

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
LUCKNOW BENCH,  
LUCKNOW.**

**Original Application No. 457 of 2016**

Reserved on 09<sup>th</sup> April, 2018

Pronounced on 24<sup>th</sup> April, 2018

**Hon'ble Mr. Justice V.C. Gupta, Member-J**

Sri Pal Maurya, aged about 46 years, S/o Sri Ram Shanker Maurya, R/o Village Rannopur, 3 Misrikh Sitapur, at present working as CP Mali/Waterman/Farrash, Misrikh Post Office, District Sitapur

.....Applicant

By Advocate : Sri Surendran P.

Versus.

1. Union of India through the Secretary, Department of Posts, New Delhi.
2. The Chief Post Master, U.P. Circle, Lucknow.
3. Superintendent of Post Offices, Sitapur.

.....Respondents.

By Advocate : Sri Rajesh Katiyar.

Alongwith

**Original Application No. 458 of 2016**

Ram Sewak Kashyap, aged about 42 years, S/o Sri Sunder Lal Kashyap, R/o Shiv Colony, Lakhimpur at present working as CP Mali/Waterman/Farrash, Hargaon, Post Office, Sitapur.

.....Applicant

By Advocate : Sri Surendran P.

Versus.

1. Union of India through the Secretary, Department of Posts, New Delhi.
2. The Chief Post Master, U.P. Circle, Lucknow.
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.....Respondents.

By Advocate : Sri Rajesh Katiyar.

**O R D E R**

In these two O.As having O.A. no. 457 of 2016 and 458 of 2016 common questions of facts and law are involved, hence both have been heard together and are being disposed of by a common order.

2. The facts giving rise to the O.A No. 457/2016 are that the applicant Shree Pal Maurya was engaged as part time Mali on 26.6.1986 at Misrikh Post Office, Sitapur by issuing appointment order, a copy of which has been annexed as Annexure no.2 to the O.A. He continued as such till 30.9.1996. By order dated 1.10.1996 the applicant was treated as full time casual labour. The applicant is still working in the department as full time casual labour, but he has not yet granted the temporary status and has been deprived from all the benefits, which ought to have been accrued to the applicant after giving temporary status in pursuance of a scheme formulated by the Central Government after the judgment of Hon'ble Supreme Court. The scheme of giving temporary status to casual worker vide G.I. Dept. of Posts, Lr. No. 45-95/87-SPB.1 dated 12<sup>th</sup> April, 1991 was issued by the respondents. The scheme provides that the temporary status would be conferred on the casual labourers in employment as on 29.11.1989 who continue to be currently employed and have rendered continuous service of atleast one year and during the year they must have been engaged atleast for a period of 240 days (206 days in the case of offices observing five days week). It was further concluded that earlier to it, by a circular dated 17.5.1989 a clarification has been issued by the Department of Posts vide G.I. Dept. of Posts. Lr. No. 65-24/88-SPB.1 dated the 17<sup>th</sup> May, 1989 wherein the casual workers on daily wages were categorized in two categories and named as part time casual labour and full time casual labour, irrespective of the fact that they are working under different nomenclature. The said circular provides that for the purpose of computation of eligible service, half of the service rendered as a part time casual labourer should be taken into account. If a Part time casual labourer has served for 480 days in a period of two years, he shall be treated, for the purpose of recruitment and will be treated to have completed one year of service as full time casual labourer. This clarification leaves no room to doubt that any part time casual labourer engaged for less than eight hours irrespective of period of hours for which he was engaged will be treated as part time casual labourer and if he worked 480 days during of two years continuously, he will be qualified to have completed one year of service as full time casual labourer for the purpose of recruitment.

3. When the temporary status was not given to the applicant, he made a representation, but his representation was not decided. He filed O.A. no. 556 of 2015 which was disposed of with a direction to the respondents to decide the representation of the applicant. In compliance of the order of this Tribunal, the respondents considered and rejected the representation of the applicant by order dated 28.4.2016. Aggrieved by the said order, this O.A. has been filed by the applicant. Perusal of impugned order reveals that the claim of the applicant for grant of temporary status was declined solely on the ground that the applicant was not working as full time casual labourer on the cut off date mentioned in the Scheme of 1991.

4. Counter Reply has been filed by the respondents alleging therein that the applicant –Sri Pal Maurya was engaged as C.P. Waterman/Farrash at Misrikh Sub Post Office in the year 1986 and he worked there for less than 08 hours per day. In the year 1996, the working period of the applicant was enhanced that of 08 hours per day vide SPOs Sitapur Memo dated 1.10.1996 and made the applicant entitled to the wages equivalent to the minimum of Group 'D' scale + allowances as admissible thereon which the applicant was getting continuously on monthly basis and since then he has been working as Waterman/Farrash/Mali for 08 hours per day as full time casual labourer at Misrikh Sub Post Office, District Sitapur. It was further contended that as per the scheme of 12.4.1991 temporary status to those casual labourers cannot be granted who were part time casual labourers. As per the scheme dated 12.4.1991, those casual labourers who on 29.11.1989 were continuously employed and have rendered continuous service of atleast one year and during that one year they must have been engaged for a period of 240 days (206 days in the case of offices observing 5 days week) were allowed to continue after granting temporary status. It was further contended that the Directorate vide letter dated 1.11.1995 extended the benefit of scheme of casual labourers recruited after 29.11.1989 but before 10.9.1993 and for those the scheme was modified vide letter date 2.9.2005 in the light of introduction of New Pension Scheme in respect of persons appointed in Central Government offices on or after 1.1.2004, but in supersession of letter dated 2.9.2005, the DoP&T issued a fresh

O.M. dated 26.2.2016 after quashing of new Pension Scheme by the Tribunals, High Court and after dismissal of SLP by the Hon'ble Supreme Court in those matters. This O.M. dated 26.2.2016 was adopted by the Postal Department by letter dated 22.7.2016, a copy of which has been annexed by the respondents as Annexure no. CA-2. From the perusal of this Office Memorandum dated 22.7.2016 it reveals that the scheme of 12.4.1991 was further clarified vide letter dated 1.11.1995 whereby the benefit to casual labourers engaged till 10.9.1993, the benefit of the scheme dated 12.4.1991 was extended. The Directorate vide letter dated 30.11.1992 made it clear that the casual labourers who had acquired temporary status and completed 3 years service are to be treated at par with temporary Group 'D' employee and would be entitled to various benefits including leave encashment, holidays, CGIES, GPF, Medical aid, LTC etc. and also for counting the temporary service after regularization for retirement benefit in terms of O.M. dated 26.2.2016 issued by the DoP&T. The Directorate also granted the similar benefit which has been given by the DoP&T after superseding the New Pension Scheme.

5. In view of the above, it has been contended that temporary status to a casual labourer can never be granted after 10.9.1993 as is evident from the letter dated 1.11.1995 and clarification issued by letter dated 22.7.2016.

6. The respondents in their Counter Reply did not say about the benefit accrued to the Part time casual labourers in the light of letter dated 17.5.1989 issued by the Department of Posts. For ready reference, letter No. 65-24/88-SPB.I, dated the 17th May, 1989 issued by the Department of Posts is extracted here-in-below:-

*"In the Department of Posts.*

*'1. Part-time and Full-time Casual Labourers.- It is hereby clarified that all daily wagers working in Post Offices or in RMS Offices or in Administrative Offices or PSDs/MMS under different designations (mazdoor, casual labourer, contingent paid staff, daily wager, daily-rated mazdoor, outsider) are to be treated as casual labourers. Those casual labourers who are engaged for a period of not less than 8 hours a day should be described as full-time casual labourer. Those casual labourers who are engaged for a period of less than 8 hours a day should be described as part-time casual labourers. All other designations should be discontinued.*

*Substitutes engaged against absentees should not be designated casual labourer. For purposes of recruitment to Group 'D' posts, substitutes should be considered only when casual labourers are not available. That is,*

*substitutes will rank last in priority, but will be above outsiders. In other words, the following priority should be observed:-*

- (i) NTC Group 'D' officials.*
- (ii) EDAs of the same Division.*
- (iii) Casual labourers (full-time or part time. For purpose of computation of eligible service, half of the service rendered as a part-time casual labourer should be taken into account. That is, if a part time casual labourer has served for 480 days in a period of 2 years he will be treated, for purposes of recruitment, to have completed one year of service as full-time casual labourer).*
- (iv) EDAs of other division in the same Region.*
- (v) Substitutes (not working in Metropolitan cities).*
- (vi) Direct recruits through employment exchanges.*

*Note - Substitutes working in Metropolitan Cities will, however, rank above No. (iv) in the list."*

Perusal of class (iii) of para 2 makes it abundantly clear that for the purpose of computation of eligible service, half of the service rendered as a part-time casual labourer should be taken into account, that means that if a Part Time Casual labourers has served for 480 days in the period of two years, he will be treated, for the purpose of recruitment, to have completed one year's service as full time casual labourer. Admittedly, this circular was never shown to be withdrawn by the respondents.

7. It is also not in dispute that the scheme for granting temporary status to the casual labourers in the Postal department was introduced on 12.4.1991, which provides that the casual labourers, who are in the employment as on 29.11.1989 and continue to be currently employed on the date of commencement of the scheme and have rendered continuous service of atleast one year and during that year they must have been engaged for a period of 240 days (206 days in the case of offices observing 5 days' week), temporary status would be conferred on such casual labourers. In this scheme, there is no prohibition for grant of temporary status to part time casual labourer. However, by further clarification made by letter dated 16.8.1991, it was first time stated that the part time casual labourers are not covered by the scheme. They may, however, be brought on the strength of full time casual labourer subject to availability of work and suitability. For that purpose, work requirements of the different types and at neighboring units can be pooled. Even, this clarification does not reveal that the

decision of Postal Department taken on 17.5.1989 with regard to computation of eligible service of part time casual labourers was ever withdrawn. Thus, if a particular rule/circular/executive instructions are in existence on the date of commencement of any scheme, the benefit of such rule/circular/executive instructions cannot be denied to those part time casual labourers, who are otherwise entitled to get the benefit by virtue of instructions issued on 17.5.1989. Admittedly, the applicant was working in the department since 1986 and was also working on 29.11.1989. He continuously worked till 29.11.1989 shows that he worked for more than 2 years till cut off date mentioned in the scheme of dated 12.4.1991. Prima-facie, it appears that the applicant might have completed 480 days of 412 days, as the case may, in two years as part time casual labourer so he would be treated to a full time casual labourer on cut off date i.e. 29.11.1989. This aspect of the matter has been totally overlooked while deciding the representation of the applicant.

8. My attention has also been drawn towards the judgment of Andhra Pradesh High Court in Writ petition No. 17048 of 2000 decided on 7.9.2010 which covers the controversy involved in the case in hand.

9. The relevant paras of the judgment is extracted here-in-below:-

*"7. In the instant case, the entire issue revolves around Clause (iii) of letter dated 17-5-1989, on which basis, the Tribunal has also considered the claim of the applicants. Therefore, it is relevant to go through Clause (iii) of the letter dated 17-5-1989, which reads as under:*

*"Casual labourers (full time or part-time) for purpose of computation of eligible service, half of the service rendered as part time casual labourer should be taken into account. That is, if a part-time casual labourer has served for 480 days in a period of 2 years he will be treated for purposes of recruitment, to have completed one year of service of full time labourer."*

*8. The above letter makes it clear that in case of computation of eligible service pertaining to a part time casual labourer, half of the service rendered by such labourer shall be taken into consideration. For example, if a part time casual labourer has rendered a service of 480 days in a period of two years, he shall be treated for the purpose of recruitment, to have completed one year of service of full time casual labourer.*

*9. In this regard, there is also no dispute that the applicants have completed not less than 15 years of service in the Railway Mail Service Division at Visakhapatnam by the time of filing the O.A.*

*10. As per Clause (iii) of the letter dated 17-5-1989, a part time casual labourer is entitled to be treated as a full-time casual labourer by adopting the method of computing the service as mentioned therein. It is also pertinent to note that by letter dated 30-11-1992, it was communicated that the Supreme Court had held that after rendering three years of continuous service with temporary status, the casual labourers should be treated on par with temporary group D employees of the Department. It is also borne on record that certain measures have been taken to provide full time employment to part time casual labourers.*

*11. In the light of the judgment of the Supreme Court referred to in the letter dated 30-11-1992 as well as Clause (iii) of the letter dated 17-5-1989 and the correspondence made by the authorities, we feel that the right of conferment of temporary status on the applicants, cannot be denied, as rightly observed by the tribunal.*

*12. In this view of the matter, we have no hesitation to hold that the order of the Tribunal does not suffer from any illegality or irregularity. Hence, this writ petition is devoid of merits and the same is liable to be dismissed.”*

10. Hence, in view of the above, this Tribunal is also of the view that the benefit of circular dated 17.5.1989 may be extended to the applicant for considering him to grant temporary status on 29.11.1989 on the basis of working for 480 days or 412 days continuously. In case it is found that the applicant within two years had completed required number of working days as per circular dated 17.5.1989, the benefit of temporary status should have been granted to the applicant.

11. It is not in dispute that the applicant is continuously working since 1986 till date as a casual labourer and acquired status of full time casual labourer in the year 1996. However, the benefit on the basis of computation of qualifying working days as per the letter dated 17.5.1989 has not been extended to the applicant. Therefore, if the applicant is found entitled to grant temporary status on the basis of computation of working days in terms of letter dated 17.5.1989, he may also be allowed to grant all consequential benefits after completion of three years from the date of grant of temporary status.

12. The applicant of O.A. no. 458 of 2016 namely Ram Sewak Kashyap was also appointed in the year 1986 as Waterman/Mali/Farrash in Sub Post Office Hargaon, District Sitapur as a part time casual labourer and also granted status of full time casual labourer on 1.10.1996. The applicant has been working without any break from the date of his appointment and receiving the

consolidated salary, but has not been granted temporary status in view of the scheme of 12.4.1991.

13. So far as the pleadings are concerned, they are almost similar to the pleadings made in O.A. no. 457 of 2016 and the reply of the respondents is also on the similar footing.

14. That in view of the above discussions made hereinabove, while considering the facts and law in O.A. no. 457 of 2016, the Tribunal finds that O.A. no. 458 of 2016 also having identical facts and legal issues involved in O.A. no. 457 of 2016.

15. Consequently O.A. nos. 457 of 2016 and 458 of 2016 stand allowed. The impugned order 28.4.2016 in both the O.As is set-aside. The respondents are directed to act in furtherance of the aforesaid order to consider the applicants for grant of temporary status. This exercise must have been completed within a period of two month from the date of production of certified copy of this order by passing a reasoned and speaking order under communication to the the applicants.

16. Incase the applicants are found entitled to confer temporary status as per scheme of 12.4.1991; all other consequential benefits to the applicants may also be given within three months thereafter. There shall be no order as to costs.

**(Justice V.C. Gupta)**  
**Member-J**

Girish/-