

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1194 of 2001

M.A. No. 1026/2001

New Delhi, this the 6th day of March, 2002

Hon'ble Mr. V.K. Majotra, Member (A)

HON'BLE MR. KULDIP SINGH, Member (J)

1. Chand Ram  
VPO Bhainswal Kalan  
District Sonapat.
2. Krishan  
VPO - Atail  
District Rohtak.
3. Om Bir  
VPO - Manoli,  
District Sonapat.
4. Dayawanti  
House No. 614/29  
Subhash Nagar,  
Sonapat.
5. Rajbir Singh  
VPO-Bajana Kalan  
District Sonapat.

-APPLICANTS

(By Advocate: Shri Susheel Kumar Sharma)

Versus

1. Chief Commissioner (DZ)  
Officer of the Chief Commissioner of Customs  
and Central Excise, C.R. Building,  
New Delhi.
2. Commissioner of Customs,  
Central Excise Commissionerate (Delhi-III),  
C.R. Building, New Delhi.
3. Deputy Commissioner of Central Excise,  
Sonapat Division, Atlas Road,  
Sonapat (Haryana)

-RESPONDENTS

(By Advocate: Shri R.N. Singh, proxy counsel for Shri  
R.V. Sinha, Counsel )

ORDER (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicants have filed this OA seeking the following reliefs:-

(a) To quash the impugned order(s) dated

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3.5.2001 of the respondents terminating the services of the applicants.

(b) To allow the applicants to continue to work with the respondent No.3 without any break in service.

(c) To treat the 'technical break' in service, if any, due to above impugned termination order(s) dated 3.5.2001 as applicants 'on duty'.

(d) To call the complete record of the applicants' employment with the respondents.

(e) To direct the respondents to convert the services of the applicants from part-time to full time.

(f) To grant thereafter the Temporary status to the applicants.

(g) To regularise the services of the applicants.

2. The facts, as alleged by the applicants in brief, are that they have been working with the respondents on part-time basis for fairly long period of time varying from 8 to 16 years without any break. The period of the working of the applicants is shown in Annexure A-2 (page 13 of the paper book).

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3. The applicants further submit that since the vacancies in which they have been engaged for last 8 to 15 years without any break still exists so they are entitled to be regularised. It is further submitted that as the order of termination is bad in law, so they should be conferred with temporary status and should be regularised.

4. The respondents are contesting the OA. The respondents in their reply pleaded that the applicants had earlier filed an OA 2744/99 and this Tribunal had been pleased to dismiss the same as being premature as well as on merits vide order dated 7.9.2000 though directions were given to the respondents to take a decision on the representation filed by the applicants within a period of 2 months, but the claim of the applicants had already been adjudicated upon. It is further submitted that the applicants had again approached the Tribunal in OA 846/2001 which was disposed of on 3.4.2001 with a direction to the respondents to examine the whole issue in terms of the direction given in order dated 7.9.2000 and the respondents have passed the impugned order keeping in view the directions given in the earlier order.

5. It is further submitted that on the applicants representation Annexure A-9 to A-13 (Colly.) the department had considered their representation for regular appointment and have stated that they do not have any additional work of regular nature in any of their offices in the jurisdiction of Delhi-III Commissionerate but in view of the CAT's order dated 9.4.2001, the

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respondents are unable to give any regular employment. However, the respondents informed that some part-time jobs are available at the office of the Deputy Commissioner (Sonepat), so the applicants may contact Deputy Commissioner, Sonepat if they are interested in the job and they will be given preference over freshers, against which the applicants had again made representation and ultimately filed this OA seeking their regularisation.

6. We have heard the learned counsel for the parties and gone through the records of the case.

7. The learned counsel for the applicants have referred to a judgment in OA 2191/94 in the case of Shri B.S. Chendalyia Vs. U.O.I & Another wherein one of the part-time sweeper working under the respondents had filed an OA who was also similarly placed as the applicants and in that case the Tribunal had directed to consider the regularisation of the applicant as casual labourer taking into account the part-time service in the light of the Full Bench judgment in Sakkubhai's case. Based on that, the learned counsel for the applicants submitted that the present applicants are also entitled for regularisation in view of Sakkubhai's case.

8. However, in reply to this, the learned counsel for the respondents submitted that the judgment of the Full Bench in the case of Smt. Sakkubai and Another Vs. The Secretary, Ministry of Communications and Others has been reversed by the Apex Court which is reported in JT 1998 (9) SC 297 entitled as Secretary, Ministry of

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Communications and Others Vs. Sakkubai and Another so the judgment given by the Co-ordinate Bench of this Tribunal is no more a good law since it is based upon a Full Bench judgment of the Tribunal which stood reversed by the Hon'ble Supreme Court as such the learned counsel for the respondents submitted that the applicants have no case for seeking regularisation.

9. We have gone through the material on record and have considered the rival contention of the parties.

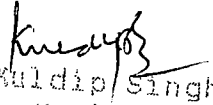
10. The short question involved is whether the part-time workers are entitled for regularisation in accordance with the Scheme of the DOP&T issued on 10.9.93. The learned counsel for the applicants submitted that Sakkubai's case is of a Postal Department where they have a separate Scheme and that is why the Hon'ble Apex Court had observed that instead of the Scheme of 10.9.93 the respondents may consider them for absorption in the priority set out in the letter of 17.5.89 issued by the Department of Posts. The learned counsel for the applicants thus submitted that the Hon'ble Supreme Court had at least recognised that even the part-time workers is entitled to regularisation depending upon the length of service as part-time worker. However, the learned counsel for the respondents has also submitted that in the Government of India there is only one Scheme, i.e., of 10.9.93 regarding grant of temporary status and regularisation and a clarification has been issued by the DOP&T which is available on Swamy's Establishment and Administration Manual at page 236 and a perusal of this clarification would show that the temporary status cannot be granted to part-time casual employees so the learned counsel for the respondents

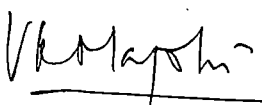
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submitted that the scheme does not cover the part-time casual workers.

11. We have given our thoughtful consideration to the matter in issue.

12. Since the judgment of the Co-ordinate Bench is based on Sukkabal's case which has been reversed by the Hon'ble Supreme Court, so to that extent we must make it clear that the judgment of the Co-ordinate Bench is no more a good law. Though in Sukkabal's case the Hon'ble Supreme Court had observed that the applicants will be absorbed in the priority set out in the letter dated 17.5.89 provided they fulfilled the eligibility criteria, so by making this observation the Hon'ble Supreme Court had simply confirmed the policy and/or instruction of the Postal Department issued vide their letter dated 17.5.89 for regularisation of P&I workers but the court on its own had not given any direction that the part-time workers with a sufficient length of service could be regularised without the scheme of the department. Whereas in the case of the Government of India there is no Scheme and there is only one Scheme and that is of 10.9.93 which does not apply to the part-time workers so we find that the OA does not warrant any interference and the same is dismissed. No costs.

  
(Kuldip Singh)  
Member (J)

  
(V.K. Majotra)  
Member (A)

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