

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,  
JAIPUR

Dated of order: 13.08.2003

OA No.478/2002

Kamlesh Kumar Patel s/o Shri Chunni Lal r/o Behind Cinema Hall, Lakheri, Distt. Bundi, working as C.F. Chowkidar at Sub-Post Office (HSG), Lakheri, Distt. Bundi.

.. Applicant

Versus

1. Union of India through Secretary, Ministry of Communication, D/o Post, Dak Bhawan, New Delhi.
2. Post Master General, Rajasthan, Dak Bhawan, Jaipur.
3. Superintendent, Post Office, Tonk Division, Main Post Office, Tonk.

.. Respondents

Mr. Vimal Kumar Jain, counsel for the applicant.

Mr. N.C.Goyal, counsel for the respondents

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

O R D E R

The applicant, who is working as contingent paid Chowkidar is aggrieved of non-grant of temporary status and regularisation of him and has filed this OA thereby praying for the following reliefs :-

- "i) That the respondents be directed to regularise the services of the applicant and he be awarded all consequential benefits arising out of that. In the alternative the applicant may be given benefit of temporary status and the respondents be directed to give the benefit of 'equal pay for equal work' i.e. the minimum of the pay scale to the petitioner for the post of Chowkidar with all

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consequential benefits.

- ii) That the respondents be directed to regularise/grant temporary status of Group 'D' official and all other consequential benefits from the date his similarly situated person was granted.
- iii) Any other relief which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may also kindly be granted in favour of the humble applicant."

2. The applicant was initially appointed as contingent paid Chowkidar on 19.3.88 on fixed wages of Rs. 212.50 per month. The applicant is continuing as such since then and subsequently his wages/salary was raised to Rs. 1700 + D.A. The applicant has further alleged that he is working on the post of contingent paid Chowkidar for last 14 year without any break. He has further alleged that though he is performing his duties from 8 A.M. to 8 P.M. in the office of respondent No.3 but he is paid wages only for 5 hours. It is further averred that one Shri Ram Karan Sharma who was a contingent paid Chowkidar, Kota Jn. Sub Post Office was conferred temporary status of Group 'D'official w.e.f. 29.11.89 vide order dated 26.11.92 (Ann.A3) whereas the applicant, who is similarly situated, has been denied this benefit. It is further averred that the applicant has made number of representations from 1997 onwards (copies placed at Ann.A4 to A7) but neither he was granted temporary status nor his services were regularised by the respondents and thus has filed this OA thereby praying for the aforesaid reliefs.

3. Notices of this application were issued to the respondents who have filed their reply. In the reply it has been stated that prior to the engagement of the applicant, there was a post of Extra Departmental Chowkidar at Lakheri. The post of Extra Departmental Chowkidar was abolished as per Director General Posts letter dated 14.12.87 circulated vide Postmaster General, Rajasthan circular dated 18.12.87. Consequently, in compliance of these instructions, the post of Extra Departmental Chowkidar, Lakheri was to be abolished vide Superintendent of Post Offices memo dated 16.3.1988 and simultaneously it was also mentioned in that memo that the post of contingent paid Chowkidar in consolidated sum of Rs. 212.50 per month shall stand sanctioned. The Sub-Post Master, Lakheri was asked to engage someone as contingent paid Chowkidar and there was no sanctioned post of Chowkidar at Lakheri. So the Sub Post Master was granted contingent allowance to get the work of Chowkidar done by paying this allowance. This allowance was for 5 hours work in a day only. The allowance for contingent Chowkidar was revised from time to time and at present this allowance is Rs. 1700 + DF, as can be seen from copy of memo dated 20.12.98 (Ann.R3). Thus, the stand taken by the respondents in their reply is that the applicant is working on part-time wages i.e. for 5 hours a day and paid from contingency and as such he is not entitled for grant of temporary status and regularisation. It is further stated that the applicant is not entitled for similar benefit as given to Shri Ram Karam Sharma in Kota Division. As per the scheme for grant of temporary status, a worker who fulfils two conditions namely worker should be working on full time basis i.e. for 8 hours daily and

he should be working against sanctioned vacant post for 240 days service as on 29.11.1989, are entitled for grant of temporary status. The applicant is working for 5 hours daily i.e. on part-time basis and also the post of Chowkidar is not sanctioned at Lakheri Sub Post Office. Thus, he is not entitled for this benefit.

4. The applicant has filed rejoinder thereby reiterating the submissions made in the OA.

5. I have heard the learned counsel for the parties and gone through the material placed on record.

5.1 The learned counsel for the applicant has raised 3 contentions for consideration of this Tribunal. Firstly, the learned counsel for the applicant argued that the applicant was engaged as full-time casual worker and not part-time casual worker, as the respondents are ~~expecting~~ <sup>extracting</sup> work for 12 hours though he is paid wages for 5 hours. The second contention put forth by the learned counsel for the applicant is that even if it is assumed that the applicant is part-time worker, he is entitled for grant of temporary status in terms of the scheme framed by the Department dated 12.4.91. Lastly it was argued that even if it is held that the applicant is not entitled to grant of temporary status and regularisation in terms of the scheme dated 12.4.91, in any case, he is entitled to be absorbed in accordance with the circular dated 17.5.89 as per the priority set out therein.

5.2 So far as the contention of the learned counsel for the applicant that the applicant is a full-time casual worker and not part-time casual worker is concerned, it is suffice to say that this Tribunal is not a forum where

such type of controversy can be raised and determined. Admittedly, the applicant is being paid wages for 5 hours though the applicant has stated that he is working for about 12 hours a day. As already stated above, it is not possible for this Tribunal to examine this contention since it is entirely a question of facts which has to be determined and gone into by a competent forum. In case the applicant was aggrieved on this account, he should have raised industrial dispute and sought his remedy before the competent forum. As such, this contention of the learned counsel for the applicant deserves to be rejected at the threshold.

5.3. In so far as the contentions of the learned counsel for the applicant that even part-time casual workers are entitled for conferment of temporary status and regularisation in terms of the scheme dated 12.4.91 (Ann.F5) and also that in any case he is entitled for absorption in accordance with the letter/circular dated 17.5.89 (Ann.F7), the matter is no longer res-integra. Both these scheme i.e. the scheme titled as "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme" dated 12.4.91 and the circular dated 17.5.89 came for consideration before the Apex Court in the case of Secretary, Ministry of Communications and ors. vs. Sakhubai and anr., 1998 SCC (L&S) 119. After noticing the relevant provisions of Indian Posts and Telegraphs (Group 'D' Posts) Recruitment Rules, 1970, whereby casual labourers (full-time and part-time) of the recruiting division or unit were given preference for appointment, has observed as under:-

7.....Item (ii) of the notification refers to casual labourers (full-time and part-time) who

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were thus given preference for absorption in the posts in question. As a result of the aforesaid letter of 17.5.1989, it was clarified (in para 2) that all daily wagers working in Post Offices or in FMS Offices and other offices set out therein 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 declared as part-time casual labourers. All other designations should be discontinued.

8. The letter also gives priorities which are to be observed in recruitment to Group 'D' posts in para 3. These priorities are as follows:

- (i) NTC Group 'D' Officials.
- (ii) EDAs of the same Division.
- (iii) Casual labourers (full-time or part-time. For purpose of computation of eligible service, half of the service rendered as part-time casual labourer should be taken into account. That is, if a part-time casual labourer has served for 480 days in a period of 2 years he will be treated, for purposes of recruitment to have completed one year of service as full-time casual labour).
- iv) EDAs of other divisions in the same region.
- v) Substitutes (not working in metropolitan cities).
- vi) Direct recruits through employment exchanges.

9. The respondents have emphasised item (iii) which basically equates two years of service as a

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part-time casual labourer with one year's service as a full-time casual labourer. They have submitted that in view of this equation they should also have been included in the Scheme framed of 12.4.1991 on similar terms. There is some justification for this submission. However, the Scheme is for granting temporary status as well as regularisation. It is, however, stated before us by the learned counsel for the appellants that the priorities for absorption in Group 'D' posts which were set out in the letter of 17.5.1989 are still in force and that part-time casual labourers are also entitled to absorption as per the said letter. The Scheme of 12.4.1991 is merely for the purpose of conferring temporary status on full-time casual labourers. It does not take away the benefit of absorption conferred on part-time casual labourers in terms of the letter of 17.5.1989. He has also pointed out that it is difficult to confer temporary status on part-time casual labourers. However, they will be absorbed in accordance with the priorities set out in the letter of 17.5.1989 provided they fulfil the eligibility criteria.

10. The Tribunal, in our view, was not right in coming to the conclusion that the Scheme for conferring temporary status on full-time casual labourers is also applicable to part-time casual labourers. In view of the clarification which has been made by the learned counsel for the appellants, we do not find it necessary to give any further directions.

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11. Learned counsel appearing for the respondents in civil appeal arising out of SLP (C) No.11096 of 1996 has submitted that the respondents were in fact full-time casual workers and not part-time casual workers. It is not possible for us to examine this contention since it is entirely a question of fact and in case the respondents are claiming the benefit of the Scheme of 12.4.1991, it will be for them to take such appropriate steps as may be available to them."

6. In view of the law laid down by the Apex Court as reproduced above, the applicant who is a part-time casual worker is not entitled to grant of temporary status in terms of the scheme of 12.4.91 as the said scheme is merely for the purpose of conferring temporary status on full-time casual labourers. However, the applicant is entitled to be absorbed in accordance with the priority set out in the letter dated 17.5.89 provided he fulfils the eligibility criteria. According this OA is partly allowed. The respondents are directed to consider the case of the applicant for absorption in group 'D' post in accordance with the priority set-out in the letter dated 17.5.89 provided he fulfils the eligibility criteria in his own turn.

7. With the above observations, the OA is disposed of with no order as to costs.

  
(M.L. CHAUHAN)

Member (Judicial)