



CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A.N0.060/00507/2017 Order pronounced on:03.03.2021
 (Order reserved on: 09.02.2021)

HON'BLE MS. AJANTA DAYALAN, MEMBER (A)

Jai Chand S/o Sh. Sita Ram, aged about 41 years, earlier employed as Safai Wala-cum-Frash in the office of Commissioner of Central Excise and Custom, Central Excise Commissionerate, SCO no. 407-408, Sector-8, Panchkula now residing at H.No. 1428, Mori Gate, Manimajra (U.T), Chandigarh, Group 'D'.

....

Applicant

(BY ADVOCATE: MR. MANU K. BHANDARI)

VERSUS

1. Union of India through its Secretary, Govt. of India, Ministry of Finance, Department of Revenue, Customs and Central Excise Wing, North Block, New Delhi.
2. The Chief Commissioner of Central Excise, Delhi Zone, Central Excise Commissionerate, C.R. Building, I.P. Estate, New Delhi-110002.
3. The Central Excise Commissionerate through Commissioner/Additional Commissioner of Central Excise (P&V), Delhi-1, C.R. Building, I.P. Estate, New Delhi-110002.
4. The Central Excise Commissionerate, through its Commissioner/Additional Commissioner, SCO No. 407-408, Sector 8, Panchkula.
5. The Superintendent, Central Excise Commissionerate, SCO No. 407-408, Sector 8, Panchkula.

Respondents

(BY ADVOCATE: MR. SANJAY GOYAL)



ORDER
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)

1. The present Original Application has been filed by the applicant Jai Chand seeking quashing of the order dated 21.4.2014 (Annexure A-18) and 28.3.2017 (Annexure A-23), whereby his request for grant of temporary status has been rejected. The applicant has also sought setting aside of order dated 1.12.2006 (Annexure A-15) vide which O.A.No.569-HR-2004 filed by him for grant of regularization was dismissed.
2. The applicant states that he was engaged as a Safaiwala-cum-Frash on 3.3.1992. Vide order dated 22.9.1993 he was allowed to continue till further orders. The nature of appointment of the applicant was changed to part-time worker vide order dated 17.10.1995 (Annexure A-1). The working hours of the applicant were enhanced from 2 hours per day to 4 hours per day in December 2001. He continued working as such till December 2002. He was engaged as daily wage worker w.e.f. 1.1.2003. The Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993 framed by the Government of India came into force w.e.f. 1.9.1993. This Scheme provided for grant of temporary status and regularization to the casual workers.
3. The applicant requested the respondents to grant him temporary status/regularization as per Scheme of 1993. However, his claim was declined on the ground that he was only a part-time worker and that he had not completed one



year of service as on 1.10.1993, as required under the Scheme of 1993 for grant of temporary status.

4. The applicant then approached this Tribunal for grant of temporary status and regularization of his service as Safaiwala-cum-Frash vide **O.A.No. 569-HR-2004** which was dismissed by a Division Bench of this Tribunal vide order dated 1.12.2006. The Bench found that even though the applicant was engaged in March 1993, but only on part time basis for 2 hours per day. Part-time workers were not covered for grant of temporary status/regularization under the Scheme of 1993. For this view the Bench relied upon decision of Hon'ble Apex Court in the case of **SECRETARY, MINISTRY OF COMMUNICATIONS AND OTHERS VS. SAKUBAI & ANOTHER**, C.A.No.360-361 of 1994 decided on 2.4.1997. Reliance was also placed by the Bench upon decision of Hon'ble Apex Court in the case of **UNION OF INDIA VS. MOHAN PAL**, JT 2002 (Suppl-1) SC 312 and **UNION OF INDIA VS. GAGAN KUMAR**, 2005 (6) SLR 417, to record that temporary status could be given to only those casual labourers who were in employment as on date of commencement of the Scheme and had completed service of one year by that date. The Scheme was not an ongoing scheme. Therefore, the applicant was held not entitled to the benefit of the Scheme for either grant of temporary status or for regularization. He was never recruited to a civil post in accordance with the provisions of Rules. His continuation with the respondents on odd jobs for more than 10 years does not and cannot confer any right to claim regular appointment which could be given only as per relevant Rules. The reliance



placed by the applicant on the decision of Hon'ble Apex Court in the case of **SECRETARY, STATE OF KARNATAKA VS. UMADEVI**, 2006 (1) SC SLJ 480 for allowing him to continue till the post is filled by a regular employee was also rejected. It was held that a daily wager not recruited in accordance with the provisions of Recruitment Rules has no right to the post. Rights of a daily wager come to an end every evening. However, the respondents were given liberty to take a decision to continue the applicant if work was available and his work and conduct was found to be satisfactory.

5. The applicant then approached the Hon'ble High Court of Punjab and Haryana by way of **CWP No. 5641-CAT-2007** against the decision of this Tribunal. The Writ Petition was dismissed as not pressed with liberty to approach the respondents for employment in the same capacity if work was available as observed by the Tribunal in order dated 1.12.2006. Thus the decision dated 1.12.2006 of this Tribunal became final.

6. The applicant thereafter approached the respondent department vide representation dated 28.3.2014 (Annexure A-17) for his engagement in the same capacity, as the work was available. This representation was rejected vide order dated 21.4.2014 (Annexure A-18) reiterating that the applicant could not be given benefit of Scheme of 1993. Moreover, in the light of decision taken vide letter dated 30.3.1992, no further recruitment on daily wage basis was to be resorted to. Then the applicant issued a legal notice dated 16.8.2016 (Annexure A-22) for re-consideration of decision. This was rejected vide



order dated 28.3.2017 (Annexure A-23) on the ground that earlier rejection order dated 22.4.2014 (Annexure A-18) is self explanatory.

7. The instant Original Application was listed for motion hearing on 17.5.2017 when the Bench raised a query as to whether this Court has power to set aside the order passed by a co-ordinate Bench of this Tribunal. On 4.7.2017, the learned counsel for the applicant placed reliance of a decision in the case of **S.P. CHANGALVARAYA NAIDU V. JAGANNATH**, 1994 (1) SCC 1 to plead that if a judgement is obtained by playing fraud, then it can be challenged in any court even in collateral proceedings. It was pleaded that claim of the applicant was rejected in earlier O.A. on the ground that he was a part time employee. But, as per office order dated 22.9.1992 (Annexure A-19), the applicant was allowed to work as Casual Worker on daily wage basis w.e.f. 3.3.1992 till further orders. Further, as per office order dated 17.10.1995 (Annexure A-20) the applicant was ordered to work 4 hours per day at range office as part time daily wager w.e.f. 17.10.1995 till further orders. Thus, it was prayed that the applicant is entitled to temporary status/regularization as per Scheme of 1993.

8. The applicant had filed M.A.No.060/723/2017 which was allowed on 9.3.2018. The delay in filing the O.A. was condoned.

9. When the case came up for hearing on 14.3.2019, the Bench noticed that the applicant has filed second O.A. on the same claim on the basis of two communications dated



22.9.1992 (Annexure A-19) and 17.10.1995 (Annexure A-20) whereby the applicant was ordered to be engaged as Safaiwala-cum-Frash - casual Daily Wager at Range Office from 3.3.1992 till further order. The learned counsel for the applicant made a statement that these documents were not available at the time when claim of the applicant was decided against him in earlier round of litigation. The respondents sought time to verify the veracity of these two documents. The respondents were directed on 30.9.2019 to file affidavit clarifying whether the documents Annexures A-19 and A-20 were part of the record. The affidavit was filed through M.A.No.060/84/2020, which was allowed on 22.1.2021.

10. The respondents have contested the claim of the applicant. They have stated that reliance placed by the applicant on Annexure A-19 and A-20 is misconceived as neither these documents nor the file numbers mentioned in these documents are available in the record of the respondents. As per their record, the applicant had worked as part time daily wager for 2 hours per day from March 1993 to November 2001; 4 hours per day from December 2001 to December 2002; 8 hours per day from January 2003 to 20.2.2005 and 4 hours per day from 21.2.2005 to 1.12.2006. Thus, he was not entitled for the relief sought.

11. The applicant filed a rejoinder. He has annexed letter dated 19.7.2004 (Annexure A-26) as per which the applicant was shown to be working as full time employee w.e.f. March 1992. However, the respondents filed an additional affidavit dated 5.12.2018 to plead that



letter dated 19.7.2004 (Annexure A-26) produced by the applicant is at variance with the letter available with the department. According to them the correct picture is as under :-

Sr. No.	Period	Working hours	Name of office
1	March 1993 to November 2001	@ 2 hours per day	Central Excise Range-1 & II, Panchkula under Ambala Division
2	December 2001 to December 2002	@ 4 hours per day	Central Excise Range-1 & II, Panchkula under Ambala Division
3.	1 st January, 2003 & onwards i.e. till date	Full time per day	Central Excise Commissionerate, Panchkula.

12. The applicant filed a counter affidavit dated 12.3.2019. He submits that as per Annexure A-19 and A-20, the duration of the duty of the applicant was reduced from 8 hours to 4 hours. He submits that it can be presumed that the applicant was working as full time daily wager from 3.3.1992 to 11.10.1995 and as such he was entitled to benefit of Scheme of 1993. He submits that tabulation given by the respondents is contrary to Annexure A-19 and A-20. The applicant has also placed on record an affidavit of S.K. Sharma, retired as Superintendent, Custom & Central Excise, Central Excise Commissionerate who has stated that he was holding charge of Central Excise Range, Panchkua, as Range Officer in 1994. In 1994, the applicant was working on full time basis as Sweeper-cum-Frash. He had issued order dated 17.10.1995 reducing working hours of the applicant to 4 hours per day w.e.f. 17.10.1995 (Annexure A-20).



13. The respondents have filed a reply stating that File No.C.No.CE-20/ADMN/MISC/PKL-I/92 from which order dated 17.10.1995 is purported to have been issued is not available in their record. Thus, it is difficult to comment as to whether order is genuine or not. However, they submit that order does not show that working hours of the applicant were reduced. He was only allowed to work for 4 hours per day.

14. The respondents have filed an affidavit dated 10.1.2020 showing that language mentioned in office order dated 22.9.1992 (Annexure A-19) seems to be not in order as it shows that Superintendent, Central Excise Range, Panchkula, who is subordinate of Assistant Commissioner is issuing directions to his superior i.e. Assistant Commissioner, CED, Ambala City for allowing the applicant to work as casual worker at Range Office w.e.f. 3.3.1992 till further orders. This casts a doubt on authenticity of the document.

15. The respondents have finally concluded that in view of all above, the O.A. has no merit and the applicant does not deserve the relief sought in the O.A.

16. I have heard the learned counsel of opposing sides and have carefully gone through the pleadings on record. I have also given my thoughtful consideration to the entire matter.

17. I observe that multiple issues are involved in the case. These include limitation, principle of res-judicata, disputed documents, the status of the applicant as on the date of introduction of the scheme for regularization and



entitlement of the applicant or otherwise to the relief sought. These issues will be discussed in the following paragraphs.

18. Regarding limitation, there is obviously delay in filing of the O.A. Firstly because the applicant is seeking relief under the Scheme of 1993 which was not an ongoing scheme but was a one time scheme. From this period, there is obviously a substantial delay. However, the applicant has been before this Tribunal on the same issue earlier and that O.A. was decided vide order dated 1.12.2006 (Annexure A-15). Even with regard to this date, there is substantial delay. Even the High Court order in the CWP is dated 20.3.2014 (Annexure A-16) and the present O.A. was filed only on 15.05.2017. Hence, even from this date, there is delay. However, as the Tribunal has already condoned the delay vide order dated 9.3.2018, I am not going into the question of limitation now.

19. Regarding res-judicata, it is seen from the material on record that for the same very relief as claimed in this O.A. regarding regularization of service, the applicant had earlier approached this Tribunal in O.A.No.569-HR-2004 titled **Jai Chand Vs. Union of India & Others.** This was dismissed on 1.12.2006 (Annexure A-15) on the ground that a daily wager not recruited as per Rules has no right to hold the post. The rights of a daily wager come to an end every evening. Then, the Tribunal had given liberty to the department to continue the applicant if work was available and his work and conduct was found to be satisfactory. This order was challenged in **CWP No. 5641-CAT-2007.** However, the applicant himself did not press the petition. He was granted liberty to approach



the department for engagement in the same capacity if work was available as observed by the Tribunal in its order dated 1.12.2006. In short, the decision dated 1.12.2006 of this Tribunal rejecting the claim of the applicant for regularization as Casual Labour and upheld in CWP, attained finality. So, the very same claim cannot be raised by him once again before this Court, being barred by the principle of res-judicata.

20. Further, I find that peculiar to this case, three documents are disputed. These are Annexures A-19 to A-21. These annexures were enclosed by the applicant with the O.A. in the form of transcript. However, the same documents have later been attached as photocopies by way of Annexures A-24 to A-26. While the applicant is claiming these to be part of the office record, the respondents have stated that some of these documents are not part of the office record. The applicant is even alleging concealment of these documents on the part of the respondents. The respondents are debating the genuineness of the same but they are not able to make a categorical statement as the relevant record is not available at this point of time. Annexure A-26 contains details of the service of the applicant which is at variance with the available record. These documents are vital as they may help to determine the status of the applicant as on the date of coming into force of the Scheme of 1993 i.e. 1.9.1993. Despite multiple exchanges through M.As in the Court and despite repeated orders of this Court to determine the authenticity of the documents, no conclusion has been reached in this regard as yet and the applicant and the respondents continue to dispute over them.



21. In this regard, I observe that though the issue of authenticity of the documents is not getting settled through official records available with the respondents, there are many indicators to indicate that the contents of these documents are either debatable or at least definitely do not substantiate the pleadings of the applicant. These are as follows :-

(A) Office Order dated 22.9.1992 (Annexure A-24).

This document reads as follows:-

"OFFICE OF THE SUPERINTENDENT CENTRAL EXCISE, RANGE-I, PANCHKULA.

CE-2B/ADMN/Misc/PKL-I/1992/370 Dated: 22/9/1992

OFFICE ORDER

I am directed to the Asstt. Commissioner Central Excise Division, Ambala City to allow Shri Jai Chand, Safaiwala cum Frash as Casual worker at Range Office Daily Wager w.e.f. from 3/3/1992 till further orders.

Sd/-
SUPERINTENDENT
RANGE-I PANCHKULA,

Copy forwarded to

- (1) Asstt. Commissioner Central Excise Division Ambala.
- (2) Guard File.

Sd/-
SUPERINTENDENT
RANGE-I PANCHKULA."

- (a) It is obvious that the language of the order is not at all standard language and especially the portion "I am directed to the Assistant Commissioner".
- (b) Besides, this order is shown as issued in September 1992. But the applicant has been allowed to work as casual worker w.e.f. 3.3.1992. Thus, the order was issued on 22.9.1992 more than 7 months after the effect is to be given to the order. This is against the normal practice. Even in this O.A., it is seen that other orders in respect of daily wagers etc. are issued on the same date or



immediately thereafter and definitely not at this distance of time.

- (c) The above indicators throw genuine and clear cut doubt on the authenticity of the document.

(B) Office Order dated 17.10.1995 (Annexure A-25)

This order reads as under:-

"OFFICE OF THE SUPERINTNDENT CENTRAL EXCISE RANGES,
PANCHKULA.

CE 20/ADMN/MISC/PKL-I/92/1236

Dated: 17.10.95

OFFICE ORDER

In supersession of order No.CE-20/admn/misc/pkl-I/92/370 dated 22/09/92 Shri Jai Chand daily wager casual worker is hereby ordered to work 04 hours per day at range office as part time daily wager w.e.f. 17/10/1995 till further orders.

This issue with the approval of the Asstt commissioner.

Yours faithfully,
Sd/-
(S.K.SHARMA)
Superintendent, Central Excise, Range-I,
PANCHKULA.

Copy forwarded to:-

- (1) Asstt. Commissioner Ambala.
- (2) Jai Chand daily wager.
- (3) Guard File".

- (a) The authenticity of this document is also disputed. Even if I accept the contents of this order, it no where states that the working hours have been reduced as made out by the applicant. It only states that the applicant was allowed to work 4 hours per day as a part time daily wager w.e.f. 17.10.1995.

- (b) Thus, the document does not substantiate the claim of the applicant that earlier to this he was working for 8 hours per day.



Considering that normally the working hours are not reduced, I would say that possibility of his working earlier for less than 4 hours is far greater than this order resulting into reduction of hours.

(c) The above conclusion is further proved by the fact that the applicant never thereafter even in his own pleadings objected to reduction of working hours. This was inspite of the fact that he does claims that he was made to do odd jobs in addition to his other duties.

(C) Office Order dated 19.7.2004 (Annexure A-26).

This order reads as under:-

"OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE, SCO-407-408, SEC-8, PANCHKULA (HARYANA)

C.No.I-19(I)Admn./PKL/2003/8641 Dated: 19/7/04

To,

The Additional Commissioner (CCU),
O/O the Chief Commissioner (D7),
Central Excise Commissionerate,
C.R. Building, I.P. Estate,
New Delhi.

Sir,

Sub:- Counting of service rendered by Casual labourers prior to grant of temporary status pensioner benefits-C/R.

Please refer to your office letter CCU(DZ) Admn./49/2004 dated 19.7.2004 on the above subject. The requisite report on the subject is appended below:-

Para I to VII:-

This report may be deemed as nil since no casual employee has been regularized in this Commissionerate.

Para VIII No. Of casual employee yet to be regularized:



There is only one casual employee namely Sh. Jai Chand, who has been working as daily wager in this Commissionerate as per detail annexed.

Yours faithfully,

Sd/-

ADDITIONAL COMMISSIONER (P&V)

C.Ex. Panchkula."

Encl: As above (one)

Detailed particulars in r/o of Jai Chand Daily wages/Brash S/o Sh. Sita Ram

S. No.	Period	Working hours	Name of office
1	Mar-92	Full time Per Day	Central Excise Range-1 & 2, Panchkula (Ambala Division)
2	Oct-95	4 Hours Per Day	Central Excise Range-1 & 2, Panchkula (Ambala Division)
3	01-01-2003 to till date	Full time Per Day	Central Excise Commissionerate Panchkula

- (a) The covering letter in this communication is the same as per the stand of the respondents. It is only in the annexure that there is variation in dates. However, I observe that the annexure, whether submitted by the applicant or by the respondents, does not have any signature of any authority or even a lower level functionary of the Commissionerate. Thus, authenticity of the annexure, which could determine the status of the applicant is highly debatable and no conclusion can be drawn there from.
- (b) I see from the pleadings of the case both by the applicant and by the respondents (which I have gone through carefully) that the respondents have been very consistent in their stand that the applicant was engaged from March 1993 and not March 1992.
- (c) Surprisingly, the applicant himself has never earlier mentioned that he was engaged in 1992. Even in his first O.A, he has categorically stated that he was engaged in



March 1993 (Annexure A-14). In his own representation dated 28.3.2014 (Annexure A-17) to the Commissioner/Additional Commissioner, the applicant has stated that he was "initially appointed as Part-time Casual Labour in the month of 03/1993 on 2 hourly basis".

- (d) In fact, as mentioned above, I have carefully gone through the whole pleadings and nowhere till 20.5.2016 has the applicant ever stated that he was engaged in 1992.

22. According to the applicant, it was in 2017 or so when he visited his hometown and discovered this new order which establishes that he was engaged in 1992 and not in 1993. It is quite unlikely that a person who is so careful about his working hours all through would forget even his date of initial engagement and would remember it only after over 20 years. Considering that the applicant is quite vigilant about keeping record of appointment orders etc., it is quite improbable that the order regarding his first engagement in the respondent office would be kept in his home town especially as this was not a regular appointment but only an engagement as a part time casual labour. Hence, it is much more likely that after rejection of his claim in the O.A. by this Tribunal, the applicant thought of these documents to substantiate the plea of engagement in 1992 thereby entitling him to temporary status under the Scheme of 1993. To this purpose, some of these documents could be an invention by him and not a discovery. Through this invention, the applicant perhaps thought of a way out for over-coming the hurdle of earlier dismissal of his



O.A. by this Tribunal and application of principle of res-judicata.

23. Considering the evidence against the applicant and the consistent stand taken by the respondents that the applicant was engaged only in 1993 and not in 1992 and as such he had not completed one year of service as on the date of introduction of the Scheme and was not entitled to benefit under the Scheme of 1993. I am convinced that this would be the position. Else, there would be at least some record somewhere in the Department to prove the earlier service of the applicant.

24. The above discussion also takes care of the variation in the details of service put in by the applicant with the respondent department. The crucial dispute is with regard to service from March 1992 to March 1993. As discussed in above paragraphs and total absence of this period in the official record of the department as well as applicant's own pleadings in his earlier O.A. on the same issue before this Tribunal and even in his own representation as late as in 2014 (Annexure A-17) before the Commissioner, I am of the clear opinion that the applicant was engaged only in March 1993 and not in March 1992 as is now very belatedly being claimed by him.

25. Once the issue of initial engagement of the applicant in March 1993 is settled, it is clear that the applicant had not completed one year of service as on 1.9.1993 when the Scheme of 1993 came into operation. Besides, he was a part time casual worker working for only 2 hours as per all



indicators of the case and as also claimed by the respondents. As such, he was not covered under the Scheme of 1993.

26. It is further observed that the applicant submitted a representation dated 28.3.2014 (Annexure A-17) for his engagement as daily wager. It was rejected vide order dated 22.4.2014 (Annexure A-18), in the light of policy decision dated 30.3.1992 that no further recruitment on daily wage basis was to be resorted to. A reference was also made in the order that the applicant could not be given benefit of Scheme of 1993. In response to the legal notice, reply was given on 28.3.2017 (Annexure A-23) reiterating the earlier rejection order dated 22.4.2014. Thus, if the applicant had any grievance qua rejection of his request for re-engagement on daily wage basis, he could have approached this Tribunal. But in the guise of filing a case on that aspect, he cannot be allowed to challenge rejection of his claim for regularization which stands judicially settled by this Tribunal in earlier round of litigation and Hon'ble High Court where the applicant himself did not press the Writ Petition. A claim which stands settled cannot be re-opened in terms of principle of res-judicata as discussed earlier as well.

27. The learned counsel for the applicant vehemently argued that order delivered by this Tribunal on 1.12.2006 deserves to be quashed as it was obtained by fraud in view of two documents produced by the applicant which show him to have worked full time for quite some time. However, in view of the specific discussion on these documents in aforesaid paragraphs, I have no doubt at all in my mind that these two documents do not support the case of the applicant. First of



all, their authenticity is under cloud and secondly even if it is assumed, for the sake of argument only, that the same are genuine, a fresh O.A is not maintainable and that too for quashing of order passed by this Tribunal. Thus, the relief sought by the applicant cannot be allowed.

28. The claim of the applicant for re-engagement has been rejected on the basis of a policy decision taken by respondents not to engage any daily wagers. This Tribunal does not find any infirmity in the decision taken by the department which is to apply across the board for all and no exception can be made for the applicant.

29. In view of all the above, I find that the applicant does not deserve the relief sought for by him in the O.A. The O.A. is, therefore, dismissed.

30. There shall be no order as to costs.

**(AJANTA DAYALAN)
MEMBER (A)**

Place: Chandigarh
Dated: 03.03.2021

HC*