

30/600
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

CA No. 206/96

S. J. K. Rai

vs

Union of India et al. Respondent(s)

Mr. B. K. Sonoma, B. Mehta Advocates for the applicant(s)

S. Sonoma

Mr. A. K. Choudhury Advocates for the Respondent(s)

Office Notes

Date

Courts' Orders

This application is in
form and within time
C. F. of Rs. 53/-
deposited.

IPOBB No. 346828
Dated ... 29-8-96

S. Sonoma
D. Registrat. 9/9/96

18/9

20-9-96

None present for the applicant. List for consideration of Admission on 27-9-96.

1m

6
Member

27-9-96

None for the applicant.
Learned Addl. C.G.S.C. Mr. A. K. Choudhury for the respondents.

List for consideration of Admission on 11-11-96.

1m

M
2/11

11-11-96

None for the applicant.
Mr. A. K. Choudhury, Addl. C.G.S.C. for the respondents.

List for consideration of Admission on 21-11-96.

1m

M
12/11

6
Member

✓✓✓
O.A. No. 206 of 1996

21.11.96

Learned counsel Mr. S.Sarma for the applicant.

Mr. A.K.Choudhury, learned Addl. C.G.S.C. for the respondents.

Perused the contents of the application and relief sought. Heard counsel for both sides for admission. The applicant has submitted this application seeking an order on the respondents to grant him temporary status and absorb in Group D posts with all consequential benefits. He has submitted representation dated 24.7.96 Annexure (D2) to the Director General, All India Radio, Akashbani Bhawan, Parliament Street, New Delhi through proper channel requesting for regularisation of his service from the date of his initial appointment with all consequential service benefits. This representation is pending disposal of respondent No.2 of this application. The application needs not be admitted at this stage but it is disposed of with the direction to the respondent No. 2 to dispose of the representation of the applicant dated 24.7.96 on merit within 3 (three) months from the date of receipt of the copy of this order. Liberty to the applicant to approach this Tribunal again if he is aggrieved with the order of the respondent No. 2 on his representation.

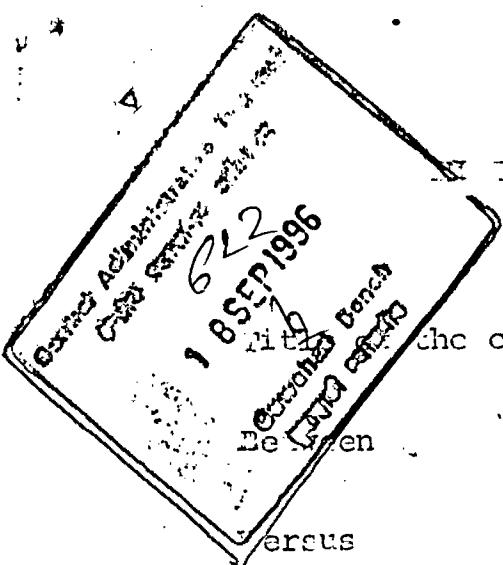
The application is disposed of. No order as to costs.

Copy of the order be supplied to both the counsel of the parties.

Member

trd
AN
21/11

5.12.96
Copy of order
Issued to the parties
in park's case
D.W. 3980 to 3985
5.12.96



5

Filing in application
through
O.P. Mohan
Advocate
18.9.96

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CASE NO. 622 :: C.I.H. E.

the case :- C.A. No 622 of 1996.

:- Sri J.K.Rai
...APPLICANT.

:- The Union of India & ors.
...REPLYANT.

= H D T X.

Sl. No	Particulars of the documents	Page No.
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8.	Annexure D2.	17. to 22.

For Use in the C.A./C.I.H. Office.

; Register C.A./Ghy. CA 206/96
; Date of Filing. 18.9.96
;

Ranbir
A.K. Chaudhary
Addl. C.J.S.C
18/9/96

Filed by.

S. Arma,
Advocate.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GOVERNMENT

O.A. No. 206/96

BETWEEN

Sri J.K. Rab,
Casual Labour (Mali)
All India Radio, Shillong Station,
Shillong.

.....Applicant

-AND-

1. Union of India,
represented by the Secretary
to the Govt. of India,
Ministry of Information & Broadcasting
New Delhi-1.
2. Director General,
All India Radio,
Akashbani Bhawan,
Parliament Street,
New Delhi- 110 001.
3. Station Director,
All India Radio, Shillong Station,
Shillong, Meghalaya.

.....Respondents

DETAILS OF APPLICATION

1. Particulars of orders against which this application is made.

The instant application is directed not
against any particular order but is ~~preferred~~ making
grievances against the apathy shown by the ~~respondent~~ respondents

.....2/-

Rab

in respect of the benefits admissible to the applicants under rules as Casual Labour and deemed refusal to conferring temporary status.

2. JURISDICTION OF THE TRIBUNAL :-

The applicant declares that the subject matter of the instant application is within the jurisdiction of this Hon'ble Tribunal.

3. JURISDICTION OF THE TRIBUNAL

3. LIMITATION :-

The applicant further declares that the application is filed within the Limitation period prescribed under Sec. 21 of the Administrative Tribunal Act, 1985.

4. BASIS OF THE CASE:-

That the applicant is a citizen of India and is entitled to all the rights and privileges guaranteed by the Constitution of India and the laws framed thereunder from time to time.

4.1 That the applicant states that he has been working as Casual Labour (Mali) w.e.f 14.11.85 on payment of Rs 35/- only per day, under the Station Director, All India Radio, Shillong Station, Shillong and discharging his duties with due diligence maintaining

his integrity at all times to the satisfaction of all concerned and continuing as such. The appointment letter of the applicant has been misplaced and even after due search he could not make it available. However, a copy of letter No. SHG - 29 (S)/94-G/1441 dated 31.5.94 issued by the Station Director, Shillong to the Director General All India Radio Akashbhaani Bhawan, Parliament Street, New Delhi- 110 001 dealing with the subject if any against engagement of any Casual Labour has dealt with the matter stating that the applicant alongwith other were sponsored through Employment Exchange and after due process of selection he has been engaged as mali and he has been engaged only daily wage basis for more than 340 days in a year since 1986, and expressed his desire to regularise him as Mali (Gardener).

A Copy of the letter dated 31.8.94 is annexed herewith and marked as ANNEXURE-A.

4.2. That the applicants States that he has the requisite number of working days in a year/as to get the benefit of temporary status as well as benefits admissible under the relevant rules and also as per the directions laid down by the Apex Court. The petitioner Crave Leave of this Hon'ble Tribunal w.e.f. to the relevant rules as well as the decisions of the Apex Court in support of

this contentions.

4.3. That the applicant states that after sponsored by the Local Employment Exchange he was selected by the duly formed Selection Committee and a formal appointment letter was issued to him but the said appointment letter could not be traced as he had to shift from the house he was lodged which was but by accidental fire.

4.4. That the applicant states that as a Casual Labour (Mali) he has to discharge the duties of Mali as well as appear from the duty chart of Group B Staff (Casual Daily Wage) with effect from 1.1.94 to 18.11.94" having holidays on Sundays and Second Staурday and general holidays.

A Copy of duty chart of Gr. B is annexed herewith and marked as
ANNEXURE-B.

4.5. That the applicant states that he has acquired the required knowledge in maintaining Home Flower Gardens & Lawns and have passed himself, worthy of Mali Job and practices of Gardening and its maintenance. He has been issued a certificate dated 16.1.91 by the Station Director, All India Radiom Shillong about his proficiency.

4.6. A copy of the certificate dated 16.1.91 is annexed herewith and marked as ANNEXURE-C.

4.6. That the applicants states that the applicant has been working as Mali from the year 1983 continuously without break on daily wage basis of Rs 35/- per day and even after

completing the required number of 240 days work in a year he has not been extended the minimum of the daily rates of pay on need basis as entitled to him by virtue of "Casual Labours (Grant of temporary Status and Regularisation) Scheme of Govt. of India, 1993, which has come into effect from 1.9.93 and Industrial employment (Standing Orders) Act, 1946 invokes that "those daily rated (Workman) who have actually worked for not less 240 days in any period of 12 months should be transferred to regular establishment w.e.f the first day of the month following the 12 months of the said period."

4.7 That the applicant states that he made a representation dated 30.3.92 followed by reminders dated 20.2.96 and 24.7.96 but that have not been able to evoke any fruitful result and are quite silent over it.

Copy of the representations dated 30.3.92, 20.2.96 and 24.7.96 are annexed herewith and marked as ANNEXURE-D,D1 & D2.

4.8 That the applicant states that he was initially appointed as Mali alongwith others and some vacant posts were of permanent nature and as such he is duly entitled to and eligible for payment of pay and allowances w.e.f. the date of appointment under FR 17(1) but despite that the applicant has been utilised /engaged as daily wage basis.

4.9 That the applicant states that he has been working under Station Director, AIR? Shillong since 14.11.95 without any break and with any prospect or

improvement in his service career and the just and minimum equitable relief he claims is conferment to temporary status pending absorption in Gr. 'D' Posts as per Government's own Scheme.

4.10 That the applicant states that when his persistent persuasions by repeated representations, before the competent authority for consideration of his case for granting him the lesser benefit and conferment of temporary status and further absorption in Group - D post could not evoke any impetus he has no other alternative efficacious, remedy then to approach the Hon'ble Tribunal.

4.11 That the applicant states that the relief as prayed for by the applicant is a fundamental right and denial of the same amounts to infringement of the same.

5. GROUND FOR RELIEF:-

- i. For that the applicant has been working for several years with any break and therefore his prays for his service security and future benefits thereon.
- ii. For that the applicant has been working w.e.f. 14.11.95 he has not been granted temporary status and regularisations thereafter to Group 'D' post with minimum pay Scale on need basis prescribed for such services.

- iii. For that the Central Government by its Scheme "Casual Labourers (Count of temporary status and Regularisation) Scheme 1993 requires that the services of Casual Workers like that of the applicant be regularised with certain conditions which are satisfied by the applicant.
- iv. For that the Industrial employment (Starting orders) Act, 1946 provides for regularisation of the services of Casual Labourers similar to the applicant.
- v. For that the applicant was sponsored through employment Exchange and has been selected by duly Constituted Selection Committee and has been appointed against permanent post as such he is entitled to all the benefits as per Rule.
- vi. For that the applicant has fulfilled the eligibility criteria as such he is entitled to the benefit of regularization.
- vii. For that in any view of the matter the denial of temporary status as well as regularization amounts to violation of Constitutional rights which requires to be set right

6. DETAILS OF REMEDIES EXHAUSTED :-

That the applicant declares that he has taken

recourses to all the remedies available to him and has failed to get any relief and as such there is no alternative remedy open to him then to approach this Hon'ble Tribunal

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT OR TRIBUNAL:

That the applicant declares that he has not previously filed any application writ petition or suit regarding the matter in respect of which this application has been made, before any court, authority or other benches of this Hon'ble Tribunal. nor any such application writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT FOR :-

Under the facts and circumstances stated above the applicants prays for the following reliefs

- i) To direct the respondents to confer on the applicant the minimum, just and equitable benefit of temporary status and further absorption in Gr.'D' Post and to pay salaries at par with regular Gr.'D' employees including other service benefits.
- ii) Pass any other order or orders as Your Lordships may deem fit and proper, considering the facts and circumstances of that case.
- iii) Cost of the application.

9. INTERIM ORDER PRAYED FOR :-

Pending disposal of this O.A., the above named applicant prays for an interim order directing the respondent to consider the case of the applicant towards confirmation of temporary status, and regularisation thereafter alongwith consequential service benefits.

10. DETAILS OF INDEX:-

An index summary showing the particulars of the documents is enclosed.

11. PARTICULARS OF THE I.P.O.

i) I.P.O. No. 09 346828

ii) Date of issue :- 29.8.96

iii) Issued from :- G.P.O. Gauhati

iv) Payable at G.P.O. Gauhati.

12. List of enclosures:-

As stated in the Index

Verification.....

• *Kan*

VERIFICATION

I, Shri Jay Kant Rai, S/o Ganesh Rai aged about 29 years R/o Shillong working as Casual Labour (Mali) in the All India Radio, Shillong Station, Shillong, Meghalaya, do hereby solemnly affirm and declare that the statements made in paragraphs 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraphs 5 are true to my legal advice and I have not suppressed any material facts:-

And I sign this verification on this the 14 the Day of September, 1996.

Applicant

J. K. Rai
(J. K. Rai)

ANNEXURE-A

SPEED POST
CONFIDENTIALGovernment of India
All India Radio, Shillong
Meghalaya

No.SHG.29(5)/94-G/

Dated, Shillong
the 31st Aug.'94

To,

The Director General,
All India Radio,
Akashbani Bhavan,
Parliament - 110 001.

Sub:- ENGAGEMENT OF CASUAL LABOURS - REGARDING.

Sir,

Keeping the exigencies of works in view casual labours were engaged for execution of time bound works since 1985. The local Employment Exchange was then approached to sponsor registered candidates. Interviews were held at certain intervals in which the following candidates were selected and panel was drawn in order of merit. Out of 15 (fifteen) candidates sponsored only seven were selected in which the First, the Second, the Fourth and Fifth candidates have got job in some offices. The candidate who was placed on the third position has been engaged by this Station from time to time since 1986. The name is Kuldeep Kaur No.W-1161/86 now running 33 years of age. She was engaged on daily wages basis for over 240 days in a year. Another one is Shri Jaikant Rai who has also been engaged on daily wage basis for more than 240 Days in a year since 1986.

In the light of Government of India's policy to provide safe drinking water to all citizens it is proposed to regularise Smt. Maldip Kaur as Water Carrier (Gr -D) Post.

Attested.

Advocate.

16/9/94

Page -2

post while Shri Jaikant Rai will be regularised as
Mali (Gardener).

It is, therefore, requested to kindly
examine the proposal and communicate the decision to
this office confidentially at an early date.

Yours faithfully,

Attested.


Advocate.

Sd/- Illegible
(B. THANMAWIA)
Station Director.

ANNEXURE-B

Government of India
All India Radio, Shillong.

DUTY CHART OF GROUP 'B' STAFF (CASUAL DAILY WAGE) WITH EFFECT
FROM Dt. 01.11.94 to 15.11.94

1. Smt. Mary Nangkynrih :- SD/Suptd. Engineer/ASD(Cordination)
2. Smt Rita Singh :- ASE (000) PEX(Co-ordination and progress section,
3. Smt Minalia Marak :- ASC/PEX (B) E
4. Shri Krishna Rao :- PEX (H) PLX (T) PEX (K) & PEX (L)
5. Shri Selmiah :- News Section from 16.11.94 to 30th Nov. '94.
6. Shri Ajit Thapa :- News Section from 16.11.94 to 30th Nov. '94
7. Shri J.K. Roy :- Mali
8. Shri Brahamdeo Rai :- will clean tables chairs etc.
9. Shri Suraj Pandey :- will work as mali and attend to group D's works in the 2nd Floor.
10. Shri Devi Ram Dorjee :- Look after Safaiwala job

N.B. They have been given holidays on sundays and second saturday and on general holidays).

Copy to :-

- 1) Station Director, (2) Super intending Engineer, AIR, Shillong.
- 3) ASD (Co.) (4) Accountant (5) ASE/
- 6) ASD (000)
- 7) Notice Board....

Attested.



Advocate.

Shri Jai Kant Rai

(I. SINGH)
PROGRESS EXECUTIVE
For Director.

AKSHVANI
STD CODE-0364

ANNEXURE-C

Office-24153

Res. -23550

B. THANMAWIA
Station Director

GOVERNMENT OF INDIA
POST BOX NO. 14

ALL INDIA RADIO : SHILLONG - 793 001

No.

Dated 16.1.91

TO WHOM IT MAY CONCERN

This is to certify that Shri Zaykánth Rai son of late Ganesh Rai, a resident of village- Christian Basti, Pyntharmkhrah, Shillong is personally known to me. So far I know he bears an excellent moral character.

He is very good in maintaining Home Flower Garden and Lawns. He has proved himself worthy of Mali Job and practices of gardening and its maintenance. I wish him all success in life Shri Rai is not related to me.

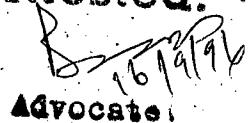
Sd/-

16.1.91

(B. THANMAWIA)
Station Director,

All India Radio, Shillong.

Attested.



Advocate.

ANNEXURE-D.

The Station Director,
All India, Radio, Shillong.

Sir,

I beg to state that I have been working as a casual Mali for this station since a long time with all sincerity.

Since the post of Mali is likely to be filled up on a regular basis, I shall ever remain obliged if my case is considered with sympathy.

I pray to your sir to consider the case of appointing me on a regular basis which will provide a security to me and my family, and I assure you that I shall attend to my work with equal, if not greater, sincerity and honesty.

Yours faithfully,

(J.K. Rai)

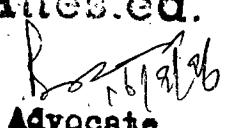
Mali (casual)

Christian Basti,

Pyntorumkhrah,

Shillong, 30.3.92

Attested.



Advocate.

ANNEXURE-D1

To,

The Station Director,
All India Radio,
Shillong.

Sir,

With due respect I beg to information you that I am working in this department w.e.f 14.11.85 as a Casual Worker (Mali) Rs 35/- per day and although above 11 years already passed but I have not been regularised nor get a regular post.

In this connection I beg to information you that I have got nine family members who are wholly depended on me and I ~~shall~~ could not earn their forday properly in this low income.

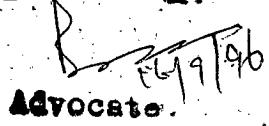
As such I request you to give the scale of any Group 'D' Post on appoint me as a regulaf post of Group 'D' for which act of your kindness I shall remain ever grateful to you.

Thanking you,

Yours faithfully,

26.2.96
(JAY KANT RAY)
MALI

Attested.



Advocate.

ANNEXURE-D2

To,

The Director General,
 All India Radio,
 Ajashbhani Bhawan,
 Parliament Street,
 New Delhi.

(Through proper Channel)

Sub:- Prayer for regularisation of the service and payment of all arrear dues.

Sir,

I beg to state the following lines for your kind consideration and favourable orders:-

1. That sir, I was initially appointed as Mali w.e.f. 14.11.85 on payment of Rs 35/- (Rupees thirty five only) per day and I have since then been working under the "Station Ditector All India continuously with the satisfaction of all my superiors officers and have never falter in official service to the Departmental to the best of my capacity.
2. That my service on the post aforesaid an appointment on 14.11.85 has been extended continuously without any break/Interruption in any relevant point of time particular on the basis of the performnace of my service and it may be added here that he has never been warned or reprimanded even once for these years and I have ever been reposing deen trust and understanding believing benefits that the good will and since service would count in the long run.
3. That I have submitted number of representations to all concerned through proper channel in due diligency praying for regularisation of my service.

Attest.

16/19/96

Advocate.

But all ill luck would have it upto now my dream has not pass over the success.

-2-

4. That Sir, I beg to state further that it has only been enjoined upon as a mandatory provisions duly mark enshrined in the Industrial Employment (Standing orders) Act 1948 dt. 15.1.82 that " those daily rated (Workmen) who have actually worked for not less than 240 days (Two hundred forty) Days in any period of 12 (twelve) months should be transferred to the regular establishment w.e.f. the first day of the month following the 12th months of the said period. The gap if there is any, in their employment subsequent to the date of such regularisation should be treated as leave or (Superannuary posts in the regular establishment may be created if necessary for all this purpose. It needs to be mentioned that in Geological Survey of India as well as in P & T and other Depts and other no-Industrial sector this provision now been invoked for the benefit of the employees.

5. That sir, I beg to state further that in C.P.W.D. or in the State P.W.D. in the alike Dept. even the workcharge staff are allowed the same pay scale and all other allowances as may be due and admissible to regular staff lending regularisation of their service but as ill luck would have it, I have not been granted the pay scale and other allowances as may be due and admissible.

6. That Sir, in Geological Survey of India, P&T and other departments of Govt. of India those of casual employees who are engaged daily wage basis is granted and other allowance alongwith facilities of leave.

7. That sir, I was initially appointed on daily wage along with other while some posts of Malis were vacant and those vacant posts were permanent and as such I was duly entitled to and otherwise eligible for payment of pay and allowances with effect from the date of my appointment order under FR 17 (1) but as ill luck would have it, I have

Attested.


Advocate. b/9/98

-3-

long been/kept in as an employee on daily wage basis without any ground whatsoever.

8. That Sir, my candidature was duly sponsored through the employment exchange and I was duly ~~appociated~~ to the substantive post of Mail on 14.11.85 which I was found suitable for the post in all respects.

9. That Sir, I beg to state further that it is settled law that whenever anybody appointed even on adhoc/temporary basis and my candidature was duly sponsored through the employment exchange and as such I am duly entitled to and otherwise eligible for regularisation in service.

10. That Sir, I beg to state that the President/Governor has been duly authorised to make rules regulating the conditions of service of the Central and State Govt. employees under Article 309 of the Constitution of India and the Government can always issue administrative instructions to cover the gap where no statutory rule exists or fill up the gaps where the rules are silent on any particular point and the conditions of service can be regulated by the Executive Instruction covering my fate also (vide Article 53,73,154 162 310 entry 70 of the Union list and entry 41 on the State list ibid.

11. That Sir, I beg to state further that I have not been granted the benefit of casual leave, and other leave as well as Medical facilities tilldate for no fault of own.

12. That Sir, in other Departments of the Government a consolidate pay is granted to the employees whose services have not been regularised and the prevalent rate of daily

Attested.

6/4/96
Advocate.

-4-

wage is also far higher in other Departments and at least by this time the authorities could have granted me consolidated pay as is admissible in other Departments.

13. That Sir, as ill luck would have it I have been allowed to work only for 20 days in a month w.e.f. 1.9.88 which is highly irregular and illegal.

14. That sir, some regular posts of Malis are vacant in the Shillong Station of All India Radio and as such I could have been appointed to the regular post on humanitarian and avocative consideration.

15. That the Casual/Daily rated employees appointed on or before 1.7.84 is now being treated as monthly rated establishment employees on payment fixed pay of Rs 780.00 P.M. without allowance w.e.f. 01.01.90 and such categories of the employees are also entitled to annual increment till their regularisation of service and upon regularisation they are put into the minimum time scale of pay applicable in the lowest group cadre under the Govt. of India and they are also entitled to and otherwise eligible for other benefit of service etc available to the regular Government servants of the corresponding cadre and such categories of casual and daily valid employees and automatically are to be regularised after completion of 10 (ten) years service quite in keeping with judgement and order passed by the Hon'ble Supreme Court in Dharma's District P.W.D. literate daily wage employees Association and other - Vrs - State of Karnataka and others 1990 (2) SEC 396.

16. That sir I beg to state further that my family consists of nine members and it is humanly impossible on my part to survive with my family members unless my service

Advocates

26/4/91

Advocate

is regularised and in fact I have already been stranded both financially and otherwise due to non/regularisation of my service.

17. That sir, I have submitted this representation reposing deepest faith in your benevolence for regularisation of my service. I wish and cherish the good desire that I shall get justice.

In view of the facts stated above I would pray that you would be kind enough to consider my case very sympathetically on humanitarian and evocative consideration and pass necessary order for regularisation of my service from the date of my first appointment (i.e, w.e.f. 14.11.85) and for making payment of all the arrear dues and grant me further other benefit of service for which act of your kindness I shall ever remain grateful.

Dated, Shillong,
The 24th July, 1996.

Yours faithfully,

(JAY KANT RAY)
All India Radio, Shillong
Station, Shillong.

copy forwarded to :-

- 1) The Director General, All India Radio, Akashvani Bhawan, Parliament Street, N.Delhi.
- 2) The Deputy Director General, All India Radio, Guwahati.
- 3) The Station Director, All India, Radiom Shillong.

(JAY KANT RAY)
All India Radio, Shillong.

Arres.ed.
D 16/7/96
Advocate.