

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A.NO. 193/92
T.A.NO.

DATE OF DECISION 27-8-98

B.S. Chunara

Petitioner

Mr. I.M. Kapoor

Advocate for the Petitioner [s]

Versus

Union of India & Others

Respondent

Mrs. P. Safaya

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman

The Hon'ble Mr. P.C. Kannan, Member (J)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ?
- 2, To be referred to the Reporter or not ?
- 3, Whether their Lordships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ?

ND

DM

Bhikhabhai Shakrabhai Chunara,
Ramdev Nagar,
Kacha Chhapra,
satellite Road,
Behind Bus Stop for
Route No.44,
Ahmedabad - 54.

... Applicant

(Advocate: Mr. I.M. Kapoor)

VERSUS

1. The Union of India,
Notice to be served through
the Secretary,
Department of N.C.C.,
Ministry of Defence,
New Delhi.
2. Director General,
National Cadet Corps,
West end Blocks-4,
Ram Krishna Puram,
NEW DELHI : Pin Code : 110 066.
3. Deputy Director General,
National Cadet Corps Directorate,
Gujarat, Dadra, Nagar Haveli, Diu and Daman,
AHMEDABAD : Pin Code : 380 003.

... Respondents

(Advocate: Mrs. P. Safaya)

: JUDGMENT :

O.A./193/92

Dated: 27-8-98

Per: Hon'ble Mr. P.C. Kannan, Member (J)

The applicant has filed the above O.A. under Section 19 of the Administrative Tribunals Act, claiming the following reliefs:-

- (A) that this Hon'ble Tribunal be pleased to issue an appropriate writ, order or direction, quashing and setting aside the Oral Order of termination of service of the petitioner, and to reinstate the petitioner to his ori-

Contd..3/-

ginal post of 'Khalasi' treating his service as continuous and without any break from 20-3-1989, when the oral order of termination of service was made;

- (B) that this Hon'ble Tribunal be pleased to declare that from the date of the Oral Order of termination to this day the service of ~~the~~ petitioner is continuous and as a sequel whereof all the pay and other concomitant benefits may kindly be ordered to be paid to the petitioner;
- (C) that alternatively, the Hon'ble Tribunal may direct the respondents to offer the petitioner the post of peon or Chawkidar, beginning from the date of Oral Order of termination of service as if his service were not terminated.
- (D) that without prejudice to the foregoing, the Hon'ble Tribunal may be pleased to direct the respondents to pay all benefits attached to the service of a casual labourer who has worked for more than five years continuously and who has not been paid any benefits save and except the daily wage for the days worked;
- (E) that in view of the facts and circumstances of the case, any other and further relief may be granted.

2. The case of the applicant is that he was engaged as a (Khalasi) ~~the~~ 'casual daily wage labourer' from September 1983 under the respondents. He had been so working since September 1983 upto 20-3-89. On 20-3-89, he was asked orally not to attend the duty from the next day, i.e. 21/3/89. The applicant stated that he was not issued any prior notice of termination of his service nor was assigned any reason. The applicant claims that he served under the respondent No.3 for more than 5 years continuously and

uninterruptedly. After the termination of the services, the applicant had submitted a representation in writing to the respondent No.2 vide the letter dated 28.3.89 (Ann. A-3). In furtherance of his representation dated 28.3.89, the applicant addressed a letter dated 15.5.89 to the respondents. The respondent no.2, in response to the representation dated 28.3.89 asked the applicant whether he was willing to work as a Peon anywhere in India. The applicant accepted the offer. However, the respondents vide letter dated 16.5.90 (Ann. A-6) informed the applicant that he was over age and therefore, he could not be considered for regular appointment. Thereafter the applicant has filed the present O.A. in April, 92 challenging the oral order of termination alongwith the Application for condonation of delay in filing the present O.A. Vide order dated 17.6.92 this Tribunal allowed the M.A. and condoned the delay.

3. The respondents in their reply stated that for carrying out various specified activities, various posts have been sanctioned by the Govt. in Group 'D', clerical and Officer cadres. For carrying out works of unspecified nature and tenure, the Government has left it at the discretion of the Heads of the Organisation to engage workers on casual basis at daily rates. The rates of wages are prescribed by the State Govt. under whose jurisdiction, the respondent No.3 is located. For regularisation of services of all casual labourers, the Government of India has laid down certain guidelines, subject to fulfilment of which a casual worker could be regularised on the available Group 'D' posts. In terms of these guidelines, a casual worker, may be given relaxation in the upper age limit only if at the time of initial recruitment as a casual worker, he had not crossed the upper age

DM

limit prescribed for the relevant posts. The instructions inter-alia directed for adjustment of all eligible casual workers in regular posts and others to be discharged unless retention of other casual worker is considered absolutely necessary (Ann.R-1). As the applicant was over age on the date of initial engagement as casual labour on 16.12.83, his date of birth being 1.6.57, he could not be regularised. The respondent no.3 was advised to discontinue his services as casual labourer. The applicant was explained the reasons about the decision vide the letter dated 17.7.90. The respondents denied other allegations and stated that in view of the factual position, the applicant is not entitled for regularisation or for continuing in employment.

4. We have heard Mr. Kapoor, counsel for the applicant and Mrs. Safaya, counsel for the respondent. Mr. Kapoor submitted that the applicant was appointed as a casual worker in 1983 and continued as such for about 5 years and in the circumstances, he is entitled for regularisation. He submitted that the oral order of termination is liable to be quashed and the applicant is entitled to be regularised. In this connection, he relied on the judgment of the Supreme Court in the case of State of Haryana & Ors. vs. Piara Singh & ors. (JT 1992 (5) SC 179).

In the case of State of Haryana & Ors. vs. Piara Singh & ors., the Supreme Court held that if an employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State. So far as the work-charged employees and casual labour are concerned, the Supreme Court directed that effort must be to regularise them.

[Signature]

as far as possible and as early as possible subject to fulfilling the qualifications, if any, prescribed for the post and subject to availability of work. The court further observed that if a casual labourer is continued for a fairly long spell, say two or three years a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. In the light of the observations of the Supreme Court, it was contented that the applicant who had worked continuously for over 5 years was entitled to regularisation and the oral termination order is liable to be quashed and the applicant is entitled to reinstatement with backwages.

5. Mrs. Safaya submitted that as the applicant was over age at the time of initial appointment as casual worker in 1983, the department could not regularise his services and in the circumstances, the services were terminated. In this connection, she relied upon the judgment of the Ernakulam Bench of the CAT in the case of V.K. Damodaran vs. Defence Pension Disbursing Officer, Kottayam and Ors. (1990 13-ATC- 142). In this case, the casual worker was recruited otherwise than through Employment Exchange and also being over-age at the time of initial recruitment. The question for consideration before the Tribunal was whether the applicant was automatically entitled for regularisation. The Tribunal held notwithstanding along period of engagement, in the absence of relaxation of upper age limit, such a worker is not entitled to regularisation.

6. We have carefully considered the submissions of both sides and examined the pleadings.

7. The Department of Personnel OM dated 7.6.88 contains the

policy regarding engagement of casual labourers in Central Govt. offices. So far as the regularisation of services of casual labourers is concerned, it has been stated that the casual worker may be given relaxation in the upper age limit only if at the time of initial recruitment as a casual labourer, he had not crossed the upper age limit for the relevant post. However Para 1(XI) of this OM enables the Department to seek relaxation even with regard to initial recruitment as a casual labourer. The relevant para reads as follows:-

"If a Department wants to make any departure from the above guideline, it should obtain the prior concurrence of the Ministry of Finance and the Department of Personnel and Training."

8. At the time of recruitment of the applicant (as on 16.12.83) the applicant was aged about 26 years 6 months. The maximum age for recruitment to Class IV Group 'D' post being 25 years, the applicant was over-age by about 1 year 6 months. In terms of the instructions of the Ministry of Personnel dated 7.6.88, it is open to the respondents to seek the relaxation in this regard. However, the Respondents did not seek any such relaxation. As the applicant has continuously worked under the respondents for over 5½ years and his performance as a casual labourer was found to be quite satisfactory (Annexure A-2), the respondents could have sought recourse to the procedure set out in para 1(XI) of the aforesaid OM.
9. Under similar grounds, the Ernakulam Bench of the Central Administrative Tribunal in the case of V.K. Damodaran vs. Defence Pension Disbursing Officer, Kottayam & Ors. held that a casual worker notwithstanding a long period of engagement, is not

[Signature]

entitled to regularisation in the absence of relaxation of the upper age limit. The relevant observations of the Tribunal in Para 9 reads as follows:-

"In the facts and circumstances we find that since the applicant we over-aged even at the time of initial recruitment as a casual worker, he is not entitled to regular appointment unless in view of his long period of service the respondents are well disposed in relaxing the upper age limit. Accordingly, we dismiss the application with the direction that the applicant may make a representation for relaxing the upper age-limit, within a period of one month from the date of communication of this order and the respondents are directed to dispose of his representation within a period of two months from the date of its receipt. We hope that the respondents will consider his representation sympathetically keeping in view his status, the long period of service and the general trend of directions of the Supreme Court as referred to earlier."

10. In the light of the above judgment and in the facts and circumstances of the case, it is open to the applicant to make representation for relaxing the upper age limit at the time of initial recruitment as a casual worker within a period of one month from the date of communication of this order and in case, the applicant makes such a representation, we direct that the respondents to consider the same and dispose of his representation within a period of three months from the date of its receipt.

plz
Subject to the above observations, the OA is dismissed and there will be no order as to costs.

P. C. Kannan
(P.C. Kannan)
Member (J)

V. Ramakrishnan
27/8/97
(V. Ramakrishnan)
Vice Chairman

hki