

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

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O.A. No. 1964/99

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T.A.No.

DATE OF DECISION 31-10-2000

Pushpa Mohanan and ors.Petitioner

Mrs. Rani ChhabraAdvocate for the
Petitioner(s)

VERSUS

UOI & OrsRespondent

Sh.S.M.Arif learned counselAdvocate for the
with Sh.P.N.Puri Respondents.

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)
The Hon'ble

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member

Central Administrative Tribunal
Principal Bench

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O.A. 1964/99

New Delhi this the 31st. day of October, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

1. Pushpa Mohanan,
S/o Shri A.D. Mohanan,
R/o 118-D, Pocket A,
Mayur Vihar, Phase-II,
2. Meena Rani,
D/o Shri Deepak Chandra,
R/o 68-D, LIG Flats,
Jhilmil Colony,
Vivek Vihar,
Delhi-110095.
3. Mohd. Javed,
S/o Shri M. Zaki Mohani,
R/o B-20, Mujeeb Bagh, Jamia
Nagar, New Delhi-110025.
4. Kunwar Pal Rathi,
S/o Shri Harpal Singh,
R/o CPCB, East Arjun Nagar,
Delhi-110032.
5. Pravin Kumar Gupta,
S/o Shri Kishori Lal Gupta,
R/o B-126, Street No. 11,
Kanti Nagar Extension,
Krishna Nagar,
Delhi-110051.
6. Devi Prasad,
S/o Shri Ram Prasad,
R/o 19/998, Lodhi Colony,
New Delhi-110003.
7. Suresh Chand Sharma,
S/o Shri Krishna Nand,
R/o House No. A-69, Street No.6,
West Vinod Nagar,
Delhi-110092.
8. Anju Kumari,
D/o Shri Mangat Ram Lakhera,
R/o C-1/276, Street No. 24,
Khajuri Khas,
Delhi-110094.
9. K.P. Srivastava,
S/o Shri Anand Kishore Lal,
R/o N-479, Sector 23,
Sanjay Nagar,
Ghaziabad (UP).
10. Shalini Joshi,
D/o late Shri M.C. Joshi,
R/o 700-E, Chajjupura Gate,
Babarpur, Shahdra.

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11. Chander Pal Singh,
S/o late Shri Kesho Ram,
R/o 100/C, MIG Flats,
G.T.B. Enclave, Pocket F,
Delhi-110093.

... Applicants.

(By Advocate Mrs. Rani Chhabra)

Versus

1. Union of India,
through Ministry of Environment & Forests,
Ministry of Environment,
Paryavaran Bhawan,
CGO Complex, Lodi Road,
New Delhi-110003.

2. Central Pollution Control Board,
Parivesh Bhawan,
East Arjun Nagar,
Delhi-110032.

3. The Member Secretary,
Central Pollution Control Board,
Parivesh Bhawan,
East Arjun Nagar,
Delhi-110032.

... Respondents.

(By Advocates S/Shri S.M. Arif and P.N. Puri)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

This O.A. has been filed by 11 applicants seeking regularisation of their services with consequential benefits.

2. The brief facts of the case are that the applicants state that they were appointed on different posts from 1991 to 1996 on casual basis with Respondents 2 and 3, that is the Central Pollution Control Board (CPCB), and have completed a number of years satisfactory service in those posts. They state that initially they were appointed for a period of 89 days and after a notional break of one day, they have been re-appointed and continued in those posts. They have relied on the Regulations framed by the CPCB, namely, the Central Pollution Control Board

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(Method of Recruitment Terms and Conditions of Service of Officers and other employees other than Member Secretary) Regulations, 1995. According to them, the respondents have failed to give the benefits under the Regulations but in its meeting held on 27.2.1996 had resolved to implement the Casual Employees (Grant of Temporary Status and Regulation) Scheme (Annexure A-3) for regularisation of the existing casual workers as a one-time measure. Pursuant to this Scheme, Respondent 2 issued an order dated 6.1.1997 conferring temporary status on all the applicants. Mrs. Rani Chhabra, learned counsel submits that in view of this order granting temporary status to the applicants and as they possess the requisite qualifications, they are entitled to be regularised on the vacant posts, which the respondents have failed to do. Hence, this O.A.

3. Learned counsel has submitted that all the applicants have been engaged in various posts, such as Stenographers, Data Entry Operators, Junior Laboratory Assistants, Lower Division Clerks, etc. after they had been found fit in the skilled test and interviews which were conducted at the time of their initial appointments. Mrs. Rani Chhabra, learned counsel has, therefore, submitted that their entries into service with Respondent 2 cannot be held to be as "back-door entry". She has also submitted that all the applicants had been appointed prior to the coming into force of the Regulations framed in 1995 and continuously working with the CPCB. She has, therefore, vehemently contended that as the applicants have been conferred 'Temporary Status' as a one time measure in terms of the Scheme, they were also entitled to all other benefits, like HRA, DA and leave encashment and the

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respondents cannot deny them these benefits arbitrarily and illegally. She has relied on a number of judgements, referred to in the written submissions submitted by her, which are placed on record. She has contended that as the applicants have got the necessary technical qualifications and have put in a number of years service, this should also be kept in view and the O.A. should be allowed.

4. I have seen the replies filed by the respondents and heard S/Shri Mohd. Arif and P.N. Puri, learned counsel. In the reply of Respondent 1, they have submitted that DOP&T O.M. dated 10.9.1993, that is the Scheme for Casual Labourers (Grant of Temporary Status and Regularisations) Scheme in Government of India, 1993" is applicable only to casual labourers employed by a Ministry/Department and granting of temporary status is applicable only in respect of Group 'D' employees. They have submitted that the CPCB had approved the implementation of the Scheme as a one-time measure for regularisation of casual workers engaged by the Board and continuing as on 31.3.1996. Shri Mohd. Arif, learned counsel has submitted that the Scheme is not applicable to persons performing duties of a regular nature, including clerks or stenographers, which has been reiterated in the Ministry of Finance (Department of Expenditure) O.M. dated 16.7.1990 which was also earlier the position under the O.M. dated 1.9.1972. He has submitted that the CPCB authorities have inadvertently issued orders giving "Temporary Status" to persons like the applicants, who are Group 'C' and not Group 'D' employees which they are not empowered to do. He has also submitted that the CPCB had, without obtaining the necessary approval of the Central

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Government, i.e. Respondent 1, issued these orders, which are, therefore, illegal and ultra vires, on which the applicants are relying upon. Shri Mohd. Arif, learned counsel for the respondents has submitted a letter dated 20.9.2000 from Respondent 1 to Respondent 2, copy placed on record. In this letter, it has been stated that the respondents after due consideration clarify that the existing instructions do not permit regularisation of casual employees in Group 'C' posts. In so far as regularisation of casual employees against Group 'D' posts are concerned, the existing instructions have to be followed by the CPCB. They have further stated that it is not possible to hold any one-time examination for any particular group of persons. Learned counsel for the respondents has, therefore, submitted that it is not possible to regularise the services of the applicants, as most of them do not fulfil even the eligibility conditions, and they cannot also rely upon an earlier erroneous order passed by Respondents 2 and 3 which is against the relevant Rules and Regulations.

5. In the reply filed on behalf of Respondents 2 and 3, they have also submitted that the applicants were not eligible for being granted "Temporary Status" even according to the provisions of the Scheme. They have stated that some of the applicants did not have the requisite qualifications at the time of their initial appointment or at the time when they were granted "Temporary Status". They have also referred to paragraph 15 of the Scheme in which it is provided that casual employees who acquire temporary status will not, however, be brought on to the permanent establishment unless they

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are selected through regular selection process as per CPCB Rules in force. During the hearing, Shri P.N. Puri, learned counsel has also submitted that one of the applicants, namely, applicant 2 has already left their service. He has also submitted that applicants 1,3 and 9 were over aged at the time of their initial appointment. According to Respondents 2 and 3, only ^{three} applicants 8 were eligible as per the conditions laid down in the Recruitment Rules at the time of ~~the~~ initial appointment and all the other applicants had some disqualifications at the relevant time.

6. MA 387/2000 has been filed by Respondent 2 for vacation/modification of the stay order dated 14.9.1999 in which it had been ordered that the services of the applicants shall not be terminated, if they are already on the jobs as casual labourers.

7. I have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

8. The CPCB Scheme prepared by Respondent 2 is under the title "Casual Employees (Grant of Temporary Status and Regularisation) Scheme, 1996". Under the Scheme, the term "Casual Employees" means all employees working on daily wage or consolidated basis, etc., but does not apply to those casual employees working under any specified project and those who are doing work of a purely seasonal or casual nature and part-time casual workers. In paragraph 7 of the Scheme, it is stated that "in case of illiterate casual employees, or those who fail to fulfil

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the minimum qualification prescribed for recruitment, regularisation will be considered only against those posts for which illiteracy will not be an impediment". The applicants have stated that they have been working as Stenographers, Data Entry Operators, Junior Laboratory Assistants and LDCs, as given in the chart annexed to the application (Annexure A-2). They cannot, therefore, under any circumstances be considered as illiterate casual employees for whom certain provisions have been specifically made in the Scheme prepared by the CPCB as a one time measure.

9. The main contention of the respondents is that the Scheme is to apply only to Group 'D' employees who have been employed as casual workers in CPCB and continuing as such as on 31.3.1996 who are to be granted the benefits under the Scheme and not employees who are performing duties of a regular nature, including clerical or stenographic staff. I find force in the arguments of the learned counsel for the respondents, having regard to the provisions of the Scheme. Apart from this, learned counsel for Respondent 1 has also submitted that the Scheme prepared by the CPCB did not get the Ministry's approval which was necessary. It is further relevant to note that some of the applicants did not also fulfil the educational qualifications and age criteria for appointment in the Group 'C' posts they are holding. In the facts and circumstances of the case, the reliance placed by the applicants and their counsel on the "Temporary Status" granted to them by Respondent 2 under the Scheme, on the basis of which they are claiming further benefits, is not tenable in law. In the rejoinder filed by the applicants,

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they have submitted that once the respondents have taken a decision for conferring temporary status as a one time measure for all employees, the respondents cannot wriggle out of the benefits given to them under the Scheme, on the grounds that the same has not been approved by the Central Government. I am unable to agree with this contention because it is not disputed by Respondents 2 and 3 that the Scheme prepared by them needs to be approved by the Ministry of Environment, that is Respondent 1, which has not been done in the present case. Besides, there is also force in the submissions made by the learned counsel for the respondents that the Scheme is not meant for persons, like the applicants, who are performing the duties of clerical or stenographic nature, but was meant as a one time measure for regularisation of casual workers/Group'D' employees. As mentioned above, the Scheme includes even illiterate casual employees and in the facts and circumstances of the case the submissions made by the learned counsel for the respondents that the temporary status granted to the applicants in pursuance of the Scheme is erroneous and is without approval of the competent authority goes against the applicants. Accordingly, no such direction as prayed for by the applicants to regularise their services in accordance with the Scheme can be granted, particularly as some of them did not also fulfil the eligibility conditions.

10. Learned counsel for the applicants had very strongly urged that since the applicants had been continuing with the respondents for a number of years in various posts, they should be regularised because they have already acquired the necessary experience of many years and

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some of them have also become over-aged to seek any other service. Therefore, she has submitted that in the interest of justice, equity and fair play, they may be regularised on the posts they have been holding for the last many years. The respondents have, however, submitted that some of the applicants were over-aged or did not have the requisite qualifications at the time they joined the CPCB, excepting in the case of ^{three} ~~two~~ applicants. ^{is} ~~are~~. In the circumstances of the case, there is no merit in the application and the same is liable to be dismissed.

11. However, since the applicants have been engaged by Respondent 2 themselves and have been working satisfactorily for a number of years and as there are no allegations of any fault on their part, so long as the work of the nature the applicants are doing continues with the respondents, they shall not be replaced by juniors or outsiders. In the facts and circumstances of the particular case, it is further ordered that in case any of the applicants apply for the test to be conducted by the respondents for regularisation, they shall be given ^{age} relaxation ~~xxx~~ to the extent of their service, and some weightage should also be given to their past experience.

12. In the result, the O.A. fails and is dismissed, subject to the observations made in paragraph 11 above. Parties to bear their own costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'