

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.41/2005

Wednesday this the 7th day of September, 2005.

CORAM:

HON'BLE MR.KV. SACHIDANANDAN, JUDICIAL MEMBER

(By Advocate Shri VD Balakrishna Kartha)

V.S.

1. Union of India-represented by
Secretary to Government of India,
Ministry of Communications, New Delhi.
2. Post Master General,
Central Zone, Kochi-16.
3. Senior Superintendent of Post Offices,
Kochi Division, Kochi-11.
4. Post Master,
Shanmugham Road Post Office,
Kochi-31.

(By Advocate Shri TPM Ibrahim Khan, SCGSC)

The application having been heard on 7.9.05
the Tribunal on the same delivered the following:

ORDER (Oral)

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant was appointed as Collection Agent in 1988 at Speed Post Centre, Thevara and in 1989, he was allowed to work as Group 'D' Postman and continued up to 1997. In 1993, he was appointed as part Time Sweeper in addition to the above work. The claim of the applicant is that during the period of 1995 to 1997, he worked continuously for 242 days and 222 days respectively. All other similarly placed persons were granted temporary status and regularization and the same was not granted to the applicant. Earlier he has approached this Tribunal filing O.A.512/04 which was disposed of by order dated 12.7.2004, with a direction to the respondents to consider the representation submitted by the applicant in that O.A. and vide A-8 order dated 1.9.2004, his claim was rejected by the respondents. Aggrieved by the action on the part

of the respondents the applicant has filed this O.A. seeking the following main reliefs:

- i) To call for the records leading to the issue of Annexure A8 order and to quash the same.
- ii) Direct the 4th respondent to produce order book and other registers in respect of the appointment, work and payments, available with you for the entire period while the applicant was in service.
- iii) To issue necessary direction to 2nd and 3rd respondents to absorb the applicant in Group 'D' post in accordance with the Casual Labour (grant of temporary status and Regularization) Scheme.
- iv) To issue direction to 2nd and 3rd respondent to regularise the service of the applicant from the date of initial appointments and to grant all consequential benefits thereon.
- v) To grant temporary status to the applicant from the date of initial engagement.

2. The respondents have filed a detailed reply statement contending that the applicant had worked in the Speed Post Centre on daily wages for 126 days during the period from May 1998 to September 1998, and for 25 days during March 1989 to April 1989, on temporary basis. Thereafter, he was working in the short term leave vacancies of Postman/Group 'D' staff, on daily wages during 1990 to 1993. He thereafter gained engagement as Part-time Sweeper for 5 hours, without proper authority. The case of the applicant was considered and rejected by the respondents vide letter dated 8.3.1996 on the ground that he has not completed 240 days of casual service which is required as per the scheme for regularisation. The claim of the applicant for temporary status and appointment in Group 'D' post is on the basis of the number of days he worked as Part-time Sweeper and the substitute arrangement made on the leave vacancies alleged to have been accrued as in A-2 of the O.A. Annexure A-2 is only a tabulation done by the applicant himself and it is not based on any authenticated documents. The applicant has not fulfilled the conditions as stipulated in the scheme and, therefore, he is not entitled to get the benefits as claimed in the O.A.

3. Shri V.D.Balakrishna Kartha, learned counsel appeared for the applicant and Shri TPM Ibrahim Khan, SCGSC appeared for the respondents.

4. Learned counsel have taken me to various pleadings, material and evidence on record. Counsel for applicant argued that, similarly situated persons have already been

granted this benefit and in the case of the applicant denying the same benefit, is discriminatory, arbitrary and in violation of Article 14 and 16 of the Constitution. The representation of the applicant has been rejected mechanically and without application of mind. The applicant having been put more than 16 years of casual service in the department and he is entitled for regularization. The respondents on the other hand persuasively argued that since the applicant has not fulfilled the conditions as stipulated in the Scheme and not completed 240 days of service, he is not entitled to get the same benefit. I have given due consideration to the arguments advanced by the counsel. The question that has to be considered in this O.A. is, to evaluate whether the applicant will squarely come under the Scheme of regularization or not? A-9 is the Scheme which stipulates for conferment of grant of temporary status and regularization to casual labourers who fulfills the following main conditions.

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).
2. Such casual workers engaged for full working hours viz., 8 hrs. including $\frac{1}{2}$ hour's lunch time will be paid at daily rates on the basis of the minimum of the pay scale for a regular Group 'D' official including DA, HRA & CCA.

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7. Conferment of Temporary status does not automatically imply that the casual labourers would be appointed as a regular Group 'D' employee within any fixed time frame. Appointment to Group 'D' vacancies will continue to be done as per the extent recruitment Rules, which stipulate preference to eligible ED employees.
8. After rendering three years continuous service and after conferment of temporary status, the casual labourers would be treated at par with temporary Group 'D' employees for the purpose of contribution to General Provident Fund. They would also further be eligible for the grant of Festival Advance/Flood Advance on the same conditions as are applicable to temporary Group 'D' employees, provided they furnish two sureties from permanent Govt. Servants of this Department.

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13. For the purposes of appointment as a regular Group 'D' official, the casual labourers will be allowed age relaxation to the extent of service rendered by them as casual labourers.

[Handwritten signature]

5. The further contention of the respondents is that, Annexure A-6 issued by the Department of Posts, Office of the Senior Superintendent of Post Offices, Ernakulam Division, (The copy of CPMG TV letter dated 26.6.89), stipulates that:

“Substitutes engaged against absentees should not be designated as casual labourer. For purposes of recruitment to Group D posts, substitutes should be considered only when casual labourers are not available. That is, substitutes will rank last in priority, but will be above outsiders.”

6. The crux of the point to be looked into for evaluating whether the applicant was a substitute, continuously working or he was otherwise engaged as casual labourer? The respondents have produced the entire service records/registers pertaining to the engagement of the applicant, and this Court has directed the Registrar to find out whether the applicant had worked continuously for 240 days at any point of time or not? After perusing all the records the Registrar has produced the entire files and reported that:

“With reference to the orders dated 25.8.05 of the Hon'ble Bench, it is respectfully submitted that the records reveal that the applicant has worked for more than 240 days in total.”

7. On perusal of the records this Court also convinced that, the above facts finding by the Registrar is correct. Therefore, going by the records produced by the respondents, it is quite clear that, the applicant has been put more than 240 days of casual engagement. In that event, the question is, whether the applicant is entitled for the reliefs sought for or not? This court has considered the same issue in a number of identical O.As. Viz., O.A.532/91 dated 8.1.1992, O.A.512/2004 dated 12.7.2004 and O.A.985/95 dated 4.3.97 etc.

8. A careful reading of the first paragraph of the Scheme, it squarely shows that, the casual labourers in employment as on 29.11.89, who continues to be currently employed and have rendered continuous service of at least one year during the year, he would be entitled to the grant of temporary status.

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The applicant having in employment from 1988 onwards and continued to be currently employed in accordance with the spirit of the scheme. In such

circumstances, I am of the view that, the applicant is eligible for grant of temporary status, when he completed 240 days continuous service in a year. Therefore, the stand taken by the respondents that he was engaged intermittently for substitute service in addition to the casual labourer service and therefore, the benefit to be denied to the applicant cannot be accepted and it is not tenable in tune with the scheme that has been formulated for conferment of temporary status to the casual labourers. This is the dictum laid down in the decisions in the above O.As. I am in respectful agreement with the decisions in the above O.As. I am of the considered view that, the respondents are duty bound to consider the applicant for grant of temporary status and regularisation in a Group'D' post in his turn, in accordance with the provisions of the Scheme framed in this regard.

9. In the result, the application is allowed. Impugned order A-8 is quashed and set aside, and direct the respondents to consider the applicant for grant of temporary status with effect from the date of filing of this O.A. i.e. 29.12.2004 and regularize him forthwith from that date, in accordance with the provisions of the scheme and instructions in this regard. Respondents are also directed to pass appropriate orders granting all the consequential benefits within a time frame of two months from the date of receipt of a copy of this order. In the circumstances, no order as to costs.

Dr Receipt 3.10.05

Dated the 7th day of September, 2005.

2.12.2005



K.V.SACHIDANANDAN
JUDICIAL MEMBER