

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 541 of 2004  
Original Application No. 1174 of 2004

Jabalpur, this the 17<sup>th</sup> day of May, 2005

Hon'ble Shri M.P. Singh, Vice Chairman  
Hon'ble Shri Madan Mohan, Judicial Member

Original Applications Nos. 541/2004 & 1174/2004 :

Jitendra Prasad Shakya, S/o. Shri  
Manpal Shakya, aged about 31 years,  
Working as Driver Temporary Status,  
Group 'D', R/o. Dattpura,  
Morena (MP).

... Applicant in  
both the OAs

(By Advocate - Shri Gopi Chourasia in both the OAs)

V e r s u s

1. Union of India, through : Secretary,  
Ministry of Communication, Department  
of Post, New Delhi.
2. Post Master General,  
Indore Region, Indore.
3. Superintendent of Post Offices,  
Chambal Division, Morena (MP). ... Respondents in  
both the OAs

(By Advocate - Shri K.N. Pethia in both the OAs)

O R D E R

By M.P. Singh, Vice Chairman -

As the issue involved in both the Original Applications  
is common and the facts and grounds raised are identical, for  
the sake of convenience we are disposing of both these  
Original Applications by a common order.

2. By filing these Original Applications the applicant  
has claimed the following main reliefs :

OA No. 541/2004 -

"(ii) set aside the order dated 10.7.2004 (Annexure  
A-1),

(iii) consequently, command the respondents to  
permit the applicant to continue as Temporary status  
Group-D as if the impugned order was never passed.

OA No. 1174/2004 -

(2) to set aside the impugned order dated

22.12.2004 (Annx. A/1),

(3) to command the respondents to permit the applicant to continue in service as he was performing before the order of termination."

3. The brief facts of the case in both the Original Applications are that the applicant was initially appointed as an Outsider Driver with effect from 1.2.1995 on daily wages. He was subsequently confirmed by granting temporary status of Group-D cadre by order dated 25.1.2000 (Annexure in OA No. 541/2004).

A-2/ According to the applicant he has not mis-represented any fact to secure the employment. He was also never subjected to any disciplinary proceedings nor any adverse remarks have been communicated to him. He has put in more than nine years of regular service without there being any break in the service. However, the respondents have issued a show cause notice dated 10th July, 2004 (Annexure A-1 in OA No. 541/2004) whereby the temporary status granted to the applicant on 25.1.2000 is sought to be withdrawn. The OA No. 541/2004 has been filed by the applicant seeking direction to set aside the order dated 10th July, 2004 with further direction to continue him as temporary status Group-D employee.

3.1. Thereafter during the pendency of the OA No. 541/2004 the respondents vide order dated 22nd December, 2004 (Annexure A-1 in OA No. 1174/2004) have dispensed with the services of the applicant. Therefore, he has filed OA No. 1174/2004 seeking direction to set aside this impugned order dated 22nd December, 2004.

4. The respondents in their reply have stated that the applicant was engaged as a Driver on daily wages on 1.2.1995 by Shri B.L. Shakya who was holding the charge of Superintendent of Post, Chambal Division, Morena without following the prescribed procedure for engagement of Casual Labour. The requirement such as nominations from local

employment exchange as pre-requisite for engaging a person as Casual Labour, was not followed. This engagement was made by an officer who is the uncle of the applicant. There has been violation of the rules by Shri B.L. Shakya, the then Superintendent of Post Office by engaging the applicant as a Casual Labour. The respondents further submitted that the work of a Driver is of regular nature and not of a casual worker. Inspite of the fact that the Government have imposed a complete ban on engagement of Casual Labour for performing the duties of Group-C posts vide OM dated 26.2.1990, the uncle of the applicant Shri B.L. Shakya in utter violation of the provisions, engaged the applicant as a Casual Labour Driver (Group-C cadre). The respondents also stated that the engagement of the applicant with effect from 1.2.1995 is totally dehors the rules. As per the circular dated 12th April, 1991 the "temporary status would be conferred on the casual labourers in employment as on 29.11.1989". Subsequently the scheme was extended by subsequent circulars, whereby it was observed that the employees recruited upto 1.9.1993 may also be considered for grant of benefit under the scheme for the purpose of temporary status. Moreover, the applicant was not entitled for grant of temporary status as he was engaged in a Group-C cadre with effect from 1.2.1995. It is further stated by the respondents that the temporary status can be granted in Group-D only and not in the post of a Driver which is a Group-C post. In view of the submissions given above, both the Original Applications are liable to be dismissed as having no merits.

5. Heard the learned counsel for the applicant as well as the learned counsel for the respondents and carefully perused the pleadings and records.

6. We have given careful consideration to the rival



contentions made on behalf of the parties and we find that the applicant was appointed as a Casual Labour and was working as a Driver with effect from 1.2.1995. We further find that the Ministry of Communications, Department of Posts vide letter dated 30th November, 1992 have taken a decision to grant temporary status to casual labourers fulfilling certain conditions. As per this letter the temporary status would be conferred on the casual labourers in employment as on 29.11.1989 and who continue to be currently employed and have rendered continuous service of at least one year, during the year they must have been engaged for a period of 240 days (206 days in the case of offices observing five days weeks). Such casual workers engaged for full working hours viz. 8 hours including  $\frac{1}{2}$  hour's lunch time will be paid at daily rates on the basis of the minimum of the pay scale for a regular Group-D official including DA, HRA and CCA. The Department have issued further instructions extending the benefit of grant of temporary status to the casual labourers who have been engaged during the period between 29th November, 1989 and upto 1st September, 1993, vide order dated 1.11.1995. As per the judgments of the Hon'ble Supreme Court it is a settled position that these schemes are one time scheme. We further find that the scheme of 12.4.1991 as well as the earlier scheme of 1989 for grant of temporary status, were applicable only for Group-D employees. It is not disputed that the applicant was working as a Driver which is a Group-C post and not a Group-D post. Therefore, conferment of the temporary status in his case was not in accordance with the rules. It is also not disputed that the applicant was not working as a daily wager either in 1989 or in 1991. Moreover, he was performing the duties of a Driver which is a Group-C post and conferment of temporary status under both the schemes is

applicable in Group-D post only. The respondents have rectified their mistake by withdrawing the temporary status granted to the applicant by the Superintendent of Post, Chambal Division, Morena i.e. Shri B.L. Shakya who is said to be a relative of the applicant, dehors the rules. The respondents have given notice to the applicant for withdrawal of the temporary status on 10.7.2004. They have given the applicant an opportunity of hearing before the benefit of temporary status granted to him earlier was withdrawn. Thus, the principles of natural justice have been followed in this case. Hence, we do not find any ground to interfere in the orders passed by the respondents.

7. In view of the aforesaid, we are of the considered opinion that the applicant has failed to prove his case and these Original Applications are liable to be dismissed as having no merits. Accordingly, the Original Applications are dismissed. However, before we part, we may observe that the respondents may consider the engagement of the applicant as and when there is work of casual nature in preference to the juniors and fresh appointees. No costs.

8. The Registry is directed to place a copy of this order in the another file i.e. OA No. 1174 of 2004.

(Madan Mohan)  
Judicial Member

(M.P. Singh)  
Vice Chairman

पृष्ठांकन सं औ/व्या....., जबलपुर, दि.....  
"SA" परिचिति आयो दिन:-  
(1) सहिय. उच्च वायाहाय बल एसोसिएशन, जबलपुर  
(2) अमेन्डम श्री/श्रीमा/....., के कानूनी  
(3) प्रद्युम्न श्री/श्रीमा/....., के कानूनी  
(4) बोयपाल, कोडो, जबलपुर नामानीठ सूचना एवं आवश्यक कार्यवाही लेतु

११ बप्पे रजिस्ट्रार

gssued  
19-5-05