

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 311/2001

Date of Decision : 17th October 2002

Smt.V.R.Shinde

Applicant

Shri R.R.Shetty with
Shri K.R.Yelwe

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents

Smt.H.P.Shah

Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

- (i) To be referred to the reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other *all* Benches of the Tribunal ?
- (iii) Library *yes*

S.L.Jain
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.311/2001

Dated this the 17th day of October 2002.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Smt.Vimal R.Shinde,
R/at Chimanlal Vithaldas
Compound, 50 B2, Room No.11,
Hanuman Galli, Lower Parel,
Mumbai.

...Applicant

By Advocate Shri R.R.Shetty
with Shri K.R.Yelwe

vs.

1. Union of India
through the Secretary
to the Government of India,
Ministry of Communication,
(Department of Posts),
New Delhi.
2. The Postmaster General,
Mumbai Region, G.P.O.,
Mumbai.
3. The Senior Superintendent
of Post Office, Mumbai City,
West Division,
Mumbai.
4. The Director of Postal
Services (BR),
O/O the Chief Post Master
General, Maharashtra,
G.P.O. Mumbai.

...Respondents

By Advocate Smt.H.P.Shah

..2/-

Agm 2 -

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 to quash and set aside the oral termination order dated 27.8.2000 by Respondent No.3, with the direction to the respondents to treat her to have acquired temporary status from the date of completion of one year with all admissible benefits under the Scheme/Rules and regularise her services in any of the Group 'D' category.

2. There is no dispute between the parties in respect of the facts that the applicant worked as Outside Postman w.e.f. 7.2.1985 till 11.1.1999, in the year 1991 for recruitment to the post of Postman, she sent her application but she was not allowed to appear in the said examination on the ground of her being overaged, she appeared in the examination held in 1998 for the post of Postman on regular basis, but she could not succeed. She was informed by letter dated 11.1.1999 that her services have been discontinued (Annexure-8). She submitted representation dated 16.4.1999 to the Director of Postal Services, approached the Chief Postmaster General, Mumbai Division vide Annexure-9, she was engaged as E.D. Stamp Vendor w.e.f. November, 1999 and continued as such till 26.8.2000. She represented to the Director, Postal Services on 16.8.2000 and also to the Postmaster General on 11.9.2000 but they failed to response.

P.O. -

..3/-

3. The applicant claims that she was sponsored by the Regional Employment Exchange in pursuance of the requisition placed by the respondents - Senior Supdt. of Post Offices Mumbai City West Division Mumbai-14 for being considered as Postman/ Group 'D' on daily wages in January, 1985. The respondents have disputed the said fact. On perusal of the pleadings and documents on record, the said fact is not established as the applicant failed to produce any evidence regarding her sponsorship by Regional Employment Exchange for the post of Postman Group 'D'.

She further claims that from January, 1992 she was asked to work as Water-Woman (Group 'D') in the same post Office. She approached the Chief Postmaster General and the Senior Supdt. of Post Offices against the abrupt change in the nature of her duties. The applicant failed to establish the fact that from January, 1992 she was asked to work as Waterwoman Group 'D' in the same Post Office, approached the Chief Postmaster General and Sr. Spdt. of Post Offices against the abrupt change in the nature of her duties.

4. The applicant claims that other similarly placed casual workers, i.e. outside postman who had become overage, were allowed to appear in the said examination and were subsequently absorbed after qualifying in the said examination. Thus, she was discriminated for the reasons best known to the respondents. The applicant failed to put forth the names of such casual workers who have become over age, were allowed to appear in the said examination.

Plon. -

5. In initial appointment as daily rated casual worker the applicant was over age as stated by the respondents and therefore she was not allowed to appear in the said examination.

The applicant claims that she made representation against the said rejection on 28.8.1993 (Annexure-A-3) but to no avail. The said fact is being denied by the respondents. I have carefully perused the said Annexure-A-3. There is no endorsement of receipt by the respondents. As such, the said fact is not established.

The applicant's grievance relates to the year 1993. The applicant has filed this OA. on 27.4.2001 before this Tribunal. Respondents have never replied to such grievance. As the matter is being agitated after a lapse of more than 10 years without there being any cause for the same, the said fact is not at all relevant for deciding the reliefs sought by the applicant. As such, the grievance being barred by time also, no consideration deserves to be attached to the said fact.

6. The applicant claims that vide Annexure-A-4 dated 2.1.1993 she has indicated her willingness to be absorbed in any Group'D' post. The said fact is being denied by the respondents. I have carefully perused Annexure-A-4. There is no endorsement regarding receipt of the same by the respondents. As such, the said fact is not established.

Signature

..5/-

7. In January, 1994 the Inspector of Post Office submitted a proposal of her regularisation. She was asked to produce 3 copies of photographs and character Certificate from two reputed persons which she did. She was also asked to undergo Medical Examination and obtain fitness Certificate which she did. The said fact is being disputed by the respondents. On perusal of Annexure-A-5, I find that the said averments of the respondents is not truthful. However, the said fact in no way assists the applicant in deciding the matter in issue.

8. The applicant claims that she made representation on 1.2.1994 for absorption as Postman but it was of no avail. I have perused Annexure-A-6 which bears the receipt by the respondents though the said fact is being denied by the respondents but it is being established.

9. The applicant claims that other similarly placed candidates were given 3 chances to clear the examination. The said fact is being disputed by the respondents. In my considered opinion, the question must have been relevant and material when the applicant applies for subsequent examinations and was denied opportunities to appear. The applicant never applied for further chance of examination. For the reliefs claimed this fact is not a relevant fact.

10. The applicant claims that w.e.f. 7.2.1985 till the date of termination of her services w.e.f. 27.8.1999, she has worked as under :-

P. 6/11 -

Year	No.of days worked	Worked as
1985	218	Outside Postman
1986	285	"
1987	241	"
1988	317	"
1989	294	"
1990	307	"
1991	283	"
1992	217	Group'D'
1993	223	Group'D'
1994	304	Outside Postman
1995	303	"
1996	-	-
1997	318	"
1998	237	"
1999	-	Upto 22.11.99 "
		From 23.11.99 to
		31.12.99 E.D.S.V.
2000		From 1.1.2000 to
		26.8.2000 as E.D.
		S.V.

11. The applicant claims that in pursuance of the scheme framed by the Department of Posts in 1989, a Casual Labour who has put in 240 days in one year is to be granted temporary status. The applicant claims that she has worked as stated above and is entitled to be conferred with temporary status from 1986. She further claims that casual labourers in Group 'D' posts who were engaged after her have been conferred with temporary status and their services have been regularised. Similarly the casual Outside Postman who were engaged after her have also been regularised as Postman after they have passed the prescribed examination. She has indicated vide her letter dated 1.7.1999 her willingness to get absorbed on regular basis in any of the non-test category or Group'D' categories (Annexure-A-13). In view of Circular dated 7.3.2001, an examination for recruitment

P. G. M. -

..7/-

of Group'D'(T/C) official, to fill the existing vacancy in Mumbai City East Division, Mumbai is to be held on 13.5.2001 (Annexure-A-3). Similarly, in view of Notification dated 7.3.2001 a departmental examination on 13.5.2001 for Group'D' employees is to be held for the post of Group'D'(T/C) official, the casual workers with temporary status and Part-Time Casual Workers are entitled to appear in the examination (Annexure-A-14).

12. On the above facts, the applicant claims that as she has worked for 240 days in almost every year since 1985, she is entitled to be regularised in any of the Non-Test Category post or any other Group'D' post. She claims that in view of O.M.No.R&E25/ corres/81 dated 12.1.1981 issued by the respondents and/or (b) the provisions of Casual Labours (Grant of Temporary status and Regularisation) Scheme framed by the respondents vide their O.M.No.45-95/87-SPB-I dated 12.4.1991, she is entitled for regularisation. Her engagement as Outside Postman does not disentitle her for being considered for any Group'D' category.

13. In reply to rejoinder filed by the respondents dated 20.12.2001 in para 16 it is stated that "the action to grant her temporary status for having worked as outsider postman for the periods claimed by her was not taken, since the scheme of temporary status is not applicable to any person working on casual basis on Group C posts (i.e.postman)."

P.L. Sharma

..8/-

14. On perusal of the reply even as per respondents the applicant has worked for more than 240 days in year 1986, 1987, 1988, 1989, 1990, 1991, 1994, 1995, 1996, 1997, 1998. On perusal of Casual Labourers (Grant of Temporary Status and Regularisation) Scheme issued by Ministry of Communications, Department of Posts, vide their letter dated 12.4.1991 the applicant claims Temporary Status. Para 1 of the said Scheme is extracted below :-

"1. 'Temporary Status' would be conferred on the casual labourers in employment as on 29.11.1989 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)."

15. The perusal of the same makes it clear that the applicant has to satisfy the following conditions for conferring the 'Temporary Status' :-

1. He must be a casual labour.
2. He must be in employment as on 29.11.1989.
3. Continue to be currently employed.
4. Have rendered continuous service of at least one year.

16. In para 15 of the reply dated 8.6.2001, the respondents have stated that "I say that applicant's services as Casual Labour was terminated w.e.f. 11.1.1999." The Scheme does not make any distinction between casual labourers engaged in Group 'C' post or Group 'D' post. The Scheme says only about

Pl. Sign -

..9/-

regularisation in Group 'D' post only. The applicant has worked for 300 days even as per averment of the respondents. She was in employment as on 29.11.1989, have rendered continuous service of at least one year. As such, she fulfils all the criteria laid down by the Scheme.

17. It is true that she was not sponsored by the Employment Exchange but as she was engaged before 7.6.1988 (O.M.dated 8.4.1991), the said lapse also do not come in her way for granting Temporary Status.

18. I have not taken into consideration the period commencing from 23.11.1999 to 6.8.2000 when she had worked as E.D.S.V.

19. In the result, OA. is allowed. The applicant is entitled to 'Temporary Status' as on 12.4.1991 with all admissible benefits under the Scheme known as 'Casual Labourers (Grant of Temporary Status and Regularisation) Scheme. She be considered for regularisation as per her turn. The respondents are directed to pay costs amounting to Rs.1,000/- to the applicant within three months from the date of receipt of copy of order.


(S.L.JAIN)

MEMBER (J)

mrj.