

Central Administrative Tribunal
Calcutta Bench

OA/691/1997

Date of Order: 14-7-03

Present:

Hon'ble Mr.B.P.Singh, Administrative Member

Hon'ble Mr.Nityananda Prusty, Judicial Member

Amar Nath Chowdhury and 14 ors.

Applicants

-Vs.-

Union of India (G.S.I.) 83 ors.

Respondents

For the applicants : Mr.P.C.Das, Counsel

For the respondents : Ms.U.Sanyal, Counsel

O R D E R

B.P.Singh, AM

This application has been filed by 15 applicants who worked as casual workers in the G.S.I. in various types of works. They have filed this application against the Order dt.28-2-97 which are in compliance of the judgment and order dated 17-2-94 in OA/726/1990. The applicants have prayed for the following reliefs :-

- a) Direct upon the respondents to quash and set aside the impugned Order dt.28-2-97 and 15-4-97 being Annexure G of this application.
- b) Direct upon the respondents to reinstate the applicants and regularise their service.
- c) Direct upon the respondents to give the applicants all consequential benefits to which the temporary employees are entitled.
- d) Direct upon the respondents to produce all the records.

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2. The brief fact of the case as stated in the OA is that the applicants worked as casual workers in the G.S.I. and were doing various types of works such as Clrk, Machine Operator, Vehicle Operator, Store Keeper etc. as their services were indispensable for the smooth running of the organisation. The applicants were continued and they have been working year after year for several years. All the applicants worked under the G.S.I. for 206 days or more in a single year and also in consecutive two years for diverse periods from 1984 till the date of their disengagement by an Order dt.17-5-90. According to the office memorandum dated 26-10-84, copy of which has been enclosed as Annexure A along with the OA, if a casual worker has worked for 240/206 days or more in each year for two years, he is entitled to be regularised, ~~on 240/206 days or more~~. The applicants are thus entitled to be absorbed into regular service in G.S.I.

2.1 Suddenly on 17-5-90 the applicants received order issued on behalf of the Deputy Director General (P) by which it was proposed to disengage ~~the~~ casual workers. Aggrieved and dissatisfied with the arbitrary and illegal action of the respondents, 35 applicants filed OA/726/90 before this Tribunal. A copy of the application is enclosed along with the OA and marked Annexure D. The said application was heard and disposed of by the Order dated 17-2-94. A copy of the order is enclosed as Annexure E along with the OA. The respondent authorities in reference to the said order dated 17-2-94 in the OA considered the cases of the applicants and passed Order dated 28-2-97, Annexure F series, by which the claim of the applicants for regularisation on various posts has been rejected stating separate reason in each case.

2.2 Aggrieved with the said order, the applicants have

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filed this OA and prayed for the reliefs as stated above.

3. Ld.Counsel Mr.P.C.Das appears for the applicants and Ld.Counsel Ms.U. Sanyal appears for the respondents. Reply has already been filed in this case. Rejoinder to the reply has also been filed. We have heard Ld.Counsel for both sides and perused the OA, reply and rejoinder.

4. The main contention of the Ld.Counsel for the applicants is that the order of the Tribunal dt.17-2-94 passed in OA/726/1990 has not been complied with in its true spirit. It is submitted that since the records in respect of the engagement of the applicants were not available, the applicants were asked to submit necessary documents regarding their engagement which they did but, the respondent authorities before finally rejecting the claim of the applicants did not grant any opportunity ^{of hearing} to them. In other words the respondent authorities have passed the order of rejection without considering the relevant details or giving the applicants the opportunity of hearing. It is contended that in the earlier OA the respondent authorities themselves had admitted that the records were not available. Therefore, the applicants submitted the details about their engagement to the authorities. However, by the impugned order the respondent authorities have rejected the claim of the applicants no.1 and 2 on the ground that they were over aged at the time of their initial engagement though they had fulfilled the requisite qualification for being regularised. It is contended that in the judgment of the earlier OA there was no such stipulation. It is also directed that if the applicants fulfilled the condition prescribed in the DOPT OM's they should be regularised. Secondly, it is contended that in respect of the applicants no.3 and 4 they had completed 206 days of casual work in a single year and hence, they could not be regularised

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whereas in respect of rest of the applicants it is contended that since they did not complete 206 days of work in a single year, question of their regularisation did not arise as per DOPT guideline. It is contended that reason for rejection in respect of the applicants no.3 and 4 and the rest of the applicants were contradictory. While in the case of former two applicants, the reason is that they did not complete 206 days of work in a single year whereas in a latter case the reason is that they did not complete 206 days of work in a single year. Ld.Counsel contended that in the earlier judgment the Tribunal directed regularisation of respondent no.3 therein on the ground that he completed 206 days of work in a single year. In such circumstances the reasoning given for rejection of the claim of the applicants are wholly arbitrary and illegal.

5. Ld.Counsel for the applicants further submitted that the applicants have made representation against the said order through their advocate on 22-3-97 and 21-12-98, copy of which is enclosed as Annexure G series. Ld.Counsel has further submitted that the representation made through the ld.Counsel to the respondent authorities where the claim for regularisation of the casual workers were time and again reiterated have not been considered. It is, therefore, prayed that appropriate direction should be given to the respondents to consider the case of the applicants for regularisation with reference to the records.

6. Similar facts have been reiterated in the rejoinder also by the ld.Counsel for the applicants. In view of the above submissions ld.Counsel for the applicants submitted that gross injustice have been done to the applicants and, therefore, the applicants should be allowed and reliefs be granted.

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7. Ld.Counsel for the respondents submitted that the applicants were engaged from time to time to help the operation of the division and they were continuing as casual worker and attending their duties and such engagement had been done by following rules.

8. Ld.Counsel for the respondents submitted that most of the applicants have not completed 206 days job in a single year for two years as laid down in circulars attached with the reply as Annexure R. Ld.Counsel further submitted that speaking order has been passed in reference to all the 15 applicants which are enclosed as Annexure F series to the OA. Reasons for non-regularisation of the casual service of the applicants have been stated in each of the cases. She also submits that no representation against this order has ever been made before the competent authority challenging the speaking order and thus the same has become final and should not be re-opened at this be-lated stage.

9. Ld.Counsel further submitted that 16 applicants of the earlier OA who fulfilled the criteria were absorbed and in respect of the rest, speaking order was issued. As already pointed out the applicants no.1 and 2 completed 206 days of service in each of the two consecutive years and were otherwise eligible for regularisation but, could not be regularised as they were over aged i.e. were above 28 years of age at the time of their initial engagement in the year 1990. In support of their decision DOPT's Order dt.21-3-79 has been referred. According to this OM it is provided that the candidates must be within the maximum age limit on the date of regularisation and for this purpose the period served by them as casual worker should be deducted and if they come within the maximum age limit after giving such concession only then they should be regularised. In view of this position we find no illegality in rejecting the claim of the applicants no.1 and 2.

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10. In respect of the applicants no.3 and 4 it is stated that they completed more than 206 days in a single year and, therefore, their names were empanelled for future engagement as casual worker as and when required. The respondents have relied on DOPT's OM dt.26-10-84 on the basis of which earlier order was passed. In paragraph 2 of this OM it is provided that for regularisation the casual workers have to put in two years of service with 206 days of service during each year. In such circumstances since the applicants no.3 and 4 did not complete 206 days of working two consecutive years, their case could not be considered for regularisation and ~~there~~ their names were empanelled for future engagement. We find no arbitrariness or illegality in this decision of the respondent authorities.

11. In respect of rest of the applicants, it is submitted that they did not even complete 206 days of work in a single year and hence, they do not come within the perview of the DOPT OM dated 26-10-84.

12. Ld.Counsel for the applicants at the time of hearing prayed for giving an opportunity to the applicants for producing further documents in support of claims and also submitted that the applicants may be permitted to make fresh representation enclosing available documents in support of their service before the competent authority. Both the above submissions were contested by the ld.Counsel for the respondents on the ground that the issue has already been decided as back as in February, 1997 and it would not be proper to re-open the matter which has already been settled. We do agree with this submission and we do not find any reason at this stage to either allow the applicants to file fresh documents in support of their claim or file representation


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with the documents before the competent authority after allowing lapse of about more than six years.

13. Considering the above submissions we are of the opinion that the applicants have not been able to make out a case for their regularisation on the basis of the Govt. order in this respect. Accordingly the OA is dismissed with no order as to costs.



Nityananda Prusty,
Judicial Member.



B.P. Singh,
Administrative Member.

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