

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.**

O.A. No. 70 of 2006

Date of order : 16.11.2006

C O R A M

Hon'ble Ms. Sadhna Srivastava, Member (J)

Jagat Prasad and 21 Others

....Applicant

By Advocate : Shri J.K. Karn

Vs.

**1. The Union of India through the Chief Postmaster General,
Bihar Circle, Patna and 2 Others.**

....Respondents

By Advocate : Shri M.K. Mishra.

ORDER (Oral)

By Sadhna Srivastava, M (J):-

The applicants are seeking a direction to the respondents to the effect that they be regularized on Group 'D' posts and the order dated 21.9.2005 which has been ^{passed} by the Chief Postmaster, respondent No. 3 be quashed.

2. The facts are that the applicants were initially engaged as casual labour in the department of Post. In due course they were conferred temporary status. After having



held temporary status for three years, they were granted benefits almost at par with Group 'D' employee according to the instructions issued by Director General, Posts. Thereafter, the applicants began to claim regularization on Group 'D' post. They made several representations also. Two OA(s) , namely, OA No. 348 of 2004 and 564 of 2005 were also filed. Finally, Chief Post Master (respondent No. 3) passed an order dated 21.9.2005 rejecting the applications of applicants on the ground that there were no vacancies for recruitment on Group 'D' post from amongst the casual labour. It has been stated in the impugned order dated 21.9.2005 (A/7) that the recruitment to Group 'D' post is governed by the statutory rules framed under Article 309 of the Constitution and the instructions issued thereunder wherein 25 % of vacancies of Gr. 'D' posts are required to be filled up from amongst the casual labours. The remaining 75 % of vacancies are to be filled up from amongst G.D.S employees. It has also been stated in the impugned order that in the year 2001, 2002, 2003 and 2004, only one



vacancy had occurred for direct recruitment in the year 2002.

3. The question before this Tribunal is whether the impugned order be quashed and direction issued to the respondent to regularise the applicants without having regard to the statutory rules or the existing vacancy. The regularization can only be claimed in accordance with rules. The practice to claim regularisation without reference to the rules or the vacancies is not warranted under law. Regularization is not a mode of recruitment. A Constitution Bench of the Apex Court in the case of Secretary, State of Karnataka and Others vs. Uma Devi & Others; 2006 Supreme Today (3) SC 415 has held that the right to be regularized or made permanent in public service is to be governed by statutory rules. The Apex Court has further held that the courts are not expected to issue directions for persons recruited on daily wages to be made permanent.

4. The assertion of the applicants that their juniors who were E.D.A (G.D.S) employees have been picked up for regularization on Group 'D' post is discriminatory, in my



opinion, is not tenable. The reason is that the recruitment to Group 'D' posts is made from the two sources - (i) Casual labours, and (ii) E.D Employees. These two categories of persons do not form a homogeneous class. They constitute different class. Thus, there is no question of discrimination.

5. It is also established law that the Tribunal cannot direct for creation of posts. As such, the applicants will have to wait for their turn to be made permanent. There is no way that the Tribunal can allow them to jump the queue in violation of statutory rules. The applicants, as alleged by the respondents, will be regularized as and when the vacancies arise. I agree. The applicants will have to wait for their turn. The OA is disposed of, accordingly. No costs.


[Sadhna Srivastava] M [J]

/cbs/