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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 913/2003

Friday, this the 5th day of September, 2003

HON'BLE MRS. LAKSHMI SWAMINATHAN, VICE CHAIRMAN (J)

1. Shri Jagat Singh II S/O Shri Darshan Singh
Aged about 40 1/4 years
2. Smt. Indira, W/o L. Ram Dhan, Age about 51 1/4
years
3. Shri Vijay Singh II S/o Sh. Daulat Singh,
Age about 41 1/4 years
4. Shri Lalit Kumar S/o Sh. Hira Lal, Age about 43 yrs
5. Smt. G. Railama W/o Sh. G. Channaya, Age about
40 years
6. Shri Kaur Chand S/o Sh. Munshi Ram, Age 38 1/4 yrs.

(The above applicants are working as Casual Labourers with Temporary status, in Airmail Sorting Division, New Delhi - 110021. Applicants Nos. 1 to 3 & 5 are residents of New Delhi, No.4 is R/o Noida and No.6 is R/o Basai Distt. Gurgaon. Their address for service of notices is C/o Shri Sant Lal, Advocate, CAT Bar Room, New Delhi - 110001)

... Applicants

(By Advocate : Shri Sant Lal)

Versus

1. The Union of India, through the Secretary, M.O. Communication, Deptt. of Posts, Dak Bhawan, New Delhi - 110 001
2. The Chief Postmaster General, Delhi Circle, Meghdoot Bhawan, New Delhi-110 001
3. The Sr. Supdt. Airmail Sorting Division, Chanakyapuri, New Delhi-110 021

.... Respondents

(By Advocate : Shri R.P. Aggarwal)

O R D E R (ORAL)

By Hon'ble Mrs. Lakshmi Swaminathan, Vice Chairman (J) :

This application has been filed by six applicants impugning the action of the respondents in issuing a show cause notice dated 4.7.2002. The respondents have stated that by this show cause notice, which has been issued to

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applicant No.1, he has been given an opportunity to make representation against the proposal of the respondents to withdraw the conferment of temporary status conferred on him, in terms of the Ministry of Communication, Department of Posts, Memo dated 12.4.1991. The learned counsel for applicants has submitted that similar show cause notices have been issued to the other five applicants and they have all given their replies.

2. The Tribunal by an ad interim order dated 8.4.2003 has issued a stay order against the respondents withdrawing the temporary status earlier conferred on the applicants, which order has been continuing till date.

3. Normally, the Courts/Tribunal should not interfere in such a matter, where show cause notice has been issued and on which the aggrieved party has been given an opportunity to make a representation and a decision on the same is yet to be taken by the competent authority. However, in the present case, after seeing the pleadings on record and considering the submissions of the learned counsel for the parties, it appears that the Tribunal's interim order dated 8.4.2003 has to be confirmed for the following reasons:-

(a) According to the learned counsel for the respondents, casual labourers engaged after 1.9.1993 or who were part-time casual labourers as on that date and were made full time casual labourers after that date are not eligible for conferment of temporary status under the Scheme of

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1991 issued by the Ministry of Communication,
Department of Posts;

(b) The applicants were engaged earlier as part-time casual labourers and in 1997 they were converted as casual labourers on full time basis w.e.f. 1.6.1997 i.e. after the cut off date of 1.9.1993 as laid down in the aforesaid Scheme. The respondents have therefore, contended that conferment of temporary status on the applicants subsequently was irregular and in violation of the departmental Scheme and, therefore, there was nothing wrong in issuing a show cause notice to the applicants before taking further action for cancellation/withdrawal of the conferment of temporary status in accordance with the provisions of the Scheme;

(c) On the other hand, the learned counsel for applicants relies on the Judgement of the Hon'ble Supreme Court in Union of India and Others v. Mohan Pal (2002 (1) SC SLJ 464). In this judgement, the Hon'ble Supreme Court has held that the DOP&T Scheme of 1993 is not an on going scheme. Further, it has also been held that the casual labourers in employment as on the cut off date of the commencement of the scheme i.e. 1.9.1993 and who had rendered a continuous service of at least one year i.e. 240 days in a year or 206 days in the case of offices observing 5 days a week were entitled for conferment of temporary status. The

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Hon'ble Apex Court has made it clear that "those who have already been given temporary status on the assumption that it is an ongoing Scheme shall not be stripped of the temporary status pursuant to our decision".

(d) The respondents rely on a judgement of the Kerala High Court in Union of India & Others v. Central Administrative Tribunal & Anr. (OP No 15650 of 2001 (S) decided on 31.10.2002 (Annexure R/7)). The High Court set aside the decision of the Tribunal on the question of conferment of temporary status and the OP was allowed in part. It is relevant to note that the High Court has given those directions after taking into account the decision of the Hon'ble Supreme Court in Mohan Pal's case (supra).

4. In the present case it is not disputed by the respondents that they have already granted temporary status under the Scheme of 1991 to the applicants on the erroneous assumption that it was an ongoing Scheme. Therefore, they cannot choose to ignore the judgement of the Hon'ble Supreme Court in Mohan Pal's case (supra), wherein it was made clear that those who had already been granted temporary status on the assumption that the Scheme is an ongoing one shall not be stripped of the temporary status pursuant to that order. A perusal of the impugned show cause notices issued by the respondents to the applicants shows that the proposal is to strip of the temporary status earlier granted by the Department itself to the applicants based on wrong assumptions and presumptions, which they now

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like to set aside, which cannot be done taking into account the decision of the Hon'ble Supreme Court in Mohan Pal's case (supra). The applicants cannot suffer for the wrong action taken earlier by the respondents by granting them temporary status. Therefore, in the circumstances of the case, the respondents cannot choose to ignore part of the decision of the Hon'ble Supreme Court in the manner they are proposing. It is also relevant to note that even the judgement of the Kerala High Court referred to above does not go to this extent, but has only given a direction to the Tribunal against the direction to grant temporary status de hors the Scheme. Therefore, in whatever manner the impugned action of the respondents is looked at, it cannot be said that their proposed action is legal or warranted, taking into account the aforesaid decision of the Apex Court.

5. In the facts and circumstances of the case, the proposed action of the respondents to withdraw/cancel the temporary status already granted to the applicants on a wrong assumption made by them earlier is unjustified. Taking into account the settled law on the subject, the impugned show cause notices dated 4.7.2002 are quashed and set aside. Accordingly the applicants shall be entitled to all consequential benefits in accordance with law.

No costs.

Lakshmi Swaminathan
(MRS. LAKSHMI SWAMINATHAN)
VICE CHAIRMAN (J)

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