

MUMBAI BENCH, MUMBAI.

1. ORIGINAL APPLICATION NO.549/94,
 2. ORIGINAL APPLICATION NO.550/94.

Order No. 549/94
 Wednesday, this the 22nd day of July, 1998.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
 Hon'ble Shri D.S.Bawej, Member(A).

1. P.D.Panchmukh,
 2. S.M.Dukhande,
 3. A.N.Bhosale,
 4. S.D.Vairal,
 5. C.D.Kamble,
 6. R.V.Gangurde,
 7. R.G.Parab,
 8. R.A.Parab,
 9. N.S.Kamble,
 10. G.V.Kamble, and

11. A.R.Kushwa,
 Room No.4,
 Chawli No.118,
 Western Railway Kamgar
 Colony, Konark Bunder,
 P.D'Mello Road,
 Bombay - 400 001.

Deliver & File
 ... (Applicants in OA 549/94).

1. S.S.Kadam,
 2. P.D.Kamble,
 3. B.S.Sable,
 4. V.S.Kadam,
 5. S.R.Bane,
 6. M.A.Kamble,
 7. S.M.Tambel, and

8. A.R.Bane, ... (Applicants in OA 550/94)
 All applicants are working
 as Helpers/Coolies in the
 G.P.O. Bombay on casual basis.
 (By Advocate Shri D.V.Gangal).
 V/s.

1. Union of India through
 Post Master General,
 General Post Office,
 Bombay - 400 001.

2. The Director,
 General Post Office,
 Fort, Bombay - 400 001. ... (Respondents in both
 OAs. 549 & 550/94.)
 (By Advocate Sh. S.S.Karkera)

ORDER

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

These are two applications filed by various

applicants seeking regularisation of service and for other reliefs. The respondents have filed reply opposing both the applications. We have heard the counsels appearing on both sides.

2. O.A. 549/94 is filed by 11 applicants. Though originally 15 applicants had filed the application, it is now restricted to applicants No.1 to 11 and the other names have been deleted. In O.A. 550/94, the application is filed by 8 applicants. All these applicants are claiming that they are working as Casual Labourers/Casual Coolies in the Postal Department since many years and their services are to be regularised.

The respondents reply is that the applicants are not Casual Labourers in that sense, but they are coolies employed par-time as and when there is work.

3. In our view, it is not necessary to go into the details of the pleadings, since the point is covered by two direct decisions of the Apex Court pertaining to similar types of Coolies or Casual Labourers working in the Postal Department.

In SLP (Civil) No.16063 of 1995 in the case of Union of India & Ors. V/s. S.Y. Vanjare & Ors. this Tribunal had granted regularisation to similar types of Coolies or Casual Labourers working in the Postal Department. The Postal Department carried the matter in appeal before the Supreme Court. The Supreme Court set aside the order passed by this Tribunal, but gave a direction to the Department to consider the claim of the Respondents in the light of the Judgment in State of Haryana & Ors. V/s. Piara Singh & Ors. 1992 (4) SCC 118.

Similarly, it is brought to our notice that the Full Bench of this Tribunal had taken the view that even part-time employees in Postal Department are entitled to get temporary status under the Casual Labour (Grant of Temporary Status and Regularisation) Scheme, 1991.

When the matter was taken in appeal before the Supreme Court (Secretary, Ministry of Communications and Ors.

~~V/s. Sakkubai and Anr. - (1998(1) SC SLJ 1801)~~ on behalf of the Department, the Supreme Court held that part-time Casual Workers in Postal Department will not get temporary status. Therefore, the view of the Full Bench was reversed by the Supreme Court. However, the Department conceded before the Supreme Court that even these Part-time Casual Labourers can be absorbed in terms of their letter dt. 17.5.1989, subject of course, the candidates fulfilling the eligibility criteria. The Supreme Court, therefore, allowed the appeal and recorded the clarification made ^{by} the department that necessary action will be taken as per the letter dt. 17.5.1989 and the claim of the respondents in that case for absorption will be considered.

4. In our view, in the light of the two decisions given by the Apex Court pertaining to similar type of part-time casual labourers in the Postal Department, we feel that both these U.As. can be disposed of by giving similar directions.

It is brought to our notice that applicants are being continued by virtue of the interim order passed in these two U.As. In our view, the applicants should be continued in the present work which they are doing provided there is availability of work in the Department. The respondents are also to consider the case of applicants

for absorption in the light of the Circular dt. 17.5.1989 as and when vacancy arises and as per their turn subject to the applicants fulfilling the eligibility criteria as mentioned therein. It is also brought to our notice that the applicants though were being paid wages individually earlier are not now being paid wages individually but are being paid through one of them. In our view, this arrangement should not be continued and the applicants should be allowed to get wages individually for whatever work they do in future.

5. In the result, both the O.As. are allowed partly in the light of the observations and directions given in para 4 above. A copy of this order be communicated to the respondents and the respondents to take appropriate steps in the light of these directions according to rules. In view of the O.As. being disposed of, the M.Ps. No.291, 80, 251/96 and C.r. 120/94 stand disposed of. No costs.

(D.S.BAWEJA)
MEMBER(A)

(R.G.VAIDYANATHA)
VICE-CHAIRMAN.

B.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT MUMBAI
C. P. NO. 37 OF 2000
IN
O.A.NO. 550 OF 1994
S. S. KADAM & 7 OTHERS.) . . APPLICANTS
VERSUS
UNION OF INDIA & ORS.) . . RESPONDENTS.

WRITTEN REPLY ON BEHALF OF THE RESPONDENTS

I, H. C. Agrawal, Director, having my office at O/O the Director, General Post Office, Mumbai-400001, do hereby state on solemn affirmation as under:

- (1) I say that I have been authorised to file this written reply on behalf of the respondents.
- (2) I say that I am acquainted with the facts and circumstances of the case, in my official capacity.
- (3) I say that I have gone through the contentions/averments/allegations made in the O.A. and the reply to them same is as under:
- (4) I say that all the material averments in the contempt petition which are not specifically admitted, stands denied in toto. The applicant is put to strict proof thereof all such material averments which are deemed to have been denied.

(5) At the outset, the respondents respectfully submit that the judgement and order was delivered on 22-7-98 whereas the present contempt petition is filed on 5-7-2000. The applicants have not made averments in the contempt petition or in the affidavit in support of the Contempt petition that the contempt petition is filed within the limitation provided in the Contempt of Courts Act, 1970 and therefore the said contempt petition is beyond the limitation prescribed in Section 20 of the Contempt of Court Act, 1971 and hence on this ground alone the Contempt petition deserves to be dismissed.

(6) The respondents submit that the applicants are being engaged as part-time casual labourers for loading and unloading of mail bags and carrying mail bags within the office from one place to another. The quantum of work has been reducing considerably in Mumbai GPO. However the respondents are providing the part time work to the applicants. In case of further reduction in work load in the Mumbai GPO, the respondents will not be in position to engage these part time causal labourers as work would not be available for them.

(7) As per DG's circular dated 17-5-89 for the purpose of recruitment to Gr.D posts following priority should be observed(Ex.R-1).

- (a) Non Test Category Gr.D officials.
- (b) EDA's of the same division.
- (c) Casual labourers(Full time or part time) For the purpose of computation of eligible service, half of the service rendered a part-time casual labour should be taken in to account. That is, if a part time casual labourer has served for 480 days in a period of two years he will be treated, for the purpose of recruitment to have completed one year of service as full time casual labourer.
- (d) EDA's of other division in the same region.

(e) Substitute(Not working in metropolitan cities)

(f) Direct Recruitment through Employment Exchange.

Accordingly to the judgement of this Hon'ble Tribunal dated 22-7-98 "these part time causal labourers were to be considered for absorption in the light of circular dated 17-5-89 as and when vacancy arises and as per their turn subject to applicants fulfilling the eligibility criteria as mentioned therein". It is to mention here that, in Mumbai GPO the respondents have not recruited any Gr.D after 22-7-98 except appointment of two officials as Gr.D on compassionate grounds, whose bread winner were departmental employees who died in harness leaving family in indigent condition.

Further the work of Gr.D staff has been reducing considerably as also seen from the review of establishment of staff strength carried out on the basis of statistics of the year 1998, where we find 124 surplus posts of Gr.D in Mumbai GPO. It can also be seen from the page 18 of Annexure B which was also submitted by the applicant as Annexure A-2 to their application that against the present sanctioned strength of 430 Gr.D posts in Mumbai DGO only 306 posts of Gr.D are justified for the work. Thus there are 124 surplus posts of Gr.D in Mumbai GPO(Ex.R-2)

There will not be any vacancy for recruitment in Gr.D in Mumbai GPO in the near future.

In this regard it also to state that as per DG, Post circular dated 7-4-2000, the Ministry of Finance(Department of Expenditure) by their OM dated 5-8-99 has directed that every Ministry/Department shall undertake a review of all the posts which are lying vacant in the Ministry/Department and in the Attached and Subordinate offices etc., in consultation with the Ministry of Finance(Department of Expenditure). FA's will ensure that the review is completed in a time bound manner and full details of vacant posts in their respective Ministries etc. are available. Till the review is completed no

16.10.2000
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vacant post shall be filled up except with the approval of the Ministry of Finance(Department of Expenditure). In view of this Memo no vacant post of Gr.D cadre in Mumbai GPO shall be filled up till the review completed or except with the approval of Ministry of Finance, Department of Expenditure.(R-3).

Further, as per DG(P) circular dated 17-5-89 priority is to be given to Non Test Category Gr.D and EDA over part-time casual labourers for recruitment to Gr.D. It is also to mentioned that as on 30-9-2000, 108 Non Test Category Gr.D officials are working in Mumbai GPO, who will be given priority over these applicants whenever recruitment to Gr.D will be made for Mumbai GPO.

As per the order of this Hon,ble Tribunal the applicants are engaged and being paid the wages individually daily for the work they are doing.

In these circumstances, it is amply clear that the contempt petition has no merit and therefore the same be dismissed with cost.

(8) With reference to para 1 of the O.A. the true position is already explained in para 7 and hence no further comments. The applicants have made an deliberate statement that they belongs to Non Test Category. The correct position is that the applicants belongs to Part-time casual labour category as mentioned in DG's letter dated 17-5-89. The Non test category is a separate category of departmental officials.

The contention of the Applicant that according A-2 of the C.P., they can be easily absorbed is denied in toto. The correct position is that establishment review of Non Test Category Gr.D of Mumbai GPO is not relevant in this case. The recruitment of part-time casual labourers to Non Test Category does not come under the purview of DG's circular dated 17-5-89 and thus also does not come under the purview of the judgement/order of Hon,ble CAT dated 22-7-98. As per

16.10.2000

the DG's circular dated 17-5-89 part time casual labourers are to be considered for recruitment to the Gr.D after giving priority to NTC Gr.D and EDA's. This circular does not provide that part time casual labourers are any time to be considered for recruitment to the category of NTC Gr.D or EDA's which are above in the priority.

The applicants averments that Union has also taken the matter in the meetings with the department, but nothing concrete is forthcoming. However, as per DG, Post circulars No.32-1/64-SR dated 11-8-64, "the right of the Union to represent casual labour has not been conceded but if any grievance of causal labour covered by the recommendation of the Pay Commission are brought to notice by the service Association, this will be examined. However, no reply in respect of such grievances would be sent to the representing associations". Even then the department has discussed the matter with the Union and given them the details from time to time to maintain co-ordial relations. Ex.R-4.

(9) With reference to para 2 of the Contempt Petition, the contention is denied in toto. The correct position is already explained in para 5 to 8 above.

(10) With reference to para 3 of the Contempt Petition, the applicants are part-timers as per the guidelines of circular dated 17-5-89. There is no order of the DG or this Hon'ble Tribunal to grant temporary status to the applicant. The Hon'ble Supreme Court has held that part time casual labourers will not get temporary status. The scheme of conferring temporary status is merely for the full time casual labourers. As per circle office Mumbai letter dated 16.5.97, part time casual labourers are not eligible for grant of temporary status scheme and hence these applicants cannot be granted temporary status. (Ex.R-5.)

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(11) With reference to para 4(a) to 4(c) of the Contempt Petition, in view of the true position stated in para 5 to 10 above, the contempt petition has no merit whatsoever and therefore the same deserves to be dismissed and the notices issued on it to be discharged.

VERIFICATION

I, H. C. Agrawal, Director, having my office at O/O the Director, General Post Office, Mumbai-400001, do hereby state on solemn affirmation that whatever is stated in reply to O.A. is true to my personal knowledge and belief as revealed from the perusal of the official records on the subject and also state that no material aspects has been suppressed.

Date: 16 -10-2000.

Place: MUMBAI

FOR THE RESPONDENTS.

निदेशक, वडा डाकघर, मुंबई 400001.
Director, Mumbai G. P. O. 400001.

(VINAY S. MASURKAR.)

COUNSEL FOR THE RESPONDENTS.