

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

Original Application No. 905 of 2007

Allahabad this the, 30 th day of oct, 2012

Hon'ble Mr. Shashi Prakash, Member (A)

1. Dinesh Kumar, son of Shri Khunkun Prasad, R/o Village Jaipur, P.O. Barhalganj, District Gorakhpur.
2. Rama Nand, son of Shri Prattans, R/o Village Sanda, P.O. Sanda, District Deoria.

Applicants

By Advocate: Mr. Sameer Om

Vs.

1. Union of India through the Secretary of Customs and Excise, Ministry of Customs and Excise, Govt. of India, New Delhi.
2. Commissioner, Central Excise, Commissioner, 38 M.G. Marg, Allahabad.
3. Assistant Commissioner, Custom and Central Excise, (P.E.) Division, Gorakhpur.

Respondents

By Advocate: Mr. R.C. Shukla

O R D E R

Through this O.A., the applicants have prayed for the following relief(s): -

"(i) Issue writ, order or direction in the nature of certiorari quashing the order dated 10.4.2007 passed by respondent No. 2 (Annexure No. 14).

(ii) Issue writ, order or direction in the nature of mandamus commanding the respondents to reconsider the petitioners and regularize their services from the date of their juniors have been regularized.

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(iii) To issue any other writ, order or direction which this Hon'ble Tribunal deems fits and proper in the facts and circumstances of the case.

(iv) Award costs of the original application in favour of the applicant."

2. The facts of the case, as per the applicants, are that the applicant No. 1 as well as applicant No. 2 was initially appointed as Casual Labour in December, 1992 and August 1993 respectively under the respondent No. 3. However, their services were terminated thereafter. As per the applicants, on 07.06.1988, 10.09.1993 and 12.07.1994, the Govt. of India, Department of Personnel & Training has framed the various schemes from time to time for regularization of Casual Labourers. They further submitted that the respondent No. 3 vide his letter dated 24.07.2002 recommended to respondent No. 2 for granting temporary status to the applicants. As the respondent No. 2 did not paid any heed to the request of respondent No. 3, the applicants filed one O.A. before the Lucknow Bench of this Tribunal, which was disposed of with the direction to dispose of the pending representation of the applicants. However, in spite of direction of this Tribunal, the respondent No. 2 took no action on the pending representation of the applicants but, two persons were granted temporary status on 21.11.2002. In spite of sufficient time being passed, the respondents did not

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consider the applicants' representation then, they filed a Contempt Petition. However, during the pendency of the Contempt Petition, the respondents rejected the applicants' representation on 26.02.2004. Thereafter, applicants' filed an O.A. No. 492 of 2004 before this Tribunal against the order dated 04.07.2003. On 22.12.2006, the aforesaid O.A. was disposed of with the direction to the respondent No. 2 to pass afresh, reasoned and speaking order. In pursuance to the order dated 22.12.2006, the respondent No. 2 passed another order dated 10.04.2007 whereby he rejected the request of the applicants for regularization. Hence, the applicants filed the present O.A.

3. The respondents filed the Counter Affidavit and denied the contentions of the applicants averred in the O.A. They submitted that the order dated 10.04.2007 is appropriate and based on DOPT circular dated 10.09.1993, which has two factors: -

(a) *The person should be engaged as casual labour as on 10.09.1993.*

(b) *He should have completed 240/206 days of continuous service on that date."*

The respondents submitted that though the applicants were employment on the date of issuance of aforesaid O.M. i.e. 10.09.1993 but, neither of the

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applicants have worked for 206 days in a year till the date of issuance of DOPT circular dated 10.09.1993. It is also mentionable here that while knowing the number of working days, maximum number of working days in the month for which payment vouchers were not available have also been taken into account. But any how the applicants are not completing requisite number days. Therefore, question of wrong calculation of working days does not arise. The respondents further submitted that as far as question of granting temporary status to casual labours junior to the applicants is concerned, they are not acquainted with this issue. The case of applicants was examined minutely and they were called for personal hearing and they appeared before the Commissioner, Central Excise, Allahabad where it was found that their case was not fit enough to be granted temporary status. The respondents further averred that the cases of applicants have been considered number of times but their cases were found not fit for granting temporary status. However, the order dated 07.04.2003 passed by the Assistant Commissioner, Central Excise, Gorakhpur is proper and legal and same is based on the grounds that the applicants have not completed requisite number of days and have never been granted temporary status.



4. Heard the rival submissions of learned counsel for the parties and perused the pleadings.
5. Learned Counsel for the applicants argued that the order dated 07.04.2003 passed by the respondents is mechanical in nature and without application of mind. Even the impugned order dated 10.04.2007, which was passed by the respondents pursuant to the directions of this Tribunal in O.A. No. 492 of 2004, rejecting the request of the applicants for temporary status/regularization, is arbitrary and illegal. He stated that a perusal of the impugned order shows that the respondents did not take into consideration the question of grant of temporary status to the applicants pursuant to the Office Memorandum dated 10.09.1993 of Department of Personnel & Training. Additionally, the respondents also failed to properly calculate the number of working days of the applicants, and arrived at wrong figure in this regard. Had the respondents taken the entire period of working days of the applicants, they would have been qualified for regularization. He also pointed out that the applicants' case deserve consideration having regard to the fact that several juniors to the applicants were regularized and, thus, in denying regularization to the applicants, the respondents acted in violation of Article 14 and 16 of the

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Constitution. Concluding his arguments, learned counsel stated that in the backdrop of foregoing facts, the impugned order dated 10.04.2007 deserves to be set aside.

6. Shri R.C. Shukla, learned Counsel for the respondents submitted that the impugned order dated 10.04.2007 is based upon the D.O.P.T. circular dated 10.09.1993, the provisions of which require that only a casual labour engaged as on 10.09.1993 and completing 240/206 days of continuous service, on that date, would be eligible for consideration of regularization, and taking into account the fact that the applicants have not completed the requisite number of working days, no right accrues to them so far as regularization is concerned. He argued that the respondents have correctly calculated number of working days of the applicants based upon the available records. Further more, so far as grant of temporary status is concerned, the applicants were given personal hearing in this regard but they could not establish their case. Even subsequent consideration of claim of the applicants for temporary status could not be sustained due to non-eligibility of the applicants. Hence, the claim of applicants both for grant of temporary status

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and for regularization does not have any legal basis. Therefore, the relief sought by them is not sustainable.

7. From the pleadings it is observed that the main controversy in this O.A. revolves around the question whether the applicants met the requirement regarding the number of working days as envisaged in DOPT circular dated 10.09.1993. While it is the claim of applicants that they had worked for more than 206 days and, therefore, fulfilled the requirement of DOPT circular and were eligible for regularization but, according to the respondents the total number of working days in the concerned years of the applicants are 185 days and 30 days respectively, as per the records/documents available with them. A further point of importance to be noted is that the impugned order passed by the respondents dated 10.04.2007 is comprehensive one which has taken into account the factual position based on records, which have been examined in the light of the Judgment passed by the Hon'ble Apex Court in the case of '*Punjab Electricity Board & Anr. Vs. Wazir Singh (JT 2002 [3] SC 49)* on the issue of regularization of casual labourers.

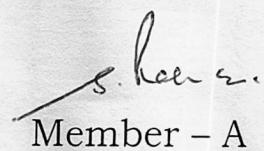
8. It is settled principle that when a claim is being made by an applicant, the onus of proof regarding accruing of a legal right, lies with him. In the instant case, it is

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observed that while the claim of continuous working days of more than 206 days has been made by the applicants, but, there is no documents in substantiation of their claim appended with the O.A. In the circumstances, we have a situation where it is to be decided as to whose figure regarding the number of working days of the applicants can be relied upon. I feel that in this case, the balance of convenience would be with the version of respondents as it has been culled out of the records/documents as available with them. The impugned order is also quite detailed and analytical in this connection. Hence, as the respondents have clearly brought out that based upon the records and calculations made by them, the applicants have worked less than 206 days, accordingly the applicants are clearly not eligible for regularization as per the Government policy, as contained in DOPT circular dated 10.09.1993. Thus, given this position the claim of the applicants does not appear to be legally tenable. However, adopting a humanistic approach in the matter, on account of the fact that the applicants have been agitating for their regularization for a long period and they do not have sufficient means of livelihood, it is felt that they may be provided another opportunity to present their case before the respondents with all the evidences supporting their claim.

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9. In view of here to before stated position, the O.A. is disposed off with the direction that the respondents may have a re-look at the cases of applicants and if the applicants are able to provide either direct or corroborative evidences in support of their having worked for more than 206 days, their claim may be duly considered for regularization as per the rules. The applicants are directed to submit a fresh representation to the respondents along with concrete evidentiary support of their claim within a period of one month. It is expected that the respondents would take a decision on the representation of the applicants within a reasonable frame of time but not later than four months from the date of receipt of the representation. The decision so taken shall be communicated to the applicants forthwith. No order as to costs.


Member - A

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