

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR

O.A. No. 219/96  
T.A. No.

188

DATE OF DECISION 11/8/99

 Chaturbhuj Sharma Petitioner

Mr. K.S. Chouhan Advocate for the Petitioner(s)


Versus

Union of India & Ors. Respondent<sub>s</sub>

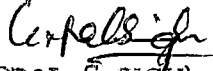
Mr. K.S. Nahar Advocate for the Respondent(s)

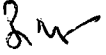
CORAM :

The Hon'ble Mr. A.K. Misra, Judl. Member.

 The Hon'ble Mr. Gopal Singh, Adm. Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? +
2. To be referred to the Reporter or not ? **Yes**
3. Whether their Lordships wish to see the fair copy of the Judgement ? +
4. Whether it needs to be circulated to other Benches of the Tribunal ? +

  
(GOPAL SINGH)  
Adm. Member

  
(A.K. MISRA)  
Judl. Member

(V)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH : JODHPUR

Date of order : August 11, 1999.

O.A. No. 219/96

Chaturbhuj Sharma son of Shri Damader Das Sharma aged 25 years resident of Sewagon Ke Gali, Pokran, District Jaisalmer, working on the post of Farras in the office of respondent No. 5.

... Applicant.

v e r s u s

1. Union of India through Secretary Ministry of Finance Department of Revenue, Govt. of India, North Block, New Delhi.
2. Collector, Central Excise & Customs Deptt., Statute Circle, Jaipur.
3. Additional Collector, Central Excise & Customs Department, Kuchaman House, Ratanada, Jodhpur.
4. Assistant Collector, Central Excise & Customs Deptt., Custom Division, Jaisalmer.
5. Superintendent, Central Excise & Customs Deptt., Custom Range Pokaran, Distt. Jaisalmer.

... Respondents.

Mr. K.S. Chouhan, Counsel for the applicant.

Mr. K.S. Nahar, Counsel for the respondents.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

O R D E R

(Per Hon'ble Mr. Gopal Singh)

Applicant, Chaturbhuj Sharma, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for a direction to the respondents to grant temporary status to the applicant and regularise his services on Group 'D' post with all consequential benefits. The applicant had filed this O.A. on 3.7.96 and his services had been terminated on 6.11.96, during the pendency

*Gopal Singh*

of the O.A. The applicant has, therefore, prayed that the termination of his services may be held illegal and void.

2. Applicant's case is that he was initially appointed as part time casual labourer with effect from 1.4.89 on the post of Waterman-cum-Sweeper on fixed monthly wages. He repeatedly represented to the respondents to accord him temporary status as admissible under the rules and regularise his services on a Group 'D' post, but his request was not acceded to. Feeling aggrieved, the applicant has filed the present O.A.

3. Notices were issued to the respondents and they have filed the reply. In their reply, it has been stated that the applicant was engaged verbally only to carry out sweeping work on part time basis for 1 to 3 hours a day. In regard to temporary status in terms of Department of Personnel & Training's circular dated 10.9.93, it has been submitted by the respondents that the temporary status could be given only to those casual workers who were recruited prior to 7.6.88 and were in service on 8.4.91. It has further been contended that there is no provision in the rules to grant temporary status to part time casual workers as clearly indicated in the Government letter dated 12.7.94.



4. We have heard the learned counsel for the parties and have perused the records of the case carefully.

5. The learned counsel for the applicant has drawn our attention to some of the decisions of the Central Administrative Tribunal in support of his contention and the same are discussed in subsequent paragraphs:

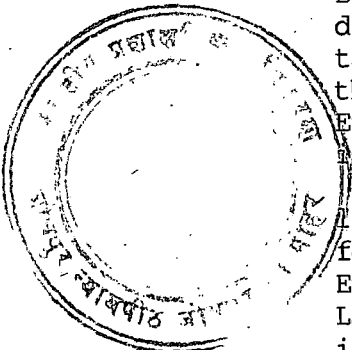
6. The Full Bench Bench of the C.A.T. in O.A. No. 912/92 and 961/92, Sakkubai and N.J. Ramulu vs. The Secretary, Ministry of Communications etc. & Four others, decided on 7.6.93 (reported in CAT (F.B) Vol.III page 209) had dealt with at length the question of grant of temporary status to the part time workers of the P&T Department. The observations of the Full Bench of the Tribunal in this case are reproduced below :-

"12. The principle stated by the Ernakulam Bench is based for interpretation of the scheme as the scheme only refers to casual labourers without specifying whether it covers only full-time casual labourers or part-time casual labourers as well, it was open to the Tribunal to examine the entire scheme to ascertain whether the benefit of the scheme should be understood in the

*copied of*

12

restricted sense as applicable only by the full time casual labourers or in the liberal sense as applicable as to the casual labourers. The Ernakulam Bench has, in support of its decision, noted what the Department itself have done in prescribing the qualification for regularly absorbing part-time casual labourers in Group 'D' posts vide its order dated 17.5.1989 to which we have already referred, in the matter of their absorption in regular Group 'D' posts. The qualification prescribed for part-time labourers is double the qualifications prescribed for full-time casual labourers, thereby rendering them eligible for regular absorption. If we look at the principle from the point of view of the equity and fairness, we see no reason to persuade us to disagree with the view taken by the Ernakulam Bench. It is difficult to believe that no regular employment has taken place in the Department during the last 18 years when the applicants have been demanding absorption on regular basis. These unfortunate employees have rendered continuous service as part time casual labourers for a long period of about 18 years without any improvement in their service conditions. The object of the scheme is to confer temporary status upon casual labourers who have been rendering service for long periods without any security of tensure. It is difficult to say that part-time casual labourers who have also served for long periods without security of tenure did not merit similar just and fair treatment. Besides, this is only a fading category. It should not be difficult to accommodate by giving temporary status to the part-time casual labourers. At least at the fag end of their service the Department should treat them kindly. The view taken by the Ernakulam Bench may it best be characterised as liberal. But it is eminently just and equitable.




13. Having regard to the aforesaid circumstances, we do not feel persuaded to reconsider the consistent view taken by the Ernakulam Bench of this Tribunal that the benefit of "Casual Labourer (Grant of Temporary Status and Regularisation) Scheme" in so far as it pertains to the grant of temporary status and further absorption in Group-D posts is equally applicable to the part-time casual labourers like the applicants also. Hence, it follows that the applicants herein are also entitled to have the same relief as granted in similar cases by the Ernakulam Bench.

14. For the reasons stated above, these applications are allowed and the respondents are directed to confer upon the applicants temporary status in Group-D posts from 2.11.1989 pending their absorptions in Group-D posts in accordance with the "Casual Labour (Grant of Temporary Status and Regularisation) Scheme". The applicants have, however, will not be entitled to any arrears of emoluments arising out of the above-said directions till the date of their filing the respective applications. The above directions shall be complied with by the respondents within six months from the date of receipt of this order."

7. In another case of B.S. Chendalyia vs. Union of India & Others reported in (1998) 37 ATC 469, the part time worker was held entitled for grant of temporary status and regularisation. The applicant, in this case, was working as part time sweeper since May, 1987 and had filed the application being aggrieved by the order dated 31.10.94. In the order dated 31.10.94, it has been stated that as the applicant had not been employed as a candidate sponsored by the Employment Exchange, his appointment is irregular and, therefore, his services should be dispensed with immediately. Relying upon the Full

*(Copies of)*

Bench order mentioned above, it was held by the Principal Bench of the Tribunal that the ratio of the judgement in Sakkubai's case (supra) is squarely applicable to the present facts and circumstances pertaining to the applicant and in the result, the impugned order dated 31.10.94 was set aside and the respondents were directed (i) to continue to employ the applicant as part-time Sweeper so long as the work is available and (ii) to consider regularisation of the applicant as casual labourer, taking into account the part-time service in the light of the Full Bench decision in Sakkubai's case. The respondents have also stated vide their letter dated 20.1.94 (Annexure R/5) that the provisions of Department of Personnel & Training's O.M. dated 10.9.93 regarding grant of temporary status, the regularisation of casual workers is not applicable to part-time casual workers. This aspect has also been dealt with by the Full Bench of the Tribunal in Sakkubai's case (supra). In this connection, the observations of the Full Bench are reproduced below:-



"9. At the outset we must deal with the letter of the Director General of Posts dated 16.8.1991. So far as the letter is concerned it is enough to say that there are judicial pronouncements of the Ernakulam Bench, to which the Director General of Posts is a party in more than one case, holding that the benefit of the grant of temporary status is available to part-time casual labourers as well. The Director General cannot, therefore, arrogate to himself the power of neutralising the binding decisions of the Tribunal by means of issuing a clarification to the earlier order. If the Director General felt aggrieved by the decision rendered by the Ernakulam Bench on the question of grant of temporary status and consequential regularisation of part-time casual labourers, the proper course for him to adopt was to challenge the decision in the Supreme Court or to seek a review as per procedure, if the circumstances of the case so warranted. When we asked the learned counsel for the respondents whether these decisions have been challenged, he clarified that these decisions have neither been challenged in the Supreme Court nor were sought to be reviewed. The learned counsel for the respondents tried to explain to us by saying that the letter was issued in a routine manner and not with a view to nullifying the judgement of the Ernakulam Bench. If that be so, the said letter may be ignored without any comment. Even otherwise it may still be ignored for the reason that no executive authority can neutralise a binding decision of the Tribunal by means of an executive order."

The respondents have also averred that since the name of the applicant has not been sponsored by the Employment Exchange, his candidature cannot be considered for appointment to a regular post. In a recent judgement of Hon'ble the Supreme Court in **Excise Superintendent, Malkapatnam, Krishna District v. K.B.N. Vishweshwar Rao**, (1996) 6 SCC 261, it has been held 'that it should be mandatory for the requisitioning authority/establishment to intimate the Employment Exchange, and Employment Exchange should sponsor the name

*Copy of*

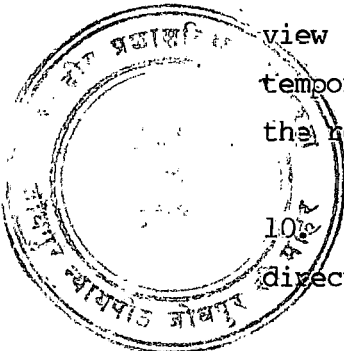
of the candidate to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment, should call for the names by publication in the news papers having wider circulation and also display on their office notice-board or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied'. In this judgement sponsorship through the Employment Exchange was not held to be the sole criterion for employment. As mentioned above, the respondents have themselves employed the applicant for more than 7 years initially as part-time Sweeper and they cannot, therefore, raise this infirmity at this stage that his employment is irregular on the ground that he had not been sponsored by the Employment Exchange.

9. In the light of the above discussion, we <sup>are</sup> firmly of the view that the applicant deserves to be considered for grant of temporary status and for regularisation as a Group 'D' employee in the respondent-department.

The O.A. is accordingly allowed with the following directions:-

- (i) that the termination of the services of the applicant is hereby declared illegal and void;
- (ii) that the applicant will be continued to be employed as part-time casual labourer so long as the work is available;
- (iii) that the applicant would be granted temporary status and further be considered for regularisation of his services as Group 'D' employee in the respondent-department.

11. Parties are left to bear their own costs.

  
*Gopal Singh*  
(GOPAL SINGH)  
Adm. member

*A.K. Misra*  
11/10/99  
( A.K. MISRA )  
Judl. Member

Copy Received  
B.L. Card No. 244/99  
For H.S. Natar  
Actn.  
28/8/99

*(Handwritten signature)*  
28/8/99