

(16)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1914/97, OA-1915/97, OA-1916/97, OA-2080/97,
OA-2081/97, OA-2083/97, OA-2085/97 & OA-2093/97

New Delhi this the 6th day of October, 1998.

Hon'ble Sh. S.P. Biswas, Member(A)

OA-1914/97

Shri Shankar,
S/o Sh. Mala Ram,
C/o Sh. Surinder Kumar,
C-6/96, Lawrence Road,
New Delhi.

..... Applicant

(through Sh. G.D. Bhandari, advocate)

versus

1. Union of India through
the Secretary,
Ministry of Defence,
South Block, New Delhi.

2. Engineer-in-Chief,
Army Hq., Kashmir House,
New Delhi.

3. The Garrison Engineer(P),
Sirsa(Haryana).

..... Respondents

(through Sh. R.P. Aggarwal, advocate)

OA-1915/97

Shri Diwan Chand,
S/o Sh. Suljha Ram,
C/o Kalawati Devi,
Sadh Ngr. Part II,
H.No. 686, Palam
Colony, New Delhi.

..... Applicant

(through Sh. G.D. Bhandari, advocate)

versus

1. Union of India through
the Secretary,
Ministry of Defence,
South Block, New Delhi.

2. Engineer-in-Chief,
Army Hq., Kashmir House,
New Delhi.

3. The Garrison Engineer(P),
Sirsa(Haryana).

..... Respondents

(through Sh. R.P. Aggarwal, advocate)

2
P.

17

OA-1916/97

Sh. Mahender Singh,
S/o Sh. Ganddi Ram,
R/o Jhugi, A.P. Block,
Vishaka Enclave,
Delhi-34.

..... Applicant

(through Sh. G.D. Bhandari, advocate)

versus

1. Union of India through
the Secretary,
Ministry of Defence,
South Block, New Delhi.

2. Engineer-in-Chief,
Army Hq., Kashmir House,
New Delhi.

3. The Garrison Engineer(P),
Sirsa(Haryana).

..... Respondents

(through Sh. R.P. Aggarwal, advocate)

OA-2080/97

Shri Kushal Singh,
S/o Sh. Sawan Singh,
C/o 305/1, Railway Colony,
Shakurbasti, Delhi.

..... Applicant

(through Sh. G.D. Bhandari, advocate)

versus

1. Union of India through
the Secretary,
Ministry of Defence,
South Block, New Delhi.

2. Engineer-in-Chief,
Army Hq., Kashmir House,
New Delhi.

3. The Garrison Engineer(P),
Sirsa(Haryana).

..... Respondents

(through Sh. R.P. Aggarwal, advocate)

OA-2081/97

Shri Rohtash Singh,
S/o Sh. Bhor Singh,
R/o KG:11/184, (Jhuggi),
Vikas Puri, New Delhi.

..... Applicant

(through Sh. G.D. Bhandari, advocate)

versus

24/11

18

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi.
2. Engineer-in-Chief, Army Hq., Kashmir House, New Delhi.
3. The Garrison Engineer(P), Sirsa(Haryana). Respondents
(through Sh. R.P. Aggarwal, advocate)

OA-2083/97

Shri Surat Singh,
S/o Sh. Phool Chand,
R/o 116-A DCM Loco Shed
Colony, Delhi. Applicant
(through Sh. G.D. Bhandari, advocate)

versus

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi.
2. Engineer-in-Chief, Army Hq., Kashmir House, New Delhi.
3. The Garrison Engineer(P), Sirsa(Haryana). Respondents
(through Sh. R.P. Aggarwal, advocate)

OA-2085/97

Shri Raja Ram,
S/o Sh. Ram Lal,
R/o WZ-3371-A, Mahendra Park,
Shakur Basti, Delhi. Applicant
(through Sh. G.D. Bhandari, advocate)

versus

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi.
2. Engineer-in-Chief, Army Hq., Kashmir House, New Delhi.
3. The Garrison Engineer(P), Sirsa(Haryana). Respondents
(through Sh. R.P. Aggarwal, advocate)

OA-2023/97

Shri Ami Lal,
S/o Sh. Maha Singh,
R/o D-504/2, Ashok Nagar,
Shahdara, Delhi.

..... Applicant

(through Sh. G.D. Bhandari, advocate)

versus

1. Union of India through
the Secretary,
Ministry of Defence,
South Block, New Delhi.
2. Engineer-in-Chief,
Army Hq., Kashmir House,
New Delhi.
3. The Garrison Engineer(P),
Sirsa(Haryana).

..... Respondents

(through Sh. R.P. Aggarwal, advocate)

ORDER

The pleas raised, legal questions involved and the reliefs sought for in these 8 original applications are identical and hence they are being disposed of, with the consent of learned counsel for both the parties, by a common order. For the sake of convenience, as agreed to by both parties, the background facts as in the case of OA-1914/97 (Shankar Vs. U.O.I. & Ors) are being mentioned herein for the purpose of appreciation of the legal issues involved.

2. Applicants were initially appointed as Muster Roll Daily Rated Mazdoors between 1965 to 1992 for short periods varying from 20 days to 60 days or even more but continued being disengaged and re-engaged in different spells. Some of them worked only between July 1965 to September 1966. Details of such working experiences are

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available in appropriate Annexures attached with individual applications. All the applicants are aggrieved by the respondents' actions in terminating their services verbally even though they were all interviewed on 2.7.92 but none of them have been informed about the results of the selection held. They would submit that their services have been terminated verbally by the respondents in mala fide and illegal manner from 7.7.93 onwards. All the applicants appear to have submitted representations on different dates in August 1992 but the respondents decided to turn Nelson's eyes on them. It is the case of the applicants that juniors to them are already working. The applicants would allege that vide A-4 circular dated 8.2.88, the respondents came up with the Scheme called "Employment of Casual/Muster Roll Employees of Delhi Cantt" and resorted to arbitrary regularisation of certain employees on pick and choose basis. The most important instruction in that Scheme reads as under:-

"The cut off date from where we have to stop consideration of daily wagers/muster roll employees for employment as fresh recruits will be 1.4.85. These daily wages employees who have completed 180 days in each year beginning from 1.4.85 might be considered eligible for induction of fresh recruits against regular vacancies after passing the requisite trade tests and provided they are within the prescribed age limits and were sponsored through the employment exchange at the time of their initial appointment on muster roll."

3. It is the "cut off" date i.e. 1.4.85 in the Scheme which has been challenged in these applications. Applicants have assailed the respondents' refusals to re-engage them as well as the "cut off" date on the basis of the following:-

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(a) That the policy regarding engagement of casual employees in Central Government Offices has been revised by the Government keeping in view of the Hon'ble Supreme Court's orders in the case of Shri Surender Singh & Anr. Vs. Engineer-in-Chief/CPWD, AIR 1986 SC 584 and the guidelines to be followed in the matters of recruitment of casual workers on daily wage basis have already been accordingly issued by Department of Personnel & Training vide O.M. No.49014/2/86 dated 7.6.86. It is only under these guidelines that the respondents herein, i.e., the Ministry of Defence had to regularise the casual workers within a period of 6 months as stipulated therein.

(b) That the applicants having rendered required number of days of casual/muster roll services were entitled to be considered for permanent absorption. But the respondents have malafidely ignored them on the false grounds that they have rendered services for lesser number of days as against the requirement.

(c) That the applicants would stake their claim on the basis of the reliefs granted by the Tribunal on 10.6.93 in OA-270/93. It has been further submitted that the Principal Bench in OA-1715/88, decided on 23.8.91, held that termination of such casual services are illegal and the respondents were directed to reinstate the casual employees accordingly. The main plank of attack by the applicants is on the basis of the decision of this Tribunal in OA-139/93 (Ram Lal Vs. U.O.I.) decided on 1.4.97. Vide orders in this O.A., based on the decisions of this Tribunal in O.A. Nos. 317 and 318 of 1992 decided on 4.2.92, the respondents were directed to consider

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regularisation of the applicants therein like the similarly placed applicants herein, in terms of the respondents Policy dated 8.2.88 as at Annexure A-4. All the applicants would urge that their cases are covered on all the fours by the decision of this Tribunal on 1.4.97 in OA-139/93. They are thus being forced to face hostile discrimination.

4. The applicants have questioned the "cut off" date on the basis that the directions issued of DOP&T as well as the provisions of statutory rules do not lay down any such condition of "cut off date", as has been laid down in para-3 of respondents O.M. dated 8.2.88. The said O.M. is in the shape of administrative instructions. The cut off date-1.4.85 mentioned in para-3 is illegal and bad in the eyes of law because it does not stand the test of having a nexus with the objects to be achieved. Any administrative order can only supplement the law already existing but cannot supplant the rules. The cut off date is, therefore a nullity in the eyes of law.

5. The applicants would also submit that the O.M. of 8.2.88 has been issued by Respondent No.2 whose headquarter is at Delhi and as such those orders could not have been made applicable to the applicants herein who are working in Sirsa Area in the State of Haryana.

6. The respondents are also at fault for placing erroneous details before the Selection Committee as regards the periods of applicants working experiences. Although the applicants have worked for adequate number of days entitling them for regularisation under the Scheme, yet the respondents have indicated lesser working periods before

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Selection Committee and this has prejudiced the genuine claims of applicants. In other words, if the correct position of working experiences of the applicants were placed before the Selection Board, there would have been no case of the applicants not being placed in the panel of approved candidates. The learned counsel for the applicants added that the respondents in this respect have contradicted their own submissions at several places in their counter reply dated 27.1.98. In an effort to draw strength to his argument, the learned counsel would mention that what exactly is the minimum qualifying period - 240 days or 180 days - is not very clear when one goes through the policy directions of the respondents vis-a-vis their reply statements submitted while opposing the applicants claims.

7. In the light of the above, the applicants have sought benefit of the orders in Annexure A-5, A-6, A-7 & A-8. In short, the reliefs claimed would relate to reinstatements and regularisation.

8. The respondents have denied the claims and submitted that the applicants are not eligible for employment as they have not served for the minimum of 180 days of service in each year, commencing from 1.4.85. The applicants were interviewed on 2.7.92 and if they were aggrieved, they could have approached this Tribunal within a period of one year thereafter.

9. As per respondents, the applicants cases have been decided strictly in terms of guidelines at para-X of the O.M. dated 8.2.88.

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However, the respondents have opposed the claim mainly on the basis of limitation since the applications have been filed in or after August 1971, i.e. after the expiry of more than 4 years of the period of limitation. In support of their contentions, the respondents have relied on the judgements of the Hon'ble Apex Court in the following cases:-

(JT 1997(8) SC 189 Para 6)

State of Karnataka Vs. S.M. Kotrayya

(1996 SCC (L&S) 1488 Para 7 to 9)

Bhoop Singh Vs. U.O.I. (1992(3) SCC 136 Para 7&8

State of M.P. Vs. S.S. Rathore (AIR 1990 SC 10)

Jagdish Lal Vs. State of Haryana (JT 1997(5)SC 387
Para 8.

10. Based on the rival contentions of the learned counsel for both the parties the issues fall for determination are:-

(a) Whether the applicant are entitled for reinstatement and regularisation in terms of rules and regulations on the subject? &

(b) Whether their cases are hit by law of limitation?

11. As regards regularisation, the law is now well settled that merely working on a post for a number of years on adhoc/casual basis does not vest a person with the right of getting regularised on a post which is meant to be

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filled up under the regular recruitment/statutory rules. Regularisation can only be made pursuant to a Scheme or an order against a regular vacancy and that too on the basis of rules laid down on the subject. A temporary or a casual employee has no right to continue beyond the term of appointment. An ad hoc service, whatsoever long, cannot warrant regularisation. Officiating/ad hoc/temporary service will not qualify an employee for regularisation or regular appointment. If any authority is required for these propositions, it is available in Dr. Arundhati Ajit Pargaonkar Vs. State of Maharashtra & Ors. (AIR 1995 SC 62) and State of Orissa & Ors. Vs. Pyari Mohan Misra (AIR 1995 SC 974). Based on the rules aforementioned, the applicants case for regularisation cannot be supported. This is because they were screened for regular appointment based on a Scheme but did not succeed based on principles laid down. If the applicants had any grievance, they should agitated issue in time. In an attempt to controvert the submissions of the respondents in respect of limitation, the learned counsel for the applicants has sought to draw strength the decisions of the Apex Court in the following cases:-

K.I. Shephard & Ors. etc.etc. Vs. U.O.I. & Ors.

(JT 1987(3) SC 600)

Amrit Lal Berry Vs. Collector of Central Excise,
New Delhi & Ors. (1975(4) SCC 714)

Inderpal Yadav Vs. U.O.I. (1985(2) SCC 648).

Madras Port Trust Vs. Hymashu International
(1979) 4 SCC 176).

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All these citations were intended to get over the hurdle of limitation.

12. I find that the grievances of the applicants arose actually out of the selection held on 2.7.92 and their cause of action arose on that very date. The applicants appear to have represented their cases on different dates particularly in August 1992. Thereafter, they kept silent over a period of almost 4 years and woke up admittedly only after this Tribunal decided the case of similarly placed persons in OA-139/93 by an order dated 1.4.97. All these 8 applications have been filed on or after 8.8.97. The learned counsel for the applicants argued strenuously to say that the genuine cases of the applicants can not be denied on the technical plea of limitation in the background of the judgements of the Hon'ble Apex Court in the cases cited by him. I find that the facts and circumstances of those cases vis-a-vis the present case are distinguishable. In the case of K.I. Shephar (supra), the Apex Court was confronted with the problem of amalgamation of the employees of erstwhile Hindustan Commercial Bank, Bank of Cochin Limited, Lakshmi Commercial Bank, Punjab National Bank, Canara Bank and State Bank of India respectively. Sub Sections 5 & 6 of Section 45 of the Banking Regulations Act 1949 contemplated inclusion of the names of the employees to be excluded in the draft scheme. The Reserve Bank of India thought that the inclusion can be done at the stage of finalising the Scheme. The Apex Court did not find any legal basis in the stand taken by the UOI/RBI.

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13. The learned counsel for the applicants have cited the decisions in the case of Amrit Lal Berry (supra) wherein their Lordships decided that when a citizen by being aggrieved by actions of respondents department has approached the court and obtained declaration of law in his favour, others in the like circumstances should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of that declaration without the need to take their grievances to court. However, the judgement also mentions that "it does not exclude justifiable discrimination". Similarly, the other two cases cited by the learned counsel for the applicants are distinguishable on facts and it is not necessary to burden this order with those details. It is not in doubt that the grievances of the applicants arose on 2.7.92. Even assuming that the representations were made in August 1992, the applicants should have approached this Tribunal within one year thereafter if they had not received any reply. It will be a clear violation of law if these OAs filed in August 1997 are entertained now on the basis of this Tribunal's order given on 1.4.93. In my view, the decision of the Apex Court in the case of State of Karnataka Vs. S.M. Kotrayya (1996 SCC (L&S) 1488) cited by the learned counsel for the respondents wholly covers the question.

14. Based on details available on records as well as oral arguments, it was evident that the applicants had filed these O.As after they came to know of the orders dt. 1.4.97 of this Tribunal in Ram Lal's case. The applicants should have approached this in time between 1992 & 1993 but they did not do so. Some of them had worked only in

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1965-66 or 1976-77 or in 1982-84 and remained silent thereafter till April 1997. But in Bhoop Singh Vs. U.O.I. JT 1992(3) SC 322, the Hon'ble Supreme Court has held that judgements and orders of Courts in other cases do not extend the period of limitation. To my mind, there have been inordinate delays in these present cases for making such grievances. Delay agitation of matters may upset many things settled for long. This alone is sufficient to decline interference under Art. 226 and to reject applications (See B.S. Bajwa & Anr. Vs. State of Punjab & Ors., 1998(3) SLJ SC 28). I agree with the learned counsel for the respondents that the representations made by the applicants in August 1992 did not give a fresh cause of action. The second case cited by learned counsel for respondents is equally relevant. That was the case of administrator of Union of India Territory Daman and Deav & Ors. Vs. R.K. Valand (1996(1) SCC (L&S) 205). Para 4 of the judgement is extracted hereunder:-

"The Tribunal was not justified in entertaining the stale claim of the respondent. He was promoted to the post of Junior Engineer in the year 1979 with effect from 28.09.1972. A cause of action, if any, had arisen to him at that time. He slept over the matter till 1985 when he made representation to the Administration. The said representation was rejected on 08.10.1986. Thereafter for four years the respondent did not approach any court and finally he filed the present application before the Tribunal in March 1990. In the facts and circumstances of the present case, the Tribunal was not justified in putting the clock back by more than 15 years. The Tribunal fell into patent error in brushing aside the question of limitation by observing that the respondent has been making representations from time to time and as such the limitation would not come in his way."

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15. I find an absolutely identical case in all respects was decided by this Tribunal on 7.8.98 in OA-2567/97. I am in full agreement with the decisions arrived at therein.

In view of the above decision of the Hon'ble Supreme Court as well as orders of this Tribunal in OA-2567/97, I am of the firm view that these original applications are barred by limitation and, therefore, deserves to be dismissed on that account, ^{and I do so accordingly.} No costs.

hmm.

Attested

KLSH-f
cc/cd
7/10/98

(S.P. Biswas)
Member (A)