

16

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 08.12.2011

OA No. 26/2011

Mr. C.B. Sharma, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondents.

Heard. O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

K.S. Rathore

(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 8th day of December, 2011

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)

Original Application No. 15/2011

Jugal Kishore Sain
s/o Shri Mool Chand Sain,
resident of in front of Government Hostel,
Jobner Road, Phulera,
Lastly employed as Part Time Waterman
in Head Record Office,
Railway Mail Services,
Railway Station Branch,
Jaipur Division, Jaipur

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India
through Secretary to the Government of India,
Department of Posts,
Ministry of Communication and
Information Technology,
Dak Bhawan,
New Delhi-110 001.
2. Principal Chief Post Master General,
Rajasthan Circle,
Jaipur
3. Senior Superintendent of Railway Mail Services,
Jaipur Division,
Jaipur
4. Head Record Officer,
Railway Mail Service,
Jaipur Division,
Jaipur.

.. Respondents

(By Advocate: Shri Mukesh Agarwal)

Original Application No. 26/2011

Vijay Pal
s/o Shri Shiv Charan,
r/o village and Post Jakholi,
District Sonepat/Rohatak, (Haryana),
Lastly employed as Part Time Rest House Attendant,
R.M.S. Rest House, Delhi
(R.M.S.Rahasthan),
JP Division, Jaipur

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India
through Secretary to the Government of India,
Department of Posts,
Ministry of Communication and
Information Technology,
Dak Bhawan,
New Delhi-110 001.
2. Principal Chief Post Master General,
Rajasthan Circle,
Jaipur
3. Senior Superintendent of Railway Mail Services,
Jaipur Division,
Jaipur
4. Inspector RMS,
JP-II Sub Division,
Jaipur
5. Record Officer,
Railway Mail Service,
JP Division, RMS Bhawan,
Rajasthan Rest House,
Delhi-06.

.. Respondents

(By Advocate: Shri Mukesh Agarwal)

ORDER (ORAL)

Since common question of facts and law is involved in the aforesaid OAs, as such, these are being decided by this common order.

2. Applicant, Vijay Pal was given appointment as Part-Time Rest House Attendant vide memo dated 8.5.1991 and applicant, Jugal Kishore Sain, was given appointed vide memo dated 31.7.1990. Names of both the applicants were sponsored by the Employment Exchange. The applicants worked with the respondent Department from 1990 and 1991 till December, 2010 when the respondents have not allowed the applicants to perform their duties. During the above period, the applicants represented before the respondents to regularize their services in accordance with the instructions issued on 6.6.1988 and further clarification issued on 17.5.1989 (Ann.A/5 and A/6 in OA No.26/2011) and give preference to Casual Labourers in the matter of appointment as Gramin Dak Sewak.

3. The case of the applicants is that they were registered with the Employment Exchange and their names were sponsored by the Employment Exchange for consideration of appointment as Part-Time Casual Labourer. They were interviewed and duly selected for the respective posts and pursuant to the order of appointment the applicants joined their service. As regards Shri Vijay Pal, he joined his



service as Part-Time Rest House Attendant on 8.5.1991 and in the case of Jugal Kishore he joined as Part-Time Waterman on 31.7.1990.

4. The department also issued instructions for providing full time work on 30.11.1998. (Ann.A/8 in OA No.26/2011) and respondents vide letter dated 21.10.2009 (Ann.A/9) called for applications from the casual workers for appointment as Gramin Dak Sewak, but the applicants were not allowed appointment on the post of Gramin Dak Sewak.

5. Aggrieved and dis-satisfied with the action of the respondents not allowing the applicants to perform their duties from 6.12.2010 in the case of Vijay Pal and from 2.12.2010 in the case of Jugal Kishore Sain without assigning any reason as to why they are not being allowed to continue in the employment, therefore, the applicants have filed the aforesaid OAs on the ground that they are entitled to continue in the Department and to get benefit of instructions issued by the department from time to time, as they have rendered service of more than 19 years.

6. The learned counsel appearing for the applicants referred to appointment letter dated 8th May, 1991 (Ann.A/3 in the case of Vijay Pal) and letter dated 31.7.1990 (Ann.A/4 in the case of Jugal Kishore Sain). He also referred to D.G. Posts letter dated 6th June, 1988 regarding preference to Casual Labours in the matter of appointments as ED Agents and according to prevalent Recruitment Rules governing the cadre of Group-D the order of preference among various segments of eligible employees is as under:-



- (a) Non-test category
- (b) ED Employees
- (c) Casual Labourers
- (d) Part-time casual labourers.

After referring this letter, the learned counsel submits that this deals with the Part-Time Casual Labourers like the applicants and alleged that the applicants were not given preference in appointment as ED agents in view of the above provisions.

7. Further referred to clarification issued vide letter dated 17.5.1989 (Ann.A/6) wherein it is provided that for the purpose of computation of eligible service, half of the service rendered as part-time Casual Labourer should be taken into account i.e. if a Part-Time Casual Labourer has served for 480 days in a period of 2 years, he will be treated for purpose of recruitment to have completed one year of service as Full-Time Casual Labour. These instructions are also ignored by the respondents having not considered the representations filed by the applicants from time to time.

8. Also referred to the respondents letter dated 28.4.1997 (Ann.A/7 in the case of Vijay Pal) regarding providing full time employment to Part-Time Casual Labour working in the Department of Posts.

9. Per contra, the learned counsel appearing for the respondents strongly objected the submissions made on behalf of the applicants. It is not disputed that the applicants have worked as Part-Time Casual Labourers for more than 19 years. The learned counsel



referred the appointment orders of the applicants and stated that in the appointment order itself in para-2 it was made clear that appointment is purely temporary and they will not be entitled for any claim regarding their regular employment or absorption in the department in any capacity at any time. It is further submitted that as per the instructions issued by the Directorate, New Delhi vide letter dated 19.11.2010 "duties of Waterman, Watch and Ward, Gardening, Cleaning etc are now part of duties assigned to Multi Tasking Staff and the existing practice of engaging casual labourers as Waterman, Gardener, Watch and Ward or any other miscellaneous category shall be dispensed with w.e.f. 1.12.2010." and these instructions were to be implemented immediately without any delay. Thus, pursuant to these instructions, services of the applicants were dispensed with.

10. The learned counsel appearing for the respondents placed reliance on the judgment of the Hon'ble Apex Court in the case of Secretary, State of Karnataka vs. Uma Devi reported in (2006) 4 SCC 1 wherein the Hon'ble Supreme Court observed that appointment made without following the due process or the rules for appointment did not confer any right on the appointees and that the court can not direct their absorption or regularization or re-engagement or making them permanent. The Hon'ble Supreme Court further clarified that those decisions run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their



status as precedents. So as per the law laid down by the Hon'ble Apex Court, the applicants have no legal right to be absorbed or to be allowed on the posts.

11. The respondents also referred to letter dated 19.11.2010 (Ann.R/1) which is regarding review of instructions on engagement of casual labourers in the light of the guidelines on outsourcing and in these instructions it is stipulated that these instructions should be followed in letter and spirit without any deviation and compliance report of the above aspects may also be sent to the office for information of Secretary (Posts) by 31st December, 2010 positively as per the proforma attached with the letter. Thus, in view this letter, applicants were not allowed to continue and compliance has been made accordingly.

12. The learned counsel appearing for the applicants also placed reliance on the judgment in the case of Uma Devi (supra) and referred to para 51-52 which reads as under:-

"51. The argument that the right to life protection by Article 21 of the Constitution would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right to employment can also be brought in under the concept of right to life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance or such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their



right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the backdoor. The obligation cast on the State under Article 39(a) of the Constitution is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognize that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognized by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualising justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The directive principles of State policy have also to be reconciled with the rights available to the citizens under Part-III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution.

52. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in Rai Shivendra Bahadur (Dr.) v. Governing Body of the Nalanda College (AIR 1962 SC 1210). That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority



and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the Government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent."

13. After referring the case of Uma Devi (supra), the learned counsel also referred the judgment rendered by the CAT-Jodhpur Bench dated 22.4.2010 in OA No.162/2009 in the case of Smt. Dhapu Bai vs. Union of India and ors. wherein the Jodhpur Bench after placing reliance on the judgment of the Hon'ble Supreme Court observed as under:-

"Removal by an oral order is not contemplated in service jurisprudence. At the moment, we will consider it as a part of ignorance of the concerned officer but, her continuance in service, as claimed by her cannot be granted for the simple reason that she was already attained the age of superannuation.

Her next prayer is that she be directed as regularized in Class IV employee since her initial date with all consequential benefits. But then as a matter of fact, delay and laches would come again in the way as what is done in 1976 cannot be appropriately reopen in 2009. But at the same time, after having served for about 32 years of service, she ought to have been confirmed as a full-time employee looking to the nature of the employment as also the way in which she had worked in which quantitatively and qualitatively she



had put in sufficient and satisfactory service, therefore, the following declaration is issued:-

- (i) The applicant will be deemed to have become a permanent employee and a full time employee as on the date of retirement which is 15.12.2007.
- (ii) The respondents shall work-out notional benefits due to her as if she had become a permanent employee, her date of retirement and thus become eligible to count pensionary benefits based on fresh pay fixation as on that day.
- (iii) Such retiral benefits as had been worked out shall be paid to her without interest within a period of three months from the date of receipt of copy of this order.
- (iv) If there is a delay after the stipulated period in granting such payment, the entire payment shall carry interest at the rate of 12 % per annum."

14. The order passed by CAT-Jodhpur Bench dated 22.4.2010 has been assailed by the department before the Division Bench of the Hon'ble High Court by way of filing D.B. Civil Writ Petition No. 7112/2010 which has been decided vide order dated 9.12.2010 dismissing the writ petition filed by the department and upholding the judgment rendered by the CAT-Jodhpur observing as under:-

"After hearing the learned counsel for the parties, we are of the opinion that since this fact is not disputed that the employee had put in 32 years of service, which were satisfactory and she was working as full time employee. The Tribunal has relied upon the decision in



Yashwant Hari Katakkar vs. UOI & ors., 1996 (7) SCC 113, in which an employee, who had been in service for eighteen and a half long years as a quasi permanent servant, was allowed to retire prematurely to the determinant of the status of such an employee, the Apex Court directed that he should be deemed to have become permanent.

In the facts and circumstances of the case, we find that where the employee has served in the hey days of her life for more than three decades, obviously she has to be treated as permanent employee, thus, the relief which has been granted by the Tribunal is just and proper."

15. The learned counsel appearing for the applicants also placed letter dated 28.12.2010 issued by the Department of Posts, Office of the Chief Postmaster General, New Delhi for my perusal whereby after review of instructions on engagement of casual labourers in the light of the outsourcing, it is reiterated that engagement of part time workers as Chowkidars, in house keeping maintenance like sweeping, scavenging gardening should be stopped forthwith after issuance of the letter and it is clarified that services of Casual Labourers appointed before 1.9.93 is not to be dispensed with at present and if any such engagement has been terminated that may be restored immediately.

16. Having considered the rival submissions of the respective parties and upon careful perusal of the material available on record and the circulars/instructions issued by the respondents and also



after carefully examining the judgments referred by the respective parties, it is not disputed that both the applicants were appointed in the year 1990 and 1991 and they have worked for more than 19 years as Part-Time Casual Labour. It is also not disputed that names of the applicants were sponsored by the Employment Exchange and they were interviewed and having found suitable by the respondent Department, the applicants were appointed as Part-Time Casual Labour. As stated by the applicants and also reveals from the record that both the applicants represented before the respondents for regularization of their services but they were not considered and pursuant to instruction issued vide letter dated 19.11.2010 (Ann.R/1) providing that as the duties of Waterman, Watch and Ward Gardening etc. are now part of duties assigned to Multi Tasking Staff, the existing practice of engaging Casual Labour as Waterman, Gardener, Watch and Ward or any other miscellaneous category shall be dispensed with w.e.f. 1.12.2010 and, as such, the services of the applicants were dispensed with by the respondents.

17. It is not understood that the respondents dispensed with the service of applicant Vijay Pal w.e.f. 6.12.2010 and applicant Jugal Kishore w.e.f. 2.12.2010 in compliance of Department of Posts letter dated 19.11.2010 (Ann.R/1) whereas the Department of Posts, Office of Chief Postmaster General issued letter on 28.12.2010 in continuation of office endorsement dated 15.11.2010 and 24.11.2010, clarified that services of Casual Labourers appointed before 1.9.1993 is not to be dispensed with at present and if any such engagement



has been terminated that may be restored immediately. Admittedly, both the applicants were given appointment prior to 1.9.1993 and their services have been terminated and pursuant to letter dated 28.12.2010, such engagement should have been restored immediately.

18. Further, in the light of the judgment of CAT-Jodhpur in the case of Dhapu Bai (supra), removal by oral order is not contemplated in service jurisprudence. The Jodhpur Bench while allowing the OA and having considered that the applicant rendered 32 years of service and had attained the age of superannuation, held that the applicant will be deemed to have become permanent employee on the date of retirement and directed the respondents to work out notional benefits due to her as if she had become a permanent employee and count pensionary benefits based on fresh fixation as on that day. The aforesaid order of the Tribunal has been upheld by the Division Bench of the High Court vide judgment dated 9.12.2010 and the Hon'ble High Court observed that where the employee has served in the hey days of her life for more than three decades, she has to be treated as permanent employee, thus, the relief which has been granted by the Tribunal is just and proper.

19. Having considered the ratio decided by the CAT-Jodhpur Bench which has been upheld by the Division Bench of the High Court, in the present case, since both the applicants have not reached the age of superannuation, in such eventuality, they are entitled to be continued in the posts and their engagement should



be restored immediately and their cases for regularization are to be considered in the light of the aforesaid judgment and in the light of the circulars issued by the Department of Posts from time to time and the letter issued on 28.12.2010.

20. After careful consideration of law and facts of the case on each and every aspect, in my considered view, the applicants are able to make out a case for consideration, as they have rendered services of more than 19 years and in view of Department of Posts letter dated 28.12.2010 service of Casual Labourers appointed before 1.9.1993 is not to be dispensed with at present and as the applicants were appointed way back in the year 1991 and 1990, therefore, their services are not to be dispensed with in the light of the above letter and if any engagement has been terminated that may be restored immediately. In the instant case, services of the applicants were orally terminated, as such, same should be restored immediately and their case be considered in the light of the circulars and instruction of the respondents for regularization on the post of ED Agents and, as discussed hereinabove, in pursuance to Ann.A/5 (in OA No.26/2011) preference is to be given to the Part-Time Casual Labours.

21. With these observations, both the OAs stand disposed of with no order as to costs.

copy given to
AO 194 & 194
12/12/11
R/

(JUSTICE K.S.RATHORE)
Judl. Member