

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

Jaipur, this the 16th day of February, 2006.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.

OA No.252/2005 with MA No.271/2005.

Satya Narayan Sharma,
S/o Shri Radha Krishna Sharma,
Aged about 39 years,
R/o House No.44, Jaisingh Nagar,
Delhi Bye Pass,
Jaipur.

... Applicant.

OA No.340/2005 with MA No.270/2005.

Arjun Lal Meena
S/o Shri Gopal Lal Meena,
Aged about 38 years,
R/o Patel Colony,
Opposite Government Press,
Jaipur.

... Applicant.

By Advocate : Shri C. B. Sharma in both CAs.

Vs. .

1. Union of India through
Secretary, Department of Postys,
Ministry of Communication and Information Technology
Dak Bhawan,
New Delhi 110 001.
2. Principal Chief Post Master General,
Rajasthan Circle,
Jaipur 302 007.
3. Senior Post Master,
Jaipur, GPO 302 001.

... Respondents.

By Advocate : Shri Gaurav Jain in both OAs.

: O R D E R (ORAL) :

By this common order, I propose to dispose of these two OAs (OA Nos.252/2005 and 340/2005) as common question of facts and law is involved in both the OAs.

2. Briefly stated, the facts of the case are that the applicants were initially engaged as Casual Labour in the year 1985 and 1986, respectively. It is the case of the applicants that the respondents promulgated Scheme for grant of temporary status w.e.f. 29.11.1989 vide letter dated 12.4.1991. A copy of the said Scheme has been placed on record as Annexure A/1. It is further case of the applicants that 3 OAs were filed by the present 2 applicants and one Shri Mangla Ram which was registered as OA No.193/97 (Arjun Lal Meena vs. Union of India & Ors.), OA No.208/97 (Satya Narain Sharma vs. Union of India & Ors.) and OA No. 209/97 (Mangla Ram vs. Union of India & Ors.) regarding grant of temporary status w.e.f. 29.11.1989. Their claim in the aforesaid OAs were that they have completed more than 240 days as Casual Labour as they were engaged on 2.2.1986 (Arjun Lal), 18.11.1985 (Satya Narain) and 2.2.1986 (Mangla Ram). Thus, according to them they were entitled to the grant of temporary status in terms of memorandum dated 12.4.1991 and 1.11.1995 respectively as they fulfill all the conditions for the grant of temporary status. These three OAs were disposed of by a common order and Respondent No.2, Chief Post Master General, Rajasthan Circle, Jaipur, was directed to dispose of the

representation made by the applicants on merit dealing with all points raised therein within a period of 3 months from the date of receipt of a copy of the order. Pursuant to the said direction given by this Tribunal dated 10.11.1997 in the earlier OAs, the respondents have passed the order dated 12.3.1998 (Annexure A/3) thereby rejecting the representation of the applicants on the ground that the applicants were laid off from work from 11.9.97, as such, they cannot be continued with the department. Therefore, the condition of being currently employed as laid down in the Directorate's aforesaid letter dated 12.4.1991 is not satisfied. However, in the case of Mangal Ram, the temporary status was granted to him with immediate effect vide order dated 21.1.2003. Feeling aggrieved by the action of the respondents thereby granting temporary status, Mangal Ram filed another OA in this Tribunal which was registered as OA No.328/2004 and this Tribunal while interpreting the Scheme for grant of temporary status directed the respondents to treat the applicant as temporary status holder w.e.f. 29.11.1989 and allow him all consequential benefits on notional basis and the actual arrears shall be payable for a period of three years prior filing of this OA. As already stated above, in the case of present applicants, temporary status was not even granted prospectively for the reason that they were laid off from Casual Labours from 11.9.97, as such, the provisions of the Scheme are not attracted.

3. At this stage, it may also be relevant to mention here that against the termination of service, both these applicants approached before the Central Government Industrial Tribunal (CGIT, for short) and the CGIT passed award declaring termination as invalid and entitlement for reinstatement in service with continuity of service allowing 50% pay and allowances. The decision of the Hon'ble Tribunal was upheld by the Single Bench of Hon'ble High Court and further affirmed by the Division Bench of the Hon'ble High Court thereby dismissing the writ petition filed by the respondents. Consequently the applicants were reinstated in service with benefits as were admissible to them according to the award given by the CGIT. Thereafter the applicants made a request for grant of temporary status vide letter dated 16.08.2003 but despite repeated requests made in that behalf, respondents have not passed any order. Thus, the applicants have filed these OAs thereby praying that they may be granted temporary status w.e.f. 29.11.1989 with further direction to regularize services of the applicants in Group 'D' cadre from the date of their entitlement.

4. Notice of this application was given to the respondents. Respondents have filed reply. In the reply, the respondents have given justification as to why the applicants were laid off in the year 1997. According

to them there were no work for engaging the applicants as Gardener. Regarding grant of temporary status the respondents have stated that since the claim of the applicants have already been rejected vide order dated 12.3.1998, as such, they are not entitled to grant of temporary status. The applicants have filed rejoinder thereby reiterating the stand taken in the OA.

5. I have heard the Learned Counsel for the parties and gone through the material placed on record. I am of the view that the applicants have made out a case for grant of relief. It is not disputed that the applicants were initially engaged as Casual Labour in the year 1985 and 1986, as already stated above. It is also not in dispute that the Department of Posts has also introduced a Scheme for grant of temporary status to Casual Labour vide their letter/memorandum dated 12.4.1991 (Annexure A/1). According to this Scheme, the temporary status would be conferred on the Casual Laborers in the 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. Admittedly, when the aforesaid Scheme was introduced vide letter dated 12.4.1991, both the applicants were working as Casual Labour. They were laid off from Casual Labours w.e.f. 11.9.1997, after a lapse of a period of about 7 years when the Scheme was introduced. Thus, the reason given by the respondents

vide letter dated 12.3.1998 (Annexure A/3) that currently the applicants are not employed with the department as they stand laid off last year from 11.9.1997, as such, temporary status cannot be conferred on them is without any basis and contrary to the mandate of the Scheme. The Scheme is one time Scheme and not an on going Scheme. Thus, the condition stipulated in the Scheme dated 12.4.1991 that for conferring of temporary status one must fulfill both the eligibility conditions on the cut off date, which is the date when the Scheme was promulgated on 12.4.1991, namely that the Casual Labourers must have rendered continuous service of at least one year and must be on employment on the cut off date. Admittedly, the applicants fulfill both the conditions as on 12.4.1991. Thus, they were entitled to the grant of temporary status w.e.f. 29.11.1989 in terms of memorandum/scheme dated 12.4.1991 (Annexure A/1). Further the matter is no longer res integra. This Tribunal in OA No.328/2004, Mangal Ram vs. Union of India & Ors., one of the applicant who was similarly situated to that of present applicants covered by the judgment dated 10.11.1997 (Annexure A/2), has interpreted the Scheme which was promulgated on 12.4.1991 and has observed in Para 7 & 8 as under :-

"7. We have considered the rival submissions put forth by the learned counsel for both the parties as far as the factual aspect of the matter is concerned. There is hardly any dispute, that the scheme for grant of the temporary status came to be issued as early as 29.11.1989 whereby by the another

scheme was promulgated on dated 12.04.1991 and in the scheme dated 12.4.1991 it has been provided as under :-

1) " 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 day's week.)

8. We also find that the applicant has now been granted the temporary status vide letter dated 21.01.2001 with immediate effect has been said to be as per the aforesaid scheme dated 12.04.1991, a coherent reading of the various provisions makes it evident that the said scheme was one time measure and not an ongoing scheme and one must fulfill both the eligibility conditions on the cut off date. Admittedly, the applicant fulfilled the said eligibility conditions. As said earlier that the applicant has been given the benefit of temporary status only in accordance with the said scheme."

6. Thus, according to me, the present case is squarely covered by the decision rendered by this Tribunal in the case of Mangal Ram (supra), relevant portion of which has been extracted herein above and thus according to me, present applicants are entitled to conferment of temporary status w.e.f. 29.11.1989.

7. That apart, yet for another reason the present applicants are also entitled to relief. The order dated 12.3.1998 cannot be said to be a valid order in view of the subsequent development and the decision rendered by the CGIT which was affirmed by the Hon'ble High Court when the Writ Petitions filed by the department before the Single Bench as well as before the Division Bench were

dismissed. As already stated above, the reason given by the respondents for not conferring temporary status to the applicants was that they were laid off from service w.e.f. 11.9.1997. The said order of termination was challenged by the applicants before the CGIT which gave the award in favour of the applicants. The Writ Petition against the award given by the CGIT dated 21.9.2001 (Annexure A/5) was carried by filing writ petition before the Single Bench of the Hon'ble High Court. The said Writ Petition was dismissed vide order dated 18.07.2002 (Annexure A/6). Further appeal filed before the Division Bench against the order of Single Bench was also dismissed by the Hon'ble High Court vide order dated 31.3.2003. Consequently, the applicants were reinstated in service. As such, when the order of termination of their services were set aside by the Competent Tribunal which decision was also upheld by the Hon'ble High Court, it cannot be said that the applicants were laid off from Casual Labours from 11.9.1997 and as such they are not entitled for conferment of temporary status in terms of the Scheme Annexure A/1. The effect of setting aside the order of termination of the applicants by the competent Court is that the applicants shall be deemed to be in employment of the respondents continuously without any break, as if, no order of termination has been passed by the department.

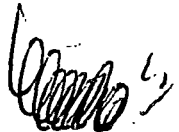
8. Thus, viewing the matter from any angle, I am of the view that the applicants are entitled for the conferment of temporary status w.e.f. 29.11.1989 in terms of the scheme dated 12.4.1991. Learned Counsel for the applicants further argued that they may be granted temporary status w.e.f. 29.11.1989 on notional basis and actual arrears may be paid for a period of 3 years prior to filing of the OAs as was directed by this Tribunal in the case of Mangal Ram (supra) as the applicants are similarly situated persons.

9. I have given due consideration to the submissions made by the Learned Counsel for the applicants. I am of the view that the applicants are only entitled to the temporary status w.e.f. 29.11.1989 on notional basis and they are entitled to consequential benefits only from the date of joining pursuant to the order to be passed by the authorities, as according to me the consequential benefits given by this Tribunal in the case of Mangal Ram (supra) was given in different factual context. In the case of Mangal Ram, the authorities have conferred the temporary status to Mangal Ram from prospective date, whereas in the case of the applicants in present OAs, they were declined temporary status vide order dated 12.3.1998. The applicants have not challenged these orders practically for a period of about 7 years and the OA in these cases were filed in May 2005 and July 2005 only. Further the applicants were reinstated in service in,

April/May 2003 whereas the present OAs have been filed after a lapse of about 2⁷ years. It is the applicants who are to be blamed for approaching this Tribunal at this belated stage and that too after the expiry of the period of limitation as prescribed under Section 21 of Administrative Tribunals Act, 1985. Thus, according to me, the applicants are not entitled to any consequential benefits on account of grant of temporary status to them w.e.f. 29.11.1989.

10. Accordingly, both the OAs (OA No.252/2005 and 340/2005) are allowed in the aforesaid terms. This order shall be complied with within a period of 3 months from the date of receipt of a copy of this order.

11. In view of the disposal of the OAs, no order is required to be passed in MA No.271/05 (OA No.252/2005) and MA No.270/2005 (OA No.340/2005) which shall stand disposed of accordingly.


(M. L. CHAUHAN)
JUDICIAL MEMBER

P.C./

*Copy sent / given vide
S.No. 125/126 Dtd 20.2.2006*