

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. / 384/92
T.A.NO.

DATE OF DECISION 5.10.99

Chavda Vasant Meghji _____ Petitioner

Mr. B.B.Gogia _____ Advocate for the Petitioner [s]
Versus

Union of India & another _____ Respondent

Mr. M.S. Rao _____ Advocate for the Respondent [s]

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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 Lerdships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ?

Chavda Vasant Meghji
Adult, Occupated: Service
Address: ~~Raxjap~~ Raj Pan Centre
Mani Mandi
Main Gate
Morbi.

Mr. Applicant

Advocate: Mr. B.B. Gogia

Versus

1. Union of India
Through: Secretary
Ministry of Finance
Department of Revenue
Government of India
New Delhi-
2. The Collector
Customs & Central Excise
Collectorate
Rajkot.

Respondents

Advocate: Mr. M.S. Rao

ORAL ORDER

IN

Dated 5.10.1999

OA/384/92

Per Hon'ble Mr. V. Ramakrishnan, Vice Chairman:

We have heard Mr. Gogia for the applicant and Mr. M.S. Rao for the respondents.

2. The applicant was engaged as a part time casual labourer as a water carrier in the Central Excise Department. He has filed the O.A. seeking regularisation of his service for a suitable post. Mr. Gogia submits that the applicant was no doubt a part time casual labourer but he was engaged as early as 16th December 1986. He was continued as such for a number of years and according to the applicant his

services were disengaged some time in the beginning of 1992 (This however is disputed by the respondents who say that he had not been coming on his own).

Mr. Gogia further submits that the respondents have taken the stand that his case is not covered in terms of the relevant scheme, and that his case for regularisation is not governed by the policy and directions of the Ministry issued from time to time. They also submit that as he was engaged only as a part time casual labourer he did not fulfil the eligibility conditions for regularisation of Group D post. Mr. Gogia submits that there was no doubt a ban on recruitment by a letter which was issued on 7.6.88. However the incumbent was engaged as part time casual labourer well before that date.

After the ban was imposed, a letter was issued by the department as can be seen from the copy at Annexure A-3 where there is a specific statement that part time employees are to be considered for regular posts. This letter goes on to say that part time employees who have put in four years of service subject to limit of 240 days of service in each of the preceding four years would also be eligible for regularisation. The learned counsel contends that it is no doubt true that subsequently some orders have been issued particularly by the Ministry of Personnel dated 10th Septr. 1993 which deals with the conferment of temporary status and also regularisation and there is a subsequent

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clarification to this O.M. of 10th September 1993 issued on 12th July 1994 which brings out that temporary status cannot be granted to the part-time casual employees. Mr. Gogia says that the applicant's case has to be regulated in terms of the scheme which was in operation when he was holding the post ~~of~~ part-time basis and not by the subsequent O.M. of September 1993 and the clarification dated 12th July 1994. Mr. Gogia further submits that the question as to whether the benefit of regularisation is available to part-time employees ~~was~~ was gone into by Supreme Court while considering the Tribunal's order in the case of Sakkubai decided by the Ernakulam Bench of this Tribunal (1998 (1) ATJ 556). It was held by the Tribunal that such benefit is also admissible for a part time casual employee. The department had taken up the matter before the Hon'ble Supreme Court and the Supreme Court by its decision dated 2.4.1997 had held that where the part-time casual labourers are not eligible for the grant of temporary status, the benefit of absorption in Group D, which is conferred upon them by a separate Notification cannot be taken away. (A copy of the Supreme Court's judgement taken on record.) Mr. Gogia particularly refers ~~to~~ in this connection to paras

6 and 9 of the judgement and says that the same principle would apply here also.

3. Mr. M.S. Rao contends that the applicant filed the O.A. in latter half of 1992. Mr. Rao also says that after the issue of the Ministry of Personnel O.M. dated 10th September 1993 which has been clarified by O.M. dated 12.7.1994 the benefit is not available to part time casual labourers. He says that the applicant was admittedly a part time casual labourer and he cannot be regularised in terms of that scheme. He also brings out that there was a ban on recruitment of casual labourers w.e.f. 7.6.1988 and as the applicant had not completed four years of service as on that date, he is not eligible for the benefit under the scheme as at Annexure A-3.

4. We have carefully considered the contentions of both the counsel. As has been brought out by Mr. Gogia the question of conferment of temporary status etc. has been gone into by the Supreme Court while deciding Sakkubai & Another's case. We may reproduce the observations of the Supreme Court in para 6 and para 9 as follows:-

"6. The respondents, however, have relied upon a letter dated 17.5.1989 issued by the Govt. of India, Ministry of Communications, Department of Posts giving a clarification regarding casual labourers and part-time casual labourers. The need for the clarification arose because by virtue of the notification dated 24.2.1989 the schedule annexed to the Indian Posts and Telegraphs (Group 'D' posts) Recruitment Rules, 1970 was amended. As a result of the amendment under the head "Subordinate Offices" in the item 11 the following entries were inserted in column 9 as follows:-

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Line 16 "In the Schedule annexed to the Indian Posts and Telegraphs (Group 'D' Posts) Recruitment Rules, 1970, under the heading 'Subordinate Offices' in Column 9, the existing entries '100% Direct Recruitment' shall be substituted by the following:

'By means of an interview from amongst the categories specified and in the order indicated below. Recruitment from the next category is to be made only when no qualified persons~~s~~ is available in the higher category.

- (i) Extra-departmental agents of the recruiting division or unit in which vacancies are ~~pro~~ announced.
- (ii) Casual labourers (full-time and part-time) of the recruiting division or unit.
- (iii) Extra-departmental agents of neighbouring division or unit. Explanation- For Post Divisions, the neighbouring division will be the Railways Mail Service Division and vice-versa.
- (iv) Nominees of the 'Employment Exchange'.

with one year's service as a full-time casual labourer.
9. The respondents have emphasised Item (iii) which basically equates two years of service as a part-time casual labourer. They have submitted that in view of this equation they should also have been included in the Scheme framed of 12.4.1991 on similar terms. There is some justification for this submission. However, the Scheme is for granting temporary status as well as regularisation. It is, however, stated before us by the learned counsel for the appellants that the priorities for absorption in Group 'D' posts which were set out in the letter of 17.5.1989 are still in force and that part-time casual labourers are also entitled to absorption ~~in Group 'D' posts~~ as per the said letter. The Scheme of 12.4.1991 is merely for the purpose of conferring temporary status on full-time casual labourers. It does not take away the benefit of absorption conferred on part-time casual labourers in terms of the letter of 17.5.1989. He has also pointed out that it is difficult to confer temporary status on part-time casual labourers. However, they will be absorbed in accordance with the priorities set out in the letter of 17/5.1989 provided they fulfill the eligibilities criteria."

This no doubt relates to the scheme followed by the department of Posts . So far as the applicants therein were concerned they were governed by the relevant scheme which was initially dated ~~1988~~.17.5.89 and subsequently modified by the letter dated 12.4.91. So far as the present applicant is concerned, he is governed by the rules referred to in the letter at Annexure A-3. It is not in dispute that as per the relevant scheme, which ~~entailed~~ ^{test} casual part-time employees are also eligible to be considered for regular posts provided they have put in four years of service and 240 days in each of the preceding four years. The respondents do not deny the contention that from 1986 upto first half 1992 the applicant had been working continuously as part time casual labourer. Their only stand now is that with the promulgation of different schemes notified by Ministry of Personnel which ~~was~~ circulated on 12th July 1998, part-times casual worker is not entitled to benefits.

There was also a contention that applicant should have put in four years of service as a part-time casual labourer before issue of the ban order. We do not see any basis for such a stand as cut-off date is relevant only for stoppage of the engagement of casual labourer. It does not say that people who had already been engaged prior to that date ~~xxxxx~~ will

cease to be entitled for grant of any of the benefits as available to the casual labourers. We therefore reject the contention that merely because the applicant had not put in four years of service as part-time casual labourer prior to the imposition of the ban on 7.6.1988 he can be deprived of the benefits of the earlier scheme.

We also find force in submission of Mr. Gogia that the principle underlying in Sakkubai's case will be equally relevant in the present case.

The scheme of Ministry of Personnel was for conferment of temporary status and regularisation. While the part-time casual labourers may not be entitled to conferment of temporary status, it does not take away the benefit of regularisation of service to part-time casual labourers in terms of the earlier scheme of the department which had provided for four years of continuous service as part-time labourer for eligibility for regularisation.

As it is not in dispute that applicant had put in four years of continuous service prior to the date when his services were no longer utilised from 1992 he would be eligible in terms of the earlier scheme for regularisation if he is the senior-most. In the facts and circumstances of the case we direct

the department to take back the applicant in service on regular basis as he fulfills requisite conditions for regularisation but this is subject to availability of a post. The decision in this regard shall be communicated to the applicant as soon as possible and in any case within two months from date of receipt of a copy of this order spelling out as to when the next vacancy will be available against which the applicant can be accommodated. We expect that any Group D post available when a vacancy arises will be offered to the applicant by the department.

5. The O.A. is disposed of as above with no orders as to cost.

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

V.Ramakrishnan
(V.Ramakrishnan)
Vice Chairman

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