

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 349 of 1999.

Dated this Thursday, the 10th day of February, 2000.

Smt. Khimibai Khimji Hedamba, Applicant.

Shri B. Dattamoorthy, Advocate for the
applicant.

VERSUS

Union of India & Others, Respondents.

Shri V. S. Masurkar, Advocate for the
Respondents.

CORAM : Hon'ble Shri D. S. Baweja, Member (A).

- (i) To be referred to the Reporter or not ? ✓
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? ✓
- (iii) Library. ✓


(D. S. BAWEJA)
MEMBER (A)

05*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO. 349/99

Dated this Thursday, the 10th day of February, 2000.

CORAM : Hon'ble Shri D. S. BAWEJA, MEMBER (A).

Smt. Khimibai Khimji Hedamba,
Part Time Sweeper,
Railway Mail Service Rest House,
Development Bank Bldg., 3rd floor,
Paltan Road, Near Crawford Market,
Mumbai - 400 001.

... Applicant.

(By Advocate Shri B. Dattamoorthy)

VERSUS

1. *Union of India through
The Chief Post Master
General, Maharashtra Circle,
Mumbai - 400 001.*
2. *Sr. Suptdt. Railway Mail
Service, 'L' Division,
Bhusawal.*
3. *Sr. Superintendent, R.M.S.,
Bombay Sorting Division,
Development Bank Building,
Paltan Road, Near Crawford
Market, Mumbai - 400 001.*

... Respondents.

(By Advocate Shri V.S. Masurkar)

O R D E R

PER : Shri D. S. Baweja, Member (A).

*The applicant who is working as a part-time Sweeper in
Railway Mail Service, Mumbai, has sought through this O.A. the*

...2

relief of regularisation of her services in Group 'D', non test category and also grant of temporary status.

2. Heard the arguments of Shri B. Dattamoorthy, the Learned Counsel for the applicant and Shri V.S. Masurkar, the Learned Counsel for the respondents. During hearing, the Learned Counsel for the applicant submitted that he does not press the relief for grant of temporary status in view of the recent judgement of the Hon'ble Supreme Court in the case of the Secretary, Ministry of Communications & Others V/s. Sakkubai & Another reported in 1998 (1) ATJ 556 according to which a part-time casual labourer is not entitled for temporary status as per the scheme laid down by the Department of Post. Accordingly, the pleadings connected with the relief of regularisation of services in Group 'D' only have been considered.

3. The applicant has made out her case as follows :

She submits that she was first engaged as a part-time Sweeper in November, 1981 with daily duty of 6.5 hours for the Rest House situated in the Development Bank Building, Palton Road, Mumbai - 400 001 under the Control of Senior Superintendent of R.M.S. Division, Bhusawal. The control of

the Rest House has been subsequently transferred under the Sr. Superintendent, R.M.S., Sorting Division, Mumbai, with effect from 14.07.1992 and the applicant has been also transferred accordingly. The applicant is continuing as a part-time sweeper since 1981 without any break. The applicant represented on 08.12.1989 for regularisation of her service in Group 'D'. This was followed by several reminders dated 14.12.1991, 05.05.1993, 05.11.1993 and 22.11.1993, but no action has been taken by the respondents so far to regularise her service. Not only this, the applicant has been asked to do some extra work of sweeping of the Inspection Rooms in the same building and she is required to do more than seven hours of work daily. The applicant has averred that there is a need of two full time Sweepers for the premises where she is working as a part-time sweeper. She also states that regular full time posts can be also created by combining posts of part-time sweepers working in the same area. It is the case of the applicant that she is entitled for regularisation in Group 'D' in non-test category in terms of the scheme laid down by the Department of Posts as per O.M. dated 17.05.1989. Feeling aggrieved by non-regularisation in Group 'D' Service, the present O.A. has been filed by the applicant on 09.04.1999. The applicant has sought the relief of directing the respondents to regularise her service in non-test category with retrospective effect from the date when she has completed 480 days of service

...3

(W)

in the first two years of her part-time service with all consequential benefits thereon, including counting of service rendered in casual status for retiral benefits.

4. The respondents have filed written statement opposing the application. The respondents, at the outset have taken an objection that the applicant who is working as a Part-time Sweeper is not holding a civil post and, therefore, the matter under challenge does not lie within the jurisdiction of the Tribunal and, accordingly, the present O.A. is not maintainable. On merits, though the engagement of the applicant as a part-time Sweeper since 1981 is accepted, but the same is qualified stating that the services of the applicant were being utilised on hourly basis and not as a regular part-time. In view of this, the respondents contend that the applicant is not entitled for regularisation. As regards the matter of combining of part-time posts to create full time post, the respondents have stated that this aspects has been examined and it has not been found feasible in view of the specific requirement of providing a sweeper round the clock and also the various offices being situated far away from each other. With these submissions, the respondents plead that the applicant has no case and the O.A. deserves to be dismissed.

5. The applicant has filed the rejoinder reply controverting the submissions of the respondents and re-affirming the grounds taken in the O.A.

6. The objection raised by the respondents that the O.A. is not maintainable before the Tribunal for want of jurisdiction, is without any merit. The plea of the respondents that the applicant who is working as a part-time Sweeper does not hold a civil post is not tenable. From the documents brought on the record, it is noted that part-time Sweepers are entitled for regularisation against Group 'D' post as per the scheme laid down and, therefore, in case any employee who is aggrieved by non-consideration of his/her case for regularisation can certainly challenge the matter before the Tribunal. It may be mentioned that several O.As. pertaining to part-time casual labourers have been entertained and decided by the various Benches of the Tribunal.

7. On merits, it is noted that the respondents' stand is that the applicant is not entitled for regularisation, as she is not a part-time Sweeper but is being engaged on hourly basis. This contention of the respondents is not tenable when looked at in terms of the extant rules brought on the record by the applicant. The applicant has stated that she is being engaged on a regular basis for 6.5 hours daily since 1981. On referring to the circular dated 17.05.1989 at page 60 of the O.A. it is noted

...

that in para 2 it is provided that those casual labourers who are engaged for a period of less than 8 hours a day are to be described as a part-time casual labourers. Since the applicant is working for 6.5 hours in a day, on a regular basis she is covered by the category of part-time casual labourer. This circular further lays down the priority order for regularisation of the casual labourers including part time alongwith other categories of staff against the Group 'D' posts. It is noted that in category (iii) the part-time casual labourers alongwith the full time casual labourers are entitled for regularisation in Group 'D'. When there is a specific provision in this O.M. dated 17.05.1989, I fail to understand the submission of the respondents that the applicant is not entitled for regularisation.

8. The applicant has also contend that the respondents be directed to create regular full time post in place of part-time posts of Sweepers, as there is a full time work load and two posts can be created. It is also further stated that the full time post of Sweepers can be created by combining the part time posts of sweepers. The respondents, however, have contested this. The respondents have stated that the possibility of combining the part time posts of Sweepers to create full time work load has been done, and the same has been not found feasible. Whether there is a need for a full time post by combining the part-time posts or workload requires permanent

regular posts, is a matter of policy within the jurisdiction of the competent authority and no direction can be issued in judicial review to act in a particular fashion. Therefore, I am unable to find any merit in the contention of the applicant.

9. The applicant has not made any submission while claiming regularisation of her services in the Group 'D' that any of the casual labourer working as part-time sweeper has been regularised. The applicant can claim regularisation as per the scheme laid down as per the seniority and meeting with the requirements as per the extant rules. In view of this, the only direction which could be issued to the respondents while disposing of the O.A. is to consider the case of the applicant for regularisation of her services as per her turn if she meets with the requirements as per the extant recruitment rules and the scheme laid down for regularisation.

10. The counsel for the applicant has made a heavy reliance on the order of the Principal Bench in the case of Smt. Bharbai & Others V/s. Union of India in O.A. No. 1822/91 decided on 22.01.1993. The counsel for applicant submitted that the ratio of what is held in this O.A. applies equally to the case of the applicant and she is entitled for the same benefit. On going through this order, I am of the considered opinion that once the scheme has been laid down by the Department of Post for

regularisation of casual labourers in compliance of the direction of the Hon'ble Supreme Court, then any claim for regularisation has to be in terms of the scheme laid down. In this connection, I refer to the judgement of the Apex Court in the case of Sakkubai & Another, as referred to earlier, where though the Hon'ble Supreme Court has examined the issue of grant of temporary status to the part-time casual labourers, but the Hon'ble Supreme Court has noted the details of the scheme laid down by the Department of Post with regard to regularisation of casual labourers, including the part time casual labourers. In view of the specific scheme laid down by the Department of Post for regularisation of the casual labourers in order of priority for the various categories, I am of the view that what is held in the order dated 22.01.1993 does not hold good and apply to the present O.A.

11. In the result of the above, the O.A. is allowed with a direction to the respondents to consider the case for regularisation of the applicant in Group 'D' non test category as per her seniority and as per the extant rules laid down for recruitment and as per the scheme for regularisation of the part-time casual labourers. No order as to costs.


(D. S. BAWEJA)
MEMBER (R).