

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

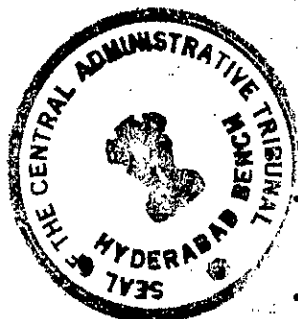
O.A.NO. 912/92 and

O.A.No. 961/92.

Date of decision: 7-6-1993.

Sakkubai.

N.J.Ramulu



Applicant in O.A.912/92

Applicant in O.A.No.961/92.

Vs.

1. The Secretary,
Ministry of Communications,
Dept.of posts, Dak Bhavan,
New Delhi-1.
2. The Chief Postmaster General,
Andhra Circle, Hyderabad-1.
3. The Director of Postal Services,
O/o the Postmaster General,
Andhra Circle, Hyderabad-1.
4. The sr.Suptd. of Post Offices,
Hyderabad Division, Hyderabad-1.
5. Senior Postmaster,
Khairatabad, Hyderabad-4.

.. Respondents in both the OAs.

Appearance:

For the Applicants in both the OAs: Shri S.D.Kulkarni, Advocate

For the Respondents : Shri N.V.Ramana, Addl.CGSC.

CORAM:

HON'BLE SHRI JUSTICE V.S.MALIMATH : CHAIRMAN

HON'BLE SHRI JUSTICE V.NEELADRI RAO : VICE CHAIRMAN

HON'BLE SHRI A.B.GORTHY : MEMBER (ADMN)

J U D G M E N T

(per Hon'ble Shri Justice V.S. Malimath, Chairman)

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The petitioners in these two cases O.A.No. 912/92 and O.A.No.961/92, Smt. Sakkubai and Shri N.J.Ramulu respectively, have approached this Tribunal for the issuance of a writ of mandamus directing the respondents to confer temporary status as Sweeper/Farash from 29-11-1989 pending absorption in Group-D posts.

- iv) EDAs of other divisions in the same region.
- v) Substitutes (not working in Metropolitan cities).
- vi) Director recruits through employment exchange.

Note: Substitutes working in Metropolitan cities will, however, rank above No.(iv) in the list."

6. The Ernakulam Bench took note of the above quoted paragraph 3(iii) of the said order which prescribes that for the purpose of computation of eligible service, double the service rendered by parttime casual labourers should be taken into account. That is if a part time casual labourer has served for 480 days in a period of two years he will be treated to have completed one year of service as full time casual labourers. The Ernakulam Bench has held that if in respect of part-time casual labourers the requirement of double the service rendered by full-time casual labourers can be stipulated for the purpose of consideration for absorption in service, there is no reason why the same formula should not be observed for the grant of a lesser benefit of conferring temporary status. The Ernakulam Bench has taken support for interpreting the scheme in question, on the formula prescribed by the Ministry of communication in its order dated 17.5.1989 on the ground that it is just and equitable principle which has been incorporated therein.

7. So far as the facts of these two cases are concerned, it is not disputed that the applicants are working as part-time casual labourers. Both of them have served more than 480 days in a period of two years and therefore on the formula contemplated by the order dated 17-5-1989, they have the necessary qualifications for absorption. The applicants maintained that the four judgments of the Ernakulam Bench of the Tribunal fully govern the facts of their cases and that they are entitled for the same reliefs as were granted in the said four cases by the Ernakulam Bench.

8. A Division Bench of the Hyderabad Bench of the Tribunal consisting of Hon'ble Shri R.Balasubramanian and Hon'ble Shri T.Chandrasekhar Reddy, have, by their order dated 19-2-1993, referred these two cases to the Chairman for constituting a

5. In all the aforementioned judgments the Ernakulam Bench of the Tribunal has, on examination of the Scheme in question, held that the grant of temporary status and consequential benefits envisaged in the Scheme applied to all Casual Labourers. The petitioners rely not so much on the language of the Scheme but on the interpretation of the said Scheme by the Ernakulam Bench for conferring the same benefits upon the part-time Casual Labourers as are permissible in the case of full-time Casual Labourers in ~~respect~~ regard to grant of temporary status pending absorption. On a careful reading of all these judgments, we find that the Ernakulam Bench has drawn considerable support for its decision on the order of the Ministry of Communications letter No. 45/24/88-SPB.I dated 17.5.1989. We may here extract the relevant portion of the said order which has been relied upon by the Ernakulam Bench:

- "3. It is hereby clarified that all daily wagers working in Post Offices or in K.M.S. Offices or in Administrative Offices or PSDs or MMS under different designations (mazdoors, daily rated mazdoor, outsider) are to be treated as casual labourers. Those casual labourers who are engaged for a period of eight hours a day should be described as full-time casual labourers. Those casual labourers who are engaged for a period of less than eight hours a day should be described as part-time casual labourers. All other designations should be discontinued.

Substitute engaged against absentees should not be designated casual labourer. For purpose of recruitment to Group-D posts, substitute should be considered only when casual labourers are not available. That is, substitutes will rank last in priority, but will be above outsiders. In other words, the following priority should be observed:

- i) NTC Group-D officials;
- ii) EDAs of the same division;
- iii) Casual labourers (full time or part time), for purposes of computation of eligible service, half of the service rendered by part-time casual labourers should be taken into 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 purpose of recruitment to have completed one year of service as full time casual labourer).

If that be so, the said letter may be ignored without any comment. Even otherwise it may still be ignored for the reason that no executive authority can neutralise a binding decision of the Tribunal by means of an executive order.

10. Hence, the only question that merits examination is whether on the ground that the question is of a general importance with wider application all over the country, the Full Bench should reconsider the consistent decisions of the Ernakulam Bench of the Tribunal. As already stated, if the respondents were conscious of the fact that the judgments had wider application of All-India implications they would have served better to have challenged the decisions of the Ernakulam Bench before the Supreme Court. It is not one decision but four decisions rendered by the Ernakulam Bench reiterating the same principle. We are, therefore, not impressed by the argument that on the ground that the principle involved in these cases has a wider implication on all-India basis, we should re-consider the consistent view taken by the Ernakulam Bench of the Tribunal.

11. Even otherwise, we are of the view, for the reasons to be stated presently that the view taken by the Ernakulam Bench is a just and equitable one for the grant of relief to the unfortunate employees who have been serving for more than a decade without any further prospects in the Department. That itself is a good ground to refuse either further examination or re-examination of this question.

12. The principle stated by the Ernakulam Bench is based on interpretation of the scheme as the scheme only refers to casual labourers without specifying whether it covers only full time casual labourers or part-time casual labourers as well, it was open to the Tribunal to examine the entire scheme to ascertain whether the benefit of the scheme should be understood in the restricted sense as applicable only to the full time casual labourers or in the liberal sense as applicable also to the ~~parttime~~ casual labourers. The Ernakulam Bench has, in support of its decision, noted what the Department itself had done in prescribing the qualification for regularly absorbing part-time casual labourers in Group-D posts vide its order dated 17-5-1989 to which we have already referred, in the matter of their absorption in regular Group-D posts. The qualification prescribed for part time labourers is double the qualifications prescribed for full time casual labourers, thereby rendering them eligible for regular absorption. ~~xxxx~~

larger Bench. It is in view of the said order the present Bench has been constituted. It is necessary to point out at the outset that the referring Bench has nowhere expressed any disagreement with the view expressed by the Ernakulam Bench of the Tribunal. The reason for referring the case to the larger Bench, as stated in the order of reference, is that the question involved is of great importance and may have a wide application to a large number of personnel of the Postal Department. It is, therefore, manifest that the Division Bench was persuaded to refer the matter to a larger Bench on the ground that the issue involved is of considerable importance and may govern large number of employees similarly situated in the Postal Department all over the country. The Bench has also adverted to a letter bearing No.45-37/91-SPB-1 dated 16-8-1991 wherein the Director General of Posts has tried to clarify that the benefit of the Scheme dated 12.4.1991 is not applicable to part-time casual labourers in the matter of granting them temporary status. It is in this back ground that we are required to examine the contentions raised in these cases.

9. At the outset we must deal with the letter of the Director General of Posts dated 16-8-1991. So far as the letter is concerned it is enough to say that there are judicial pronouncements of the Ernakulam Bench, to which the Director General of Posts is a party in more than one case, holding that the benefit of the grant of temporary status is available to part-time casual labourers as well. The Director General cannot, therefore, arrogate to himself the power of neutralising the binding decisions of the Tribunal by means of issuing a clarification to the earlier order. If the Director General felt aggrieved by the decision rendered by the Ernakulam Bench on the question of grant of temporary status and consequential regularisation of part-time casual labourers, the proper course for him to adopt was to challenge the decision in the Supreme Court or to seek a review as per procedure, if the circumstances of the case so warranted. When we asked the learned counsel for the respondents whether these decisions have been challenged, he clarified that these decisions have neither been challenged in the Supreme Court nor were sought to be reviewed. The learned counsel for the respondents tried to explain to us by saying that the letter was issued in a routine manner and not with a view to nullifying the judgment of the Ernakulam Bench.

The above directions shall be complied with by the respondents within six months from the date of receipt of this order.

CERTIFIED TO BE TRUE COPY

Dated 15/6/93
Court Officer

Central Administrative Tribunal
Hyderabad Bench
Hyderabad.

To

1. The Secretary, Ministry of Communications,
Dept. of Posts, Dak Bhavan, New Delhi-1.
2. The Chief Postmaster-General, Andhra Circle, Hyderabad-1.
3. The Director of Postal Services,
O/o the Postmaster General, Andhra Circle, Hyderabad-1.
4. The Sr. Superintendent of Post Offices, Hyderabad Division, Hyd-1.
5. The Senior Postmaster, Khairatabad, Hyderabad-4.
6. One copy to Mr. S.D. Kulkarni, Advocate, Neelrekha, 99, Postal colony
Trimulgherry, Secunderabad.
7. One copy to Mr. N.V. Ramana, Addl. CGSC, CAT, Hyd.
8. One copy to Hon'ble Mr. Justice V. Neeladri Rao, V.C. CAT, Hyd.
9. One copy to Hon'ble Mr. A.B. Gorthy, Member (A) CAT, Hyd.
10. One copy to Deputy Registrar (J) CAT, Hyd.
11. One copy to Library, CAT, Hyd.
12. Copy to All Benches as per standard list of CAT, Hyd.
13. One spare copy.

pvm

OA 912/92 and

Case Number	OA 961/92
Date of Judgement	7-6-93
Copy made ready on	15-6-93
Section Officer (J)	