

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
ORIGINAL APPLICATION NO. 180/00978/2016

Wednesday, this the 3rd day of October, 2018

CORAM

HON'BLE MR.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

1. Kamala Mottanthammal, Aged 45
D/o.Kannan, Part Time Casual Laborer
Tuneri Post Office, Residing at Puthalath House
Tuneri Post Office, Vadakara, Kozhikode District-673 505
 2. Usha.K, aged 46
D/o.Kunhiraman, Part Time Casual Labourer
Peruvannamuzhi Post Office, Residing at Orakundamchalil
Peuvannamuzhi Post Office, Vadakara,
Kozhikode District-673 528
- ... **Applicants**

[By Advocate Mrs.R.Jagada Bai]

V.

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
Vatakara Division, Vatakara 673 101
- ... **Respondents**

(By Advocate Mr.Anil Ravi)

This application having been finally heard on 1.10.2018, the Tribunal on 3.10.2018. delivered the following in the open court.

O R D E R (ORAL)

Per: MR.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

O.A 180/00978/16 is filed by Mrs.Kamala Mottantharammal and Mrs.Usha K, both are part time Casual Labourers at Tuneri P.O and Peruvannamuzhi Post Offices respectively. The relief sought in the Original Application are as follows:

“(i) Call for the records relating to the regularization of casual labourers who were appointed prior to 1.9.1993 to the cadre of Group D in Vadakara Postal Division up to 31.5.2011

(ii) Order that the applicants are eligible to be regularized in the cadre of Group D notionally in Vadakara Postal Division against the 25% of the unfilled vacancies for the years 2009 to 2011 in their turn.

(iii) Order that the applicants are eligible for 'Temporary Status' with effect from 1.9.1993 for the limited purpose of pension benefits. ”

2. Seen from a copy of what is, purportedly, a seniority list of Casual Labourers as on 31.12.2010 issued by Superintendent of Post Offices, Vadakara Postal Division i.e, respondent no.3, obtained from the office bearers of the Trade Union, a copy of which is available at Annexure A-1, Smt. Kamala.M who belongs to an O.B.C category joined at Tuneri P.O as part time casual labourer on 27.4.1984 and Smt.Usha.K joined at Peruvannamuzhi P.O on 1.1.1988. According to Annexure A-1, their respective dates of birth are 27.4.1971 and 25.01.1970. They contend that as per Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993, Casual Labourers who have been engaged for a period of 240 days are to be conferred with temporary status with all benefits at par with Group D staff. The Department of Personnel &

Training O.M on the subject dated 12.4.1994 is at Annexure A-2. The scheme provided for 25% Group D vacancies in a given recruiting unit to be earmarked for Casual Labourers. A copy of the Department of Posts Recruitment Rules dated 12.12.2010 produced as Annexure A-3 also state the same.

3. However, it is alleged that respondent no.3 took no action to grant temporary status or to regularise the Casual Labourers in the cadre of Group D in Vadakara Postal Division who were appointed prior to 1.1.1993. However, as per Annexures A-4, A-5 and A-6 judgments, where similarly placed part time contingent staff were regularized, Respondent no.3 refused to take any action to regularise the Casual Labourers despite the presence of several unfilled vacancies in 2008 itself. The applicants state that in 2010 also there were 5 vacancies which went abegging.

4. As grounds, the applicants reiterate that well intentioned measures initiated by the Government have been defeated by the authorities in the Vadakara Postal Division. They kept several available posts vacant and according to a table provided along with the O.A, there were 7 Group D vacancies eligible for Casual Labourers for the period from 1.9.1983 to May 2011 under Vadakara Postal Division for which appointments were not made.

5. Respondents have disputed the contentions raised in the Original Application. It is submitted on their behalf that both the applicants were engaged as 'outsiders' to perform contingent duties and were not appointed as Casual Labourers. They were not considered for appointment as MTS under Casual Labourer quota for the same reason. Annexure A-1 is merely a list of persons including outsiders who were engaged to perform contingent duties. It is not a legally valid seniority list as claimed. So also, the circumstances under which such

a list has been formulated and made available to the applicants is also not known.

6. As per Annexure A-2 which came into force from 1.9.1993, all Casual Labourers who were appointed through a due selection procedure became eligible to seek regularisation. The applicants did not fit in this category. It is also to be seen that as per Annexure A-1 list, it appears that applicant no.1 was appointed when she was merely 13 years old and applicant no.2, at the age of 17 years. There can be no engagement/appointment permitted before one attains the age of 18 years. The persons covered in the orders at Annexures A-4 and A-5 viz; Shri.K.Sathi Shri.K.M.Balan were working as PTCL in Vadakara Division before 1.9.1993, for whom clear engagement orders were available.

7. Respondents go on to quote the judgment of the Hon'ble High Court dated 4.8.2016 in Writ Petition No.25017 of 2009 filed against judgment in O.A 278/2008 on similar claims which ordered as follows:

“There is no case for the petitioner that he was ever given any appointment order, nor was it produced before the Tribunal or before this Court. How the petitioner came to be appointed occupying the chair of GDSMD, whether it was a case of any administrative exigency felt by the Department or was it a temporary arrangement to meet the situation, was it by way of a process of selection conducted by the Postmaster or Departmental authority etc. are not known. Unless and until it is established by the petitioner that he has undergone a process of selection and he was appointed on 'provisional basis' by the Department, the petitioner cannot be heard to say that he is entitled to have the benefit of Annexure A10. ”

8. It is further submitted that as per MTS Recruitment Rules, 25% of vacancies are to be filled up by:

(a) Appointment of casual labourers conferred with temporary status on the basis of selection cum seniority failing which by,

(b) Appointment of casual labourers engaged on or before

1.9.1993, working of 8 full hours in a day, on the basis of selection cum seniority failing which by

(c) Appointment of Casual Labourers conferred with temporary status in the neighbouring division or unit on the basis of selection cum seniority failing which by

(d) Appointment of casual labourers engaged on or before 1.9.1993, working for eight full hours in a day of the neighbouring division or unit on the basis of selection cum seniority failing which by

(e) Appointment of part time casual labourers engaged on or before 1.9.1993 of the recruiting division or unit on the basis of selection cum seniority failing which by

(f) By direct recruitment from amongst GDS on the basis of their seniority in the division or unit.

9. The applicants do not fit into any of these categories. Besides, estimation made by the applicants in the O.A regarding the vacancies is also incorrect.

10. Heard Mrs.K.Jagada Bai, learned counsel for the applicants and Mr.Anil Ravi, ACGSC, learned counsel for the respondents.

11. A person claiming the benefit of regularization with retrospective effect going back several years is necessarily required to submit convincing proof of his engagement in the first place. The only evidence before us is a copy of an unauthenticated list which is submitted as Annexure A-1. The applicant maintains that it has been provided to them by a Trade Union. The list is assailed as unauthorized by the respondents stating that it consists mostly of persons who were engaged for casual, need based services. The young age at which they appear to have been engaged, if we to take Annexure A-1 document into consideration, is also dubious. In the judgment in WP© No.25017/09 dated 4.8.2016 (Annexure R-3) the claims of

the aspirants for regularization in that Writ Petition were negatived by the Hon'ble High Court stating as below:

“ 8. There cannot be any doubt as to the Scheme of Annexure A10; that the benefit contemplated therein can be extended to provisional hands. To be treated as a provisional hand, the engagement should be in the manner as provided under the relevant provisions of law, completing the process of selection; which admittedly has not undergone by the petitioner/applicant. There is no case for the petitioner that he was ever given any appointment order; nor was it produced before the Tribunal or before this Court. How the petitioner came to be appointed occupying the chair of GDS MD; whether it was a case of any administrative exigency felt by the Department or was it a temporary arrangement to meet the situation, was it by way of a process of selection conducted by the Post Master or Departmental authority etc. are not known. Unless and until it is established by the petitioner that he has undergone a process of selection and he was appointed on 'provisional basis' by the Department, the petitioner cannot be heard to say that he is entitled to have the benefit of Annexure A-10. It was accordingly, that the matter was considered by the Tribunal and the position was answered against the petitioner/applicant as per Ext.P4. We do not find any tenable ground to call for interference. The writ petitioner fails and it stands dismissed.”

12. In this case also even assuming that they have worked for certain periods under the respondents, they were not selected through a due process and do not come within the purview of MTS Recruitment Rules.

13. Based on the above reasons, this Tribunal is of the view that the Original Application lacks merit and is to be dismissed. Accordingly, the Original Application is dismissed. No costs.

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

List of Annexures

Annexure A-1 - Copy of the Seniority List of Casual Laborers in Vadakara Postal Division as on 31.12.2010 issued by the Respondent No.3.

Annexure A-2 - Copy of the Appendix regulating the service conditions and scheme of regularization of the casual laborers in Department of Posts issued under No. DG(P) No. 45-95/87-SPB-I dated 12.04.1994.

Annexure A-3 - Copy of the G.S.R 984(E) dated 12.12.2010.

Annexure A-4 - Copy of the Superintendent of Post Offices, Vadakara Division Memo No. PF/S dated 26.03.2008 promoting Smt. K. Sathi, Part Time Casual Laborer as Group D.

Annexure A-5 - Copy of the order of this Hon'ble Tribunal in OA No.247/2009 pronounced on 05.02.2010.

Annexure A-6 - Copy of the order of this Hon'ble Tribunal in CP (C) No. 52/2010 in OA No. 247/2009 pronounced on 21.03.2012.

Annexure A-7 - Copy of the Gradation List of Group D officials in Vadakara Postal Division as on 01.07.2014.

Annexure A-8 - Copy of the Superintendent of Post Offices, Kannur Division regularizing similarly placed casual laborers as MTS.

Annexure A-9 (Series)- Copy of the representations dated 25.11.2014 submitted by the Applicants to the Respondent No.3 seeking regularization as Group D/MTS.

Annexure A-10 - Copy of the DG P&T No. 201/40/75-DISC.II dated 23.07.1975.

Annexure A-11 - Copy of the requisition under RTI Act dated 06.06.2011 submitted by Sri. P.P. Haridasan, Secretary GDS Union, NFPE Vadakara Postal Division to the Respondent No.3 seeking vacancy position of Group D for the period from 01.09.1993 to 31.05.2011.

Annexure A-12 - Copy of the Superintendent of Post Offices, Vadakara Postal Division letter No.L/RTI/Dig/8/2011 dated 22.07.2011 with its enclosure.

Annexure R-1 - True copy of letter No. B2/59 dated 24-02-2015 issued by Superintendent of Post Offices Vadakara Division.

Annexure R-2 - True copy of letter No B2/59 dated 09-12-2014 issued by Superintendent of Post Offices Vadakara Division.

Annexure R-3 - True copy of judgement of Hon'ble High Court dated 04-08-2016 in WP C 25017/2009.

Annexure R-4 - True copy of Chief Postmaster General Trivandrum letter No. Rectt/4-3/Review/E&V dated 10-09-2012.

Annexure R-5 - True copy of Directorate letter no.25-20/2002-PE-1 dated 13-11-2002.

Annexure R-6 - True copy of Directorate letter no.25-20/2002-PE-1 dated 06-01-2004.

Annexure R-7 - True copy of Directorate letter no.25-13-2005-PE-1 dated 08-04-2005

Annexure R-8 - True copy of Directorate letter no.25-12-2008-PE-1 dated 22-09-2008.

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