

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

PATNA BENCH : PATNA

Date of Decision:-

Registration No. CA-524 of 1996

Gautam Kumar Mahanty, Son of Shri Madan Mohan Mohanty, Casual Labourer (Temporary Status), Regional Stores, Department of Atomic Energy, Atomic Mineral Division, Eastern Region, AMD Complex, Khasmahal, P.O. Tatanagar, P.S. Parsudih, District Jamshedpur-831002, Bihar, resident of village Barrah, P.O. Dhadkidih, P.S. Barabazar, District Purulia (West Bengal)

... Applicant

- By Shri Gautam Bose, Advocate

Versus

1. Union of India through the Director, Department of Atomic Energy, Atomic Mineral Division, AMD Complex, Begumpet Hyderabad-16.
2. Deputy Director (J), Department of Atomic Energy, Atomic Mineral Division, AMD Complex, Begumpet, Hyderabad-16.
3. Regional Director, Department of Atomic Energy, Atomic Mineral Division, Eastern Region, AMD Complex Khasmahal, Jamshedpur-2.
4. Chief Administrative and Accounts Officer, Department of Atomic Energy, Atomic Mineral Division AMD Complex, Begumpet, Hyderabad-16.
5. Assistant Personal Officer, Department of Atomic Energy, Atomic Mineral Division, Eastern Region AMD Complex, Khasmahal Jamshedpur-2.
6. Administrative Officer III, Department of Atomic Energy, Atomic Mineral Division, AMD Complex, Begumpet, Hyderabad-16.

.... Respondents

- By Shri H.P.Singh, Advocate

Coram:- Hon'ble Shri Lakshman Jha, Member (Judicial):

O R D E R

Hon'ble Shri Lakshman Jha, Member (J):-

1. The applicant has prayed to quash the letter No.AMD-19/15/93-Adm.IV(Vol.III) dated 6.3.96 issued by the Administrative Officer-III, AMD Complex, Begumpet, Hyderabad (Respondent No.6), as contained in Annexure-A-13, rejecting the prayer of the applicant to regularise his services in the pay scale of Rs.950-1400/- and directing him to apply for a regular post against the Departmental circular as and when circulated. The prayer has also been made for direction to the Respondents to refund the amount recovered from him on account of reduction in his pay consequent upon conferment of temporary status on him with effect from 1.9.93 and to pay arrear of salary as accrued to him.

2. The applicant was engaged as a casual labourer under the Officer-Incharge Drilling, Atomic Mineral Division, Eastern Region, Department of Atomic Energy, Atomic Mineral Division, Khasmahal, Jamshedpur, with effect from 3.5.84 at the rate of Rs.8/- per working day. Since after 1987, he was paid wages for all the days of the month including second Saturday and Sunday and also for intervening holidays. In the meantime, he also acquired proficiency in English Typing after undergoing six months' English Typing Course as at Annexure-A-2. It is stated that he was called to appear before a screening committee on 27th May, 1988 by the Project Manager, S.T.B. D.A.E., AMD, ER, Khasmahal, Tatanagar, for assessment of his suitability for semi-skilled job vide Annexure-A-3. He cleared the suitability test and was approved for semi-skilled job by

the competent authority vide Sl.No.36 of the list and his rate of wage was enhanced and fixed @ Rs.26.60 per day with effect from 19.1.88 vide letter dated 2.9.88 issued by the Project Manager, as at Annexures-A-4 and A-4/1. He was also paid D.A. with effect from 1.9.88. After completing continuous service for about 8 years 6 months as casual labourer and approval of his engagement as semi-skilled with effect from 1.9.88, he applied for the post of Lower Division Clerk pursuant to an advertisement No.AMD/1/89, issued by the Department of Atomic Energy, AMD, Hyderabad, on 22.2.89, vide his application as at Annexure-A-5 but without any avail. He applied for the post of Trades Man, and appeared for the Trade Test/Interview on 7th and 8th August, 1989, but his result was not published.

He ( applicant) again appeared for trade test/interview on 12.9.90, for the post of Watchman/Helper 'A', but was not appointed. Thus, the applicant was not appointed for the post of Lower Division Clerk or Trades Man in spite of appearing in the aforesaid selection test and, therefore, he filed representation before the Director, AMD, Hyderabad on 5.9.92, vide Annexure-A-9 for redressal of his grievances. He also filed another representation on 29.5.93, vide Annexure-A-10, but without any result.

3. It is the further case of the applicant that he was conferred temporary status with effect from 1.9.93, subject to certain terms and conditions vide letter issued under the signature of the Chief Administrative and Accounts Officer (Respondent No.4) dated 13.10.93, as at Annexure-A-11. According to the conditions, the wages of the applicant at daily rate was fixed with reference to the minimum of the pay scale of Rs.750-12-870-EB-14-940/- including DA, HRA and CCA.

It is stated that from September, 1989, he (the applicant) received his daily wages at the rate of Rs.775/- plus D.A. But, after the conferment of temporary status with effect from 1.9.93 his daily wages was fixed as per the scale of Rs.750-940 plus DA, HRA and CCA. Thus, the total amount payable to the applicant for the month of August, 1993 was Rs.1577.90, but after the conferment of temporary status with effect from 1.9.93, his pay was fixed at Rs. 1527.75 i.e. to say, his pay was reduced. The excess paid to the applicant was recovered from his payment. The applicant completed 11 years and 8 months of continuous services in the Department and filed a representation dated 17.1.96 to the Regional Director, ER, AMD, Khasmahal, Jamshedpur, for regularisation of his services on regular post in the pay scale of Rs.950-1400/- i.e. in the pay scale of Lower Division Clerk, as per AMD Headquarters' letter No.AMD-19/15/93-Rectt/31614 dated 8th of April, 1994 (Temporary Status Clarification) Query No.23, Sl.No.3. The representation was forwarded to the Higher authority concerned at AMD Complex, Hyderabad. But the prayer of the applicant was rejected <sup>with direction</sup> to apply for a regular post against the departmental circular as and when circulated vide the impugned Annexure-A-13.

4. It is stated that the applicant is not being paid the wages for the week end and for the intervening holidays pursuant to the letter dated 4.4.96 of Assistant Personnel Officer, Department of Atomic Energy, AMD, Jamshedpur. He filed a representation against the same on 19.6.96 as at Annexure-A-14/1. It is stated that he used to be engaged for six days of a week and <sup>was</sup> paid wages for the week end and intervening holidays since 3.5.84 till March, 1995, as per the acquittance roll as at Annexures-A-16 & A-16/1.

The Jharkhand Parmanu Urja Mazdoors Union, Turamdih, P.O. Sundernagar, Jamshedpur, raised an industrial dispute before the Central Government Industrial Tribunal No.1, Dhanbad, vide Reference No.271 of 1990, which was disposed of in term of "No Dispute Award" as, in the meantime, the Government of India, in the Ministry of Personnel, P.G. & Pensions, issued a scheme dated 10.9.93 for regularisation of the services of the Casual Labourer. Thus, it is the case of the applicant that his services as Casual Labourer have not been regularised by the Respondents Department in the scale of Rs.950-1400/- and rejection of the prayer for regularisation of his services as contained in the impugned Annexure-A-13 is illegal, arbitrary and discriminatory.

5. The applicant has filed a second supplementary petition, in which it is stated that he is performing the job of typing and other clerical matter in the office of the Automic Mineral Division, Jamshedpur. Recently, on 12.1.99, the Assistant Store Officer, issued an Office order as at Annexure-A-19, under which he has been allotted the work of clerical nature including typing work, etc. Hence, the OA with the prayer as stated above.

6. The Respondents Department have resisted the claim of the applicant. It is the case of the respondents that the applicant has been <sup>conferred</sup> ~~given~~ temporary status in accordance with O.M. No.51016/2/90-Estt.(C) dated 10.9.93, issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training as at Annexure-R-1. There are no specific recruitment norms separately applicable to the casual labourers who have <sup>been</sup> ~~been~~ granted temporary status for selection in the regular Establishment. The casual labourer conferred with temporary status would be considered and appointed on regular basis

against Group D post if they fulfil the recruitment norms and if they get selected through regular selection process. The temporary status casual labourers are required to apply against vacant posts whenever circulars are issued. They are screened and on being selected are appointed against regular vacancies. The recruitments against the regular vacancies are in due process and, therefore, the applicant should respond to the circulars issued from time to time for filling up Group 'D' vacancies and their regularisation would be done in conformity with the aforesaid 1993 scheme (Annexure-R-1).

7. It is the further case of the Respondents that the casual labourers are paid wages as per the local prevailing rates on as and when required basis. They are eligible for only one day rest and are paid for continuous six days. It is stated that the applicant appeared in the aforesaid test for L.D.C., but he could not succeed. He also appeared in the trade test on 7th & 8th August, 1989, and also, in the test held in September, 1990, but, he could not be selected by the selection committee. The applicant after conferment of temporary status is entitled for wages on daily rated basis with reference to the minimum of the pay scale for corresponding to regular Group D employee in the pay scale of Rs.750-950/- pre-revised including DA, HRA and other benefits as per 1993 scheme and for ad hoc bonus. After the completion of three years of continuous service and subsequently, on conferment of temporary status they would be treated on par with temporary Group D employee for the purpose of contribution to GPF and some other benefits. It is denied that the applicant has been paid less wages after conferment of temporary status. In fact, he has been paid arrear of more wages amounting to Rs. 1431/- on account of HRA and CCA for the period from 1.9.93 to

30.6.94. The Respondents Department adhered to the stipulation as in the aforesaid O.M. dated 10.9.93 and, therefore, the applicant has got no cause of action for filing the O.A.

8. Heard Shri Gautam Bose, learned counsel for the applicant and Shri H.P.Singh, counsel for the Respondents and perused the record.

9. It is the admitted position that the applicant was engaged as casual labourer in the Respondents Department with effect from 3.5.84 on the basis of daily wages and he continues till date. It is also admitted position that he was granted temporary status with effect from 1.9.93 vide Annexure-A-11 in term of O.M. dated 10.9.93 of the Ministry of Personnel, Personal Grievances and Pensions), Department of Personnel and Training, Government of India (Annexure-R-1). According to one of the terms and conditions of the aforesaid scheme, wages at daily rate with reference to the minimum of pay scale of Rs.750-12-870-EB-14-940/- including DA, HRA and CCA was payable to the applicant. It is also stipulated as one of the conditions that after rendering of three years of continuous service after conferment of temporary status a casual labourer would be treated on par with temporary Group 'D' employee for the purpose of contribution to the General Provident Fund and would also further be eligible for grant of Festival Advance, Flood Advance on the same conditions as are applicable to a temporary Group 'D' employee. He was also entitled to productivity linked bonus and facilities some other            as stipulated in the scheme.

10. It is not denied that the applicant is enjoying all the benefits as are admissible to him

under the aforesaid 1993 scheme on conferment of temporary status. The main grievance of the applicant is that he should be considered for being regularised in the cadre of Group 'C' employees in the pre-revised scale of Rs.950-1400 and rejection of his representation for absorption in Group 'C' cadre vide Annexure-A-3 is illegal and improper.

11. The learned counsel for the applicant contended that the applicant was engaged as Casual Labourer in the year 1984 and he was taken work of typing since after he matriculated in 1980 and acquired proficiency in typing work vide Certificate dated 27.7.85 as at Annexure-A-2. He also referred to Annexure-A-19 to the second supplementary application and submitted that as per distribution of work vide the Office Order dated 12.1.99, the applicant has been allotted the work of typing, preparation of C.S.T./ clearance of Bill No.3, local purchase, release order and maintenance of accounts, etc. The learned counsel for the applicant further contended that the applicant was called to appear before screening committee on 27.5.88 for the assessment of his suitability for semi-skilled job and he was declared successful in the same vide Office order dated 2.9.88 as at Annexure-A-4. After he was approved as semi-skilled he was paid daily wages at the rate of Rs.26.60 per day. Subsequently, he applied for the post of Lower Division Clerk in the year 1988 in the Respondents Department vide Annexure-A-5 and was also called for the interview and appeared in the same, but without any result. Thereafter, he applied for the post of Tradesman in response to a circular dated 20.12.88 and was called for interview vide Annexure-A-7. He appeared in this interview also, but

without any result. Then, he appeared for the trade test for the appointment to the post of Watchman/Helper -A on 12.9.90, vide call letter, as at Annexure-A-8, but was not appointed on this post also. Thus, the learned counsel for the applicant contended that the applicant is working as a semi-skilled casual labourer since 1988 and was conferred temporary status with effect from 1.9.93. He matriculated in 1980-81 and acquired proficiency in typing work in 1985. He was called for interview/test for the post of LDC/tradesman and for Watchman and Helper -A for appointment in the grade of Rs.950-1400, but without success. He (the applicant) is being engaged for typing and some other Clerical job vide Annexure-A-19 and, therefore, is entitled to be regularised in category 'C' post in the scale of Rs.950-1400/-.. The learned counsel for the applicant has relied upon a decision of the Hon'ble Madras Bench of the CAT in N. Seenai and Another Versus the Union of India and Others as reported in 1994 26 ATC page 57, according to which, the regularisation is not confined to Group 'D' post only and it can be against Group 'C' post also. But it appears from the facts of the aforesaid case before the Madras Bench that the applicant was engaged as Driver Group 'C' on daily wages basis for more than 8 years. There was a departmental order also entitling him for regularisation. However, the Respondents Department took the plea that the applicant would be regularised as and when his turn comes. The plea of the Department was rejected observing that the applicant was engaged against Group 'C' vacancy and, therefore, there should not be any difficulty regarding availability of vacancy and, therefore, a direction was issued to consider the applicant for regularisation.

12. The facts and circumstances of the instant case are quite dissimilar. The applicant in the instant case was initially engaged as casual labourer in the drilling section of the Department. He has been conferred temporary status in term of 1993 scheme and is being treated as temporary Group 'D' employee. He is also enjoying the pay scale of Group 'D' employee with some benefits as spelt out in the scheme. Admittedly, he appeared in response to some advertisements/circulars of the Department for being absorbed in Group 'C' post, but without success. It is a fact that the Respondents Department has not controverted the stand of the applicant that he is being taken the work of clerical nature including typing, but to my mind it would not be of any assistance to him in the matter of seeking directions from this Tribunal for his regularisation in Group 'C' post. Therefore, the contention of the learned counsel for the applicant on this score is not acceptable.

13. The learned counsel for the applicant further contended that the applicant was getting the payment of Rs.775/- before he was granted temporary status with effect from 1.9.93. But after temporary status was granted to him, his daily wage was fixed in the scale of Rs.750-940/- plus DA, HRA and CCA, according to which, he was being paid at the reduced rate. This has been controverted by the Respondents Department in their W.S., in which it is stated that in fact, the applicant has been paid more after grant of temporary status in the shape of DA, HRA, CCA, etc. This position has not been controverted in the rejoinder. In any view of the matter, the applicant has accepted the benefits under the terms and conditions of the scheme and, therefore, the contention on this score <sup>also</sup> holds no water.

14. Now, so far the prayer for regularisation of the applicant in Group 'D' post is concerned, the learned counsel for the Respondents Department contended that the case of the applicant would be considered as and when vacancy in Group D posts arises and the applicant applies against the circular/advertisement, etc. in term of 1993 scheme as at Annexure-R-1. I may profitably extract para-8 of the aforesaid scheme regarding the procedures for filling up of Group 'D' posts as follows:-

"8. Procedure for filling up of Group 'D' posts:

Two out of every three vacancies in Group 'D' cadres in respective offices where the casual labourers have been working would be filled up as per extant recruitment rules and in accordance with the instructions issued by Department of Personnel & Training from amongst casual workers with temporary status. However, regular Group 'D' staff rendered surplus for any reason will have prior claim for absorption against existing/future vacancies. In case of illiterate casual labourers or those who fail to fulfil the minimum qualification prescribed for post, regularisation will be considered only ~~as~~ against those posts in respect of which literacy or lack of minimum qualification. They would be allowed age relaxation equivalent to the period for which they have worked continuously as casual labourer."

15. Apart from the aforesaid provision in the scheme, the learned counsel for the applicant relied upon a number of decisions of the Hon'ble Apex Court, and also, of the different Benches of the CAT to drive home the point

that casual labourers engaged for a long spell of time are entitled to regularisation.

16. Reliance is placed on the decision of the Hon'ble Principal Bench in Shri Raj Kamal and Others Versus Union of India & Others, which led to the formulation of the aforesaid 1993 scheme, to show that termination of services of a casual labourer on the ground of lack of vacancy is not proper and it was held that they must be engaged in any ministry, where there is a vacancy and the Government was directed to frame scheme and the DOP to regularise casual labourers of all the departments other than the Railway and P&T and appoint them as per number of <sup>days of services</sup> ~~200000~~ rendered in the Ministry.

17. The Hon'ble Supreme Court in ~~200000~~ District PWD employees Association Versus the State of Karnataka, as reported in AIR 1990 SC page 883 held that casual and daily rated employees having completed 10 years of service should be regularised and, accordingly, ordered to be regularised. Yet, in another decision in the case of Jacob Versus Kerala Water Authority as reported in AIR 1990 SC page 2228 it was directed that the employee serving for a long spell and having requisite qualification should be regularised.

18. In Ram Swaroop Versus the State of Haryana as reported in AIR 1978 SC page 1536, it was held that the petitioner acquired experience of the requisite number of years on the post of labour-cum- Conciliation Officer his appointment on the post should be deemed to have been regularised. In Bhagwati Prasad Versus Delhi SMR Corporation as reported in 1990 (1) SCC 361, it was held that the daily rated worker serving for long period with artificial break, three years service

ignoring the artificial break was sufficient for regularisation. In Bachan Kumar Sahu Versus the Orissa State Housing Board, as reported in 1992(2) SLR page 781, it was held that casual workers employed for about seven years cannot be subjected to selection test for the purpose of regularisation, suitability stood approved by their continuance for these years. In Mul Raj Upadhyay Versus the State of Himachal Pradesh, as reported in 1994 (3) J.T. 453 (SC) the Hon'ble Supreme Court held that Daily wages Master Roll workers having completed 10 years of service should be regularised and be given the pay scale of regular employee with all other benefits available to corresponding post.

19. In the case of the State of Haryana Versus Pyara Singh and Others, as reported in AIR 1992 SC 2130, the Hon'ble Supreme Court has held that for 2 or 3 years would give rise to the presumption as to regular need for their service.

20. Thus, by the various decisions as referred to above, it appears settled that a long spell of continuous work as casual labour entitles him for regularisation to the post to which he is engaged. I cannot help observing that the aforesaid 1993 scheme is, no doubt, a beneficial scheme in the direction of the amelioration of the lot of the casual labourers, but certain terms and conditions need reconsideration, viz; under para 5(v) of the 1993 scheme, it is stipulated that 50% of the services rendered under temporary status would be counted for the purpose of retirement benefit after their regularisation. It means that if a casual labour is regularised in the service after a long spell of time, i.e. to say, after many years after granting temporary status, he would be a

P.D.

great looser in the matter of pensionary benefits, etc. to sustain him in the evening of life. I am afraid, such term may not be discriminatory and against the Constitutional mandate, and also, against the spirit of beneficial legislation.

21. Lastly, the learned Addl. Standing Counsel for the Respondents contended that the applicant was required to apply against the post as and when circular/advertisement was issued and he would require to go screening test before regularisation under the Rules and on the other hand the learned counsel for the applicant submitted that the Respondents Department is under legal obligation to consider the case of regularisation of the casual labourers as and when vacancy arises according to their turn in term of the 1993 scheme referred to above. The contention of the learned Additional Standing counsel for the respondents that the applicant was required to apply against the post as and when circular/advertisement was issued appears without substance. The applicant is already working as temporary status casual labourer for a long spell of time and he is also enjoying the benefits of temporary Group 'D' employee under the scheme. Therefore, it is needless to say that the Respondents Department is under legal obligation to consider the case of regularisation of the applicant (Temporary Status Casual Labourer) as and when vacancy arises. According to his turn in term of the 1993 scheme he is also entitled to the benefit of age relaxation as per the Rules.

22. In view of the aforesaid discussions, I am of the considered view that the applicant is entitled to regularisation in the service as Group 'D' employee according to his turn. However, he is not held entitled

to regularisation in the pay scale of Rs. 950-1400/- and for refund of the amount recovered from him on account of the alleged reduction in his pay consequent upon conferment of temporary status. Accordingly, the Respondents are directed to consider the case of regularisation of the applicant in the light of observations made above within three months from the date of receipt of a copy of this order. There shall be no order as to costs.

The O.A. is partly allowed.

*L. Jha*  
11.10.2010

( Lakshman Jha )  
Member (J)

SKS