

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

FREE COPY U/R 22
OF C.A.T. (PROCEDURE) RULES

O.A. No. 1525/98 and O.A. No. 349/99

FRIDAY, THE 21st DAY OF JULY, 2000

C O R A M

HON'BLE MR. A. M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

O.A. NO. 1525/98

M. Maheen Kannu S/o Majeed
Casual Mazdoor
South Postal Division
Thiruvananthapuram
residing at Varuvilakathu Veedu
Kalluvetankuzhi, Karamana.

Applicant

By Advocate Mr. G. Sasidharan Chempazhantiyil

Vs.

1. Superintendent of Post Offices,
South Postal Division
Thiruvananthapuram.
 2. Director General
Postal Department
New Delhi.
 3. Union of India represented by its Secretary
Ministry of Communications,
New Delhi.
- Respondents.

By Advocate Mr. K. Kesavan Kutty, ACGSC

O.A. 349/99

M. Maheen Kannu S/o Majeed
Casual Mazdoor
South Postal Division
Trivandrum
residing at Varuvilakathu Veedu
Kalluvatankuzhy, Karamana

..Applicant

By Advocate Mr. G. Sasidharan Chempazhantiyil

Vs

- 1 The Sub Postmaster, Karamana, Trivandrum.
2. Sub Postmaster, Poonthura, Trivandrum.
3. Superintendent of Postoffices,
South Postal Division,
Trivandrum.
4. Chief Postmaster General
Kerala Circle,
Trivandrum.

Director General
Postal Department,
New Delhi.

6. Union of India represented by Secretary,
Ministry of Communications,
New Delhi. ..Respondents

By Advocate Mr. Shri Hari Rao, ACGSC

The application having been heard on 23.6.2000 the Tribunal delivered the following on 21.7.2000.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant in O.A. No. 1525/98 seeks to declare that he is entitled to be conferred with temporary status and to direct the first respondent to confer temporary status on him. This O.A. was dismissed by this Tribunal on 17.2.99. Applicant filed O.P.No. 22952/99 in the High Court of Kerala. When the O.P. came up for admission on 26.10.99 High Court of Kerala disposed of the same with direction to the Tribunal to consider the applicability of various decisions of the Tribunal in earlier cases, more particularly Exts. P-11, P-12 and P-15 filed along with the Original Petition observing as follows:

It is the case of the petitioner that in these cases a view different from that taken in the impugned judgment has been expressed. Learned counsel for the respondents stated that these judgments have no application to the facts of this case. It would be appropriate for the Tribunal to decide the applicability of its earlier decisions to the facts of this case. We make it clear that we have not expressed any opinion on the merits. It will be proper if the parties are permitted to place material in support of their respective stand in addition to those which are already on record.

Ext. P-11 and P-12 were copies of the orders of this Tribunal dated 17.3.94 in O.A. No. 1599/93 and in O.A. 1632/94 respectively.

2. After dismissal of O.A. No.1525/98 the applicant filed O.A. No. 349/99 on 19.3.99 in which he sought quashing of A-1 order dated 9.1.97 of the fourth respondent restricting the duration of engagement of outsiders in leave vacancies of Group 'D'/Postman to 6 hrs a day and seeking for a direction for payment of full daily wages and payment for Sundays and holidays.

3. When O.A. No. 349/99 came up on 10.2.2000 it was ordered that the said O.A. may be posted along with O.A. 1525/98 and accordingly the two O.As were heard together.

4.. The case of the applicant in O.A. 1525/98 in brief is as follows. He was working since 1988 very frequently in the leave vacancies of Postman and Group 'D' and had worked for more than 240 days in the year 1997. He satisfied all the conditions contained in A-2 letter dated 12.4.91 of Director General of Posts and hence eligible for grant of temporary status. A-1 was issued by the then Postmaster, Karamana saying that the applicant had worked as a casual mazdoor. Respondents resisted the O.A. contending that the applicant was only a paid substitute against the absentees in the leave vacancies of Postman and Group 'D'. He did not satisfy the requirement for conferment of temporary status. He had worked only 218 days in the year 1997 and not 244 days as shown in A-3. He was engaged only for 6 hours a day and the same was borne out by A-7 and A-8 and no reliance can be placed on A-1 since the person who was alleged to have issued A-1 stated that he has not issued any such certificate to the applicant. Pursuant to the direction of the High Court of Kerala while remanding the O.A. back to the Tribunal parties were permitted to place material in addition to

those which were already on record. Applicant filed M.A. 1340/99 with additional documents and respondents filed additional reply statement. Applicant also filed M.A. No.1339/99 which was ordered to be heard along with the O.A.

5. In O.A. No. 349/99 the applicant's case is that he was working in the casual and earned leave vacancies of Postmen and Group 'D' officials in the South Postal Division. When Postmen and Group 'D' officials take earned leave for long periods he assumed charge by signing charge report of the post of the absentees. He relinquished charge of the post by signing the charge report when the incumbent reported back for duty after leave. The employment was continuous from the starting of leave till the end of leave. This was also the case when officials belonging to Group 'D' and Postmen took casual leave. He claimed that he was doing all the work of the Postmen and Group 'D' who took leave all by himself and no work of the Postmen and Group 'D' in whose place the applicant was working was distributed to others to be shared with the applicant in any one of the days when he was engaged in 1997. He claimed that he was working for more than 8 hrs invariably on all days of his employment for work. The work of the Postmen required his attendance in the Post Office and in the delivery area for more than 10 hrs a day and therefore he was entitled for full wages for each day of his engagement. He was also entitled for paid weekly off days on Sundays and Holidays falling during the period of his employment. He claimed that the third respondent came with a verified statement and opposed the Original Application No. 1525/98, in which he sought conferment of temporary status, submitting that he was paid 6 hours per

day in the year 1997 and also that he was not paid wages for weekly off days and holidays. Thus, the fact of short payment/non-payment of wages to the applicant during 1997 came to the notice of the applicant for the first time during the last week of January, 1999. He submitted that from the verified statement of the third respondent in O.A. 1525/98 it had come to the notice of the applicant that the 4th respondent issued A-1 order dated 9.1.97 to restrict payment to outsiders in the leave vacancies of Postmen and Group 'D' to 6 hours a day. He submitted that outsiders referred to in A1 according to the Department were Casual Mazdoors. He also annexed a copy of letter dated 26.6.89 of the 4th respondent as Annexure A2. He submitted that the subordinates of the 4th respondent did not reduce the working hours of the outsiders pursuant to A1 but reduced their wages to the extent of 6 hours a day and that the same was illegal. He submitted that respondents did not obtain his consent for such restriction. He submitted that on the basis of A-3 he was paid wages only for 172 days whereas on the basis of A-4 and A-5 he was actually employed 194 days and that there was short-fall of wages for 22 days during the period from 20.2.97 to 2.9.97. Further from 2.9.97 to 22.9.97 even though he was engaged for 20 days as per A-3 he was paid only for 17 days. For the period from 24.1.97 to 31.1.97 he had worked for 8 days he was only paid for 7 days. He submitted that when Extra Departmental Agents take leave by nominating their own nominees in their place and work as Postmen and Group 'D' they earn 8 hours wages. According to him non-payment of wages for Sundays and Holidays intervening the period of continuous employment in leave vacancy was illegal. He sent A-8 representation dated 28.1.99 to the third respondent. He sought the following reliefs:

1. Call for the records and quash Annexure A1.
2. Direct the respondents to pay the applicant full daily wage for each day of his engagement in the year 1997.
3. Declare that the applicant is entitled to be paid wages for the Sundays and Holidays intervening the period when he was holding the post of Postmen and Group 'D' who went on leave, and direct the respondent to regulate the payments accordingly.
4. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
5. Award the cost of these proceedings.

6 Respondents resisted the claim of the applicant in their reply statement. According to them applicant was engaged in leave vacancies and therefore he was a paid substitute. They further submitted that he was engaged only for 6 hours on the days of engagement as the work entrusted to him was only to be carried out in 6 hours and that he was not entitled for any payment on Sundays and Holidays intervening during the period of his engagement. The benefit of payment on Sundays was available only in cases where the engagement was for 8 hours a day. They referred to R3(4) statement dated 8.6.99 given by Shri G. Krishnan Nair - then SPM Karamana - before the Inspector of Post offices, Trivandrum South Division in support of their averment that the applicant was engaged only for 6 hours per day. Further, relying on R-3(3) order of this Tribunal dated 17.2.99 in O.A. No.1525/98 they submitted that applicant was only engaged for 218 days during the year 1997 and therefore the claim of the applicant that he was engaged for 244 days was not true. They submitted that the post of Postman and Group 'D' were created when the workload was more than 5 hours per day per post and such posts were created on the basis of average workload and not

on the basis of daily workload. Therefore, it could not be said that every day Postman and Group 'D' would have 8 hours workload though it could be said generally that the workload would be above 5 hours. It was submitted that the workload per day would vary according to the receipt of mails for delivery and where there were more than one post, the workload of each post might be different. Where the work load fell less than 5 hours, the departmental post would be abolished. That being the case the actual work load of a Postman on a given day could be determined only after receipt of mails for delivery that day and after assessing the workload by applying the prescribed work standard. In the case of Group 'D' post also the sanctioning of the post was done as in the case of Postman and the workload on each would be known only based on various factors like mails received, mails posted, etc. The applicant worked in Karamana and Poonthura Post Offices as paid substitute in the leave vacancies of Postmen. Enquiries were made with the concerned Postmaster / Sub Postmaster who held charge of the two Post Offices during the relevant periods. During the enquiry they stated that the applicant was entrusted with work for 6 hours only as against his claim of 8 hours. Annexures R 3(6) to R3(8) being statements of officials incharge of the Post Offices were enclosed with the reply statement. In support of their statement that only casual labourers and not paid substitutes were entitled to weekly off, Director General's letter No.45/111-90-SPB dated 25.3.91 communicated under Chief Postmaster General's letter No. EST/53-1/Rlgs dated 3.4.91 was produced as Annexure R3(11). Extra Departmental Agents could not be equated with paid substitutes. There were no instructions to restrict the engagement of the E.D. agents when they work in departmental posts. A-1 order had

been issued by the competent authority and therefore it was valid in all respects. Having accepted the offer for 6 hours and received payment the claim was not tenable. E.D. Agents and paid substitutes stand in two distinct class and therefore Articles 14 and 16 of the Constitution of India will not apply. There was no merit in the O.A. and the O.A. was liable to be dismissed.

7. Applicant filed rejoinder and additional rejoinder and respondents filed additional reply statement. In addition, an interrogatory was filed by the applicant which was replied by the respondents.

8. We heard Shri Vishnu for the applicant in both the O.As and S/Shri K. Kesavan Kutty and Hari Rao for the respondents in O.A. No.1525/98 and O.A. No. 349/99 respectively. We have given careful consideration to the submissions made by the learned counsel for the parties and pleadings in both the Original Applications and perused the documents brought on record. We propose to deal with O.A. No.349/99 first.

O.A.No.349/99

9. In this O.A. the points to be decided are the validity of A1 order, the duration of daily work performed by the applicant and the eligibility of the applicant for the payment for the intervening Sundays and Holidays during the period of his engagement.

10. The applicant is challenging A1 on the ground of the same being discriminatory. According to him discriminating casual mazdoors like the applicant and

reducing their wages to the extent of 6 hours per day when engaged as Postman/Group -D against leave vacancies and at the same time E.D. Agents being paid 8 hours wages when engaged against leave vacancies of Postman/Group-D is discriminatory. It is also violative of the principles of 'equal pay for equal work'. Respondents resisted the claim on the basis of the order dated 17.2.99 of this Tribunal in O.A. No. 1525/98. Reliance placed by respondents on this order is no longer valid as the High Court in its judgment in O.P.No.22952/99 dated 26.10.99 remanded back the O.A. No. 1525/98 to the Tribunal for a fresh hearing and adjudication. According to respondents the post of Postman/Group -D are created when the work load is more than five hours per day and such posts are created on the basis of average workload and not on the basis of daily workload. Therefore, it cannot be said that either a Postman or Group-D will have 8 hours of workload daily. It can be only said that the workload will be above 5 hours. Further they submitted that E.D. Agents could not be equated with outsiders and there is no restriction in the period of daily engagement of E.D. Agents when they work in departmental posts against leave vacancies. We find that the respondents are admitting that when E.D. Agents are engaged against leave vacancies of Postmen/Group-D they are paid wages for 8 hours. This would go to prove that A-1 letter is violative of Article 14 of the Constitution and is discriminatory in that the said letter restricts the working hours of only outsiders like the applicant to six hours when engaged in leave vacancies of Postman/Group-D whereas nothing is stated about E.D. Agents when posted against such vacancies. We are of the view that both outsiders like the applicant (whom respondents call as Substitutes) and E.D. Agents form one class when engaged

against leave vacancies of Postman / Group 'D' and restricting the engagement of outsiders alone to six hours without any guideline as to which work of the regular incumbent of the post is not to be performed by them is arbitrary.

11. Respondents had not produced any order or authority issued by 5th or 6th respondent to show that the 4th respondent is competent to issue A-1 letter except an assertion that fourth respondent is competent. According to the applicant fourth respondent is not competent to issue such instruction as contained in A-1 in the face of A-9 issued by the fifth respondent. According to A-9 letter dated 30 .6.1987 issued by the Director General (Posts) certain guidelines about unapproved candidates in short term vacancies in the grade of Postman etc. and calculation of daily wages for them were given. This reads as follows

I am directed to say that the question of payment for working weekly off days to the unapproved candidates engaged in short term vacancies has been engaging the attention of the department for some time past. It is clarified that the unapproved candidates employed in leave vacancy on daily wage basis for a specified period will be entitled to paid weekly off if they are on duty continuously for the six preceding days. For purposes of calculation of the daily rate wages, the total emoluments may be divided by the number of days in the month of employment and due amount calculated in accordance with the undernoted formula.

Emoluments based on minimum	Number of actual
the scale including HRA,CCA..X	working days

Number of days in the month

12. We notice from the above that apart from clarifying that unapproved candidates engaged in short term vacancies on daily wages would be eligible for paid weekly off days, the method of working out the daily wages is also indicated. There is absolutely no whisper that the daily

wages as worked out in the manner indicated in the above letter can be further restricted in any manner. We find that, A-9 has been issued by the Director General of Posts - fifth respondent -, a superior authority whereas A-1 was issued by the 4th respondent - Chief Postmaster General, subordinate to him. Thus, we find considerable force in the plea of the applicant that the fourth respondent had no authority to issue A-1 letter dated 9.1.97.

13. A-1 letter dated 9.1.97 reads as under:

As per this office letter No. EST/53-2/92 dated 15.12.94 engagement of outsiders in leave vacancies of Gr.D/Postmen was restricted to 4 hrs a day irrespective of the nature of duty performed by them.

The position has been reviewed by CPMG in view of the difficulties expressed by some Divisional heads. Accordingly, the said order dated 15.12.94 has been modified to the extent that "The duration of 4 hrs prescribed therein may be extended to 6 hrs wherever deemed absolutely essential."

All the other conditions stipulated in the said instructions will remain unchanged.

From a perusal of the above we are of the view that prior to 15.12.94 there was no restriction in the number of hours of engagement of outsiders in leave vacancies of Postman/Group-D. Respondents have not produced the letter dated 15.12.94. They have also not explained the reasons as to why such restrictions were necessary. In the absence of such an explanation we are of the view that the restriction of the duration of engagement and payment of wages on that basis is arbitrary especially in the light of the statement of the respondents that posts of Postman and Group-D are sanctioned whenever the workload exceeds 5 hours meaning thereby that for the regular incumbents of the posts of Postman and Group-D the duration of daily work will vary from more than 5 hours to 8 hours. If for such regular employees wages for 8 hours are paid, not meeting

out the same treatment to 'outsiders' engaged as 'substitutes' to such regular employees is arbitrary and is opposed to the principle of 'equal pay for equal work' especially when no list of duties or any other material which the regular employee is to perform and which is not to be performed by the substitute had been placed before us by the respondents. Further admittedly when outsiders are engaged against leave vacancies they are substitutes. There is no concept of 'Part-time substitutes' envisaged in any of the directives/orders of respondents 4 and 5 placed before us. In view of the foregoing, we declare that any orders issued by the fourth respondent restricting the number of hours per day of engagement of outsiders against leave vacancies of Group-D/Postman as arbitrary, discriminatory, violative of the principles of 'equal pay for equal work' and without authority. Hence, A-1 order dated 9.1.97 cannot be sustained.

14. The next question that arises is whether the applicant had been advised in advance that he would be engaged only for 6 hours or do the respondents have any record to show that he had performed work only for six hours. Respondents submitted that enquiries were made with the officials who held charge of the Karamana and Poonthura post offices as Sub Postmaster during the relevant periods namely S/Shri G. Krishnan Nair, S. Manilal Sarma and N. Ponnamma Postal Assistant. They submitted that all the above officials had during the enquiry stated that the applicant was engaged for 6 hours work against 8 hours as claimed by him in support of which they produced R-3(6) to R-3(9). We find that R-3(6) to R-3(9) were recorded on 8.6.99, 19.5.99, 20.5.99 and 20.5.99 respectively i.e. after this O.A. was filed on 12/19.3.99. They relied on

these statements as well as A-1 order of the Chief Postmaster General, Kerala Circle and the order of this Tribunal dated 17.2.99 in O.A. 1525/98. As already stated once the High Court of Kerala had remanded this O.A. back to this Tribunal for fresh hearing the said order of this Tribunal cannot be of any help to the respondents. The respondents have no case that the applicant was informed in his appointment letter or otherwise in writing that he has to work only for 6 hours as Postman/Group-D against leave vacancies. Though respondents stated in the reply statement that applicant had agreed that he was appointed for 6 hours of work as revealed during enquiry, no material/documents were placed before us to substantiate this statement. In the rejoinder filed by the applicant he specifically denied para 9 of the reply statement wherein such a statement had been made. In the reply to the interrogatories of the applicant, the respondents submitted that no entries were made in the Error Book. Thus, the respondents have no official record to show that the applicant's engagement was restricted to 6 hours per day during 1997. We also find in the reply of the 3rd respondent to the interrogatories of the applicant that there were two deliveries at Karamana Post Office first 1000 hours and the second at 1430 and only one delivery at Poonthura Post Office at 0930 hours and the Postmen were required to attend the office on each day one hour in advance in the case of split working Offices like Karamana and at the opening time itself in stretch working offices like Poonthura. At Poonthura the Postman was to attend at 0800 hours. Even though the respondents stated that the work load of departmental postman would depend on the post office and the Postmaster and Sub Postmaster would be in a position to say on the workload of the Postman/Group-D

after assessing the actual workload, they have no case that in the case of the applicant such workloads were assessed before his engagement maintained anywhere in the official records. They have also not denied the statement of the applicant that every day the Postmaster/Sub Postmaster had not assessed the workload before his engagement. Their statement that the applicant was not engaged on continuous basis is also not borne out by facts. On a perusal of the records produced by the respondents we did not find anywhere any record to show that the applicant had worked only for 6 hours. Respondents have also no case that R-3(14) was given to the applicant along with the payment made to him. It is admitted fact that the applicant was engaged against regular sanctioned posts of Postsman/Group-D. It is also an admitted fact that against these posts either substitute such as applicant or Extra Departmental Agents can be engaged. It is the case of the respondents that when E.D. Agents are engaged against such leave vacancies they will be paid full wages but when substitutes are engaged they would be paid only for 6 hours. In support of their action they relied on A-1. We have already held that A-1 cannot be sustained. As regards the plea of the respondents to accept the statement of concerned officials recorded after filing of this Original Application we find that in these enquiries the applicant had not been associated. Hence we do not accept the reliance placed by the respondents on the statement made by the SPMs. From the office records, the respondents were not able to prove that applicant had been engaged only for 6 hours. From A-5 to A-7 charge reports produced by the applicant we find that the applicant had assumed and relinquished the charge of the post of Postman, Poonthura on 20.2.97 and 2.9.97 respectively vice Sri Mohandas,

Postman, Beat No.I (A-4 and A-5) and 24.1.97 and 31.1.97 respectively vice Shri Sateesan, Postman, Beat No. III (A-6 and A-7). Respondents have not specifically denied these documents. When a person takes over charge of a post, as is the case herein, it has to be assumed that the entire workload of the post had been taken over. Any statements made by the incharge officials long after the event cannot alter the situation. In the circumstances we accept the applicant's contention that he had worked for full day during the periods of his engagement and is therefore entitled for the full days' wages.

15. In terms Director General's letter A-9 reproduced earlier, a substitute like the applicant is entitled to be paid weekly off, if he was on duty continuously for the preceding six days. As we have already rejected the plea of the respondents that the applicant had been engaged only for 6 hours and had accepted the applicant's plea that he had worked for full day during his periods of engagement, instructions in Annexure A-9 will apply. Accordingly, the applicant is entitled for the wages for the intervening Sundays. It is an admitted fact as seen from A-3 [which is the same as R-3(5)] that during the periods, from 24.1.97 to 31.1.97, 13.2.97 to 19.2.97 and 21.2.97 to 30.9.97 the applicant had been engaged for more than 6 days at a stretch. For the Sundays during these periods he is entitled for wages which had not been paid as seen from R-3(14)

16. In the light of what is stated in the foregoing paragraphs, this Original Application succeeds and the applicant is entitled for the reliefs as indicated below. We set aside and quash A-1 order dated 9.1.97. We declare

that the applicant is entitled to be paid full daily wages for the entire period he was engaged including for the intervening Sundays Respondents are directed to make payment of the difference between what has been already paid and what is due in accordance with the above declaration within a period of three months from the date of receipt of the copy of this order.

O.A. No. 1525/98

17. The reliefs sought in the O.A. are as follows:

1. Call for the records and quash Annexure A5.
2. Declare that applicant is entitled to be conferred with temporary status and direct the first respondent to confer temporary status on the applicant
3. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
4. Award the cost of these proceedings

18. Respondents resist the O.A. According to them for enabling the applicant to claim for temporary status the following conditions were to be satisfied.

i) the applicant must be a casual labourer whereas here he was only a paid substitute engaged against leave vacancies of Postman/Group-D.

(ii) the applicant should have been engaged for a period of 240 days in a year whereas in this case he was engaged only for 218 days in 1997 as against his claim for 244 days as shown in A-3.

iii) The applicant should be a casual worker engaged for full working hours viz. 8 hours whereas he was engaged only for 6 hours a day throughout the period of his engagement and he had been paid only for 6 hours per day of engagement.

iv) The applicant should be a casual labourer recruited through employment exchange.

v) No reliance can be placed on A-1 since the person who had issued A-1 had given a statement marked as R-1 in which it was admitted that he had no authority to issue the certificate.

19. We have already considered the issues under (ii) and (iii) above in O.A. 349/99 which has been allowed to the extent indicated in para 16 above. Hence these two pleas are only to be rejected.

20. We find from A-2 that for grant of temporary status casual labourers should be in employment on 29.11.89. Applicant relied on A-1 certificate dated 11.4.92 issued by the then SPM/Karamana Post Office, A-10 additional document- a compilation made by the applicant showing the details of work done by him from November, '89 to June, '95, A-13 certificate issued by Shri A.K. Perumal, SPM Peroorkada and A-11, A-11(a) and A-11(b) leave sanction orders dated 26.3.88, 31.5.88, and 30.9.89 respectively. Even though respondents questioned the legality of A-1 and A-13 certificates and A-11, A-11(a) and A-11(b) leave orders as being issued by authorities not competent to issue them, they have not denied that the applicant was not engaged as substitute during the period. We further find

that in reply to M.A. No.1339/99 filed by the applicant, respondents have stated as follows "It is submitted that the applicant was working only occasionally as paid substitute and he has not been working on a continuous basis for 12 years as claimed." In the reply statement to the O.A. filed on 13.1.99 also respondents had stated as follows. "It is submitted that the applicant is only a paid substitute against absentees in the leave vacancies of the postmen and Group 'D' in different post offices in Trivandrum South Division." When we read this in the context of the applicant's statement in the O.A. that "The applicant has been working as casual mazdoor in the leave vacancies of Postman and Group -D in various Post Offices under the first respondent for the last more than 10 years' leads us to conclude that the applicant was being engaged by the respondents from 1988 onwards. Moreover, in A-5 the impugned order, the applicant's request for grant of temporary status had not been rejected on the ground that he was not in employment on 29.11.89. Hence we are of the view that the dispute in the case of the applicant is only on account of the nature of his engagement and not on account of his being not engaged at all in 1988, 1989, etc. Hence, even if A-1 and A-13 certificates are not legally valid, the admitted position is that the applicant was being engaged from 1988 onwards against leave vacancies.

21. Respondents pleaded that in terms of letter dated 17.5.89 issued by Director General, Posts circulated under CPMG, Kerala letter dated 26.6.89 substitutes engaged against leave vacancies could not be designated as casual labourers and hence applicant is not entitled for temporary status as per A-2 letter dated 12.4.91. A Division Bench of

this Tribunal in O.A. 913/93 have considered the letter dated 17.5.89 referred to by the respondents. The Tribunal held as follows in its order dated 7.4.94 (Annexure A-9):

6. The learned counsel for respondents also submitted that the applicant is a paid 'substitute' and hence he cannot be brought within the purview of Annexure A-5. This is answered by the applicant in the rejoinder placing reliance on the letter of Director General, Department of Posts No. 45-24/88-SPB-1 dated 17.5.89 which reads as follows:

"It is hereby clarified that all daily wagers working in post offices or in RMS offices or in Administrative offices or PSD/MMS under different designations (Mazdoor, Casual Labourer, Outsider) are to be treated as Casual labourers."

7. We have considered same issue in similar cases relying on the departmental letter and held that it is not the nomenclature of the employee that is material for deciding the right. If a daily wager had worked continuously for long period discharging duties to the satisfaction of the departmental authorities, some right will accrue in his favour. In the light of those rights a daily wager can be treated as casual employee for the grant of benefit of temporary status. Under these circumstances, we reject the submission of the respondents.

22. Order dated 7.4.94 in O.A. No.913/93 also dealt with the matter of 'paid weekly off' being taken into account for computation of 240 days of engagement in a year. Para 4 of the order is as follows:

Accepting the statement submitted by the respondents in regard to the number of days in the credit of the applicant for the year 1988 the learned counsel for the applicant referred to us the statement Annexure A-1 submitted by him. He submitted that holidays and weekly off are also to be taken into account in which case the total days of work would come to 240 days and he fulfilled the requirements in annexure A-4 for grant of temporary status. He also relied on the decision of the Principal Bench of this tribunal in O.A. No. 57/90 in that case considering the same issue, the Tribunal directed the department to take into account all holidays and 'weekly paid off' for computing total number of days of work in the credit of the casual employees for getting temporary status under the extent order. In the light of the above submission and the decision of the Principal Bench, we see considerable force in the submission of the applicant.

23. We also notice from A-15 that this Tribunal in O.A. No.1599/93 and O.A. No. 1632/94 held that the applicants therein who were working as paid substitutes against leave vacancies were entitled for grant of temporary status under A-2 letter dated 12.4.91 and the same was implemented by the department after the SLP filed in Supreme Court was dismissed. Further by order dated 2.10.99 in O.A. No. 724/97 this Tribunal had held that the applicant therein who was engaged against leave vacancies was eligible for grant of temporary status.

24. We are in respectful agreement with the dictum laid down in the above orders of this Tribunal and reject the plea of the respondents to the effect that as the applicant was engaged against leave vacancies he is not eligible for the grant of temporary status under the scheme notified vide A-2 letter dated 12.4.91.

25. Another plea taken by the respondents to resist the claim of the applicant for grant of temporary status was that he was not sponsored by the Employment Exchange as required under R-1(6) O.M. dated 12.7.94 of GOI, Department of Personnel & Training. We have considered the matter. We are unable to accept this plea because we find from R-1(6) O.M. dated 12.7.94 that the same was issued in the context of the Department of Personnel & Training O.M. dated 10.9.93. Nothing had been brought on record to show that this O.M. dated 10.9.93 is applicable to the employees of Department of Posts. Hence, we reject this plea.

26. In the light of the detailed analysis in the foregoing paragraphs this Original Application succeeds and is allowed. Accordingly we set aside and quash Annexure A-5 order dated 24.8.98 and declare that the applicant is entitled to be conferred with temporary status in accordance with A-2 scheme dated 12.4.91 and direct the first respondent to take necessary action for conferment of temporary status on the applicant. The applicant is also entitled for all consequential benefits both monetary and other than monetary - under the scheme which shall be given to him without delay by the respondents.

27. M.A.No.1339/99 filed by the applicant seeking to direct the first respondent to provide the applicant with employment at the rate and scale at which he was being engaged in the past till the disposal of the O.A. was posted along with the O.A. In the objection filed against this M.A. respondents apart from raising the pleas raised in the O.A., also took objection to the production of copies of A-7 and A-8 copies of acquittance rolls dated 4.8.97 and 11.11.97 respectively. It had been submitted that Smt. N. Ponnamma who was the Sub Post Master, Poonthura on both the days had stated that she had not permitted the applicant to take photocopies of the two acquittance rolls and that the originals of A-7 and A-8 Acquittance Rolls were sent to Thycaud Head Post Office. A true copy of the statement of Smt. R. Ponnamma was produced as Annexure R-1(a). Further it was stated that the applicant had obtained A-7 and A-8 photocopies apparently through illegal and clandestine means and the said act was a misconduct on the part of the applicant and by this act he had become unfit for engagement as paid substitute in the post offices and pending a detailed probe

as to how the applicant came to possess the photocopies, it was proposed to keep the applicant away from being engaged as a substitute. Applicant in the rejoinder submitted that it was Smt. Ponnamma who had given the Acquittance rolls to the applicant after signature for taking photocopies and that he had a right to take a photocopy of the receipt which he had signed and given to the Department. Further the receipt given by the applicant was not a confidential record under the Official Secret Act and taking photocopy of his own receipt with the permission of the disbursing Officer would not constitute a misconduct and that the proposal to keep away the applicant from engagement was unreasonable and malafide and the purpose was to deprive him his means of livelihood. We have considered the rival contentions and have perused R-1(a). We find from R-1(a) that there is no specific averment that Smt. Ponnamma had not given the acquittance rolls to the applicant. We also find considerable force in the applicant's plea that he had not committed any misconduct in taking a copy of his own receipt. After considering all the aspects involved and in the light of our orders and direction in the O.A. and in the interest of justice, we allow this M.A. However, this will not preclude the respondents to take appropriate action against the applicant in accordance with law if in the enquiry contemplated finding is made that some illegality has been committed by the applicant.

28. One aspect which came to our notice while dealing with this Original Application was that the applicant for his engagement against leave vacancies for the period from 21.2.97 to 20.6.97 received payment in one lump sum in August, '97 and again for the period from 21.6.97 to 31.8.97 in November, '97.. Does it indicate that

outsiders/substitutes do not have any wage period or periodicity of payment? If it is so it cannot be allowed to continue as the same will be very hard on such outsiders/substitutes. We expect the third respondent in O.A. No. 1525/98 will specifically look into this for appropriate remedial action.

29. The two Original Applications viz. O.A. No. 1525/98 and O.A. No. 349/99 stand allowed as indicated in paragraphs 26 ^{and 16} respectively. In the circumstances we direct the parties to bear their respective costs.

Dated the 21st July, 2000.

Sd/-
(G.RAMAKRISHNAN)
ADMINISTRATIVE MEMBER

Sd/-
(A.M.SIVADAS)
JUDICIAL MEMBER

List of Annexures referred in this Order

O.A. 1525/98

- A-1 True copy of the Experience Certificate issued by the Sub Postmaster, Karamana dated 11.4.92
- A2 True copy of DG's letter No. 45-95/87-SPB.I dated 12.4.91 issued by the first respondent
- A3 True copy of the representation dated 1.12.97 sent to the 2nd respondent.
- A4 True copy of the order of Tribunal in O.A. No.916/98 dated 23.6.98.
- A5 True copy of the order bearing No.CC/25/98 dated 24.8.98 issued by the 1st respondent.
- A7 Photocopy of the acquittance Roll No. 564 for the period 21.2.97 to 20.6.97
- A8 Photocopy of the Acquittance Roll No. 285
- A-10 True copy of the compilation showing the details of work done payment received by the applicant at Karamana PO during the period from; 11/89 to 6/95

A-11 True copy of Leave Memo No. PF/RD dated 26.3.88 of the Sub Postmaster, Karamana

A-11(a) True copy of Leave Memo No. PF/NVN dated 31.5.98

All(b) True copy of the Leave Memo No. B II/N.V.N dated 30.9.89

A-13 Photocopy of the Certificate dated 11.4.92 of the Sub Postmaster, Karamana.

R-1 True copy of CPMG, Kerala letter No.ST/307/88-Rlgs dated 26.6.89 addressed to all SSPOs/SPOs in Kerala Circle.

O.A. 349/99

A1 True copy of the order No.EST/53-2/96 dated 9.1.97 issued by the 4th respondent.

A3 True copy of the calculation sheet from 8.1.97 to 30.9.97

A9 True copy of the order ST/37/Rlgs dated 30.6.87 issued by the Director General, Postal Deptt., New Delhi.

R3(3) True copy of the order dated 17.2.99 in O.A. No. 1525/98

R3(4) True copy of the statement given by one Sri G. Krishnan Nair dated 8.6.99

R3(6) True copy of the statement dated 8.6.99 given by ne G. Krishnan Nair stating about the work done by the applicant.

R3(8) True copy of the statement dated 20.5.99 given by SriR. Manilal Sarma stating about the work done by the applicant

R3(11) True copy of the letter No. EST/53-1/Rlgs dated 3.4.91 issued by the 4th respondent.

R3(5) True copy of the statement showing the engagement of the applicant in the leave vacancies in the year 1997.

R3(9) True copy of the statement given by one Smt. Ponnamma stating about the work done by the applicant

R3(14) True copy of the details of Acquittance Rolls produced in O.A. No. 1525/98 showing payment for 6 hours per day.

CERTIFIED TRUE COPY

Date

Deputy Registrar