

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 399/93

Tuesday, this the 8th day of February, 1994

SHRI N. DHARMADAN, MEMBER (J)
SHRI S.KASIPANDIAN, MEMBER(A)

1. N. Krishnan Nair, K.P. Bhavan,
Antiyoorkonam, Kollode PO,
Trivandrum Dist.
2. R.Karunakaran, Shine Bhavan,
Mariyapuram PO, Neyyatinkara.
3. Asoka Kumar, Chakkakonathu,
Kattakulill Veedu, Kachani,
Karakulam, Nedumangad. .. Applicants

By Advocate Shri M.G.K. Menon

V/s

1. The Sr. Superintendent,
RMS 'TV' Division,
Trivandrum-3.
2. Chief Post Master General,
Kerala Circle, Trivandrum.
3. Union of India rep. by
Director General of Posts,
Postal Service Board, New Delhi-1.
4. M.Ravindran Nair,
ED Mailman, HRO, RMS 'TV' Division,
Trivandrum-1.
5. L. Madhu, -do-
6. K. Divakaran Nair, -do- .. Respondents

By Advocate Shri S.Krishnamoorthy, ACGSC (Resp. 1 - 3)
By Advocate Shri Paul Varghese (Resp. 4 to 6)

ORDER

N. DHARMADAN

Three applicants, who are working as part-time
casual labourers under the first respondent, have jointly
filed this application for grant of temporary status in
accordance with extant orders applicable to the same.

2. First applicant joined as part-time Watchman in the Trivandrum RMS/3 w.e.f. 12.6.78. He has produced Annexure-A1 appointment order and Annexure-A2 proceedings of Head Record Officer, RMS TV Division to establish his prior service. The second applicant was first appointed as P.T. Test House Attender, RMS Rest House at Trivandrum w.e.f. 5.2.68. Annexures-A5 and A6 are documents to establish the details of service as casual labourer ever since his initial appointment. Similarly, third applicant was appointed as part-time Rest House Attender at Shenkotta RMS TV Division w.e.f. 9.9.82. Later, he was transferred to Postal Holiday Home at Trivandrum as part-time Caretaker. Annexures-A8 and A9 orders are produced to establish his prior service. All the applicants submitted that they are working continuously ever since their appointment and they have continuous service for more than ten years and hence, according to them, they are eligible for temporary status on the basis of the departmental orders issued in this behalf.

3. Respondents have produced Annexure-R2 letter of Director General dated 12.4.91 dealing with grant of temporary status and regularisation scheme. Clause 1 of Annexure-R2 reads as follows:-

"1. 'Temporary Status' would be conferred on the casual labourers in employment as on 29.11.89 and who continue to be currently employed and have rendered continuous service of at least one year; During the year they must have been engaged for a period of 240 days (206 days in the case of offices observing five days weeks)."

4. The learned counsel for respondents further submitted that Annexure-R1 Recruitment Rules issued under Article 309 of the Constitution will apply and the applicants are not eligible for regularisation for they do not come within the preferential category mentioned in the Recruitment Rules.

5. The question of grant of temporary status and regularisation to part-time casual employees have been considered by this Tribunal in more than one decisions. The applicants have referred to two of the decisions in ground-E of the original application, OA 608/90 decided on 25.4.91 and OA 853/90 decided on 6.6.91.

6. Respondents have no case that these cases would not apply to the facts of this case and that they are distinguishable. The only answer given in para 6 of the reply is that the judgments in OA 853/90 and 608/90 were given by this Tribunal after considering the facts and circumstances in those cases and that the above decisions will not apply to the facts of this case.

7. Having heard the learned counsel for both parties and after perusal of the documents, we are of the view that the decisions cited above fully apply to the facts of this case. It is after considering same contentions that this Tribunal passed the above judgments. The contention of the respondents based on Annexure-R1 Recruitment Rules cannot be accepted in the light of the law laid down by this Tribunal particularly when the applicants are requesting only for a grant of temporary status, which is governed by Annexure-R2. Hence, we follow the principles laid down in those judgments:-

"9. Now we come to the last point about regularisation through absorption of the applicants in Group 'D' cadre. In this connection the relevant provisions in the scheme of regularisation and temporary status as adopted by the Department of Telecommunications and circulated by that department through its letter No.269-10/89-STN dated 7.11.89 reads as follows:-

'The provisions in the Scheme would be as under:-

A) Vacancies in the Group 'D' cadres in various offices of the Department of Telecommunications would be exclusively filled by regularisation of casual labourers and no outsiders would be appointed to the cadre except in the case of appointments on compassionate grounds, till the absorption of all existing casual labourers fulfilling the eligibility conditions including the educational qualifications prescribed in the relevant

Recruitment Rules. However, regular Group D staff rendered surplus for any reason will have prior claim for absorption against existing/future vacancies. In the case of illiterate Casual Labourers, the regularisation will be considered only against those posts in respect of which illiteracy will not be an impediment in the performance of duties. They would be allowed age relaxation equivalent to the period for which they had worked continuously as casual labour for the purposes of the age limits prescribed for appointment to the Group D cadre, if required. Outside recruitment for filling up the vacancies in Gr. D will be permitted only under the conditions when eligible casual labourers are NOT available.

B) Till regular Gr. D vacancies are available to absorb all the casual labourers to whom this Scheme is applicable, the casual labourers would be conferred."

The Supreme Court in the Jagrit Mazdoor Union (1990 SCC (L&S) 606) directed that a similar scheme should be adopted for Postal Department also. The respondents before us themselves had proposed creation of six posts for the absorption of the six applicants, but the same had not been approved. No reason has been given for not creating these six posts while getting the work done by engaging the six applicants and retaining them on a casual basis for 12 to 18 years.

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10. In the light of the aforesaid clear rulings of the Supreme Court and the respondents own proposal to have six posts for absorption of the six applicants who appeared to us to be at the lowest rung of the lowest cadre of part-time and then full-time casual Scavengers/Sweepers, we have no hesitation in directing that they should be regularised forthwith by creating or otherwise finding six Group 'D' posts. Till such time as they are absorbed, they should be given all the benefits of casual labourers with temporary status as are available under the Scheme of Regularisation and Temporary Status promulgated by the Department of Telecommunications."

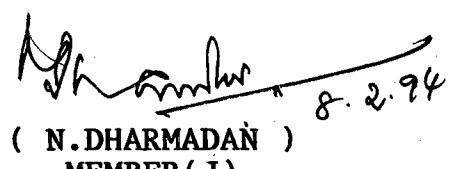
(O.A. No. 608/90)

8. In the light of the law laid down by this Tribunal, we declare that applicants are entitled to temporary status if they are found to be otherwise eligible for the same in accordance with the conditions stipulated in Annexure-R2. This shall be done within a period of three months from the date of receipt of a copy of this order.

9. The application is allowed as above. There will be no order as to costs.


(S. KASIPANDIAN)

MEMBER(A)


(N. DHARMADAN)
MEMBER(J)
8.2.94