been produced intentionally, deliberately and wilfully and with all mala fides to mislead the Tribunal in an attempt to see whether a favourable order which the applicant is not entitled can be obtained.

14. A-7 shows that during certain periods, the applicant was engaged as a substitute. If the applicant was engaged as a substitute, he was not a casual mazdoor as contended by him. R-2 series would go in support of the stand of the respondents.

15. It is clearly seen that this O.A. is full of misleading and inaccurate statements. The applicant has not made full and true disclosure of facts. It could well be said that it is done only with ulterior motives. It is a well accepted principle of law that a party who approaches this Tribunal should come with clean hands, and if comes forward with an application containing misleading and inaccurate statements, the Tribunal will dismiss it. If any authority is required for this proposition, it is found in M/s Tilochand Motichand Vs. H.B. Munshi (1969) 1 SCC 110.

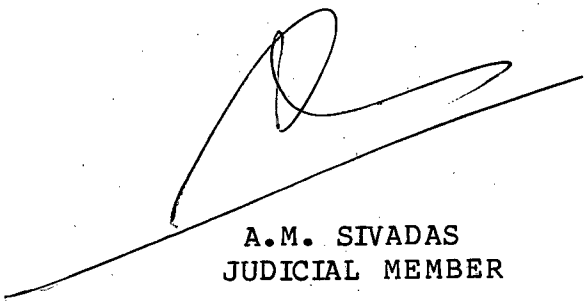


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So in this ground alone, this Original Application can be dismissed.

16. Accordingly, the Original Application is dismissed with costs of Rs.1000/ (Rupees one thousand).

Dated the 12th day of February, 1999.



A.M. SIVADAS
JUDICIAL MEMBER

P/11299

LIST OF ANNEXURES

1. Annexure A1: True copy of the Experience Certificat dated 23.12.1993 issued by 1st respondent to the applicant.
2. Annexure A4: True copy of the statement showing the details of casual work in 1996.
3. Annexure A7: True copy of the extra cost bills (contingent bills) for the year 1996.
4. Annexure R2(A): True copy of the relevant extract from Appendix VI to Post and Telegraph Manual Volume IV.
5. Annexure R2(B): True copy of the Letter No.8IC/Cont/Dlg dated 28.2.1997 issued by the 2nd respondent.
6. Annexure R2(G): True copy of the order No.45-95/87-SPB-I (Pt,II) dated 15.5.88 of the Director General Posts.
7. Annexure R2(O): True copy of the order No.45-130/88-SPB-I dated 11.1.89 of the Director General, Posts.
8. Annexure R2(E): True copy of the orders of the Sub Postmaster, Vallakkadavoo made in his Order Book from 6.1.1996 to 20.1.96 to 20.1.1996 and 28.11.1996 to 2.12.1996.
9. Annexure R2(F): True copy of the Extract of Bill relating to the month of February, 1996 towards the cost incurred for engaging outsiders in the casual leave vacancy of Postman/ Group 'D'.

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