

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
C.A. NO. 154 of 1996

Date of order 8 -11-2001

1. Shiv Kumar Mishra
2. Yogendra Mishra
3. Bharat Dular Choudhary
4. Kailash Jha
5. Krishna Nandan Sah
6. Ravindra Sah
7. Ram Shankar Paswan
8. Debu Mandal
9. Parmanand Jha
10. Satyendra Kumar Rai
11. Jai Kumar Sinha
12. Krishnadeo Prasad
13. Raj Kishore Prasad
14. Niranjan Prasad Gupta
15. Krishnadeo Thakur
16. Indra Kumar Jha
17. Umesh Prasad
18. Gonaur Choudhary
19. Anil Kumar Srivastava
20. Manoranjan Prasad
21. Birendra Kumar Mishra
22. Jai Shankar Prasad
23. Yadunandan Prasad
24. Janmejai Tripathi
25. Hafij Md. Anis
26. Manoranjan Sahay
27. Ram Naresh Jha
28. Suresh Kumar Jha
29. Satya Narayan Paswan
30. Umesh Singh
31. Smt. Indu Devi
32. Raj Kumar Mahto
33. Ramakant Thakur
34. Surendra Prasad Singh
35. Ganesh Singh
36. Dinesh Jha
37. Niteshwar Singh
38. Ram Naresh Mishra
39. Indra Kumar Mishra
40. Banarsi Prasad
41. Dilip Kumar
42. Amardeo Prasad

43. Shailendra Kumar Sinha
44. Bijay Kumar Dev
45. Ashok Ram
46. Baijnath Paswan
47. Pradip Kumar Rai
48. Birendra Prasad Yadav
49. Hitesh Kumar Mandal
50. Md. Sharif
51. Ashok Kumar Sinha
52. Md. Alam Ansari.

Applicants ..

-versus-

1. The Union of India, through the Director-General, Department of Posts, Dak Bhawan, New Delhi-1.
2. The Chief Postmaster General, Bihar Circle, Patna-1.
3. The Postmaster General (North), Muzaffarpur.
4. The Superintendent, RMS, North Bihar Division, Samastipur.
5. The Sub-Record Officer, RMS, N.B. Division, Samastipur.
6. The Sub-Record Officer, RMS, N.B. Division, Barauni.
7. The Sub-Record Officer, RMS, N.B. Division, Katihar.

Respondents ..

Counsel for the applicants .. Shri R.N. Mukhopadhyaya
Shri Vishwanath Ram
Counsel for the respondents .. Shri G.K. Agarwal

P R E S E N T: Hon'ble Shri L.R.K. Prasad, Member (A)

O R D E R

L.R.K. Prasad, Member (A):

This application has been filed seeking following reliefs:



- (a) To consider the case of applicant nos. 19, 21, 33, 34, 40, 41, 42, 43 and 46 for grant of temporary status.
- (b) To consider the case of the applicants for appointment against Group 'D' posts and/or equivalent Class IV posts taking into account that juniors to the applicants have already been appointed/regularised against Group 'D' posts.
- (c) To provide the applicants benefits of allowances, increments, Productivity Linked Bonus, CCA, age relaxation

with respect to regular appointment and other benefits, as laid down by the respondents from time to time.

2. I have heard the learned counsel for the parties and perused the materials on record.

3. Applicants (52 in number) were engaged as casual labourer/casual worker/daily wage mazdoor from time to time in the Department of Posts. The applicants have submitted a statement (Annexure-3) giving details regarding initial date of their appointment, qualification, grant of temporary status wherever applicable, etc. However, this statement has not been verified by the respondents. The document dated 10.12.1982 (Annexure-1) shows that some persons were put in the panel to work as daily mazdoor. This document included the names of the applicant nos.

42, 43, 50 and 23. The document at Annexure-2 dated 24th January 1983 indicates a panel of daily wage mazdoors, who were to work 8 hours. This document includes applicant nos. 21, 41, 44 to 46, 48, 49, 51 and 52. It is stated that even though the applicants were duly selected for the post of casual labourer/casual worker, Superintendent, RMS, North Bihar Division, Samastipur (respondent no.4) directed different SROs, including Katihar to re-examine the selection process. Selection tests were held on 18.3.1983 and 1st January 1984. Names of different persons were approved by letter dated 12.8.1983 and 15.5. 1987. Even though names of some applicants were approved, a direction was issued (Annexure-4) by Superintendent, RMS, Samastipur (respondent no.4) that no regular appointment letter is to be issued to the individual concerned. The Department of Posts had framed a scheme/guideline with regard to engagement of different daily wage persons and for grant of temporary status as a consequence of decision by the Hon'ble Supreme Court dated 17.1.1986 (1986 1 SCC page 639). Instead of considering the case of the applicants as per

Verbal

prescribed scheme, Superintendent, RMS, Samastipur (respondent no.4)

issued on 10.1.1990 a notice for promotion to group 'D' posts after literacy test from amongst the non-test category of group 'D' persons of ED employees and casual labourers which, it is alleged, was not widely circulated, as a result of which the applicants did not come to know about it.

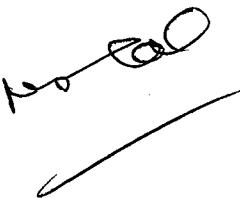
On 17th October 1990, the Department of Posts came out with Government instructions and clarification regarding grant of temporary status and regularisation scheme for casual labourers. The scheme known as Casual Labourers (Grant of Temporary Status and Regularisation) scheme in the Department of Posts was circulated on 12.4.1991 (Annexure-8). It is the stand of the applicants that as their cases are covered by the aforesaid Scheme of the Department, they should have been considered for grant of temporary status in time and, consequently, their cases should have been taken up for regularisation of their services against group 'D' posts as and when vacancy arises. However, this was not done except in case of certain applicants, temporary status was granted. In case of applicant nos. 19, 21, 33, 34, 40, 41, 42, 43 and 46 even temporary status has not yet been granted even though they fulfil the requisite qualification as prescribed under the departmental instructions.

4. The applicants have stated that on 6th May 1991, the Superintendent, RMS, Samastipur (respondent no.4) brought out a seniority list of casual labourers and at the same time a different seniority list was prepared in respect of Extra-Departmental employees. As the cases of the applicants were not given due consideration, representation dated 16.7.1991 (Annexure-10) was submitted by one of the applicants, namely, Banarsi Prasad. In the meantime, some of the applicants were granted temporary status, as has been indicated in the document at Annexure-3. Even though they were

entitled for grant of temporary status much earlier, ~~and~~ and although they had completed more than 240/206 days as casual labourers, they were also not provided with the facilities of house rent allowance, city compensary allowance, etc. in terms of the departmental instructions. On 28.10.1992 (Annexure-12), certain instructions were issued in this regard but the Superintendent, RMS, Samastipur (respondent no.4) did not comply with those guidelines. It is alleged that even though the applicants had fulfilled the requisite qualifications for grant of temporary status as well as their cases were ripe for being considered for appointment against Group 'D' posts, the respondents did not consider their cases in accordance with prescribed instructions/scheme. It is further alleged that their juniors have been considered for grant of temporary status and services of some of them have been regularised as per the scheme. However, the applicants have not clearly indicated the names of those junior persons and circumstance under which their cases have been considered for grant of temporary status/regularisation of their services against group 'D' posts. The applicants have stated that they have been making representations before the concerned authority for consideration of their demand with regard to grant of temporary status in time and further for regularisation of their services against Group 'D' posts, but the respondents have failed to consider their cases in accordance with law. On the other hand, they are favouring the cases of ED employees, thereby, ignoring the rightful claims of the applicants. The applicants have also filed supplementary applications enclosing therein copy of letter dated 6th June 1988 (Annexure-21) with reference to preference to be given to casual labourer and copy of letter dated 1.7.1996 (Annexure-22), copy of letter dated 28.9.1987 (Annexure-23), copy of letters dated 15.1.1993 and 27.2.1993 (Annexure-24 series), copy of letter dated

1.6.1995 (Annexure-25) and copy of letter dated 18.7.1996 (Annexure-26). Being aggrieved by the action of the respondents, the applicants have filed the instant application seeking certain reliefs as mentioned at para 1 above.

5. while opposing the above application, the respondents have stated that as per direction of the Hon'ble Supreme Court, the respondents had framed a scheme for grant of temporary status and regularisation of services of daily rated mazdoor with temporary status. The said scheme is being followed. It is stated that vacancy of group 'D' cadre is widely circulated amongst the casual labourers and E.D. employees of RMS, North Bihar Division. Those, who fulfilled eligibility criteria were directed to appear in the test. If someone did not appear, how his case can be considered. They have denied the allegation of the applicants that Superintendent, RMS. Samastipur (respondent no.4) did not comply with the instructions dated 28.10.1992. With reference to para 4.27, it is stated that eight posts of ED employees fell vacant in SRO, Barauni and the applications were accordingly invited from the casual labourers but none of them were ready to appear since the emoluments of ED employees were less than the casual labourer and, as such, those vacancies were filled up from outside. Applicant nos.20, 22 and 39 completed their respective 240 days with eight hours working per day in 1992, 1993 and 1994 respectively. Therefore, they were granted temporary status on 27.2.1995 but with effect from the date of completion of their respective 240 days. They were also paid arrears. It is further clarified that those applicants, who had completed 240 working days in two years, have been provided with temporary status and those who have been declared successful in the test for appointment as Group 'D' worker have been



appointed as such.

6. I have considered the matter in the light of submissions made on behalf of the parties and materials on record. During the course of hearing it transpired that the applicants are still working in the respective branch of the Department of Posts. The dispute has arisen with regard to demand for grant of temporary status to applicant nos. 19, 21, 33, 34, 40, 41, 42, 43 and 46. The dispute has also arisen with regard to demand of the applicants for regularisation of their services against Group 'D' posts, as according to them, they fulfil the requisite qualifications as per prescribed scheme/instructions of the Department. While the applicants have given different reasons in support of their claim, the reply given by the respondents does not appear to be adequate and substantive. They have not given specific reply in respect of certain points specially the document which is at Annexure-3.

7. So far as casual labourers are concerned, certain specific instructions/guidelines of the Department do exist and the cases of the applicants are to be dealt with in accordance with those guidelines/instructions. It is admitted fact that the applicants are working ^{as casual labourer/worker} in the Department and all of them, excepting applicant nos. 19, 21, 33, 34, 40, 41, 42, 43 and 46 have already been granted temporary status. However, their cases have not yet been taken up for consideration with regard to regularisation of their services in the light of prescribed instructions/guidelines. So far as Department of Posts is concerned, the scheme known as Casual Labourers (Grant of Temporary Status and Regularisation) Scheme was circulated vide letter No.45-95/87-CPB-I dated

12th April 1991. The scheme Casual Labourers (Grant of Temporary Status and Regularisation) Scheme clearly states that temporary status would be conferred on the casual labourers in employment as on 29.11.1989 and who continued 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 case of offices observing five days week). The said scheme also prescribes certain benefits to be given to daily rated mazdoor with temporary status, such as, HRA, DA, CCA,etc. It further makes it clear that conferment of temporary status does not automatically imply that casual labourers would be appointed as a regular Group 'D' employee within any fixed time frame. Appointment to Group 'D' vacancy will continued to be done as per extant recruitment rules which stipulate preference to eligible E.D. employees. The said scheme also prescribes for contribution to General Provident Fund after continuous service of three years as DRM with and temporary status/entitlement to Productivity Linked Bonus,etc. The scheme further provides that for the purpose of appointment as regular Group 'D' official, the casual labourer will be allowed age relaxation to the extent of service rendered by them as casual labourer. The engagement of casual labourer will continue to be only on daily rates of pay on need basis. The conferment of temporary status has no relation to availability of sanctioned regular Group 'D' post.

8. The document at Annexure-21 indicates preference to casual labourers in the matter of appointment as ED Agent. According to the prevalent recruitment rules governing the cadre of Group 'D', the order of preference among various segments of eligible

employees is as under-

- (a) Non-test category
- (b) ED employees
- (c) Casual labourers
- (d) Part-time casual labourers.

It has been recognised that since number of vacancies of Group 'D' is limited and the number of ED employees eligible for recruitment as Group 'D' is comparatively large, the casual labourers and part-time casual labourers hardly get any chance of their being absorbed as Group 'D'. Therefore, the majority of casual labourers with long service are left out without any prospect of their getting absorbed in Group 'D' cadre. That is why it has been decided by the Department of Posts that casual labourers, whether full time or part-time, who are willing to be appointed to ED vacancies, may be given preference in the matter of recruitment to ED posts provided they fulfil the ^{requisite} conditions and have put in a minimum service of one year. For this purpose, a service of 240 days in a calendar year may be reckoned as one year's service.

9. Even though the respondents have opposed the instant application, they have not given adequate justification for opposing the same so much so that they have not given categorical reply to certain points raised in the O.A., such as, service details of the applicants, as given by them (Annexure-3), the circumstances under which cases of the applicants have not been considered for grant of temporary status (applicant nos. 19, 21, 33, 34, 40, 41, 42, 43 and 46) and on the demand of the applicants for regularisation of their services, etc. As already pointed out earlier, the Department has already issued scheme/instructions in the matter of

engagement of casual labourers, grant of temporary status to them and regularisation of their services subsequently. It is not clear to me whether this exercise has been done by the Department or not and whether the case of the applicants had been considered in accordance with such guidelines/instructions. ~~While~~ I agree with the submissions of the respondents that Group 'D' posts are to be filled up in accordance with Recruitment Rules and as per departmental guidelines and instructions, according to which, first preference is to be given to E.D. employees. It is possible that the number of ED employees may be much more than the vacancy in Group 'D' cadre at a particular time. Nevertheless, the cases of the applicants are required to be considered in the light of prescribed guidelines/instructions in the matter of grant of temporary status as well as regularisation of their services. Certain basic facts are also required to be checked with reference to the records available with the respondents, specially with regard to the statement which is at Annexure-3. If the cases of the applicants are covered and if they fulfil the eligibility criteria under the departmental instructions/scheme on the subject, they ~~same~~ deserve~~s~~ consideration in that light. If, however, they are not eligible to be considered under departmental instructions/scheme specially with regard to regularisation of their services in Group 'D' cadre, specific reasons for the same are required to be given by the respondents. Therefore, the entire matter is required to be re-examined by the respondents in the light of prescribed/scheme instructions of the Department for passing appropriate reasoned order in accordance with law.

10. In the facts and circumstances of the case, as stated above, I dispose of this O.A. by directing the

respondents to examine and consider the prayers of the applicants in the light of observations made by me above and pass appropriate reasoned order in the matter in accordance with law within four months from the date of communication of this order. No order as to the costs.

L.R.K.Prasad
(L.R.K.Prasad) 8/1/01
Member (A)

Mahto