

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR

ORIGINAL APPLICATION NO. 577/2003

Jaipur, this the 11th day of January, 2005

CORAM : HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDL.)

Mali Ram Swami s/o Shri Mohan Lal Swami, aged about 33 years, r/o Kumawataon Ka Mohalla, Renwal, presently working as contingent paid Chowkidar, Renwal Post Office, Renwal Distt. Jaipur.

.. Applicant

By Advocate : Shri C.B.Sharma.

VERSUS

1. Union of India through its Secretary to the Govt. of India, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Superintendent of Post Offices, Jaipur (M) Postal Division, Jaipur.

.. Respondents

By Advocate : Shri N.C. Goyal

ORDER (ORAL)

The applicant, who is working as contingent paid Chowkidar, is aggrieved of not granting temporary status and regularisation to him has filed this OA thereby praying for the following reliefs:-

- "i) That the entire record relating to the case be called for from the respondents and after perusing the respondents may be directed to grant temporary status from the date applicant




became eligible for further regularisation with all consequential benefits including arrears of pay and allowances.

ii) That the respondents be further directed to allow pay and allowances for full working hours since date of engagement with all consequential benefits.

iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.

iv)"

2. Briefly stated the applicant was initially engaged as contingent paid Chowkidar on 28.11.89 on fixed allowances of Rs. 404/- per month and he is continuing as such since then and at present he is getting Rs. 1374 + DA. It is further stated that the applicant is working on the post of contingent paid Chowkidar for the last about 14 years without any break. He has further averred that though he has performed duties from 7.00 P.M. To 6.00 A.M. and also directed to guard the Post Office in proper way but he is not being paid pay and allowances for full working hours since the date of his engagement. For the purpose of showing that the applicant's working hours were from 7.00 P.M. To 6.00 A.M., the applicant has placed on record various office orders issued by the Post Master, Renwal Post Office dated 8.1.90, 18.12.1997, 27.02.1998, 20.11.1999 (Ann.A3 to A6). It is further averred that the applicant has made number of representations to the authorities but neither he was granted temporary status nor his services were regularised by the respondents and also that he has not been paid full wages. As such, he has filed this OA thereby praying for the aforesaid reliefs.



3. Notices of this application were given to the respondents, who have filed their reply. In the reply, it has been stated that the applicant was engaged as part-time contingent paid Chowkidar to guard the locked Sub Post Office, Renwal during the odd hours of the night from 28.10.1989 with duty hours from 22.00 hours to 04.45 hours and the contingent allowance of Rs. 404/- per month had been sanctioned by the Superintendent (Moffussil) Division, Jaipur vide memo dated 14.4.1988. The respondents have also annexed copy of the said memo dated 14.4.1988 as Ann.R1. It is further stated that at the time of engagement of the applicant, no appointment order was served. The allowance of the applicant was fixed for 04 hours 30 minutes duty as paid to the Group 'D' employees. It is further stated that a regular Chowkidar who had been employed to keep a general watch over the building during night is required to perform daily 12 hours duty as no strain is involved and that 12 hours duty of such Chowkidar is equal to 08 hours duty of a Group 'D' employee. In the instant case, the duty fixed by the Superintendent of Post Offices, Jaipur was only for a period of 6 hours 45 minutes which is equal to 4 hours and 30 minutes for the purpose of payment of allowance. The said part time contingent paid Chowkidar i.e. the applicant had been paid the allowance since then. It is further stated that the allowance of the applicant has been revised on the basis of the minimum pay of the Group 'D' employee and working hours of part time contingent paid chowkidar in the light of DG P&T, New Delhi letter dated 17.7.1998. It is further stated that the Sub Post Master, Renwal is



not competent to enhance the working hours or allowances of the applicant at his own. The Superintendent of Post Offices, Jaipur is the competent authority to sanction/revise such allowances or working hours and he had neither vetted the orders noted by the Sub Post Master, Renwal in the order/error book nor has issued any orders in this regard. It is further averred that necessary action is being taken against the official who has written the working hours of the applicant from 1900 hrs to 0600 hrs instead of 2200 hrs to 0445 hrs in the order/error book on 28.10.1989, 08.01.1990, 28.12.1997, 27.01.1998 and 20.11.1998 . The respondents have also placed on record judgment of the Apex Court rendered in Civil Appeal No. 360-361/1994, Secretary, Ministry of Communication and ors vs. Sakkubai and another dated 02.04.1997 and also the judgment of this Tribunal rendered in OA No.478/02, Kamlesh Kumar Patel Vs. Union of India decided on 13.8.2003 to contend that part time casual labourers are not entitled to grant of temporary status as well as regularisation in terms of the scheme of 12.4.1991 and the applicant is entitled to be absorbed in accordance with the priority set out in the order dated 17.5.1989 provided he fulfills the eligibility criteria.

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 Admittedly, the applicant was engaged as contingent paid Chowkidar pursuant to order dated 14.4.88 whereby allowance to the post of contingent paid Chowkidar for Post Office, Renwal was revised from Rs. 200 to Rs. 404 per month. There is nothing on record to suggest that the applicant was engaged as full time casual worker and he was also being paid full wages which were admissible to full time casual worker. Thus, I am of the firm view that the applicant was working in the capacity of part-time casual worker/Chowkidar and he was being paid fixed allowance out of the contingency funds. Further, this Tribunal is not a forum in which such type of controversy can be raised and determined. Admittedly, the applicant is being paid wages for 4 hours and 30 minutes though the applicant has stated that he was working for about 11 hours a day. For that purpose, the applicant has placed on record copy of the order sheet dated 8.1.90, 18.12.97, 27.2.98 and 20.11.98. According to respondents, the applicant was engaged as part-time contingent paid Chowkidar only for 6 hours and 45 minutes which is equal to duty period of 4 hours and 30 minutes and action is being taken against the official who has written working hours of the applicant from 1900 hours to 0600 hrs instead of 2200 hrs to 04.45 hours in the order/error book on 28.10.89, 8.1.90, 27.2.98 and 20.11.98. Thus, from the material placed on record, it cannot be precisely concluded that the applicant was continuously working from 1900 hrs. to 0600 hrs. since his engagement was part-time contingent paid Chowkidar. At the most, from the order Ann.A3 to A6, it can be concluded that the applicant was asked to perform the duties from 7.00

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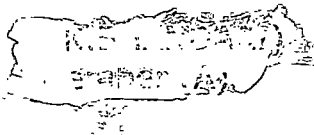
P.M. To 6.00 A.M. in the interregnum for short period as the applicant was ^{not} asked to perform the duties for the aforesaid period in the year 1991-92, 1992-93, 1994-95 and 1995-96 and even upto 27th December, 97 and also in the year 1999 onwards. Thus, in view of the material placed on record, it is not possible for this Tribunal to come to the conclusion that the applicant was working continuously for about 11 hours a day since inception. The applicant has placed on record some material to suggest that on some occasions he was asked to perform duties w.e.f 7.00 P.M. To 6.00 A.M.


5.2 Thus, in the facts and circumstances of this case, I am of the view that the competent authority shall consider the matter and determine whether the applicant has performed duties from 7.00 P.M. To 6.00 A.M. and if so, the competent authority shall determine the amount of allowances which may be admissible to the applicant on that basis. Such exercise shall be completed by the respondents within 3 months from the date of receipt of this order.

5.3 As regards other submissions of the applicant that he is entitled for conferment of temporary status and regularisation in terms of scheme dated 12.4.91 and also that in any case he is also entitled for absorption in terms of letter dated 17.5.1989, suffice it to say that the matter is squarely covered by the judgment in Secretary, Ministry of Communications and ors vs. Sakkubai and another (supra) and also the judgment rendered by this Tribunal in OA No.478/2002, Kamlesh Kumar Patel vs. Union of India decided on 13.8.2003 whereby this Tribunal has held that the applicant who is part-time casual worker is not entitled to grant of temporary status

in terms of scheme of 12.4.91 as the said scheme is merely for the purpose of conferment of temporary status to full time casual labourers. It was further held that the applicant therein is entitled to be absorbed in accordance with the priority set out in the letter dated 17.5.89 provided he fulfills the eligibility criteria. The reasoning given in the case of Kamlesh Kumar Patel (supra) shall be squarely applicable in the instant case. Accordingly, 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 fulfills the eligibility criteria in his own turn and he shall not be entitled to grant temporary status in terms of the scheme of 12.4.91.

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




(M.L. CHAUHAN)
Member (J)