

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

O.A. No. 2266/97

New Delhi this the ~~18~~ Day of May 1998

Hon'ble Shri R.K. Ahooja, Member (A)

(A)

1. Shri Girdhari Lal,  
S/o of Shri Gopal Dass,  
R/o B 200 Khanpur.
2. Raj Kumar II,  
Son of Shri K.S. Gularia,  
R/o C-115 Kidwai Nagar
3. Ajay Kumar,  
Son of Ranbir Singh,  
R/o Village Karala,  
Delhi-81.
4. Shri Krishna Gopal,  
Son of Shri Banta Ram  
R/o 111-A, Kamla Nagar,  
Delhi-110007.
5. Atul Gupta,  
S/o O.P. Gupta,  
R/o Laxmi Nagar.
6. Sunil Phedka,  
S/o Shri K.C. Phadke,  
R/o 19 D Block B, DDA Flats,  
East of Kailash
7. Jeevan Singh,  
S/o Hukam Singh,  
R/o C-487 Om Nagar,  
Meethapur.
8. Birender Singh,  
S/o Shri Prem Singh,  
R/o Sagarpur,  
Delhi-46.
9. Arun Kumar Singh,  
S/o Shri Adhikari Singh,  
R/o F 4/14 Krishna Nagar,  
Delhi-51.
10. Laxman Singh,  
S/o Padam Singh,  
R/o Sec. II/582 Sadiq Nagar
11. Om Parkash II  
S/o Ram chander,  
R/o Village Kharwar,  
Rohtak
12. Nihal Singh,  
S/o Keshri  
R/o Village Narhawali,  
Ballabgarh

2

13. Satya Parkash  
S/o Dali Chand  
R/o Vilklage Mahmoodpur,  
Bulandshar, UP

14. Smt. Bindra  
W/o Ram Chander,  
R/o Baba Kharak Singh Marg, Petitioners

(By Advocate: Dr. Surat Singh)

-Versus-

1. The Secretary,  
Department of Personnel & Training,  
North Block,  
New Delhi.

2. The Secretary,  
Ministry of External Affairs,  
South Block,  
New Delhi.

3. Joint Secretary & Chief Passport Officer,  
Regional Passport Office,  
Ministry of External Affairs,  
Patiala House,  
New Delhi.

Respondents

(By Advocate: Shri N.S. Mehta)

ORDER

The applicants who joined the Regional Passport Authority as Casual labourers and were given the temporary status as per the order of the respondents dated 7.7.1997 are aggrieved by the impugned order dated 4.8.1997 by which the temporary status conferred on the applicant is sought to be withdrawn.

2. It is an admitted position that the applicants on their initial engagement with the respondents had not been sponsored by the Employment Exchange. The respondents say that as per the Department of Personnel & Training, Scheme for grant of temporary status issued in 10.9 1993 Annexure R-1 providing for conferment of temporary status to casual labourers, the condition of engagement through

12

(b)

Employment Exchange was not specifically mentioned.

Later, DOP&T issued OM dated 12.7.1994, Annexure R-III, clarifying that engagement through Employment Exchange was a mandatory pre-condition for conferment of temporary status. The respondents say that as engagement through Employment Exchange as a pre-condition was not specifically mentioned in the OM dated 10.9.1993, they inadvertently issued as order on 15.3.1994 conferring temporary status on the applicants. After clarifications from the DOP&T became available, orders withdrawing temporary status were issued vide Annexure R-IV dated 24.11.1995. As this had been done without first issuing a show cause notice, the applicants herein approached the Tribunal in OA No. 543/96 and as per Tribunal's order dated 8.4.1997 the order withdrawing the temporary status was quashed giving liberty to respondents to proceed further in accordance with the provisions of the Scheme. The respondents have now issued the impugned notice dated 4.8.1997.

3. The issue thus for consideration is whether the benefits of the Scheme for grant of temporary status can be denied to those who have not been sponsored through the Employment Exchange. I have heard the counsel on both sides on this issue. The learned counsel for the applicant Shri Surat Singh relies on the three judges decision of the Hon'ble Supreme Court in Civil Appeal No. 11646-11724 of 96 delivered on 28.8.1996 Excise Superintendent Malkapatnam Vs. KBN Visweshwara Rao Annexure PA I and



the decision of this Tribunal in OA No. 2041/96 dated 14.3.1997 where, in a similar case, the relief sought for by the applicant herein was granted on the strength of the Hon'ble Supreme Court judgement in Excise Superintendent Malkapatnam (Supra). On the other hand, the learned counsel for the respondents Shri N.S. Mehta has cited the judgement of a Division Bench of the Hon'ble Supreme Court in SLP Appeal No. 3386/97 Passport Officer, Trivandrum & Ors. Vs. Venugopal C. & Ors. delivered on 27.1.1987. It is the contention of Shri Surat Singh that Hon'ble Supreme Court's judgement in Excise Superintendent Malkapatnam (Supra) being a judgement delivered by a Larger Bench of 3 judges has to be followed as against the judgement in Passport Officer Trivandrum (Supra) which was delivered by a Division Bench of 2 judges.

4. For examining this contention of Shri Surat Singh, it is necessary to see as to what were the facts and circumstances of the two afore mentioned judgements of the Hon'ble Supreme Court and the ratio decided down in each of them. A copy of the judgement in Excise Superintendent Malkapatnam is available at Annexure P-A1 annexure to the rejoinder filed by the applicant. The respondents therein had not been sponsored for selection to 723 posts sought to be filled up by the candidates sponsored only though the Employment Exchanges. As the claims of the respondents who had applied independently was not considered, they approached this Tribunal and sought directions for their appointment. Interim directions were given to consider their cases and to appoint, if selected. The

12

(9)

Tribunal held that the sponsoring of the candidates through the media of Employment Exchange was valid and not violative of Articles 14 and 16 of the Constitution but since many of the candidates came to be selected because of the interim orders, they were directed to be appointed. On the matter coming to the Hon'ble Supreme Court, it was held by the Bench of 3 Hon'ble Judges as follows:

4. "Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidate are unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate are deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning Departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate Department or undertaking or establishment, should call for the names by publication in the newspaper employment news-bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates.

5. The appeals are accordingly disposed of. No case is made out to disturb the directions issued by the Tribunal for appointment of the selected candidates. Therefore, the directions survive. "No costs."

(2)

(9)

5. On the other hand, in the case of Passport Officer Trivandrum & Ors. Vs. Venugopal C. & Ors. (Supra), the respondents were similarly placed as applicants herein. The Division Bench of the Hon'ble Supreme Court held as follows:

"Under the scheme the respondents were given a temporary status. Later on when it was realised that certain persons whose recruitment was not through the employment exchange had also been given temporary status, by an Office Memorandum dated 12.7.94 it was clarified that under the scheme only those employees who had been recruited through the employment exchange would be given a temporary status. Consequently the respondents who were given the temporary status though not recruited through the employment were de-recognised as temporary. We do not think that in doing so the appellant had acted in an arbitrary manner. If the department decides that only those employees who are recruited in normal manner i.e. through the employment exchange shall be given the temporary status, no fault can be found with the department. The decision cannot be said to be unreasonable or arbitrary. Therefore, we find it difficult to accept the line of reasoning taken by the Tribunal in holding that the decision was inconsistent with Article 11 of the Constitution..

In the result, we set aside the impugned order of the Tribunal and restore the order of the Government passed on the basis of the clarificatory order. The appeal will stand allowed accordingly with no order as to costs."

6. The reading of both the judgements of the Hon'ble Supreme Court makes it clear that the facts and circumstances of each cases were entirely different. In Excise Superintendent Malkapatnam's case (Supra), the issue was recruitment to the civil posts for which an advertisement had been issued and certain people had applied for consideration independently from the Employment Exchange. The Hon'ble Supreme Court

(2)

60

observed that apart from intimating the Employment Exchange, the concerned departments should call the names by publication in the newspapers and through announcement on radio, TV etc., and then consider the case of all the candidates who have applied. The ratio<sup>o</sup> incident thus was that everyone should have an equal opportunity for employment in public posts and it should not be confined only to those whose names are registered with the Employment Exchange. On the other hand, in the matter of Passport Officer Vs. Venugopal (Supra), the Apex Court was dealing with the grant of temporary status under a Scheme formulated for granting certain benefits to casual labourers and what was decided by the Hon'ble Supreme Court in that case was that if the respondents acted as per the Scheme then their action cannot be regarded as arbitrary.

7. It is thus clear that the issue before the Apex Court in the above mentioned two cases were entirely different. Decidly the case of the present applicants falls within the purview of Division Bench judgement in Passport Officer Trivandrum (Supra). The initial employment of the applicants in the present case was not in response to any general notification or announcement through the media whereby equal opportunity was available to everyone. The recruitment was not to a civil post but for discharging the duties of a casual and temporary nature. It is only which such persons continued in engagement for long periods that under the instructions of the Hon'ble Supreme Court and this Tribunal, Schemes came to be formulated for grant of certain benefits to them. The Hon'ble

62

(21)

Supreme Court has held as per the judgement of the Division Bench that action by the respondents within the ambit of such a scheme could not be considered arbitrary. The impugned notice issued to the applicants is also within the ambit of the Scheme as set out in Annexure R-3. It is therefore to be upheld.

9. It is true that a Division Bench of this Tribunal in OA No. 2041/96 decided on 14.3.1997 had in similar circumstances and relying on Excise Superintendent Malkapatnam (Supra) gave relief to similarly placed applicants. It is clear from the perusal of that order, copy at Annexure P-A-2, that the decision of the Hon'ble Supreme Court in Passport Officer Trivandrum & Ors had not been drawn to the notice of the Hon'ble Members of the Division Bench.

10. In the light of the above discussion and in accordance with the law laid down by the Hon'ble Supreme Court in Passport Officer Trivandrum (Supra), I dismiss the present OA. There shall be no order as to costs.

*R.K. Ahooja*  
(R.K. Ahooja)

Member (A)

\*Mittal\*