

(7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 428/98
T.A. No.

199

DATE OF DECISION 25/4/2002

Nandu Singh

Petitioner

Mr. Manish Bhandari

Advocate for the Petitioner (s)

Versus

U.O.I & Ors.

Respondent

Mr. V.S. Gurjar

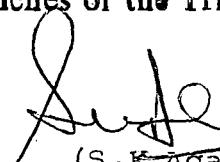
Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.K. Agarwal, Member (J).

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(S.K. Agarwal)
Member (J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.428/98

Date of order:

Nandu Singh, S/o Shri Anup Singh, R/o Shanti Bhawan, Opp.
Sardar Singh Nursing Home, Bani Park, Jaipur.

...Applicant.

Vs.

1. Union of India through the Secretary, Mini. of Health & Family Welfare, Nirman Bhawan, New Delhi.
2. Director, Central Govt. Health Scheme, Nirman Bhawan, New Delhi.
3. Additional Director, Central Govt. Health Scheme, Hotel Radha Krishna, Near Rly Station, Jaipur.

...Respondents.

Mr. Manish Bhandari - Counsel for the applicant

Mr. V.S. Gurajar - Counsel for respondents.

CORAM:

Hon'ble Mr. S.K. Agarwal, Judicial Member

PER HON'BLE MR. S.K. AGARWAL, JUDICIAL MEMBER.

In this Original Application under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to direct the respondents to grant temporary status on fulfilling the conditions for grant of such benefits and to further direct the respondents to give the benefits of increments and other benefits in pursuance of Office Memorandum dated 24.10.97.

2. Facts of the case as stated by the applicant are that he was initially engaged on daily wage basis in February 95. Applicant preferred an O.A which was disposed of with the direction to the respondents to re-engage the applicant. In pursuance of the order dated 31.7.96 in O.A No.31/96. The applicant was taken back in service since then he is working on daily wage basis. It is stated that he is entitled to the benefits of the scheme issued vide Memorandum dated 24.10.97 but the respondents have not given the full benefits of the Scheme and the action of the respondents not conferring temporary status according to the Scheme is wholly illegal and in violation of Articles 14 & 16 of the Constitution of India. The applicant therefore, filed this O.A for the relief as mentioned above.

3. Reply was filed. In the reply, it is admitted that the applicant was initially engaged on daily wage basis as Waterman for a specific period only and later on he was re-engaged in view of the directions of the Tribunal given on 31.7.96 in O.A No.31/96. It is stated that the applicant is being paid daily wages, as and when revised and the applicant is not entitled to temporary status as there is no post. The applicant is also not entitled to any other

benefits as claimed by him, therefore, the O.A is devoid of any merits is liable to be dismissed.

4. Heard the learned counsel for the parties and also perused the whole record and also perused the written submissions filed by the counsel for the applicant.

5. The main contention of the applicant in this case has been that he is working as Waterman since February 1995 on daily wage basis but inspite of the scheme available with the respondents, he was not given temporary status and has not been regularised. On the other hand, the learned counsel for the respondents has argued that the applicant being on daily wage basis and no post of Waterman is available in the department, therefore, the applicant is not entitled to temporary status and regularisation.

6. Admittedly, the applicant is working as Waterman on daily wage basis in the department since February 1995 and memorandum dated 24.10.97 also reveals that there exist a scheme in the department.

7. In Sakkubai & N.J.Ramulu Vs. The Secretary, Minister of Communication etc. & 4 ors. decided on 7.6.93 (reported in CAT(FE) Vol.III page 209) in O.A No.912/92 and 961/92, the Full Bench has dealt in length the question of grant of temporary status to the part-time workers of the P&T department and the observations of the Tribunal are reproduced below:

"12. The principle stated by the Ernakulam Bench is based for 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 by the full time casual labourers or in the liberal sense as applicable as to the casual labourers. The Ernakulam Bench has, in support of its decision, noted what the department itself have 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. If we look at the principle from the point of view of the equity and fairness, we see no reasons to persuade us to disagree with the view taken by the Ernakulam Bench. It is difficult to believe that no regular employment has taken place in the department during the last 18 years when the applicants have been demanding absorption on regular basis. These unfortunate employees have rendered continuous service as part time casual labourers for a long period of about 18 years without any improvement in their service status upon casual labourers who have been rendering service for long periods without any security of tenure. It is difficult

to say that part time casual labourers who have also served for long periods without security of tenure did not merit similar just and fair treatment. Besides, this is only a fading category. It should not be difficult to accommodate by giving temporary status to the part-time casual labourers. At least at the tag end of their service the department should treat them kindly. The view taken by the Ernakulam Bench may it best be characterised as liberal. But it is eminently just and equitable."

8. In another case B.S.Chendalyia Vs. UOI & Ors. (1998) 37 ATC 469, it was held that part time workers are also entitled for grant of temporary status and regularisation. In this case, the applicant was working as part-time Sweeper since May 1987 and directions were given for considering him for temporary status and regularisation.

9. In Chaturbhuj Sharma Vs. UOI & Ors. 1999(3) ATJ 504, the Jodhpur Bench of the Tribunal has also taken a similar view and held that part-time casual labourers are also entitled to be considered for grant of temporary status and regularisation.

10. In view of the above legal position and facts and circumstances of the case, I am of the considered view that the applicant is entitled to be considered for conferring temporary status and thereafter for regularisation if he is eligible and found fit.

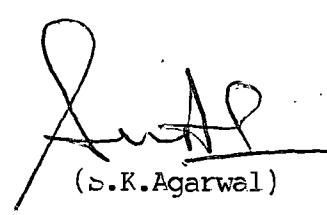
11. In view of the above, the O.A is accordingly allowed with the following directions:

(a) The applicant should be continued in service as waterman on daily wage basis so long as the work is available;

(b) the applicant may be considered for conferring temporary status if he is found eligible and fit and thereafter the applicant will be considered for regularisation on Group-II post in the respondents' department.

(c) The above exercise shall be completed within 3 months from the date of receipt of a copy of this order.

(d) No order as to costs.



(S.K. Agarwal)
Member (J).