

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 635/93

~~**T.A. NO.**~~

DATE OF DECISION 31-3-1995

Wilson Christian

Petitioner

Mr.R.S.Gajjar

Advocate for the Petitioner (s)

Versus

Union of India & Anr.

Respondent

Mr.Akil Kureshi

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. N.B.Patel

: Vice Chairman

The Hon'ble Mr. K.Ramamoorthy

: Member (A)

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 ?

/ No

Wilson Christian
C/o. Superintendent of Customs,
Foreign Post Office,
Shahibaug, Ahmedabad.
(Advocate: Mr.R.S.Gajjar)

: Applicant

Versus

1. Union of India
Through:
Ministry of Finance, Department
of Revenue, New Delhi.

2. Collector of Customs (Prav.)
Gujarat Collectorate,
Customs House, Ahmedabad.

: Respondents

(Advocate: Mr.Akil Kureshi)

: J U D G M E N T :

OA No.635/93

Date:31.3.1995

Per: Hon'ble Mr.K.Ramamoorthy

: Member(A)

The present application is against non-regularisation of the applicant even though he has been working with the department since 1.7.1986.

2. The applicant had been employed as a full-time casual leabour from 1986 to 1988. Thereafter, his services were terminated and he was again engaged as a part-time casual worker at Foreign Post Office under the jurisdiction of respondent No.2 which engagement is continued even today. The main contention of the applicant is that his services should not have been terminated in 1988 and he should have been regularised in view of the years of service that he had put in and that he should also be paid regular scales of pay consequent to such regularisation.

3. It is the reply of the respondents that the applicant is presently working only as a part-time casual labour. His work is of a miscellaneous nature such as supply of water both to the staff members and to the

visitors in the office of the Foreign Post Office. It is the main contention of the respondents that the approved scheme of Govt. of India which envisages regularisation, does not provide for regularisation of part-time casual labour and hence they are unable to do anything further in the matter.

4. The following facts about the actual service put in by the applicant are not disputed:

- 1-7-1986 to 30-7-1988 - Full-time casual labour in Foreign Post Office.
- 1-5-1990 till date - Part-time casual labour.

(The applicant claims that between 30-7-1988 and 1-5-1990 also, the applicant was employed on casual basis and 1-5-1990 is the date from which his wages was fixed at Rs.15/- per day)

5. During the discussion at bar, it has also became evident that though the applicant is technically a part-time employee and is paid also wage as such, the actual hours of service put in by the applicant is almost full-time since the nature of work is one which requires the presence of the employee almost during the whole of the office hours and even earlier and later as he had to cater to the requirements of staff and visitors. It was also fairly conceded that the respondents were generally satisfied with the work of the applicant and, but for the restriction in the scheme for not extending it to part-time casual labourers, there was little else which came in the way of regularisation of the services of the applicant.

6. We have gone through the averments and heard the arguments of both the sides. At the outset it has

to be agreed that the respondent No.2 being a regular department of the Govt. of India, the question of the applicability of the I.D.Act does not arise and, therefore, the question of setting at naught the termination of the services of the applicant in 1988, for not following such procedural requirements as notice pay, retrenchment compensation, etc. does not arise.

7. The service rules of the department will govern the matter of discharge of services of its employees. Government of India has also laid down guidelines to govern the services of such employees from time to time, including provision for temporary status, regularisation, etc. and the case will therefore, have to be considered in the light of such schemes and guidelines.

8. In the application, the applicant has sought to take aid from the provision in the O.M. No.49014/7/83-Estt.(c) dated 13-12-83, which provides for regularisation of part-time casual worker also. The applicant has also referred to the regularisation order issued thereunder in respect of casual labourers including persons who were even junior to the applicant. In response to this, the respondents have stated that these orders were no more in force and a new scheme has been introduced by O.M.No.51016/2/90-Estt(C) dated 10-9-1993 (Annexure R/1) to regularise the causal workers w.e.f. 1-9-1993. There is some validity in the arguments specially since the earlier orders refer to regularisation of staff recruited before a certain date, under which paramater the present applicant is not covered. The case of the present applicant has to be analysed in the light of the current scheme.

9. On going through the current scheme formulated by the Govt. of India in O.A.No.51016/2/90-Estt (C) dated 10-9-1993 it is seen that a conscious decision has been taken to regularise the service of such casual labourers from 1-9-1993.

10. It is stipulated that this scheme applies to employees who are in service on that day. The fact that the employee has been in service on that day is not in dispute though he has been shown as a part-time employee, though as stated earlier, we find that the work of the employee is of full-time nature. In any case, the requirement for application of the scheme is the fact of his being on job on the date of the formulation. As shown in para 4 above, it is also clear that by this time as on 1-9-1993, the present applicant has had admittedly 25 months of work as casual labour in full-time capacity which entitles him to be treated as a regular employee under the provision of the new scheme. Clarification given in the letter No.A-12034/52/93.AD-III-B dated 20.1.1994, wherein it has been stated that "the provisions of the aforesaid DOP & T's O.M. dated 10-9-1993 are not applicable to part-time casual workers", is not relevant to the particular facts of the case. In this case, the applicant is in employment on the date of issue of O.M. within the meaning of 4(i) and has been engaged in 'full-time' work of 206 days by then. While on the subject, the counsel for the respondent referred to the issue already decided by the Tribunal in its Ernakulam Bench (1994 (IV) ATC 500) that no distinction can be made between casual labourers as between full-time or

part-time. This should have been a relevant point if the vires of the scheme has been challenged. In the absence of such a pleading in the petition, we do not think it necessary to go into this question at this stage.

11. In view of what is stated in the above para, we direct that the action may be taken by the respondents to apply the scheme to the present applicant and confer him temporary status. Such an action may be taken within a period of 15 days from the date of this order. In view of the fact that he had put in necessary years of service ^{as} of the full-time employee by 1-9-1993, he may be given temporary status from 1-9-1993. However, he will be eligible for regular scale and wages only from the date the actual order is passed as per the directions of the Tribunal in this judgment or on the expiry of the 14 ¹⁴² days period stipulated above, whichever is earlier.



(K. Ramamoorthy)
Member (A)



(N. B. Patel)
Vice Chairman

kvr.

Office Report

ORDER

12-5-95

Notice returnable on 16-5-1995. May be placed on that day before the Learned Vacation Member. Direct service permitted on this applicant.

2

(K.Ramamoorthy)
Member (A)

(N.B.Patel)
Vice Chairman

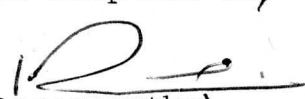
16-5-1995

The present application has been filed by the original respondents of O.A. No.635/1993 seeking extension of time for implementing the order passed by this Tribunal. The operative portion of the Tribunal's order is as under:

"We direct that the action may be taken by the respondents to apply the scheme to the present applicant and confer him temporary status. Such an action may be taken within a period of 15 days from the date of this order. In view of the fact that he had put in necessary years of service as the full-time employee by 1-9-1993, he may be given temporary status from 1-9-1993. However, he will be eligible for regular scale and wages only from the date the actual order is passed as per the directions of the Tribunal in this judgment or on the expiry of the 15 days period stipulated above, whichever is earlier."

It is the contention of the present applicants (ori. respondents) in O.A. No.635/93 that some inevitable delay had occurred ~~in~~ by way of delay in obtaining the formal copy of the order as also in getting formal orders from the Office of the Senior Standing Counsel. Thereafter, the department has taken necessary action to get necessary orders. As per the orders of the Tribunal, necessary ~~appointment~~ order will soon be issued after receiving the orders of the Central Board. The counsel for the original applicant in O.A. No.635/93 has opposed this on the ground that this applicant has already lost valuable time. However, the order is explicit in as much as it is stipulated that

P.T.O.

Date	Office Report	ORDER	Date
		<p>the appointment order will be issued within 15 days from the date of the order itself. He has also taken objection to the fact that the present application has been filed after 28 days though the order itself talks about regularisation taking place from 01-9-1993. Any delay in the issue of the appointment order will mean financial loss to the applicant since his pay will begin only from the day he actually takes over ^{over} for work after issue of the appointment order. When the Tribunal had specifically stipulated that the present xx respondent will start getting his salary after 15 days, there was no reason why his client should suffer any financial loss because of the application.</p> <p>Both the counsel were heard. Operative order itself very clearly stipulates that the respondent (ori. applicant) will not suffer by way of date of regularisation. As regards the financial loss by way of delay in receipt of salary consequent to delay in receipt of appointment order, the present applicants have explained the administrative exigencies necessitating their seeking orders as to whether the order of the Tribunal should be implemented as such. We find that this delay of the department is reasonable. However, to see that the client is not put to any great loss, it is directed that the department may see to it that the action is taken by 5th June, 1995. Written statement of ^{also} taken on record. M.A. is disposed of, as above.</p> <p style="text-align: right;">  (K. Ramamoorthy) Member (A) </p> <p style="text-align: center;">kvr</p>	

present respondents

Date

Office Report

ORDER

12-5-95

Notice returnable on 16-5-1995. May be placed on that day before the Learned Vacation Member. Direct service permitted on this applicant.

(K.Ramamoorthy)
Member (A)

(N.B.Patel)
Vice Chairman

16-5-1995

The present application has been filed by the original respondents of O.A. No.635/1993 seeking extension of time for implementing the order passed by this Tribunal. The operative portion of the Tribunal's order is as under:

"We direct that the action may be taken by the respondents to apply the scheme to the present applicant and confer him temporary status. Such an action may be taken within a period of 15 days from the date of this order. In view of the fact that he had put in necessary years of service as the full-time employee by 1-9-1993, he may be given temporary status from 1-9-1993. However, he will be eligible for regular scale and wage only from the date the actual order is passed as per the directions of the Tribunal in the judgment or on the expiry of the 15 days period stipulated above, whichever is earlier."

It is the contention of the present applicants (ori. respondents) in O.A. No.635/93 that some inevitable delay had occurred ~~in~~ by way of delay in obtaining the formal copy of the order as also in getting formal orders from the Office of the Senior Standing Counsel. Thereafter, the department has taken necessary action to get necessary orders. As per the orders of the Tribunal, necessary appointment order will soon be issued after receiving the orders of the Central Board. The counsel for the original applicant in O.A. No.635/93 has opposed this on the ground that this applicant has ^{already} lost valuable time. However, ^{in both} the orders is explicit in as much as it is stipulated that

Date	Office Report	ORDER
		<p>the appointment order will be issued within 15 days from the date of the order itself. He has also taken objection to the fact that the present application has been filed after 28 days though the order itself talks about regularisation taking place from 01-9-1993. Any delay in the issue of the appointment order will mean financial loss to the applicant since his pay will begin only from the day he actually takes ^{over} for work after issue of the appointment order. When the Tribunal had specifically stipulated that the present ex respondent will start getting his salary after 15 days, there was no reason why his client should suffer any financial loss because of the application.</p> <p>Both the counsel were heard. Operative order itself very clearly stipulates that the respondent (ori. applicant) will not suffer by way of date of regularisation. As regards the financial loss by way of delay in receipt of salary consequent to delay in receipt of appointment order, the present applicants have explained the administrative exigencies necessitating their seeking orders as to whether the order of the Tribunal should be implemented as such. We find that this delay of the department is reasonable. However, to see that the client is not put to any great loss, it is directed that the department may see to it that the action is taken by 5th June, 1995. Written statement of ^{of} taken on record. M.A. is disposed of, as above</p> <p style="text-align: right;">(K. Ramamoorthy) Member (A)</p> <p>kvr</p>

present respondent