

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/01506/2016

Dated the 14th day of August Two Thousand and Twenty

CORAM: HON'BLE MR. T. JACOB, Member (A)

1. B.Hari Kumar,
2. L.Gopalakrishnan,
3. M.Anandan,
4. C.Dhasarathan,
5. V.Masilamani,
6. B.Suresh Kumar,
7. S.Mahendran.

....Applicants

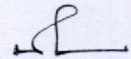
By Advocate M/s. R. Prabhakaran

Vs

1. The Commandant, Officers Training Academy,
St. Thomas Mount,
Chennai-600016.
2. Union of India,
Ministry of Defence, Rep. by
The Secretary,
New Delhi 110001.

....Respondents

By Advocate Mr. K. Rajendran



ORDER
(Pronounced by Hon'ble Mr. T. Jacob, Member(A))

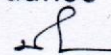
The applicant has filed this OA seeking the following relief

:

"To issue directions to the respondents, to regularise the service of the applicants with effect from the date of their initial ad-hoc appointment with consequential service benefits such as seniority, retirement and pensionary benefits to the applicants and direct the respondents to pay the salary for the applicants for the extra 8 hours of work extracted from the applicants per week with arrears and pass such further or other order or orders as the Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

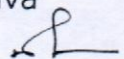
2. The facts of the case as stated by the applicants are as follows:

The applicants herein were originally appointed on adhoc basis on various dates at par with regular employees except the permanent status and they were subsequently appointed and absorbed in regular vacancies vide appointment Order No. 4128/Est dated 23.01.2001 etc., and kept them on probation for further periods of two years. After the period of probation, the applicants were not regularised from their earlier adhoc



appointment and aggrieved by the act of the respondents, they filed the present application for regularising their service from their initial date of appointment on the following grounds:-

- i. The respondents failure to regularize the service of the applicants from their earlier appointment of adhoc employment without just cause is not prudent and is unfair labour practice on the part of the respondents and amounts to violation of the tenor and spirit of Article 14, 16 & 21 of the Constitution of India.
- ii. The respondents failed to consider the various orders and notification issued by the Department of Personnel and Training, Government of India, vide No. 49014/4/2007-Esst.(c) dated 09.05.2008, relating to the regularization of the service of the temporary employees and also failed to follow the precedents laid down by this Hon'ble Court in various cases with respect to regularization of adhoc employees. Being a model employer, the respondents ought to have provided the same without making any room for any further litigation by wasting the valuable time of the Hon'ble Tribunal.
- iii. The Hon'ble Supreme Court in State of Jharkhand and others V. Jitendra Kumar Srivastava



and another AIR 2013 SC 3383, held that "the right to receive pension, gratuity or leave encashment can be treated as right to property in terms of Article 300-A of the Constitution of India. If a person is eligible to get pensionary benefit on retirement, if denied by giving narrow interpretation of rules, it will definitely be in violation of Article 300-A of the Constitution of India.

iv. In Union of India and another Vs. K. Puniyakoti and 16 others, the Hon'ble High Court of Madras had held that

"....thus it is clear that persons appointed as contingent staff either on temporary basis or on daily wage basis, who served not as a part timer and received salary every month, are entitled to count 50% of their service for pension on their regularization/absorption in regular establishment....."

v. It is settled law that the adhoc service of an employee is to be counted for the purpose of seniority.

3. Learned counsel for applicant relies upon the following judgments:-

i. Order dt. 14.02.2017 of the CAT-Madras



Bench in OA 272/2014 in the case of N.Lakshmanan Moorthy Vs. Union of India and ors.

ii. Judgment dt. 15.10.2004 of the Hon'ble Delhi High Court in the case of Union of India Vs. B. L. Sharma and ors. [2005 (79) DRJ 722]

iii. Order dt. 25.10.2010 of the CAT-Chandigarh Bench in OA 729-CH-2009 in the case of Sunita Rani Jain Vs. Union of India and ors.

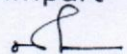
iv. Judgment dt. 22.08.2000 of the Hon'ble Supreme Court in the case of Rudra Kumar Sain & Ors. Vs. Union of India & Ors.

v. Judgment dt. 02.05.1990 of the Hon'ble Supreme Court in the case of Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra and Ors.

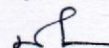
vi. Judgment dt. 01.08.2019 in the case of Writ Appeal No. 17904 of 2018 in the case of Dr. Anupama Mehrotra Vs. The Hon'ble Chancellor Mahatma Jyotiba Phule Rohilkhand University and 9 Ors.

vii. Judgment dated 10.01.2018 of the Madurai Bench of the Hon'ble Madras High Court in WP (MD) Nos. 7986 and 7987 of 2010 in the case of P. Deivendran and Anr. Vs. The Chairman, Tamil Nadu Electricity Board, Chennai and Ors.

4. The respondents have filed detailed reply. It is submitted that Officers Training Academy, Chennai is authorised to impart



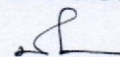
training for 500 Gentlemen Cadets at any one time with two courses running concurrently, each course commencing from April and October onwards in a year. In accordance with the Peace Establishment Table of the Academy, categories of staff are authorized for smooth functioning of the Academy. The Government had imposed a strict ban on employment since Jan 1984 in any vacancies, therefore, appointment could not be made on regular basis unless and until release orders were received from the Government. As and when the strength of Cadets had increased and the strength of the permanent staff was not sufficient, this Academy had to resort to adhoc employment of erstwhile Group D employees for short durations of each course on temporary basis, being an inescapable requirement. The selection of the adhoc employees was done as per laid down rules. The contention of the applicants that they were appointed on adhoc basis on various dates against the regular vacancies and they have served continuously with artificial breaks for one or two weeks is incorrect. The applicants were appointed on adhoc basis and not as permanent employees. A copy of the appointment order in respect of adhoc employees is enclosed (Annexure R1). The



terms and conditions are enumerated below:

- i. Appointment is purely on temporary basis for the period mentioned and no right to claim regular appointment.
- ii. Appointment is from the date of assumption.
- iii. Appointment is liable to be terminated at the discretion of appointing authority at any time with a notice. The period of notice shall be 24 hours without assigning any reasons thereof.
- iv. Appointment will be as a temporary Class IV Non-industrial civilian employee in the minimum pay of class IV employee with other allowances as admissible.
- v. In addition to the above terms and conditions, the terms and conditions of appointment as a temporary employee shall be governed by the existing rules as applicable to the Govt. servant.

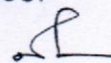
The respondents would submit that the actual strength of cadets reporting for training for each course kept fluctuating, thereby, requirement of adhoc employees was also increased/reduced according to the strength of cadets. When the strength of cadets reporting for training increased, engagement of employees on temporary basis as adhoc employment was an inescapable requirement and vis-a-vis when the cadets for training decreased, the requirement also



decreased. Accordingly, adhoc employees were engaged when the cadet strength was more and terminated when it became less. On the other hand, keeping the adhoc employees on temporary basis continuously, when the strength is less, is loss to the state exchequer. Hence, there was no question of artificial breaks given to them as stated by the applicants. Later on, when the government released certain vacancies for appointment on regular basis, the applicants were given fresh appointment on various dates on regular basis in the existing vacancies, as per the recruitment procedures, duly convening Recruitment Board, Medical Examination, Police Verification etc and the individuals were kept on probation for two years from the date of appointment. The respondents therefore pray for dismissal of the O.A.

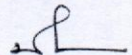
5. The Learned counsel for respondents has relied upon the following judgments :

- i. Judgment dt. 14.03.1996 of the Hon'ble Supreme Court in Civil Appeal No. 6882 of 1996 in the case of Y.H.Pawar Vs. State of Karnataka and Anr. [(1996) 10 SCC]
- ii. Judgment dt. 15.12.2008 of the CAT-Principal Bench in OA 1851/2007 in the case of Tarun Kapoor



& ors Vs. Lt. Governor, Delhi & Ors.

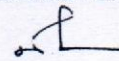
6. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.
7. The short question that is involved in this OA for consideration is whether the applicants are entitled for regularisation of their services from the date of their initial adhoc appointments.
8. At the very outset it has to be emphasized that ad hoc situation arises under multiple circumstances. Unless there be a regular post and vacancy pertains to that post regularization from ad hoc to regular does not arise. It is on the above legal position that the case of the applicants has to be examined. This kind of regularization is different from the regularization of casual labourers as per the government orders and instructions read with the law laid down by the Apex Court in certain decisions, the spine of which is State of Karanataka vs Umadevi (2006) 4 SCC1.
9. The primary requirement of engagement of the applicants against sanctioned posts through proper and prescribed mode of selection has to be first examined. For this purpose, the



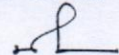
terms of initial appointment are to be kept in mind. Vide para 4 above, (also Annexure R-1) the terms of appointment are specific, unequivocal and unambiguous which the applicants have accepted with their eyes wide open before joining the post. The details of initial adhoc employment and absorption in regular vacancies in respect of the applicants are tabulated below:-

Ser No.	Name	Designation	Date of	
			Initial adhoc appointment	Absorption in regular vacancy
A	Shri B Harikumar	Mess Waiter	28/10/97	15/07/01
B	Shri L Gopalakrishnan	Mess Waiter	28/10/97	15/07/01
C	Shri M Anandan	Mess Waiter	28/04/99	16/07/01
D	Shri C Dasarathan	Masalchi	22/01/01	09/07/04
E	Shri V Masilamani	Masalchi	22/01/01	09/07/04
F	Shri B Suresh Kumar	Masalchi	22/01/01	17/09/06
G	Shri S. Magendran	Cook	01/11/00	09/07/04

10. It is an undisputed fact that the applicants herein are not given any temporary status before their absorption, viz, after 2001. At this juncture, it is relevant to refer to the scheme formulated by the Union of India, namely, Casual Labourers



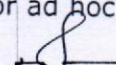
○ (Grant of Temporary Status and Regularization) Scheme, 1993 which will not be applicable to the applicants. As per the scheme only such of those employees who were on employment on the date of commencement of the scheme, viz, 10 Sep 1993, and rendered a continuous service at least one year will be conferred with Temporary Status. It is not in dispute that these applicants were engaged after 1997 on adhoc basis with frequent intermittent breaks and, subsequently, they were appointed after 2001. The benefit of temporary status is available only to those casual labourers who were in employment as on 01.09.1993 and grant of temporary status is not permissible after that date. The Casual Labour (Grant of Temporary Status and Regularisation) Scheme of Government of India was a one time measure and was applicable only to the casual labours working in the year 1993 and was not an ongoing Scheme and in view of the said Scheme, the applicants cannot claim the benefit of temporary status or claim status at par with the workmen having temporary status. The said Scheme has been considered by the Hon'ble Supreme Court in the case of Union of India vs. Mohan Pal reported in AIR 2002 SCV 2001, Union of India vs.



Gagan Kumar reported in AIR 2005 SC 3107, Director General, Doordarshan vs. Manas Dey and Ors., reported in AIR 2006 SC 263 and Controller and Defence Accounts vs. Dhani Ram and Ors. reported AIR 2007 SC 2650. Further, reference has been made to the case of State of Rajasthan vs. Daya Lal by the Hon'ble Supreme Court in the case of Secretary to Government, School Education Department, Chennai v. R. Govindaswamy and others reported in 2014 (4) SCC 769 wherein it has been held as under:-

"(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the Constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the Constitutional scheme under/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc



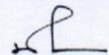
or daily wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be litigious employment. Even temporary, ad hoc or daily wage service for a long number of years, let alone service for one or two years, will not entitle such employees to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut off dates), it is not possible to others who were appointed subsequent to the cut off date, to claim or contend that the scheme should be applied to them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive cut off dates.

(iv) Part time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuation of part time temporary employees."

As such, the judgements referred to by the counsel for the applicants are not relevant to the facts of the present case.

11. The Hon'ble Supreme Court in CA.No.80-123/96 in the case of Union of India vs. Shri K.N. Sivadas and others dated

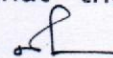


01.08.1997 held that "any service which was rendered prior to regular appointment in the cadre cannot count for the purpose of these rules because it cannot be considered as service in any eligible cadre".

12. In the case of Madhyamik Shiksha Parishad, UP v. Anil Kumar Mishra & others SCC (L&S) 628 in which it was held that employees engaged on adhoc/temporary basis cannot be granted regularisation.

13. In the case of CA No.4996/06 filed by Indian Drugs and Pharmaceuticals Limited Vs Workmen Indian Drugs & Pharmaceuticals Ltd., the Hon'ble Supreme Court observed that if the Court or Tribunal directs the daily rated or adhoc or casual employee should be continued in service till date of superannuation, it is impliedly regularizing such an employee which cannot be done and that regularization can only be done in accordance with the rules and not dehors the rules. It was also observed by the Hon'ble Supreme Court that the rules of recruitment cannot be relaxed.

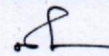
14. The Hon'ble Supreme Court in CA.No.1606/2020 & batch in the case Vinod Giri Goswami & others v. State of Uttarakhand and others dated 14.02.2020 held that the



promotees are not entitled to count their adhoc service for the purpose of computing their seniority.

15. As regards the retrospective regularization of the applicants' service the respondents have clearly pointed out that these are different cadres and regularisation of service depends on specific structure of the cadre, men-in-position and vacancies. Regularization can be done only based on vacancies and not irrespective of that. In case of MessWaiter, Masalchi , Cook the department has specifically stated that core posts were not available. In absence of core posts, I do not see how any regularization can be made. Even otherwise, regularization should normally be prospective and not retrospective. The applicants have not even represented for regularisation from the initial date of appointment at the time of absorption. I, therefore, see no justification in this prayer of the applicants - that too after more than 10 years of their regularisation and initial appointment on adhoc basis.

16. Thus, viewed from any angle, there appears no scope for regularization of the period of ad hoc appointment of the applicants from the date of initial appointment. The respondents have acted in accordance with the provisions of



the rules in existence for regularization and their action cannot, therefore, be faulted with.

17. In the conspectus of the above facts and circumstances of the case and the judgments of the Hon'ble Supreme Court, I do not see any justification to allow the OA in favour of the applicants. Resultantly, the the OA is liable to be dismissed and is accordingly dismissed.