

PETITIONER:
UNION OF INDIA & ANR.

Vs.

RESPONDENT:
K.N. SIVADAS & ORS.

DATE OF JUDGMENT: 01/08/1997

BENCH:
SUJATA V. MANOHAR, M. JAGANNADHA RAO

ACT:

HEADNOTE:

JUDGMENT:
[With Civil Appeal No. 5268/97 {@ SLP[C] No. 17422/95},
Civil Appeal Nos. 126/96, 124-125/96, 127-130/96 & 131/96]

J U D G M E N T

Mrs. Sujata V. Manohar. J.
Leave granted in S.L.P.(C) No. 17422 of 1995.
Application for impleadment in C.A. Nos. 124-125/96 are
allowed.

The respondent in these appeals were, at the material time, in the Reserved Trained Pool of Post and Telegraphs Department, Government of India. After the bifurcation of the two departments in the year 1988 the respondents continued in the Reserved Trained Pool of their respective departments.

The Reserved Trained Pool was set up in October 1980. Under a circular bearing 60/36/80-SPB I dated 30th of October, 1980 issued by the office of the Director General, Indian Posts & Telegraphs Department, a scheme was framed for constitution of a standing pool of trained reserved candidates for Post and RMS offices. The circular set out that in may operative offices the smooth flow of work was hampered by shortage of staff due to absenteeism and other cause. Meeting this shortage with overtime arrangements was not always a satisfactory solution. Hence it was decided that a standing pool of trained reserve candidates (hereinafter referred to as RTPs) should be formed in each recruiting unit to meet these short-time needs and recurrent needs. The scheme was made applicable the cadres of Postal Assistants and Sorting Assistants. As per existing practice, at the time of each recruitment, after the select list was drawn up. an additional list of candidates known as Part 'B' or part II list was being prepared by each recruiting unit. The candidate in part 'B' list were called up against drop-outs from the main list. They were imparted training only after they were brought to the main list. It was now proposed under the new scheme that after the main list is drawn up, a specific additional reserve list of candidates equal in number to 50% of the number of candidates in the main select list will be drawn up. The candidates in the reserve list will also be imparted training like the candidates in the main list. The candidates in the reserve

list will constitute a standing pool of trained reserve. They will be absorbed in regular vacancies in their turn after the candidates in the main list are absorbed. Till then they will be used as short duty staff against vacancies due to absenteeism or any other reason. Besides, they will be used for handling peak hour work. Since the purpose of having them as short duty staff is to minimise staff shortages, they may be called for engagement depending upon their ready and easy availability on demand and not necessarily in the order of their position in the reserved list. Their eventual absorption, however, will be in the order of their merit. They may be employed accordingly to needs but subject to a maximum of eight hours a day. They will be paid on hourly rates of wages. Clause 5 of the circular provides for the manner of absorption. It says that reserved candidate are recruited as a stand-by over and above the vacancies announced at the time of recruitment. The surplus recruited candidates will be given priority of absorption against vacancies for subsequent recruitment in the manner which is set out in that clause.

This scheme was in operation from the date of the circular till 4.3.1986 when the scheme was abolished. The initial creation of reserved pool was on the basis of 50% of the notified vacancies. In 1982, the percentage of reserved pool was reduced to 15% of the notified vacancies. The entire scheme was abolished with effect from 4.3.1986. The respondents in the appeals were recruited as RTPs. They have been since absorbed as regular employees on various dates from 1988 to January 1990 (with a few exception as hereinafter set out)

The respondents filed applications before different Benches of Central Administrative Tribunal claiming reliefs similar to those which were granted to casual labours in their department in view of a scheme framed for casual labourers in the year 1989 as per the directions given by this Court in *Jagrit Mazdoor Union (Regd.) and Ors. v. Mahanagar Telephone Nigam Ltd. and Anr.* (1990 Supp SCC 113). The respondents prayed that the benefits which were given to the casual labourers under the scheme which came into effect in the year 1989 should be given to them with effect from the date they were recruited as RTPs till the date of their absorption as regular employees. The first of such application came up before the Central Administrative Tribunal, Ernakulam Bench which is the before the Central Administrative Tribunal, Ernakulam Bench which is the subject-matter of CA Nos. 80-123 of 1996. The Tribunal directed that the applicants before them who had been rendering service for eight hours a day continuously, on completion of one year of such service should be deemed to have attained temporary status and half the period of eight hours a day should be counted for qualifying service for pension. It also directed that all other benefits made available to casual mazdoors after attaining temporary status should be extended to the applicants as set out therein and that the applicants should be paid productivity linked bonus during the period when they were RTPs if they had completed 240 days of service each year for three years after their recruitment as RTP candidates. Similar reliefs have been given by the Hyderabad Bench of the Tribunal also. Hence the department had filed the present appeals from these judgments of different benches of the Tribunal.

The directions given by the Central Administrative Tribunal are based upon a decision of this Court in *Jagrit Mazdoor Union (Regd.) and Ors. v. Mahanagar Telephone Nigam Ltd. & Anr.*, (1990 Supp SCC 113) (Supra). This judgment was

in respect of writ petitions which were filed either by casual labourers, or by reserved trained pool employees. This Court after referring to certain interim orders passed in various petitions before it, referred in paragraph 5 to the scheme known as Casual Labourers (Grant of Temporary Status and Regularisation) Scheme which had been formulated and put into operation from 1st of October, 1989. It said, "we find that the scheme is comprehensive and apart from provision for conferment of temporary status, it also specifies the benefits available on conferment of such status.....In these circumstance, no further specific direction is necessary in the two application relating to the two Nigams of Bombay and Delhi except calling upon the respondent to implement every term of the scheme at an early date." In paragraph 6, this Court dealt with the two remaining writ petitions by the RTP employees in the Department of Posts. It has recorded that after April 1986, about 7,000 RTPs have been absorbed. It said "Since the RTP category is no more expanding, only about 2900 of them remain to be absorbed. We have been told by learned counsel for the department that equal number of justified and supernumerary posts are being created by the ministry. The ministry's proposal is in the hands of the Ministry of Finance for approval and is expected to be finalised soon. This has to be done within a time frame and we direct the posts of both the categories to be created by the end of January 1990, and the process of absorption to be completed by March 31, 1990. With such absorption made, the RTPs will become regular employees. All their claims would, thereafter, be regulated on the basis of entitlement in accordance with extant rules." The judgment was delivered in November 1989. The expected sanction was obtained and all RTPs have been absorbed as regular employees in January 1990.

Are reserved trained pool employees prior to their absorption as regular employees, entitled to the benefits which have been given to casual labourers under the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme framed under the circular No.45-95/87-SPB I, dated 12.4.1991 issued by the Ministry of Communication, Government of India, Department of Posts and brought into effect from 29.11.1989? The Casual Labourers (Grant of Temporary Status and Regularisation) Scheme sets out that in compliance with the directions of the Hon'ble Supreme Court, a scheme was drawn up by this department in consultation with the Ministries of Law, Finance and Personnel and President had been pleased to approve the scheme. The scheme provided that temporary status would be conferred on casual labourers in employment as on 29.11.1989 and who continue to be currently employed and have rendered continuous service for at least one year. During the year they must have been engaged for a period of 240 days. The scheme gives various benefits to casual labourers which are conferred with effect from 29.11.1989. A casual labourer, therefore, is not given under the scheme any benefits prior to 29.11.1989. Under the scheme temporary status is conferred on casual labourers if they fulfil the various conditions and requirements laid down in the scheme. Clause 7 provides that conferment of temporary status does not automatically imply that the casual labourers would be appointed as regular Group 'D' employees with any fixed time frame. Appointment to Group 'D' vacancies will continue to be done as per the extant recruitment rules, which stipulate preference to eligible ED employees. Therefore, various benefits which go with the conferment of temporary status were given to these casual

labourers in view of the fact that their eventual absorption as regular employees was not to be within any fixed time and they were not automatically entitled to become regular employees.

The position of RTPs is quite different. In the first place, the very scheme which constituted RTPs provided for their absorption as regular employees. With this in mind, they were also given the same training as regular employees. They were required in the meantime, to carry out short-term duties or to handle peak hour traffic on an hourly wage basis. However, there was clear assurance in the scheme that they would be accommodated in future vacancies as regular employees in the manner set out in the scheme. We are informed that there was backlog in absorption because of a ban on recruitment during certain years. All the RTP employees have been absorbed as regular employees by 1990. Some of the respondents who are before us have been absorbed much earlier, in the year 1988. Therefore, they are in a much better position than casual labourers and are now enjoying all the benefits of regular employment. Their claim relates to the period prior to their absorption. The entire period in effect, is either prior to 1988, or in the case of some of the respondents, prior to January 1990. The benefits which they claim are the benefits which have been conferred on casual labourers only after 29.11.1989. The respondents, however, are claiming these benefits for earlier periods (In respect of those respondents who were absorbed in January 1990, their continuation as RTPs after 29.11.1989 is only of two months duration). In other words, RTPs are claiming benefits for a period for which a similar benefit has not been conferred on casual labourers under the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme.

The Tribunal, in our view, has erred in equating RTPs with casual labourers. The position of these two categories of employees is very different as we have already set out. The Tribunal has also erred in assuming that casual labourers are getting these benefits during the period for which the RTPs are claiming these benefits. RTPs have already obtained the benefit of absorption in regular service because of their own scheme. They, therefore, cannot, on the one hand, avail of their own special scheme and at the same time, claim additional benefits on the basis of what has been given to the casual labourers. This is unwarranted, especially as the period for which they claim these benefits is the period during which such benefits were not available to casual labourers.

Among the various benefits the Tribunal gave to the respondents (RTPs) productivity linked bonus if they had put in, like casual labourer, 240 days of service each year for three years or more on the basis of its judgment in O.A. 612/89 and O.A. 171/89. The appellants have submitted that although the order in these two O.As. was not challenged in appeal, it should not be automatically made applicable to all RTPs. The appellants have relied upon the observation of this Court in *State of Maharashtra v. Digambar* (1995 4 SCC 683) to the effect, inter alia, that non-filing of an appeal before this Court by the State in similar matter, by itself cannot operate as a fetter for this Court in entertaining special leave petitions subsequently filed even if they are considered as relating to similar matter when this Court finds that the relief which was granted was wrong; specially when there is every possibility that such relief may continue to be granted to other complainants who may go before that forum, which may ultimately result in a big

financial loss to the State. There is substance in this submission because we find that the reliefs which were granted by the Tribunal are wholly unwarranted, looking to the service conditions of RTPs as compared to the service conditions of casual labourers.

In C.A. Nos. 124-125 of 1996 the respondents originally worked as Telegraph Assistants in various Central Telegraph Offices in their reserved trained pool and were absorbed in regular service in 1992. In their department, the scheme of temporary status and regularisation for casual labours has come into effect from 1.10.1989. Their case is no different from the case of other RTPs although undoubtedly, they have been regularised a little later. As stated above, the position of RTPs is very different from the position of casual labourer and the Tribunal could not have equated the two.

In C.A. Nos. 127-130 of 1996 the RTPs who have been regularly absorbed in the year 1988 have been given the benefit of counting their service as RTPs for the purpose of their eligibility to appear for the departmental examination. The relevant rule provides that the candidates "must have put in at least 5 years continuous satisfactory service in one or more eligible cadres" before they can appear for the examination. The eligibility is related to five years service in the cadre. Any service which was rendered prior to regular appointment in the cadre, cannot count for the purpose of this rule because it cannot be considered as service in any eligible cadre. The Tribunal was, therefore, wrong in granting to RTPs the benefit of service rendered by them prior to their regular appointment, for the purpose of their eligibility to appear for the departmental promotion examination.

In the premises, all these appeals are allowed, the impugned judgments of the Tribunal are set aside and the original applications filed before the Tribunal are dismissed. There will, however, be no order as to costs.