

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00172/2016

Wednesday, this the 21st day of February, 2018

CORAM:

Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member

Elizebeth Francis,
Group D, Thalasseey HO (Retired),
Residing at Naramparambath |Mullan House,
Ponniam West Post Office,
Thalassery – 670 641.

..... **Applicant**

(By Advocate – Mrs. R. Jagada Bai)

V e r s u s

1. Union of India,
Represented by the Secretary to Department of Posts,
New Delhi – 110 001.
2. The Post Master General,
Northern Region, Kerala Circle,
Kozhikode – 673 011.
3. The Superintendent of Post Offices,
Thalassery Division, Thalassery – 670 102.
4. The Post Master,
Thalassery Head Post Office – 670 101. **Respondents**

(By Advocate – Mr. E.N. Hari Menon, ACGSC)

This Original Application having been heard on 08.02.2018, the Tribunal on 21.2.2018 delivered the following:

ORDER

O.A.No. 172 of 2016 is filed by Elizebeth Francis, a retired Group D employee of the Postal Department to confer temporary status with effect from 1.9.93 when the Casual Labourers (Grant of Temporary Status and Regularization) Scheme was promulgated by the Government of India.

The reliefs sought in the OA are as under:

- (a) *Call for the records regarding the vacancy position of Group D for the year 2002-2003 in Thalassery Postal Division.*
- (b) *Order that the applicant be conferred temporary status with effect from 1.9.1993 from the date of promulgation of the Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993 of the limited purpose of pension under CCS (Pension) Rules, 1972.*
- (c) *Order that the applicant is to be treated as promoted notionally from the date of arising of vacancy in 2002-2003 earmarked for the casual labourers for the limited purpose of availing of the benefits under CCS(Pension) Rules, 1972.*
- (d) *To direct the respondents to refund the entire amount already recovered towards New Pension Scheme.*
- (e) *Any such remedy deemed fit and proper as this Hon'ble Tribunal may be pleased to order.*

2. The brief facts of the case are as under:

Applicant was appointed as Part Time Casual Labourer in the Postal Department and retired as Group D on 30.9.2014. Applicant submits that as per the Casual Labourers (Grant of Temporary Status and Regularization) Scheme, 1993 the

casual labourers who had been engaged for a period of 240 days in a year should be conferred with temporary status with all benefits at par with Group D staff (Annexure A1). Applicant had made a representation before the authorities. Since there was no response, she filed OA No.346/1998. This OA was disposed of with a direction to the 3rd respondent therein to consider the representation of the applicant in the light of the instructions on the subject for combining the duties. Thereafter the duty hours of the applicant were enhanced to 6 hours with 5 hours duty for sweeping and one hour for scavenging vide Memo dated 23.12.1998. Applicant made representation for regularization in Group D, which was rejected by the 3rd respondent stating that the benefit of regularization is available only for Full Time Casual Labourers. Applicant again filed OA No.286/2005. This OA was disposed with the following directions:

“In the interest of justice and based upon the findings above, we order that the respondents shall take immediate steps for computing the number of Group D vacancies and proceed to fill them up as provided under Col.11 of A-6 viz., conducting of eligibility test of candidates from S.No.2 and filing them up with successful candidates and the remaining vacancies, if any, to be filled in as provided under sub para (i) & (ii) and direct recruitment should be resorted to if and only if the above measures do not yield the desired result.”

Since the respondents have not complied with the above directions applicant preferred another representation. The applicant was finally appointed by the 3rd respondent to the cadre of Group D along with four other GDSs vide his Memo

dated 13.2.2009 (Annexure A8). On a request made by the applicant under RTI Act through Annexure A10, the respondents informed her vide letter dated 1.1.2016 (Annexure A11) that as on 31.12.2002, there were 34 sanctioned posts of Group D in Thalassery Postal Division out of which 26 posts were filled up. Applicant submits that there were 8 Group D posts remaining unfilled in Thalassry Postal Division as on 31.12.2002. She further submitted that she is the seniormost casual labourer in the Thalassery Postal Division. Hence she has staked her claim for regularization from 1998.

3. As grounds applicant states that the action on the part of the respondents in not conferring temporary status from 1.9.1993 or regularizing her against the vacancies earmarked for the casual labourers against the vacancies arising up to 2003 is arbitrary and illegal. She further states that since the applicant was senior and performing the duties of a Part Time Casual Labourer, with eight vacancies available as on 31.12.2002, applicant should have been appointed as a Group D against one of the vacancies. She has further stated that the Hon'ble High Court of Kerala by order in WP(C) No.22818 of 2006 dated 22.3.2007 upheld the order of this Tribunal in OA 115/2004 in which it was held that casual labourers have a claim in respect of 25% of the vacancies unfilled and it should be filled up by selection cum seniority in the manner mentioned in Column 11 of the Recruitment Rules. In view of the above, the applicant should have been appointed as Group a D against the vacancies available in 2002 or 2003 instead of appointing her as a Group D from 16.2.2009. In that case,

she would have been included in the pension scheme governed by the CCS (Pension) Rules, 1972.

4. Because of the delay in appointing her to the Group D cadre, she was included in the New Pension Scheme which came into effect w.e.f. 1.1.2004 and could gain only 5 years 6 months service thereby failing to qualify for minimum pension as per CCS (Pension) Rules. She has cited a similar OA No.648/2013 which was disposed of by this Tribunal in which there was a direction to treat the applicant therein as promoted to the cadre of Postman notionally from the date of arising of vacancy in 2002 for the limited purpose of availing the benefits under CCS (Pension) Rules. She has produced the order in OA 648/2013 as Annexure A16. In another order of this Tribunal (Annexure A17) also it was declared that the applicants therein are deemed to have been appointed from the date the vacancy arose. The respondents have implemented the above said orders.

5. Per contra, Respondents have filed a reply statement and an additional reply statement, refuting the allegations in the OA. Applicant was a part time casual sweeper from 2.3.1985 with 6 hours work. This engagement was only on provisional basis. Applicant was not allotted any additional area for sweeping. As per the direction in OA 286/2005, a DPC was convened on 13.2.2009 and applicant was appointed to a Group D post at Thalassery Division on 16.2.2009. Applicant retired from service on 30.9.2014. As per the clarification issued by DOP&T OM No.49014/2/93-Estt(C) dated 12.7.1994 (Annexure R1), temporary status is not to be

granted to Part Time Casual Labourers. Since the applicant was a Part Time Casual Labourer, she was not eligible for temporary status. The benefit of casual Labourers (Grant of Temporary Status and Regularization) Scheme was extended to Full Time Casual Labourers recruited after 29.11.1989 and upto 10.9.1993 only. After the direction in OA 286/2005 the DPC which met on 13.2.2009 assessed the number of vacancies to be filled up under Group D cadre at Thalassery Division as 5. As per the register of Part Time Casual Labourers, since the applicant was eligible to be appointed under 25% quota, she was selected for appointment and she took charge as a Group D on 16.2.2009.

6. Applicant was never engaged as a Full Time Casual Labourer. Hence her request for appointment from an earlier date cannot be accepted. Out of the 8 vacancies pointed out by the applicant, 2 were filled in 2003, 2 were abolished in 2003 and 2 were for 2004 as per the direction of the Screening Committee. As per note 3 below column 11 of Schedule II of Annexure A12, the engagement of casual labourers as Group D is not by way of promotion, but as direct recruitment. No appointments have been made by the respondents overlooking the legitimate claim of applicant or any other Part Time Casual Labourer. In OA 145/2010 this Tribunal held that it is settled law that the promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of posts. Since applicant was appointed after 1.1.2004, she comes under the New Pension Scheme. Respondents state that Annexures A16 and A17 orders of this Tribunal are not

relevant to the case of the applicant.

7. Applicant has filed a rejoinder reiterating most of her contentions in the OA. She has produced Annexures A18 and A19 orders of this Tribunal in OA 590/1993 and OA 1073/96 and connected cases and stated that no distinction exists between Full Time Casual Labourers and Part Time Casual Labourers for the grant of temporary status and regularization. She has produced an OM No.01-07/2016-SPB-I dated 12.9.2016 in which it is stated that the benefit of GPF & old pension under CCS (Pension) Rules, 1972 is applicable to all casual labourers who are covered by the Casual Labourers (Grant of Temporary Status and Regularization) Scheme, even if they are regularized on or after 1.1.2004. (Annexure A20). The delay on the part of respondents in appointing the applicant against vacancy of 2001 has caused grave prejudice to her.

8. In the additional reply statement the respondents state that Annexure A18 order of this Tribunal has been stayed by the Hon'ble Supreme Court and the SLP filed against Annexure A19 has been disposed of in view of the judgment in CA Nos 35-36 of 1984 stating that scheme for conferring temporary status to Full Time Casual Labourers is not applicable to Part Time Casual Labourers. They have cited a judgment of the Hon'ble Supreme Court in ***T.N. Administrative Service Officers Vs. Union of India - (2000) 5 SCC 728*** in which it is held that even if vacancies exist, it is open to the authority concerned to decide how many appointments should be made. Simply because a candidate is eligible for selection, it does not confer on him any

vested right for getting appointment. This was followed in ***Vinodan T.V. Vs. University of Calicut (2002) 4 SCC 726.*** Annexure A20 is not directly applicable to the applicant as she has not been granted temporary status. The existing CCS (Pension) Rules are applicable to Government servants appointed on or before 31st December 2003 only and hence the applicant has no right to claim the same.

9. Smt. R. Jagada Bai, learned counsel appearing for the applicant and Shri E.N. Hari Menon, Learned ACGSC appearing for the respondents have been heard and all documents/records produced have been perused.

10. Applicant was originally appointed as a Part Time Casual Labourer under the respondents in 1985. She was appointed to the cadre of Group D on 16.2.2009 and superannuated on 30.9.2014. She claims that she should have been conferred temporary status as per the Casual Labourers (Grant of Temporary Status and Regularization) Scheme, 1993 on the ground that she had been engaged for a period of 240 days or more. The applicant agitated her grievances before this Tribunal by filing OA No.346/1998 and OA No.286/2005. The latter OA was disposed of by order dated 23.3.2007 with a direction that the respondents should take immediate steps for estimating the number of Group D vacancies and proceed to fill them up as provided under the relevant rules. The applicant was finally appointed as Group D only on 16.2.2009. Her primary contention is that there were adequate number of vacancies in Tellichery Postal Division wherein she could have been adjusted as a Group D and given posting much earlier. She was senior and was

performing the duties of Part Time Casual Labourer and ought to have been given the benefit of the order of this Tribunal in OA No.115/2004 in which it was held that Casual Labourers have a claim in respect of 25% of the vacancies unfilled. Column 11 of the Recruitment Rules is the relevant regulation in this regard. Thus she could have been appointed as a Group D against the vacancies available in 2002 or 2003 instead of having to wait for appointment as a Group D till 16.2.2009. Due to this delay, she came to be included in the New Pension Scheme which came into effect with effect from 1.1.2004, having only service of 5 years and 6 months and failed to qualify for minimum pension as per CCS (Pension) Rules. She has cited two judgments of this Tribunal, viz., OA No.648/2013 and OA No.20/2015 wherein retrospective notional effect had been granted in the case of candidates who were similarly placed as her.

11. While considering the contentions of the applicant, it is seen that the applicant was only a Part Time Casual Sweeper engaged from 2.3.1985 on provisional basis with specific hours of duty not exceeding beyond 6 hours. Thus she cannot claim the relief which was envisaged under the Casual Labourer (Grant of Temporary Status and Regularization) Scheme, 1993. In compliance with the directions in OA 286/2005 the applicant was appointed to a Group D post on 16.2.2009. She contends that there were adequate number of vacancies which were in existence in the concerned Postal Division in 2002-2003. However, on the basis of details furnished by the respondents and not contested by the applicant, this does not

appear to have been the case. She was confirmed in GDS cadre on 16.2.2009 and retired on 30.9.2014 falling short of the required period of service for being included for minimum pension.

12. Orders of this Tribunal referred to as Annexures A16 and A17 have not attained finality. Further in the judgment of the Hon'ble Supreme Court in *T.N. Administrative Service Officers Vs. Union of India - (2000) 5 SCC 728* it has been made clear that even if vacancies exist, it is upto the authority concerned to decide as to how many appointments are to be made against them. Merely because a candidate is eligible for selection, would not confer on him or her any vested right for getting appointment. CCS (Pension) Rules, 1972 are only applicable to Government servants appointed on or before 31.12.2003 and the applicant, being appointed only in 2009 has no claim whatsoever to be included under the Scheme.

13. On a consideration of all factors, I come to the conclusion that the O.A is devoid of merit and ought to be dismissed. Accordingly I reject the OA. No order as to costs.

Dated this the 21st day of February, 2018

**(E.K. Bharat Bhushan)
Administrative Member**

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List of Applicant 's Annexures

Annexure A-1 - Copy of the DOPT OM No. 51016/2/90-Estt (C) dated 10.09.1993 communicated under the DG Posts New Delhi under No. 45-95/87-SPB-I dated 12.04.1994 (Appendix).

Annexure A-2 - Copy of the order of this Hon'ble Tribunal in Original Application No. 346/98 pronounced on 19.06.1998.

Annexure A-3 - Copy of the Post Master Thalassery Head Post Office Memo No. 18/98-99 dated 23.12.1998.

Annexure A-4 - Copy of the order of this Hon'ble Tribunal in Original Application No. 286/2005 through an order dated 23.03.2007.

Annexure A-5 - Copy of the application submitted by the Applicant on 18.05.2008 under RTI Act.

Annexure A-6 - Copy of the Respondent No. 2 letter No. PG/RTA/10/08 dated 29.05.2008.

Annexure A-7 - Copy of the representation dated 23.06.2008 preferred by the Applicant claiming promotion to the cadre of Group D.

Annexure A-8 - Copy of the Memo No. B2/Group D/2002 dated 13.02.2009 issued by the Respondent No. 3 posting the Applicant as Group D, Thalassery Head Post Office.

Annexure A-9 - Copy of the charge report of the Applicant assuming the post of Group D with effect from 16.02.2009 fore noon at Thalassery Head Post Office.

Annexure A-10 - Copy of the requisition dated 02.12.2015 under RTI Act submitted by the Applicant to the Respondent No. 3.

Annexure A-11 - Copy of the Superintendent of Post Offices, Thalassery Division letter No. RTIA/DO-22/15 dated 01.01.2016.

Annexure A-12 - Copy of the Department of Posts (Group D) Recruitment Rules, 2002 framed by the Government of India, Ministry of Communications and Department of Posts and published on 23.01.2002.

Annexure A-13 - Copy of the G.S. R 984 (E) dated 12.12.2010 redesignating the Group D posts as Multitasking Staff.

Annexure A-14 - Copy of the order of this Hon'ble Tribunal in OA No. 247 of 2009 pronounced on 05.02.2010.

Annexure A-15 - Copy of the order of the Hon'ble High Court of Kerala through an order in WP (C) No. 22818 of 2006 (S) dated 22.03.2007.

Annexure A-16 - Copy of the order of this Hon'ble Tribunal in OA No. 648/2013 pronounced on 28.01.2015.

Annexure A-17 - Copy of the order of this Hon'ble Tribunal in OA No. 180/00020/2015 pronounced on 15.02.2016.

Annexure A-18 - Copy of the order of this Hon'ble Tribunal in OA No. 590/93 decided on 27.05.1994.

Annexure A-19 - Copy of the order of this Hon'ble Tribunal in OA No. 1073/96 and OA No. 1074/96 pronounced on 20.11.1996.

Annexure A-20 - Copy of the Government of India, Ministry of Communication & IT and Department of Posts OM No. 01-07/2016-SPB-I dated 12.09.2016.

List of Respondents' Annexures

Annexure R1 - OM No. 49014/2/93-Estt.(C) dated 12.07.1994 issued by DoPT.

Annexure R2 - GOI Ministry of Communication & IT letter No. 01-07/2016-SPB-I dated 22.07.2016.

Annexure R3 - GOI Ministry of Communication & IT letter No. 66-7/91-SPB-1 dated 2.12.1994.

Annexure R4 - Copy of Minutes of DPC Thalassery Division held on 13.2.2009.

Annexure R5 - OM No. 2/8/2001-PIC dated 16.05.2001 issued by DoPT.

Annexure R6 - OM No. 2/8/2001-pic dated 09.04.2009.

Annexure R7 - The copy of Interim Stay granted by Hon'ble Supreme Court tagged on with SLP No. 15569-60 of 1993 (Secretary, Ministry of Communications Vs Sukubai and another).

Annexure R8 - Copy of Judgment in CA Nos. 360-361 of 1994 (Secretary, Ministry of Communications Vs Sukubai).

Annexure R9 - Judgment dated 18.01.2017 in OP (CAT) 327/16.

PPS to Member