

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.744/2001
MA No.625/2001

New Delhi this the 21st day of August, 2001.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

1. Sh. Bal Kishan, S/o Sh. Nathi Lal Sharma
Beldar
H.No.3301, Darji Wali Gali,
Masjid Khajoor,
Delhi-6
2. Sh. Umed Singh, S/o Sh. Balwant Singh Rawat
Beldar
H.No.973, Block
3. Sh. Tara Singh Negi,
S/o Sh. Durga Singh Negi
Beldar
Vill. & Post Khera, Distt. Almora
(Uttranchal).
4. Sh. Sarda Ram,
S/o Nyader Singh
Beldar
Vill. Ranoli Latifpur, Post Dadri,
Distt. Gautam Budh Nagar
(Noida)
5. Narender Singh
S/o Sh. Jas Ram Singh
Beldar
143/20, Railway Colony, Minto Bridge,
New Delhi

6. Sh. Mohan Singh
S/o Sh. Narayan Singh
Beldar
D-10A, Salam Staff Quarters,
Madipur,
Paschim Puri, Delhi-63
7. Sh. Prem Singh
S/o Sh. Jai Karan
Beldar
Vill. Mohammadpur, P.O. Narsing Pur,
Distt. Gurgaon (Haryana)
8. Sh. Vijay Kumar
S/o Sh. Ami Chand
Beldar
Vill. & Post Kamania, Teh. Narnaul,
Distt. Mohendegarh, Haryana
9. Sh. Arun Kumar Dubey,
S/o Sh. Rajender Dubey
Beldar
Vill. & Post Jadopur
(Dube tola) Distt. Gopalganj
(Bihar)
10. Sh. Anna Malai,
S/o ~~Ram Pratap~~ Sh. Raji
Beldar
11. Sh. Ram Singh,
S/o Sh. Ram Pratap
Khallasi
Vill. & Post Malarna,
Distt. Dausa (Rajasthan)
12. Sh. Bajrang Lal
S/o Sh. Shankar Lal
Khallasi
Vill. Digawas,
P.O. Hingotia, Distt. Dausa
(Rajasthan)
13. Sh. Balbir Singh
S/o Tara Chand
Khallasi
Vill. & Post Bakra (Beri),
Distt. Jhajjar
(Haryana).
14. Sh. Radhey Shyam
S/o Kalyan Singh
Khallasi
Vill. & Post Vijaypura,
Teh. Hindon City,
Distt. Karoli
(Rajasthan).

15. Sh. Ishnarain Pandey
S/o Sh. Ram Karan Pandey
Khalasi
Vill. Pabhipur, P.O. Pindoria
(Dulhoopur)
Distt. Ambedkar Nagar (East)
Fezabad (UP).

16. Sh. Prem Singh
S/o Sh. Govind Singh
Q.No.A-332, Minto Road Complex
New Delhi

..... APPLICANTS

VERSUS

1. Union of India
Through Secretary
Ministry of Urban Development
Nirman Bhawan,
New Delhi

2. Director General (Works)
C.P.W.D.
Nirman Bhawan,
New Delhi

3. Superintending Engineer
NS&P Circle, CPWD,
Manesar, GURGAON.

..... RESPONDENTS

Applicants through Smt. Meera Chhibber, Advocate.

Respondents through Shri Rajeev Bansal, Advocate.

O R D E R

By Mr. Shanker Raju, Member (J):

MA-625/2001 for joining together is allowed..

2. The applicants are seeking benefit of the decision of this Tribunal dated 3.2.2000 in OA-783/99 which has been affirmed by the Apex Court also. The applicants who have been divested from temporary status are seeking accord of temporary status and regularisation with all consequential benefits, including arrears in accordance with the scheme of DOPT dated 10.9.93.

3. Briefly stated the applicants are engaged as Beldars and Khalasis in Electrical and Civil Wing at NSG Headquarter, Manesar and have been working without break since 1989-90. Applicants 1-10 and 16 are working on civil side whereas applicants 11-15 on electrical side. All the applicants have been registered with the Employment exchange. The applicants have been accorded temporary status in the year 1994 in pursuance of the scheme of the DOPT dated 10.9.93. Subsequently the temporary status accorded to them has been withdrawn. The applicants have objected to this action of the respondents on the ground that there is no justification to withdraw the same and whereas the others have not been treated equally. For this they made several representations. Several Malis similarly circumstance filed OA-783/99, which was disposed of by this Court by an order dated 3.2.2000 wherein directions have been issued to the respondents, by setting aside the order withdrawing the grant of temporary status and the applicants therein have been made entitled for all consequential benefits. The aforesaid orders have been challenged before the High Court lastly the Apex Court by

an order dated 22.1.2001 the SLP was dismissed and in compliance the temporary status has been restored to the applicants with all consequential benefits. In this judgement as regards sponsorship through Employment Exchange it has been observed that in view of the decision of the Apex Court in Excise Superintendent Malkapatnam AP v. K.B.N Vishweshwara Rao & Ors., 1996 (6) SCC 216 and further placing reliance on the decision of Kehar Singh v. Electronic Corporation of India & Ors., 43 (1991) Delhi Law Times (SN) 13 sponsorship through Employment Exchange was not considered to be an impediment for grant of temporary status.

4. The learned counsel of the applicants stated that though the applicants are similarly circumstance as Malis in OA-783/99 they are yet to be accorded the same benefits by the respondents. The same benefits should have been extended by the respondents suo moto to them. As the applicants have been accorded temporary benefits and that has been taken away on the plea of non-sponsorship through Employment Exchange. The applicants through their association raised their grievance to the respondents but of no avail. In pursuance of the decision of the Tribunal affirmed by the Apex Court they made representations also. It is in this background stated that once the judgement of the Tribunal (supra) has been upheld by the Apex Court they are also entitled for the restoration of the temporary status and as a modal employer the benefits should not be denied to them which would amount to unequal treatment meted out to similarly circumstance persons. The learned counsel of the applicants has placed reliance to substantiate her plea on the following decisions:

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i) Kamlakar & Others v. Union of India & Others, 1999 (3) AISLJ 307 wherein it has been held that two sets of similarly placed persons should be given the same relief by the Court.

ii) Ajay Jadhav v. Govt. of Goa & Others, 2000 (1) AISLJ SC 23 wherein it has been held that similarly placed persons cannot be treated differently.

iii) Smt. Prem Devi & Ors. v. Delhi Administration, 1989 (supp.) (2) SCC 330 wherein it has been held that there should be a parity in the employment and once the dispute of one of the employees having been decided by the Court it was expected that without resorting to any of the methods the other employees identically placed would be given the same benefits which prevents unnecessary litigation and also saves time.

iv) K.C. Sharma & Others v. Union of India & Others, 1997 (6) SCC 721 wherein five judge bench of the Apex Court has clearly held that if the judgement is in rem the benefit of it should go to other similarly situated and the question of delay and laches would not arise in such cases.

v) Raj Pal v. State of Haryana, JT 1995 (8) SC 450 wherein the Apex Court has held that similarly placed persons if regularised in service the petitioner therein is also entitled to the same relief.

vi) Excise Superintendent Malkapatnam AP v. K.B.N Vishweshwara Rao & Ors., 1996 (6) SCC 216, wherein the Apex Court has held that restricting the selection only to the candidates sponsored by the Employment Exchange is not proper.

vii) Ramesh Chand & Others v. Delhi Admn. & Ors., 1996 (10) SCC 409, wherein it has been held that denial of benefits on account of discrimination resulting from different Central Administrative Tribunal's order in respect of persons involved in the same incident is not justified and offends Articles 14 and 16 of the Constitution of India.

5. In this background it is stated that as the applicants in OA-783/99 are similarly circumstance and were working as Malis in CPWD whereas the applicants have been working as Khalisis and Beldar in CPWD at Manesar they are squarely covered by the ratio laid down by the Tribunal which is affirmed by the Apex Court and cannot be deprived of the benefit of the judgment. As regards the case of applicant No.16, Prem Singh is concerned, it is stated that the previous OA filed vide OA-401/2001 is not filed by him as neither the signatures are there on the vakalatnama or on the petition and as a bunch case the same has been wrongly shown to be his signature and can be verified from calling the file of OA-401/2001. The learned counsel of the applicants has also stated that on merits the applicants cannot be deprived of the benefit of the judgement and the reliefs as accorded to the applicants in OA-783/99. As regards limitation, it is stated that as held by the five Judge Bench of the Apex Court in K.C. Sharma's case (supra) that in accord of the benefit of the

judgement the law of limitation would not apply and in the instant case as soon as the decision of the Tribunal has been affirmed by the Apex Court the applicants immediately made a representation to the respondents which has not been disposed of. It is also stated that the representation was made through an association where one of the signatory is the applicant in the present OA.

6. Strongly rebutting the contentions of the applicants it is stated that the applicants were engaged on a project against non-sanctioned posts and the work was also not of perennial nature. As the applicants have not been sponsored through the Employment Exchange they are not entitled for the temporary status, as such the same has been withdrawn in 1985. As the applicants have approached this Tribunal in the year 2001 without any application for condonation of delay the present OA is hopelessly barred by limitation. It is also stated that the present OA is barred by Section 20 of the Administrative Tribunals Act, 1985 as no individual representations are made by the applicants whereas the representation by the association are not admissible as the same are not by a recognized association and the association has not been made a party. As regards applicant No.16 it is stated that the said applicant has already filed OA-401/2001 and as such neither he has disclosed about filing of the OA and the same is not maintainable. It is stated that the applicants might have registered later on with the Employment Exchange but at the time of accord of temporary status they have not been sponsored, as such, as they failed to fulfil the eligibility criteria, temporary status had been withdrawn.

7. The applicants in their rejoinder have reiterated their contentions taken in the OA. It is stated that the applicants after 11 years service cannot be thrown out by the respondents and the sanction as come with the respondents to continue the project work for a further period and as the Apex Court in Excise Superintendent's case (supra) has held that the employment exchange cannot be the only mode and the same has been placed reliance by this Tribunal in OA-783/99 and having attained finality by the Apex Court, this issue is no longer res integra.

8. I have carefully considered the rival contentions of the parties and perused the material on record. In my considered view the applicants are legally entitled for the reliefs claimed by them on the basis of the judgment of this Court in OA-783/99 which has been affirmed by the Apex Court and implemented by the respondents. The objection of the respondents regarding limitation is not legally founded. The applicants have been divested of the temporary status in the year 1994 and thereafter a decision of the coordinate Bench was delivered on 3.2.2001. The respondents being the modal employer should not have denied the benefit of the judgement to the similarly situated ^{persons} ~~placed~~ and this would amount to discrimination which offends Articles 14 and 16 of the Constitution of India. In my view, two sets of similarly placed persons should be given the same relief and being similarly situated they cannot be treated differently as held by the Apex Court in Prem Devi's case (supra). If the dispute is decided in the case of one of the employees by the Court it is expected of the respondents to accord the same benefit to other employees identically placed which could have avoided unnecessary litigation and also wastage

of time. The respondents have failed to show that the applicants in the present OA and in OA-783/99 are not similarly circumstance or identically placed. As regards limitation is concerned, five Judge Bench of the Apex Court in K.C. Sharma's case (supra) has clearly laid down that the benefit of judgement to the similarly placed persons should not be denied on the basis of limitation. As such the applicants are legally entitled for accord of similar benefits which are granted to the applicants in OA-783/99 being similarly placed and denial of the same by the respondents is not legally sustainable and offends the principle of equality enshrined in Articles 14 and 16 of the Constitution of India. The present OA would not hit by the law of limitation.

9. As regards the contention that no representation has been filed by the applicants is concerned, I find that several representations have been made to the respondents and the cause has been explained by the association in which one of the signatory is the applicant in the present OA. As a welfare State and modal employer the respondents should have considered their request and the decision of this Tribunal affirmed by the Apex Court has attained finality. The respondents have not yet ^{paid} any heed to the application and have not passed any order on it. Resisting the claim on a hypothetical plea would not be countenanced. The fact remains that a representation was made is sufficient compliance of Section 20 of the Administrative Tribunals Act, 1985. Apart from it, the respondents have failed to show any statutory rules where the representation is to be made against the impugned

order, as provided under Section 20 *ibid* it is only a statutory remedy which is to be exhausted otherwise the impugned order can be assailed straightaway.

10. As regards the case of applicant No.16 is concerned, I have perused OA-401/2001 and compared the signatures. The applicant in the present OA has signed in Hindi whereas the signature appearing of applicant No.16 in OA-401/2001 are in English. Apart from it, I find that sufficient justification has been given by the learned counsel of the applicants and as the applicants have not suppressed any information from the record, OA-401/2001 has been filed by a number of applicants through CPWD Karamchari Union and the name of the applicant was inserted as member of the same. He has neither signed application nor vakalatnama and someone else has put his signature. In this view of the matter, I am satisfied that this OA is also maintainable vis-a-vis applicant No.16.

11. As regards the ground on which the temporary status accorded to the applicants has been withdrawn, i.e., non-sponsorship through Employment Exchange is concerned, the Apex Court in Excise Superintendent's case (*supra*) has clearly laid down that denial on selection only on the ground that the incumbent was not sponsored through Employment Exchange is not proper. Furthermore, this issue has already been dealt with in OA-783/99 and concluded and has attained finality on affirmation by the Apex Court, as such the same is binding and this plea of the respondents to take away the temporary status is not legally sustainable.

12. In the result and having regard to the discussion made above and reasons recorded, the present OA is allowed. The impugned order, withdrawing the temporary status from the applicants, is quashed and set aside. The respondents are directed to restore to the applicants temporary status with all consequential benefits within a period of three months from the date of receipt of a copy of this order.

13. As regards regularisation, the applicants shall also be entitled to be considered for the same, subject to their eligibility and availability of vacancies, strictly in their turn as per their seniority. No costs.

S. Raju

(Shanker Raju)
Member (J)

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