

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 281/2001

Date of Decision : 21st December 2001.

V.S.Dalvi Applicant

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 ? No
- (ii) Whether it needs to be circulated to other No
Benches of the Tribunal ?
- (iii) Library No

(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.281/2001

Dated this the 21st day of December 2001.

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

Vijay Sabaji Dalvi,
R/at 31/500,
Kannamwar Nagar-I,
Vikhroli (East),
Mumbai.

...Applicant

By Advocate 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 Chief Post Master General,
Maharashtra Circle,
Mumbai G.P.O.,
Mumbai.
3. The Senior Superintendent of
Post Offices,
Mumbai City North Division,
Azad Nagar,
Mumbai.

...Respondents

By Advocate Smt.H.P.Shah

..2/-

ACM

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 order discontinuing the services of the applicant with a direction to the respondents to treat him to have acquired temporary status from the date of completion of one year and grant all the benefits admissible under the Scheme/Rules and regularised his services in any of Group 'D' category.

2. The applicant claims that he was employed as Casual worker, i.e. Coolie in the Vile Parle R.S.P.O. Mumbai w.e.f. 10.1.1996 and worked there upto June, 1997. He was subsequently employed as Casual Labourer w.e.f. July, 1997 to August, 1998 at Khar Post Office, Mumbai. His services were discontinued without assigning any reason. He has given the details of his working in para 4.5 of the OA. According to which he claims that he has worked for 286 days, 247 days and 170 days in the year 1996, 1997 and 1998 respectively. He claims that he is entitled for regularisation in any of Group 'D' post under respondents in pursuance of the Scheme for regularisation formulated in 1989 and entitled to grant of temporary status. The applicant represented to Respondent No.2 and 3 vide his representation dated 3.4.1997, 7.3.1999, 16.11.1999 and 6.12.1999 but no response. Hence, this OA. for the above said reliefs.

P.L.J.

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3. The claim of the applicant is resisted by the respondents alleging that the application is bad in law for non-joinder of Union of India as party respondents and it is premature for the reason that the applicant has not made representation to Respondents No.1 & 2. On merits it is stated that Mumbai City North Postal Division were required to engage some of the outsiders as Coolies as temporary measure to cope up the postal work due to unavoidable increase in work due to various festivals like Diwali, Christmas etc. The work of the Department temporarily increased and therefore respective Sub-Postmasters had engaged coolies to cope-up the work temporarily, but in all there are restrictions for engaging such outsiders without prior permission and hence as per approval from higher authorities as directed vide Postal Directorate Order No.45-111/90 SPB-I dated 13.1.1992, outsiders were engaged. As they were appointed only for temporary work/period, their services were terminated. The applicant is neither entitled for regularisation nor for temporary status or any other reliefs. The fact that he was engaged as a Coolie during seasonal work by the Sub-Postmaster temporarily is being admitted. No Coolie is engaged to work as full fledged casual labourer and there is no such record of engagement as a coolie. The claim of the applicant that he was employed as casual labourer at Khar Post Office is denied. Casual Labourers (Grant of Temporary Status) Scheme was considered by the department as a one time measure vide O.M. dated 16.7.1990 and it was decided that temporary status could be

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confirmed on the casual labourers who were in employment as on 29.11.1989 and who continues to be currently employed and have rendered continuous service of atleast one year and during the year they must have been engaged for a period of 240 days as per O.M. dated 12.4.1991 and further the scheme was extended by O.M. No.66-52/92 SPB-I dated 1.11.1995 deciding that full time casual labourer under employment after 29.11.1989 and upto 1.9.1993 may also be considered for the grant of benefit of the said scheme. Thereafter, there was total ban on recruitment of casual labourers. The applicant was never appointed as Group 'D' and Postman casual labourer and his claim is too beyond of crucial date, i.e. 29.11.1989 further extended date upto 1.9.1993. Hence, prayed for dismissal of the OA. along with costs.

4. The applicant filed the rejoinder stating the fact that the departmental remedies are available to the regular employees and not to the casual employees like the applicant also reiterating the representation submitted by him.

5. On perusal of Annexure to the OA. pertaining to year 1996, 1997, I find that some times the applicant worked for 7-1/2 hours, mostly he worked for six hours a day, the working hours of the applicant were not one and the same, changed from time to time and was paid according to his work performed by him. The services of the applicant were thereafter discontinued.

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6. The learned counsel for the applicant relied on 1999 (3) ATJ 546 - Bharatiya Dak Tar Mazdoor Sangh, through its President & Ors. vs. Union of India & Ors. decided by this Bench on 24.8.1999 to which I was one of the Member and argued that Casual Labour (Grant of Temporary Status) Scheme, 1989 is not a one time affair but it is a continuous Scheme where the casual labourers are entitled for benefit as soon as the criteria laid down for entitlement is met with.

7. He further relied on 1997 (2) ATJ 364, Danvir Singh vs. Union of India & Ors. decided by the Principal Bench, New Delhi on 2.7.1997 in which it was held that :-

"The Scheme nowhere lays an embargo that people appointed during 1990 would not be considered for temporary status. There is no cut-off date prescribed. In fact while interpreting 1993 Scheme of the Ministry of Personnel, this Tribunal had held that the artificial date 1.9.1993 on which date the Scheme came into force would not be a bar for consideration of temporary status to casual labourers employed after that date. There is no such cut off date in the Telecommunication's Scheme. In Swamy's Establishment & Administration sixth edition page 243, para 9 following instructions were issued :

"Casual Labourers recruited after 29.11.1989 and upto 10.9.1993 are also to be conferred "Temporary Status". According to the orders on the scheme issued vide Letters No.45-95/87-SPB I dated 12.4.91 and No.66-9/91-SPB I dated 30.11.92 (Orders (5) above). Full time casual labourers who were in employment as on 29.11.1989 were eligible to be conferred "Temporary Status" on satisfying other eligibility condiditons.

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The question of extending the benefits of the scheme to those full time casual labourers who were engaged/recruited after 29.11.1989 has been considered in this office in the light of the judgement of the CAT, Ernakulam Bench, Ernakulam delivered on 13.3.95 on OA.NO.750 of 1994.

It has been decided that full time casual labourers recruited 29.11.1989 and upto 10.9.93 may also be considered for the grant of benefits under the Scheme.

This issued with the approval of IS and FA vide Dy.No.2423 of 1995 dated 9.10.1995."

(G.I.Dept. of Post, Letter No.66-52/92-SPB I dated the 1st November 1995)."

8. The learned counsel for the applicant relied on 1999 (3) ATJ 578 - Shri Ashok Kumar Gupta vs. Union of India & Ors. which lays down the proposition that denial of temporary status to a casual labour on the ground that they were employed on projects, not justified and the Scheme for grant of Temporary Status is a continuing one and all those persons who are engaged even after the Scheme came into existence are also eligible for its benefits.

9. Similar is the view taken in 1999 (1) ATJ 415 - Rampal & Ors. vs. Union of India & Ors. decided by Principal Bench, New Delhi on 1.12.1998 laying down the proposition that the Scheme being a welfare measure has to be interpreted wide enough to include even those who had the required number of days of service in a year to their credit even after 9.9.1993.

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10. He further relied on the decision of Hon'ble Delhi High Court referred in OA.NO.1535/2000 decided by the Principal Bench on 9.11.2000 :-

" I have carefully gone through the judgements decided by the Chandigarh Bench, wherein OAs involving similar issue were dismissed by that Bench. However, the Hon'ble Delhi High Court has held in its decision dated 22.9.1999 in C.W.No.963/98 that the scheme dated 10.9.1993 is an on going scheme and not a one time concession. Similarly, the Principal Bench of this Tribunal in OA.No.791/96 vide order dated 25.1.2000 has also taken the view that the scheme is an on going one by directing the respondents to consider the applicants for grant of temporary status as per O.M. dated 10.9.1993."

11. On perusal of the above said authority, I am of the considered opinion that Casual Labour (Grant of temporary Status) Scheme 1989 being a welfare measure, not a one time scheme but it is continuous scheme, a casual labour who completes the required working days even after coming into force of the Scheme or a casual labour even though employed after coming into force of the said Scheme is entitled to the benefit of the said Scheme, if he satisfies the required criteria.

12. The applicant was not appointed as casual labour and has not worked for 8 hours a day. As stated above, he has worked some times for 7-1/2 hours a day, some times 6 hours a day and some times even 7 hours a day, rarely 12 hours a day. As such it can be only said that he was paid as per his working hours and as per need, not appointed as casual labour but only as Coolie.

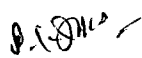
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13. The defence of the respondents that Union of India is not a party is belied on perusal of the respondents where Union of India is the first respondent. Regarding OA. being premature is also devoid of merit as the applicant has represented the matter as borne out by his representations filed as Annexure-2.

14. There is no Scheme for part-time casual labour being granted Temporary Status or regularisation. The only assistance which can be provided to the applicant is that if he is treated as part-time casual labour as per rules and instructions, and applies for appointment as E.D.Agent in subsequent vacancies, he be considered as per rules and instructions therein.

15. In the result, OA. is disposed of with the above directions. No order as to costs.


(S.L.JAIN)
MEMBER (J)

mrj.