

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 2191/94
T.A. No.

199

DATE OF DECISION 8.10 97

Shri B.S.Chandalyia

Petitioner

Shri K.B.S.Rajan

Advocate for the Petitioner(s)

Versus

UOI through the Collector of
Central Excise and Ors.

Respondent

Shri R.R.Bharti

Advocate for the Respondent(s)

CORAM

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

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

1. To be referred to the Reporter or not? *yes*

2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA 2191/94

New Delhi this the 8th day of October, 1997.

Hon'ble Smt. Lakshmi Swaminathan, Member(J)
Hon'ble Shri S.P. Biswas, Member(A)

Shri B.S. Chendalyia,
Part-time Sweeper,
O/O Asstt. Collector of C.E.
MCD II, Hauz Khas, N/Delhi.

(By Advocate Shri K.B.S. Rajan)

..Applicant

Vs.

1. The Union of India,
through the Collector of Central Excise,
C.R. Building, New Delhi-2
2. The Assistant Collector of
Central Excise, MOD-II, Hauz Khas,
New Delhi.
3. The Secretary,
Ministry of Personnel, Public Grievances,
North Block, New Delhi.

(By Advocate Shri R.R. Bharti)

..Respondents

O R D E R (ORAL)

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

The applicant who is working as part-time Sweeper with Respondent 2 since May, 1987 has filed this application being aggrieved by the order dated 31.10.94. In this order, it has been stated that as the applicant had not been employed as a candidate sponsored by the Employment Exchange, his appointment is irregular and, therefore, his services should be dispensed with immediately.

2 The Tribunal by order dated 2.11.1994 had directed that the applicant shall be retained as part-time Sweeper if work is available which order has been continued till date. Learned counsel for the respondents

(9)

confirms that the applicant continues as part-time Sweeper with the respondents.

3. The main relief sought for by the applicant is that the impugned order dated 31.10.94 should be quashed and set aside on the ground that sponsorship through the Employment Exchange cannot be insisted upon by the respondent particularly when the applicant has put in more than 7 years of service as part-time casual labourer from May, 1987. After the interim order was granted on 2.11.94 the service now put in by the applicant would be 10 years as part-time Sweeper, out of which atleast 7 years service has been rendered prior to the order passed by the Tribunal. This would, therefore, show that the respondents have themselves admitted that they ^{have} work of this nature and that the applicant had been continued in that work prior to 2.11.1994.

4. In a recent judgment of the Supreme Court in **Excise Superintendent Malkapatnam, Krishna District Vs. K.B.N. Visweshwara Rao** (1996(6) Scale 676), it has been held 'that it should be mandatory for the requisitioning authority/establishment to intimate the Employment Exchange, and Employment Exchange should sponsor the names of the candidate 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 newspapers having wider circulation and also display on their office notice board or announce on radio, television and employment news-bulletins; and then consider the cases of all the candidates who have applied.'

In this judgment sponsorship through the Employment Exchange was not held to be the sole criteria for employment.

As mentioned above, the respondents have themselves employed the applicant for more than 7 years initially as part-time Sweeper and they cannot, therefore, raise this infirmity at this stage that his employment is irregular on the ground that he had not been sponsored by the Employment Exchange. Therefore, in the facts and circumstances of the case the reasons given in the impugned order dated 31.10.94 is untenable and is also contrary to the judgment of the Supreme Court in **Visweshwar Rao's case**(supra). The order dated 31.10.1994 is accordingly quashed and set aside.

5. Learned counsel for the applicant has also submitted that as the applicant has put in more than 10 years part-time service as Sweeper, a direction may be given to the respondents to consider him for regularisation by taking into account the part-time service and doubling the service to the required number of days as provided under the Ministry of Personnel, Public Grievance and Pensions (Department of Personnel and Training) O.M. dated 10.9.93. He also relies on the judgment of **Smt. Sakkubai and Anr. V. The Secretary, Ministry of Communications and Ors** (CAT Full Bench 1991-93 (OA Nos. 912 and 961/1992) decided on 7.6.1993. He submits that even if the Scheme of 10.9.93 does not have specific provision for part-time employees, the principle laid down by the Tribunal in the judgment pertaining to the P&T employees should be made applicable to the present case also considering the length of part-time service put in by the applicant. He has also submitted that the Establishment Order 318 of 1993 passed by the

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respondents, which is placed at Ann.1 to the rejoinder also shows that many casual workers who have rendered only one year of continuous service have been granted temporary status on the terms and conditions mentioned therein. In this list, Daily Wagers working in Delhi Collectorate whose names appear at Sl.Nos. 47-50 and 77- 81 as part-time casual labourers have been regularised and against their names 'PT' is indicated.

6. Learned counsel for the respondents has, however, submitted that in another case (**Vikram Singh Vs. UOI & Ors**) OA 1134/95-CAT Allahabad Bench (SLJ 1997(3)86), the Division Bench of the Tribunal has held that part-time workers are not casual labourers and are not eligible for regularisation under the 'Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of the Department of Telecommunication, 1989'. It is noted that this judgment of the Allahabad Bench has been given on 26.2.1997 but has unfortunately not taken into account the decisions of the Full Bench of the Tribunal in **Sakkubai's case** (Supra) which was decided on 7.6.1993. In this view of the matter, the judgment of the Allahabad Bench can be considered only as per-curiam. Shri Bharti, learned counsel has also submitted that the Department of Personnel and Training vide their O.M. dated 12.7.94 have clarified that temporary status cannot be granted to part-time employees. He has submitted that as per the Scheme, part-time employees cannot be regularised straight^taway but they have to be made casual labourers in the first instance and thereafter if they fulfil the conditions of the Scheme dated 10.9.93 they will be regularised in due course.

B.

7. Considering the reasons given in the Full Bench judgment referred to above, and the provisions of the P&T Scheme which deals with regularisation of part-time workers in that Department, we see no good reason why a similar approach should not be adopted by the respondents. In this view of the matter, the clarification No.2 given in OM dated 12.7.94 is set aside. It may also be relevant to note that at Sl.No.1 of the same O.M., the Department had taken a view that it is mandatory to engage casual employees only through the Employment Exchange and the engagement of casual employees otherwise is irregular. Probably the impugned order dated 31.10.94 is based on these clarifications and applicants' services were dispensed with immediately as he was not engaged through the Employment Exchange. That stand of the respondents has been nullified by the Supreme Court in the judgment of **Visweshwar's case**(Supra). It has also been noted that the Division Bench of the Allahabad Bench of this Tribunal in **Vikram Singh's case**(Supra) has not taken into account the Full Bench Judgement of the Tribunal in **Sakkubai's case**(supra) which has held as follows:-

If we look at the principle from the point of view of the equity and fairness, we see no reason to persuade us to disagree with the view taken by the Ernakulam Bench. It is difficult to believe that no regular employment has taken place in the Department during the last 18 years when the applicants have been demanding absorption on regular basis. These unfortunate employees have rendered continuous service as part-time casual labourers for a long period of about eighteen years without any improvement in their service conditions. The object of the Scheme is to confer temporary status upon casual labourers who have been rendering service for long periods without any security of

Y.B.

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tenure. It is difficult to say that part-time casual labourers who have also served for long periods without security of tenure did not merit similar just and fair treatment. Besides, this is only a fading category. It should not be difficult to accommodate by giving temporary status to the part-time casual labourers. Atleast at the fag end of their service the Department should treat them kindly. The view taken by the Ernakulam Bench may at best be characterised as liberal. But it is eminently just and equitable.' (Emphasis added).

8. The ratio of the judgment in **Sakkubai's case** (supra) is squarely applicable to the present facts and circumstances pertaining to the applicant. The Tribunal has held that the benefit of 'Casual Labourer (Grant of Temporary Status and Regularisation) Scheme' in so far as it pertains to the grant of temporary status and further absorption in Group-D posts is equally applicable to part-time casual labourers like the applicants before them. We are in respectful agreement with the reasoning given in that case and the applicant is entitled to the same benefits as were given to those workers who worked with the P&T Department.

9. In the result, this application succeeds. The impugned order dated 31.10.1994 is quashed and set aside. The interim order dated 2.11.1994 is made absolute. The respondents are directed ;(i) to continue to employ the applicant as part-time Sweeper so long as the work is available;

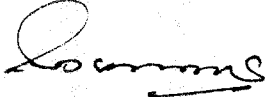
(ii) to consider regularisation of the applicant as casual labourer, taking into account the part-time service in the light of the Full Bench Judgment in **Sakkubai's case** (supra).

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(iii) The above directions shall be complied with by the respondents within a period of three months from the date of receipt of a copy of this order.

No order as to costs.



(S.P. Biswas)
Member(A)



(Smt. Lakshmi Swaminathan)
Member(J)