

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

DATED THIS THE 10th DAY OF JUNE, TWO THOUSAND NINETEEN

PRESENT:

THE HON'BLE MR. T. JACOB, MEMBER (A)

OA//310/01914/2016

A. Ravi,
S/o Late M. Arumugam,
Peria Theru,
Chitteri Village Post,
Arakonam (Taluk),
Vellore (Dt) 631 003.

...Applicant

-versus-

1. Union of India rep., by
The Chief Postmaster General,
Tamilnadu Circle,
Chennai 600 002.
2. The Superintendent,
RMS, 'M' Division,
Chennai 600 008.
3. The Sub Record Officer,
RMS, 'M' Division,
Arakonam.

...Respondents

By Advocates:

M/s S. Ramaswamyrajarajan, for the applicant.

Mr. G. Dhamodaran, for the respondents.

ORDER

(Pronounced by Hon'ble Mr. T Jacob, Member (A))

This OA has been filed by the applicant under Sec.19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"i. To direct the respondents to convert him as a full time casual labourer and to confer Temporary Status on the applicant on completion of 480 days of service as part time casual labourer and to regularise his services subsequently in the cadre of MTS and to give all consequential benefits ..."

2. The brief facts of the case as submitted by the applicant are as follows:

The applicant was engaged as an Outside Mazdoor in the year 1989 to work at Arakonam RMS and later on engaged as Rest House Attendant and subsequently transferred to Katpadi RMS as Part Time Casual Labourer . Thereafter in 2005, he was transferred to Arakonam RMS 'M' Division and working as such till date. Meanwhile, the applicant's father while working as Mailman (Group 'C' at SRO), Arakonam, RMS 'M' Division expired on 30.05.2001 and on considering the indigent condition of the family, his name was recommended for compassionate appointment in 2001 itself. However, the 2nd respondent vide order dated 15.06.2012 , after a lapse of 12 years, rejected his claim on the ground that the Circle Relaxation Committee did not recommend his name for compassionate appointment due to (i) Less indigent as per relative merit points and (ii) non-availability of 5% direct recruitment vacancy. His representation dated 09.08.2012 in that regard was also rejected by the 2nd respondent by order dated 21.08.2012. He submitted further representations dated 13.09.2015 and 06.06.2016 to confer him temporary status and regularise his services as had been done to similarly situated

persons in other divisions by virtue of order passed by this Tribunal did not yield any reply. Hence this OA seeking the above relief on the following among other grounds:-

- (a) Rejection of the claim of the applicant after a lapse of 12 years in 2012 applying the scheme of relative merit point which came into existence only in 2010 is illegal.
 - (b) The applicant ought to have been conferred with temporary status and regularisation as had been done to the applicants in OA.1567/2010, 1145/2011, 1146/2011 and 1147/2011 who are similarly situated casual labourers like that of the applicant.
 - (c) The applicant is entitled for conferment of temporary status after having completed 480 days of continuous service as per the relevant rules on the subject.
3. Per contra, the respondents in their reply have stated that the applicant was not engaged in the year 1989 and was engaged as an Outsider in the year 1998. The applicant himself in his representation dated 21.09.2001 seeking appointment on compassionate appointment had stated that he has been working as an Outsider on daily wage basis in Katpadi RMS 'M' Division from 1998 onwards. He was not sponsored through employment exchange or through any employment agency. No pre-appointment formalities were observed at the time of his engagement as an Outsider. He was not engaged continuously but was utilised in the short time leave vacancies of GDS Mailman in Arakonam RMS vide 2nd respondent letter dated 22.01.2009 to carry out the duties of functional necessities. He was not utilised/arranged against any

sanctioned post. He was not engaged as a Part Time Casual Labourer and as such the applicant cannot be converted as full time casual labourer . He was utilised as SRO, RMS 'M' Division at Gandhi nagar as an Outsider and was paid wages as per the rates prescribed. The representation of the applicant dated 21.09.2001 seeking appointment on compassionate ground was kept pending as the matter of compassionate appointment was subjudice before the Court since 2000. The case of the applicant was placed before the Circle Relaxation Committee (CRC) 2012 & 2015 and examined for Postman & Multi Tasking Staff cadre as per his educational qualification. The claim of the applicant was rejected based on the Relative Merit Points (RMP), he was awarded 47 points as against the 75 points in Postman cadre and 91 points in MTS cadre awarded to the last selected candidate in CRC 2012 and in CRC 2015, it was 73 in PM cadre and 85 in MTS cadre. The OA.1567/2010 referred to by the applicant is not applicable to the facts of the present case as the applicant therein had worked w.e.f. 04.03.1993 i.e., before 01.09.1993 whereas the applicant herein was engaged only as coolie/outsider from the year 1998 and not as casual labourer either full time or part time. Respondents also would submit that in similar case the Hon'ble CAT in its recent judgment had ordered for dismissal of OA 1792/2013 filed by Shri. E. Palani. Hence the respondents pray for dismissal of the OA.

4. Learned counsel for the applicant would submit that the action of the respondents in not giving the benefit of temporary status and regularisation is illegal and in violation of Article 14 and 16 of Constitution of India. He has relied on the following citations in support of his submissions:-



- i. Order dt. 22.02.2012 of the Chennai Bench of this Tribunal in OA 1567/2010.
- ii. Order dt. 13.09.2012 of the Chennai Bench of this Tribunal in OA 1146/2011
- iii. Order dt. 13.09.2012 of the Chennai Bench of this Tribunal in OA 1147/2011.
- iv. Order dt. 13.09.2012 of the Chennai Bench of this Tribunal in OA 1145/2011.
- v. Order dt. 17.09.1997 of the Hyderabad Bench of this Tribunal in OA 778/1995.
- vi. Order of Hon'ble Punjab and Haryana High Court in Letters Patent Appeal No. 1261 of 1992 dt. 20.09.2001.

5. Learned counsel for the respondents would submit that the applicant is neither engaged through Employment Exchange nor any formality was observed in engaging the applicant. The applicant does not fulfil the conditions prescribed for conferring temporary status and his request for regularisation cannot be acceded to. He would further submit that the applicant is not working in the RMS M Division since 2018. Learned counsel for the respondents also relied upon the following citations:

- i. Order dt. 12.01.2017 of the Chennai Bench of this Tribunal in OA 1754/2015.
- ii. Order dt. 31.12.2018 of the Chennai Bench of this Tribunal in OA 196/2015.

6. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

7. The short question that is involved in this OA for consideration is whether the applicant is entitled for regularisation of his services in the cadre of MTS.

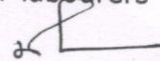
8. Admittedly, the applicant was engaged as an outsider in the year 1998.

He was not sponsored through employment exchange, no pre-recruitment formalities were observed at the time of his engagement and he was not appointed as a part time casual labourer. He was utilised as an outsider in the short term leave vacancies of GDS Mailman at Arakonam RMS for functional necessities and not appointed as casual labourer against any sanctioned post. There is no provision in the rules for regularisation of the services of outsiders who were are not appointed as per the Recruitment Rules and who are not engaged through Employment Exchange or any other employment agency. The benefit of temporary status is available only to those casual labourers who were in employment as on 01.09.1993 and grant of temporary status is not permissible after that date.

9. Upon death of his father on 30.05.2001, the request of the applicant for compassionate appointment in the post of Postman & Multi Tasking Staff was kept pending as the matter of compassionate appointment was subjudice before the Court since 2000. His representation was placed before the Circle Relaxation Committee (CRC) in the year 2012 and 2015 as per his educational qualification. The applicant was awarded 47 RMP whereas the last selected candidate was awarded 75 RMP for the Postman cadre and 91 RMP for the MTS cadre in the CRC 2012 and in CRC 2015, it was 73 in PM cadre and 85 in MTS cadre. Hence the request of the applicant was rejected vide impugned orders dated 15.6.2012 and 21.8.2012.

10. As per the Directorate's letter dated 12.04.1991, the following conditions are prescribed for conferment of temporary status to a casual labourer:

"1. Temporary status should be conferred on the casual labourers in

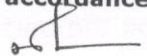


employment as on 29.11.89 and who continued to be currently employed and have rendered continuous service of atleast one year. During the year they must have been engaged for a period of 240 days.

2. After rendering three years continuous service after conferment of temporary status, the casual labourers would be treated at par with temporary Group 'D' employees.

As per OM dated 10.09.1993, those casual employees who were not sponsored through Employment Exchange or engaged through employment agency can be bestowed with temporary status. As such, the applicant is not eligible for regularisation/conferment of temporary status as per rules and instructions on the subject. The Casual Labour (Grant of Temporary Status and Regularisation) Scheme of Government of India was a one time measure and was applicable only to the casual labours working in the year 1993 and was not an ongoing Scheme and in view of the said Scheme, the applicant cannot claim the benefit of temporary status or claim status at par with the workmen having temporary status. The said Scheme has been considered by the Hon'ble Supreme Court in the case of Union of India vs. Mohan Pal reported in AIR 2002 SCV 2001, Union of India vs. Gagan Kumar reported in AIR 2005 SC 3107, m Director General, Doordarshan vs. Manas Dey and Ors., reported in AIR 2006 SC 263 and Controller and Defence Accounts vs. Dhani Ram and Ors. reported AIR 2007 SC 2650. Further reference has been made to the case of State of Rajasthan vs. Daya Lal by the Hon'ble Supreme Court in the case of Secretary to Government, School Education Department, Chennai vs., R. Govindaswamy and others reported in 2014 (4) SCC 769 wherein it has been held as follows:-

"(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with



relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme under/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be litigious employment. Even temporary, ad hoc or daily wage service for a long number of years, let alone service for one or two years, will not entitle such employees to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

iii. Even where a scheme is formulated for regularisation with a cut off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut off dates), it is not possible to others who were appointed subsequent to the cut off date, to claim or contend that the scheme should be applied to them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive cut off dates.

iv. Part time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuation of part time temporary employees."

As such, the judgements referred to by the counsel for the applicant are not relevant to the facts of the present case.

11. One aspect has to be deeply examined. May be the applicant did not enter the department through Employment Exchange and thus the judgement of the Hon'ble Apex Court in Umadevi, if applied, regularisation in this case is impossible. However, the same judgement has approved the decision in another case of State of Haryana vs. Piara Singh (1992) 4 scc 118 wherein the Apex Court has held as follows:-

"...an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee, he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority."



12. The respondents have filed an affidavit dated 26.4.2019 stating that the applicant is not working in the RMS 'M' division at present, but nowhere it is stated that the service of the applicant was no longer required nor in the place of the applicant none else had been engaged on adhoc basis to function in an identical job. If verification of the same surfaces that the respondents have actually, after termination of the applicant engaged some one else, though not exactly in the same place or function but in any other aligned function and on ad hoc basis, to which the applicant would have filled the bill, the respondents are duty bound to explore the feasibility of engaging the applicant, to this extent, the applicant has crystallised his rights.

13. In view of the above, it is held that the applicant cannot derive any benefit of past service for regularisation, but subject to the following two aspects, he is entitled to be considered for ad hoc appointment as and when necessity arises for engagement of part time ad hoc labour-

- a. After termination, either in the same place or in respect of any aligned function, respondents did engage any other person ignoring the entitlement of the applicant.
- b. The applicant has not crossed sixty years of age.

The above exercise shall be carried out within a period of three months from the date of receipt of a copy of this order and further action taken. In case, none has been so appointed, the fact of the same shall be intimated to the applicant.

14. The OA is disposed of on the above terms. No costs.