

19/10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH

JODHPUR

Date of order: 29.05.02

OA No.244/2001

Ganesh Lal s/o Shri Hem Rajji r/o Village and Post Gopinathji Ki Madar via Thoor, Distt. Udaipur, presently working on the post of Gardender in the Office of Assistant Commissioner, Central Excise and Customs, Division Udaipur.

.. Applicant

Versus

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, New Delhi.

The Commissioner, Central Excise and Customs, Nav Central Revenue Bhawan, Prithviraj Road, Statue Circle, Jaipur.

The Assistant Commissioner, Central Excise and Customs, Division Udaipur.

.. Respondents

Shri S.K.Malik, counsel for the applicant

Mr. Kuldeep Mathur, Adv. briefholder for Shri Ravi Bhansali, counsel for the respondents.

CORAM:

Hon'ble Mr. H.O.Gupta, Member (Administrative)

O R D E R

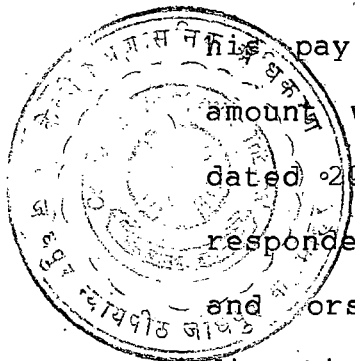
Per Hon'ble Mr. H.O.Gupta, Member (Administrative)

This application is filed with a prayer to issue directions to the respondents to confer temporary status on the applicant w.e.f. 10.09.1993 and to regularise the service of the applicant thereafter in



accordance with the respondents circular dated 24.09.1999 (Ann.A17). It has been further prayed for appropriate directions to the respondents to pay the applicant at the rate of 1/30th of pay scale of minimum of pay of Rs. 750-940 plus DA w.e.f. his date of initial appointment till conferment of temporary status.

2. The case of the applicant as made out, in brief, is that after having sought the names from Employment Exchange for selection to the post of Daily Casual Labour (Gardener), he was issued an appointment order dated 18.1.1990 (Ann.A2). He was initially paid at the rate of 200/- per month and thereafter his pay was raised to Rs. 300/- per month and from June 1991 onwards his pay was raised to Rs. 400/- per month. Since the amount was small, he made a representation vide letter dated 20.10.1992 (Ann.A3). As no action was taken by the respondents, he filed OA No.255/93, Ganesh Lal vs. U.O.I. and ors., which was decided on 15.7.1994 with the direction to the respondents to consider the case of the applicant, whether any benefit can be extended to the applicant as per Government order dated 26.9.1989 and further that whenever any vacancy occurs in Class 'D', the case of the applicant be considered for regularisation. Thereafter, he made a representation dated 27.9.1994 (Ann.A5). Vide letter dated 26.12.1994, in pursuant to the court's order dated 15.7.1994, his case was considered against the vacancy of Group 'D' post as a mere formality. Again his case was considered in 1995, but with no result. Thereafter, he made a number of representations requesting for payment of minimum wages since he was working for more



than eight hours and also for grant of temporary status and for regularising his service. Despite the clear position for grant of temporary status and also for regularisation as per respondents circular dated 24.9.1999 (Ann.A17) and despite the Court's order, no action has been taken by the respondents, although he has been working for more than 11½ years continuously without any break whatsoever.

3. The main grounds taken by the applicant are that he was duly selected as a daily Casual Labour (Gardener) after his name was sponsored through Employment Exchange. Though in the appointment order, he is shown as part-time contingency staff for a period from 22.2.90 to 21.4.90 but he has been discharging duty for more than eight hours a day. After the judgment, the matter was examined vide letter dated 5.10.1995 (Ann.A8) wherein, it is established that the applicant is discharging the duty of regular nature. A vacancy in Group 'D' also exists as may be seen from Ann.A6 and Ann.A7, but despite that, no action has been taken either to confer temporary status or regularise the applicant in Group 'D' post. He is entitled for 1/30th of minimum of the pay in the pay scale of Rs. 750-940 as per DOPT orders applicable to the respondent department. Since he has been continuously working without any break and rendered more than 206 days in a year as the department has observing five days a week, he is also entitled for regularisation.

4. The respondents have contested this application. Briefly stating, they have submitted that the

applicant was engaged as Gardener on part-time basis only for four hours per day at a consolidated amount of Rs. 200/- in January, 1990 in the office of Assistant Commissioner, Central Excise and Customs Division, Udaipur (Rajasthan). The applicant had worked in the office of the respondent No.2 only up to June 2001. Since the services of the applicant have already been dispensed with, he is not entitled for grant of temporary status and for regularisation in Group 'D' post. The applicant worked for four hours per day and, therefore, he was not entitled for consideration of grant of temporary status or regularisation thereof as per extent orders. He was payed a consolidated amount per month which was raised from time to time. He was paid Rs. 55 per day from January 2000 to June 2001 for doing work for four hours per day. No other work for class IV employees was taken from the applicant. It has been held by the Hon'ble Apex Court vide judgment dated 24.4.1997, Secretary Ministry of Communication v. Sukhubai and ors. (SCC L&S 199), the scheme for regularisation of casual labour covers only full time and not part time casual labours. There is no post of Gardener under the office of Assistant Commissioner, Central Excise and Customs Division, Udaipur which is a small office. Two to four hours are sufficient to maintain the gardens in small office. As per DOPT OM dated 10.9.1993 (Ann.R1) and 12.7.1994 (Ann.R2), temporary status could not be granted to part-time casual workers.

5. The applicant has filed rejoinder and has annexed the certificate and letters Ann.A18 and Ann.A19, showing that the applicant has worked in the month of July

2001 also in the respondent department and that the contention of the respondents that the applicant worked in <sup>upto</sup> June 2001 is not correct. Respondents have stopped his payment from the month of October, 2001 onwards so that he may withdraw this OA. The applicant has also annexed a copy of the correspondence at Ann.A20 and a copy of the fax message Ann.A21, written by Rawat Constructions to the Assistant Commissioner stating therein that the applicant is working since June 2001. This has been done to deprive the temporary status and regularisation.

6. The applicant has also filed an MA No.7/2002, stating therein that the respondents have stopped the payment to the applicant from the month of October, 2001. It has been contended that this has been done to force the applicant to withdraw the case. It has been further contended that the applicant is starving since no salary has been paid to him. It has been prayed that at least the salary for the month of October, November and December 2001 be released.

7. Heard the learned counsel for the parties and perused the records.

7.1 The contention of the learned counsel for the applicant is that the applicant worked for full day i.e. eight hours per day and, therefore, he is entitled for salary, conferment of temporary status and regularisation as per orders of the DOPT. It is also contended that although the order dated 18.1.1990 (Ann.A2) mentions that the sanction is for part-time contingent paid staff but as can be seen from their interview letter dated 12.1.1990

(Ann.A1), the name of the applicant was sponsored by the Employment Exchange and that the post of Gardener was on daily wages basis and not on part-time basis. It has been further contended that Rs. 55/- per day were paid to the applicant and that the applicant could not be paid Rs. 55/- per day if he was treated as daily wage Gardener working only for four hours a day. Further that the respondents have not produced any document by which it could be established that the applicant was engaged only for four hours a day, although the various records/correspondence mentions that the applicant as a part-time Gardener. He further submitted that the nature of job performed by the applicant i.e. as a Gardener is of regular nature and this fact also established by the letter dated 15.10.1995 (Ann.A8) of the Administrative Officer addressed to the Commissioner. He also submitted that the contention of the respondents that the applicant is not working after June 2001, is not correct since as per certificate at Ann.A18 issued by the Inspector Headquarter, Central Excise, Udaipur, the applicant worked for 26 days in the month of July 2001. He finally submitted that the respondents themselves have admitted in Ann.A20 that they have not complied the order dated 15.10.1994 passed by this Tribunal.

7.2 The contention of the learned counsel for the respondents is that the office of the Assistant Commissioner is a small office and the Gardener's work is not for more than four hours per day. The letter referred to by the applicant is an internal correspondence between the Administrative Officer and the Commissioner and that could not be given any relief to the applicant. The

learned counsel for the respondents was unable to apprise the Court as to why Rs. 55/- per day were being paid to the applicant if the work taken from the applicant was only for four hours in a day. Neither the applicant nor the respondents were able to produce any document by which it could be seen that the applicant worked for only four hours a day. The learned counsel for the respondents relied on order dated 18.1.90 (Ann.A2) wherein the sanction, against which the applicant was initially appointed, was for part-time contingency staff.

7.3 The learned counsel for the respondents also submitted that the work of the Gardener in the office was given to a contractor after June 2000 and, therefore, the applicant was <sup>not</sup> being engaged by the respondents after June 2001. He further submitted that the applicant was engaged by the contractor to whom the work for maintenance of lawns and gardens was assigned by the respondents. He fairly conceded that, being a principal employer, if any payment has not been made to the applicant by the contractor, the respondents would ensure that the said payment is made to him immediately.

7.4 From the order dated 15.7.94, passed by this Tribunal in OA No.255/93, it appears that similar grievance was agitated by the applicant. In the said OA, this Tribunal while disposing of the OA had directed the respondents to consider the case of the applicant on the following points:-

"(a) Whether any benefit can be extended to the applicant as per order of the Government referred to as Annex. A/2 dt. 26.09.89 and subsequent orders ;

(b) Whenever any vacancy occurs in Class 'D' the applicant's case for absorption or appointment should be considered on that post with other similarly situated persons. However, preferential treatment should be given to those persons who are working for a pretty long time while considering on merit. This aspect should also be kept in mind while considering their regularisation."

7.4.1 The respondents in their reply submitted that in compliance of the order dated 15.7.94, the applicant was duly considered for the post of Sepoy-Group 'D', but could not be selected. The applicant was again called for the interview for the post of Farash Group 'D' vide their letter dated 21.3.95 alongwith other senior full time casual workers. Since there was only two vacancies of Farash, therefore, two full time casual workers who were working since 1983 could be regularised in the grade of Farash.

7.4.2 During the course of arguments, the learned counsel for the applicant submitted that the respondents have yet to comply with the order of the Tribunal. Earlier he was called for the post of Sepoy, but was failed, to frustrate the case of the applicant as selection of Sepoy is entirely in a different footing. Again he was called for the post of Farash but was not selected on the ground that full time casual labourers of 1983 were regularised which was not in conformity with the orders of the Tribunal as he was required to be considered alongwith similarly placed persons with due preference of long service.



8. The judgment dated 15.7.1994 of this Tribunal has become final and, therefore, parties are bound by the said judgment. It is true that in the said judgment, no direction were given to the respondents for grant of temporary status but only for consideration. It was further directed that the respondents should consider the case of the applicant for absorption or appointment in any Group 'D' post with other similarly situated persons and by giving preferential treatment to those persons who were working for a pretty long time. There is nothing on record to establish that the respondents have considered the case of the applicant for grant of temporary status. The applicant has not been able to establish that he was engaged as full-time Gardener. Payment of Rs. 55/- per day from the year 2000 would not lead to the conclusion that the applicant was a regular employee. Keeping in view other material on record including the order dated 18.1.90 (Ann.A2), contingent bill produced, the premises where the applicant was engaged, the contention of the respondents that he was part-time casual Gardener appears to be correct. A part-time casual employee is not eligible for grant of temporary status as per Government orders. It is

however, not disputed by the respondents that the applicant worked continuously for about 11½ years as part-time Gardener and his performance was satisfactory. There is a force in the contention of the learned counsel for the applicant that there was no proper compliance of the order of the Tribunal as contained in para 6(b) of their order.

9. In view of the above discussions, this OA is disposed of with the direction to the respondents to consider the applicant for appointment to any Group 'D' post which may fall vacant under the jurisdiction of the respondent No.2 and is required to be filled up under normal direct recruitment quota within 3 years, by giving due preference to him for having worked satisfactorily with them for over 11 years and by grant wage relaxation for the period he worked with them. Since the respondents are principal employer, they shall ensure that the applicant is paid wages including arrears, if any, due to him for the period he performed work of Gardener through the contractor. Let such amount, if any, be paid ~~within~~ to the applicant within two weeks from the date of receipt of this order.

10. No order as to costs.

  
(H.O.GUPTA)

Member (Administrative)