Yes
C.L.
Termination

CAT/JH2

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. Nos. 234/88, 477/88, 486/88, 519/88 & 25/90.
~~T.A. No.~~

DATE OF DECISION 20-9-1991

Kantilal H.Vaghela & Ors. Petitioners

Mr. R.S. Dinkar, Advocate for the Petitioners)

Versus

The Collector of Central Excise & Customs & Ors. Respondents.

Mr.M.R.Raval for Mr.P.M.Raval, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. Singh, Administrative Member.

The Hon'ble Mr. S.Santhana Krishnan, Judicial Member.

(14)

O.A.No. 234/88

Kantilal H. Vaghela,
Water Server (Casual Worker),
13/313, New Health Quarters,
Opp. Meera Cinema,
Maninagar, Ahmedabad. ..... Applicant.

(Advocate:Mr. R.S.Dinkar)

Versus.

1. The Collector of Central
Excise & Customs,
"Custom House", Navrangpura,
Ahmedabad.

2. The Assistant Collector of
Central Excise, Division V,
Jivabhai Mansion,
Behind Ashram Road Post Office,
Ahmedabad. ..... Respondents.

(Advocate: Mr.M.R.Raval for
Mr. P.M. Raval)

O.A.No. 477/88

Yusufbhai Usmanbhai Malek,
C/o.Tejabaa's House, Hira Pole,
Patelwas, Makarba Village,
Near Sarkhej Roza,
Tal-City, Ahmedabad. ..... Applicant.

(Advocate: Mr.R.S.Dinkar)

Versus.

The Collector of Central Excise
& Customs, "Custom House",
Navrangpura, Ahmedabad. ..... Respondents.

(Advocate:Mr.M.R.Raval for
Mr. P.M. Raval)

O.A.No. 486/88

Manojkumar Natwarlal Datania,
LIG-1, K.K. Nagar,
Ranna Park,
Ghatlodia, Ahmedabad. ..... Applicant.

(Advocate:Mr.R.S.Dinkar)

Versus.

The Collector of Central
Excise & Customs,
"Custom House", Navrangpura,
Ahmedabad - 380 009. ..... Respondent.

(Advocate: Mr.M.R. Raval for
Mr. P.M. Raval)

CENTRAL ADMINISTRATIVE TRIBUNAL AHMEDABAD BENCH AHMEDABAD

..... 3/-

O.A.No. 519/88

Dahyabhai Nanjibhai Solanki,
Jai Chamunda-ni-Chali,
Ram Pir Tekra,
Old Wadaj,
Ahmedabad. ..... Applicant.

(Advocate: Mr. R.S.Dinker)

Versus.

The Collector of Central
Excise & Customs,
"Custom House",
Navrangpura, Ahmedabad. ..... Respondent.

(Advocate: Mr.M.R.Raval for
Mr. P.M. Raval)

O.A.No. 25/90

1. Raju C. Solanki,
2. Jivan S. Vasava,
The General Secretary,
Group 'D' Officers' Union
Customs & Central Excise,
Baroda. ..... Applicants.

(Advocate: Mr. R.S.Dinker)

Versus.

1. Union of India
Notice to be served through
Secretary, Ministry of Finance
(Department of Revenue),
North Block, New Delhi.

2. Collector,
Central Excise & Customs,
Central Excise Building,
Race Course Circle,
Baroda. ..... Respondents.

(Advocate: Mr.M.R.Raval for
Mr.P.M. Raval)

J U D G M E N T

O.A.234/88, O.A.477/88, O.A.486/88

O.A.519/88 & O.A.25/90

Date: 20-9-1991.

Per: Hon'ble Mr.M.M.Singh, Administrative Member.

The above matters came to be marked for common judgment by consent of learned counsel for both parties as they were stated to involve similar reliefs on

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similar premises, same laws and rules.

2. However, on perusal of the record we notice that the facts and particulars of O.A.25/90 are a great deal different from the rest in that neither the services of the applicants were terminated nor a notice to that effect was given to them. We will therefore first take up O.A. 25/90.

3. Applicants Raju C.Solanki and Jivan S.Vasava, General Secretary, Group 'D' Officers' Association, Customs & Central Excise, Baroda, filed O.A. 25/90 against letter No. II/31/16/88-Estt dated 26.12.1989 addressed by Collector, Central Excise & Customs, Central Excise building, Race Course Circle, Baroda to all his subordinate Assistant Collectors directing them to terminate the services of 27 casual workers. Reliefs prayed for consist of restraining the respondents from terminating the services of 27 workmen members of the applicants' union, direction to respondents to regularise the services of those workmen who have completed 206 or more days of service as casual labourers, payment to these workers salary equal to the regular employees and restraining respondents from employing fresh casual workers sponsored by the employment exchange as replacement of the 27 workmen. By direction dated 23.1.90 of a Bench of this Tribunal, status quo as on "today" till further orders was issued.

4. The substance of the respondents' reply in the above OA is that considering various court judgments on the subject of casual labourers, appropriate Ministry issued revised guidelines for regulating the services of casual labourers on the basis of which detailed instructions dated 26.12.1988

(produced at Annexure R-2) were issued. These instructions say that services of casual labourers who are engaged after 7.5.1985 without following the employment exchange procedure are to be terminated. As no orders of termination have been issued, the application is described as premature. It is also averred that most of the casual labourers found eligible have been appointed on regular group 'D' posts and only the ineligibles who have not come through the employment exchange are proposed to be terminated. It is also averred that completion of 240 days or more of engagement is only one of the four conditions to be satisfied for regularisation, the other three being minimum age, minimum educational qualification and engagement through the employment exchange. It is further averred that the respondent department is not an industry and Industrial Disputes Act therefore does not apply.

5. The applicants have filed no rejoinder to the above reply.

6. The title of the above OA 25/90 shows that the two applicants as General Secretary Group 'D' Officers' Union, Central Excise & Customs, Baroda, have filed this application. The locus standi for filing such application is derived by the applicants from their, to quote from the application, "responsibility to safeguard the interests of its members, who are Group 'D' regular and casual workers employed in various offices of the Central Excise and Customs Collectorate, Baroda". Under Rule 4(5)(b) of the Central Administrative Tribunal (Procedure) Rules, 1987, associations can file a single application provided atleast one affected person joins as an applicant. There is no averment in the application

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that any of the two applicants are affected persons of the impugned letter. The two applicants are therefore not proper as applicants when seen in the light of these Rules.

7. That apart, the impugned reference dated 26.12.89 is correspondence originating from Central Excise & Customs Collectorate Baroda addressed to all Assistant Collectors of Central Excise and Customs Collectorate and all Assistant Collectors, Customs Vadodara Collectorate on the subject of recruitment of casual workers and persons on daily wages - Review of Policy - Regarding, reminding them of guidelines issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, in their office memorandum dated 7.6.88 as the guidelines have not been implemented by most of the controlling officers. One such guideline is that the services of casual workers engaged after 7.5.1985 without following the employment exchange procedure are to be terminated and the list of such persons in the Collectorate was also annexed to the circular. The circular ended by saying that all cases of appointment of daily wages staff working in the charges of the officers to whom the impugned letter has been addressed be regulated in accordance with the instructions and any arrears arising out of the implementation may be paid to the concerned wherever necessary. There are other instructions in this circular with regafd to weekly off to be given from 7.6.1988 which is the date of issue of Department of Personnel and Public Grievance and Pension's guidelines dated 7.6.1988.

8. It is alleged by the applicants that the termination orders have been issued without giving any

notice to the individual workmen. But no such termination orders pursuant to the issue of the impugned letter have been produced or shown to us. No doubt guideline in para 5 (iii) of the impugned letter is that the services of persons engaged after 7.5.1985 without following the employment exchange procedure are to be terminated and the list of such persons also annexed. But the instructions do not say that the services are to be terminated without following the provisions of the law and the rules for such termination. This instruction has been issued, as mentioned in para 5 of the impugned letter, after a committee examining the matter relating to engagement of casual workers and jobs for which they are being employed determining whether the work is of casual nature or not making its recommendation to the Ministry which, when accepted, came to be communicated. Under section 19 of the Administrative Tribunals Act, 1985 (hereinafter the Act) a person aggrieved by any order can make an application to the Tribunal for the redressal of his grievance. As no such order is shown to have been made in the case of the 27 persons figuring in the list annexed to the impugned letter, infact no grievance about which redressal can be sought by filing with this Tribunal application under section 19 of the Administrative Tribunals Act, 1985, has arisen even to any of the persons who figure in the annexure much less to the applicants herein who have failed to show that any of them are going to be affected by the impugned letter and its annexure. Thus the applicants therefore have no cause of action firstly because no order has been issued affecting the services of any employee and secondly because none of the applicants figures in the annexure. The further allegation that

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the order has been issued without giving any notice to the applicant is baseless because the applicants have failed to produce copy of such order and have therefore failed to substantiate the allegation.

9. Thus we are of the view that the impugned letter gives no proper cause for redressal of grievance through legal action to the applicants and therefore there is no ground to allow the application with reliefs prayed on unsubstantiated allegations of actual termination. The impugned letter is of the nature of a policy decision yet to be implemented by issue of orders, if at all pursued to that stage. We, with great respect, are of the opinion that correspondence containing communication of policy decision or exchange of views of the concerned official functionaries on a policy under consideration or even decided cannot be impugned under the provisions of the Act and applicants who have failed to show that they are going to be directly affected if the policy decision is implemented have absolutely no locus standi to file an application in this Tribunal. So far as the relief of regularisation of the 27 persons figuring in annexure is concerned, their regularisation has to depend on the eligibility of the persons to appointment on a regular post and in case the number of such persons waiting happens to be larger than the number of posts available, they have to stand in a queue and wait for their turn. The direction for regularisation can be considered for issue only when it is shown that the applicants are eligible to hold regular posts and that posts are available for the purpose. The applicants have failed to produce material to support such claims and contentions.

10. The application is therefore without merits and is liable to be dismissed and the rule to be vacated forthwith. We hereby do so but without any order as to costs.

11. Coming to the remaining original applications the particulars regarding each applicant are capsulised below.

12. In O.A.No.234/88 applicant Kantilal H. Vaghela who started work on 4.2.83 and was terminated on 30.3.88 without any notice continued in service as a result of interim relief.

13. In O.A.No.477/88, applicant Yusufbhai Usmanbhai Malek who started work on 1.9.1987 and was terminated on 21.7.88 without any notice was given no interim relief.

14. In O.A.No.486/88 applicant M.N. Datania, who started work on 25.8.86 and was terminated on 21.7.88 without any notice continued in service as a result of interim relief.

15. In O.A.No.519/88 applicant Dahyabhai Nanjibhai Solanki who started work on 27.5.1986 and was terminated without notice on 20.7.88 continued in service as a result of interim relief.

16. Coming to the pleadings and submissions in the above cases, according to Mr. R.S.Dinkar, learned counsel for the applicants, each of the applicants having put in over 240 days of engagement within 12 calendar months prior to the date of termination of each their without following procedure laid down by the law is illegal. He submitted that the Department of Personnel and Administrative Reforms in its office memorandum dated 26.10.84 copy of which has been produced, laid down that

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the period of 240 days of service for regularisation was fixed on six days week being observed in Central Government offices but for organisations which changed over to five day week, casual workers may be considered for regular appointment to Group 'D' posts if otherwise eligible if they have put, in two years of service as casual workers, 206 days of service. In his submission, Central Excise & Customs Department observes five days work week and therefore 206 days of engagement in two calendar months will qualify each of the applicants for regular appointment to group 'D' posts. He also referred to the contents of Government of India, Central Board of Excise & Customs letter No. 12034/23/91-Ad.III B dated 24.4.91 addressed to the Collector of Central Excise, Ahmedabad on the subject of filling up of posts of group 'D' Sepoys in Central Excise, Ahmedabad by which three ways of filling up the posts, namely (i) by inter-collectorate transfer basis in a phased manner; (ii) in accordance with the recruitment rules conserving reservation quotas; and (iii) by regularising services of casual workers in accordance with instructions dated 15.4.91, have been mentioned. Instructions in reference of 15.4.91 are that casual workers recruited before 7.6.88 and are in service on the date of issue of these instructions be regularised as a one time measure in relaxation of upper age limit and employment exchange procedure.

17. Mr.M.R.Raval, learned counsel for the respondents, argued that the cause of action in case of the applicant arose on 207th day on completion of 206 days and the application filed after five years is time barred and some of the applicants not educationally qualified and one even illiterate and

that the applicants have to first exhaust their remedy in an Industrial Court instead of this Tribunal as Industrial Disputes Provisions are invoked though he submitted that the department of Excise and Customs is not an industry.

18. Mr. Dinkar for the applicants fairly conceded that in case any of the applicants are not educationally qualified they may not be regularised in service but even those who are not educationally qualified cannot be terminated illegally and applicants working as sweeper, even if there is no scheme for relaxation of educational qaalification in their case, can be considered for some posts for which their qualifications may be suitable. He submitted that regularisation should be ordered with effect from the date of appointment or alternatively from the date the applicants completed 206 days of engagement.

19. The line taken in the respondents' replies is that the applicants were paid on daily wage basis on the days they attended their job excluding Sundays and holidays and they were not appointed for any specific work for Group D employees and were paid from contingency and were not on regular establishment. It is further averred that such of the applicants as are not educationally qualified cannot be regularised and they cannot even be appointed in view of circular of the Central Board of Excise & Customs dated 11.11.76 which lays down primary standard as minimum qualification. The respondents also aver that the applicants were appointed without written orders as casual workers on different dates from 4.2.1983 onwards and that the applicants being juniormost, when regular candidates were appointed, they were asked not to come for work.

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So far as regularisation is concerned, persons senior to applicants eligible and suitable have to be considered first for regularisation and not the applicants. Applicants in O.A.No.477/88 and O.A.No. 486/88 engaged on 1.9.87 had not even completed two years of service upto the date of their termination. The respondents deny that the requirement of sponsorship through Employment Exchange for purposes of regularisation was being waived every now and then as alleged by the applicants. The common argument in all cases appears to be that as properly recruited candidates became available, the services of the applicants came to be terminated.

20. In the applications, reliance has been placed on the judgments reported in Randhir Singh Vs. Union of India, AIR 1982 SC 879, D.S.Nakara & Ors. Vs.Union of India, AIR 1983 SC 130, Surendra Singh & Anr. Vs. The Engineer-in-Chief, CPWD & Ors., AIR 1986 SC 584 and U.P. I.T.Contingent Paid Staff Welfare Association Vs. Union of India & Ors., AIR 1988 SC 517, for claim of payment of wages equal to the salary of a regularly appointed and breach of Article 39(d) of the Constitution of India by such denial is alleged. Judgment in this Bench in O.A.No.287/88 is also relied upon. In O.A. 287/88 of Ahmedabad Bench decided on 18.4.90, five of the applicants engaged under Collector of Central Excise & Customs, Ahmedabad from various dates between 3.4.86 & 30.4.87 and allowed to work for more than a year were orally terminated without any notice and the Tribunal holding that the same was violative of principles of natural justice ordered reinstatement of the applicants but without backwages which were to be decided by the respondents on representation of the applicants regarding whether they

were gainfully employed or not elsewhere. Randhir Singh's case, supra, is on the subject of equal pay for equal work though not a fundamental right is held as deriving from a total consideration of the provisions of Articles 14 & 16 in the light of the preamble and Article 39(d) as a Constitutional goal. In D.S.Nakara's case, supra, pensions have also been brought under the principle of equality for calculation. In Surinder Singh & Ors.case, supra, the doctrine of equal pay for equal work is held as required to be applied to the persons employed on daily wage basis also and they therefore held entitled to same wages as are paid to the similarly employed other permanent employees in the department who do identical work. In U.P. Income Tax Contigent Paid Staff Welfare Association case, supra, employees found to be working on daily wages for nearly eight years or more were, in view of Supreme Court decision in P & T Department Vs. Union of India, AIR 1987 SC 2342, directed to be paid wages at the rates equivalent to minimum pay in pay scale of the regularly employed workers in the corresponding cadres and a scheme on a rational basis for absorbing such employees who have been continuously working for more than one year also directed to be prepared. The further general line taken in rejoinders is that it was for the respondents to follow proper procedure for appointments and it was therefore not the applicants' fault that the respondents recruited them otherwise than through the Employment Exchange. It is also alleged that six persons recruited through Employment Exchange were not by way of replacement of the applicants as letters of appointment of new appointees were issued on 23.3.1988 and the new appointees were expected to join thereafter whereas the services of the applicants were terminated

much after. It is also alleged that new appointees also are not regularly recruited persons but are appointed as casual workers whose services are also being terminated by the respondents and one of the new appointees, namely R.S.Rathod, has been intimated that he was employed only for a period of five months. This example is also relied upon to allege that the modus operandi of the respondents not to allow employees to complete required number of days of engagement for regularisation of the services amounts to their exploitation by the Government of India which is disapproved in the Surendra Singh case above. The rejoinders also allege that the respondents have again called for the names of 150 candidates from the Sub Regional Employment Officer, Ahmedabad, for recruitment of casual workers in various offices through letter dated 9.5.88 and as the number of candidates called is thrice the number of vacancies, it is clear that 50 vacancies exist. It is alleged that because the instructions required placing responsibility on the concerned officers for recruitment of casual labour otherwise than through Employment Exchange, termination of service to av id responsibility has been resorted to. The actions are alleged to be violative of Articles 14,16,19(1)(g) & 39(a) of the Constitution of India.

21. The respondents say that applicants engaged after 7.5.85 could not be considered for regularisation and 28 casual workers engaged prior to this date have been regularised. Respondents selected six persons through Employment Exchange and gave them appointment on various dates in March and April 1988 as casual workers on temporary basis. Names of applicants not sponsored by the Employment Exchange could not be considered. As persons regularly selected came to be appointed, the applicants' services became not required and therefore

the same were discontinued.

22. No service rules applicable to the applicants and terms and conditions of their initial appointment have been placed before us by either of the two parties. However, instructions of Government of India and of the Board of Central Excise and Customs issued from time to time on the subject of dealing with the cases of daily wage employees becoming eligible for regularisation and casual employees engaged without reference to employment exchange have been produced by the applicants. Some of instructions also contain a warning, for example an instruction dated 10.10.83, that no appointments should be made in future without making a reference to employment exchange and for irregularity in this regard responsibility should be fixed and appropriate departmental action should be taken against the official concerned. Therefore the submission of the learned counsel for the applicants that services of the applicants were sought to be dispensed with in order to escape responsibility does not seem to be farfetched. Except for one applicant who was engaged on 4.2.83 before the date of these instructions, the dates of engagement 1.9.1987, 25.8.86 and 27.5.86 of the rest of the applicants herein give the impression that these instructions were not implemented. One of the averments of the respondents is that the applicants were not recruited through reference to the employment exchange. Instruction No. 12034/152/88-Ad.III B of 15.4.91 placed before us also has the following to say which is relevant for the cases of the applicants herein as all of them were recruited before 7.6.88 though one of the applicants (of O.A.No. 477/88) not in service on the date 15.4.91 of the issue of these instructions as he was not protected by interim relief

and, unlike the cases of the other three applicants who were protected by interim orders and therefore continued in service, could not continue in service.

> "2. The matter regarding regularisation of casual workers in relaxation of upper age limit and Employment Exchange procedure was taken up with the DP & T. That Deptt. have agreed as a one time measure to the regularisation of those casual workers in relaxation of upper age limit and Employment Exchange procedure who were recruited before 7.6.88 and are in service on the date of issue of their instructions. A copy of general orders issued by Dept. of Personnel and Training vide their O.M.No.49014/4/90 Estt.(C) dated 8.4.91 is enclosed. Accordingly all the eligible casual workers may be regularised.
>
> 3. It may kindly be ensured that the recruitment of casual workers in Central Govt. offices may be regulated strictly in accordance with the guidelines contained in Department of Personnel & Training's O.M.No.49014/2/86-Estt(C) Dated 7.6.88. Cases of neglect of these instructions will be viewed very seriously and suitable action will be taken against the defaulters. Compliance reports may be sent to the Board in due course."

As all the orders of termination were allegedly issued without any prior notice to the concerned applicants which allegation is not denied and in fact by the implications of the averments in the replies admitted, the orders of termination are liable to be struck down as bad as per the ratio of the decision in this Bench O.A.No. 287/88, supra, being violative of principles of natural justice. When the orders are struck down as bad, the applicant of No. 477/88 will be entitled to reinstatement from the date of his termination and therefore to be taken as having continued and continuing in service.

23. Regarding the prayer of regularisation and payment accordingly, it emerges from the instructions of the Government of India and the Board of Central Excise and Customs that instructions on relaxation as in reference of 15.4.91, supra, have been issued. The respondents will therefore have to consider the cases of all the four applicants of the four OAs in accordance with the latest instructions/rules and laws on the subject which may be applicable to the casual employees of the category of the applicants.

24. In view of the above, the remaining four applications are allowed to the extent of our following directions :

(i) Orders of termination of service of applicants Kantilal H. Vaghela (of O.A.No.234/88 M.N. Datania (of O.A.No.486/88), Dahyabhai Nanjibhai Solanki (of O.A.No.519/88) are quashed and set aside and rule in case of each of them made absolute.

(ii) Order of termination of service of applicant Yusufbhai Usmanbhai Malek (of O.A. No. 477/88) is quashed and set aside from the date of the termination of his service. Collector of Central Excise and Customs, Ahmedabad is directed to reinstate him in service within thirty days of his receiving a copy of this order. As regards backwages from the date of termination upto the date of reinstatement, the Collector of Central Excise and Customs, Ahmedabad shall take decision about the same as per rules on the applicant making, within a period of three months of this order, a representation to the Collector regarding

whether he was gainfully employed elsewhere. This decision shall be taken by the Collector within three months of his receiving the representation.

25. O.A.No. 25/90 is disposed of as per our order in para 10 above.

26. There are no orders as to costs.

Sd/-
(S.Santhana Krishnan)
Judicial Member

Sd/-
(M.M.Singh)
Administrative Member

Prepared by : 26/09/91
Compared by :

TRUE COPY
26/Sept/91
(K. P. SANE)
Section Officer (J)
Central Administrative Tribunal,
Ahmedabad Bench.