

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 693 of 1997

Present: Hon'ble Mr.B.V.Rao, Judicial Member
Hon'ble Dr. A.R.Basu, Administrative Member

SUBRATA ROY & ORS.

VS

UNION OF INDIA & ORS.

For the applicants : Ms.S.Banerjee, counsel

For the respondents : Mr.B.Mukherjee, counsel

Heard on : 27.7.06

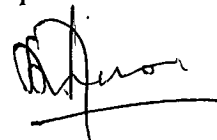
Order on : 10.1.2007

O R D E R

Dr.A.R.Basu, AM

The applicants, 90 in number have filed this OA challenging the non-disposal of the representation of the applicants regarding their permanent absorption in the vacant post of Group 'D' category since they have fulfilled all the conditions as per instruction issued by the Govt. of India and the direction of this Tribunal in connection with OA 1164/95 and that the respondent authorities illegally, discriminatorily and arbitrarily not engaging the applicants to the vacant posts of Group 'D' categories with due regard to the previous services in the department and experience thereto, although many juniors to them and having performed much lesser period of duty have been appointed for the reason best known by the authorities concerned.

2. The fact of the case is that the applicants were casual workers and were performing their duties since 1979 onwards in various categories in G.S.I. The service particulars of all the applicants are shown at Annexure 'A'. The respondents in addition to their normal work had been employing casual workers on daily wage basis. In this way the concerned authorities under the G.S.I., by adopting this method of employing casual workers were taking the advantage of having the work done without taking any liabilities of those candidates as permanent staff. These casual workers had been serving in Calcutta under G.S.I. since 1979 onwards. The respondents had been engaging them for a spell of



six months and they were disengaged and re-engaged again after six months. The strategy of engagement and re-engagement was adopted by the respondents to ensure that the applicants could not earn continuity of casual service for such period as from which they would have been entitled to claim the status of temporary Govt. employees (Annexure 'B'). The applicants with other casual labourers who were employed by G.S.I. throughout the year for several years, such casual labours including the applicants are called voucher borne casual workers as they have no written engagement of employment with G.S.I., but vouchers for payment of wages being signed by them are given to the department against a token number. The applicant further states that as per office memo being No. 49014/19/84 E.S.T.T(C) dated 26.10.84 issued by the Govt. of India wherein it has been stated that, for six days week in Central Govt. offices, if the casual workers have worked for two years within 240 days or more of service then he is entitled to be regularized. And in case of five days week in Central Govt. offices, of which G.S.I. is one, if a casual worker putting more than 206 days of service in consecutive two years then he is entitled to be absorb in the regular services. The said circulars had been sent to the Director General, G.S.I. by O.M. No. 33(1)83 Estt. dated 23.11.84 for information and necessary action (Annexures 'C' & "D"). The applicants also state that the respondent authorities simply to avoid the regular absorption of the casual workers interrupted their services from time to time which will be evident from circular No.28(4)/77-78/17A (BAN) dated 9.6.78 issued by the Director of Administration wherein it has been clearly stated that in case of field camps, temporary engagement of Mazdoors on daily wage basis is essentially required, such engagement for loading/unloading or other odd jobs may be made for a maximum period of 180 to 200 days in a year but the engagement should not in any case be of continuous nature (Annexure 'E'). Moreover as per circular No. 5/10/Contg./Dr/Acm/88 dated November, 1989 issued by the Director General, G.S.I. the minimum rate of daily wages of the contingency workers had been fixed but denying the said circular the respondent authorities were paying almost half of daily minimum wages to the casual workers including these applicants. The applicants though being appointed on 1979 onward they were performing their duties from time to time as casual workers



being engaged by the authorities concerned under G.S.I. but all on a sudden vide office memo No. C/25020/4/Cnl.Career/9/90 dated 17.5.90 issued by the officer-in-charge for necessary action regarding disengagement of the applicants along with other casual workers. As a result the applicant along with others moved an application challenging the said order of disengagement, being OA 824/90, OA 726/90 and OA 1320/90. After hearing OA 824/90 and 1320/90 on 2.9.94, the CAT, Calcutta Bench delivered a common judgment in both the OAs directing the respondents to verify the contention of the applicants of their working for various period with reference to the records maintained by them since such record must be available with them at least in respect of some of the applicants and after such verification their name shall be maintained in a separate register for the purpose of their future engagement as casual labours and such names should be considered after taking into accounts their experience along with the names sponsored by the Employment Exchange. The CAT, Calcutta Bench in OA 726/90 delivered judgment on 11.2.94 to the effect that the respondent authorities to consider the case of the applicants for engagements in view of their length of service they have put in and experience earned thereby. However, inspite of the aforesaid direction of the Tribunal in connection with OA 824/90 and OA 1320/90 no action was taken by the respondents. On the contrary the respondent authorities were going on absorbing others ignoring the claim of the applicants. Being aggrieved by the action of the respondents, the applicants along with others filed another application bearing No. OA 1164/95 whereby CAT, Calcutta Bench on 24.4.96 passed the following order :

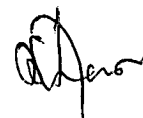
“The High Power Committee as already constituted by the respondents by their order dated 5.9.95, shall also scrutinize the claims of the present petitioners in the context of the DOPT circular dated 26.10.84 (Annexure A to the petition) and any other relevant circulars on the subject and if they are found eligible, they shall be absorbed against regular Group D posts according to their turn. If any of the petitioners is not found eligible as per rules, then the respondents shall pass a speaking order giving reasons therefor. The entire exercise be completed within six months from the date of communication of this order. There will be no order as to costs”

Thereafter just before expiry of six months the respondent authorities filed an MA bearing No. 324/96 for extension of time for another six months to complete the selection process for regularization of the applicants and on 19.3.97 time was extended by another



15 days for compliance of the order (Annexure 'G'). After the expiry of the stipulated period out of 180 candidates who were the applicants of OA 1164/95, 15 candidates were appointed to the post of Group 'D' category. Although some of the candidates among the 15 candidates have completed much lesser service than that of the applicants but they have been appointed by the respondent authorities for the reason best known by them. The applicants have further claimed that though Tribunal had ordered on 24.6.94 that if any of the applicants is not found eligible as per rules then the respondents shall pass a speaking order giving reasons therefor and the entire exercise be completed within 6 months from the date of communication of this order. No action has been taken by the respondents in this regard. Being disappointed with the action of the respondents the applicants made a representation to the concerned authorities on 21.4.97 agitating their grievance that although the applicants have not received anything from the concerned authority but 15 candidates who are standing on the same footing with the applicants and also some of whom performed much lesser period of service than that of the applicants, have been appointed by the concerned authorities and as such the applicants cannot be deprived of their legitimate claim of absorption. The applicants have stated that since their requests were not being acceded to, they have filed this OA praying for the following reliefs :

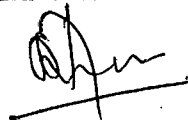
- a) a mandate please may be given to the applicants to move this application jointly as they are similarly circumstanced employees;
- b) an order directing the respondent authorities to absorb the applicants to the vacant post of Group 'D' category immediately as per direction of the Hon'ble Members of the Tribunal since some of the candidates who were also the applicants of OA 1164/95 performing much lesser period of duty than that of the present applicants (which will be evident from Annexure 'H' herein) have been appointed to the post of Group 'D' category;
- c) an order may be issued to absorb the casual workers who have completed 120 days of continuous service in a year or 206 days of service in two consecutive year i.e. at least 103 days in each year as per direction of the Hon'ble Members of the Hon'ble Tribunal vide Annexure 'E' herein;
- d) direction may be given directing the respondent authorities not to fill up the vacancies for the post of Group 'D' category from the outsider candidates till the disposal of this application;
- e) any other order or orders, direction or directions as to this Hon'ble Tribunal may deem fit and proper.



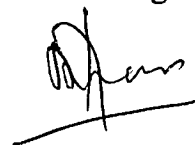
3. The respondents have filed a written reply disputing the claim of the applicants. The respondents have stated that the applicants have worked as casual workers on daily payment basis for attending to and assisting in various jobs of the department, as and when required. They have denied the contention of the applicants that engagement and re-engagement was done by the respondents to ensure that the applicants could not earn continuity of casual service. They have further stated that the payment of casual workers in all Govt. offices including G.S.I. is done as per rates fixed by the Dept. of Personnel, Govt. of India. In para 16 of their reply, the respondents have stated that regularization of services of casual workers in Group 'D' post is guided by the three office memorandum of DOP&T, Govt. of India namely – (a) O.M. No. 40014/4/77/Estt(C) dated 21.3.79, (b) O.M. No. 49014/19/84/Estt(C) dated 26.10.84 and (c) O.M. No. 49014/4/90-Estt(C) dated 8.4.91. In para 18 of the reply they have stated that already 22 (among the 90 applicants) have been provided with employment in Group 'D' posts (Annexure R/I) and other 23 cases are not in the final stage of processing (Annexure R/II). The cases of remaining 45 applicants are in different stages of verification due to non-availability of data from the various units of the Department. However, it is expected that the cases of the remaining 45 applicants will be settled as soon as possible. Regarding the age consideration, the same has been addressed to and some of the applicants have already been given employment on the above criteria. The respondents in para 24 of the reply have stated that the Department is not aware of any Supreme Court judgment whereby the employee putting continuous work for more than 120 days in a year or 240 days intermittently in a year can be given temporary status. The respondents have further stated that in view of the submission made by them the OA deserves to be dismissed.

4. The applicants have filed a rejoinder to the reply and to the supplementary affidavit filed by the respondents.

5. We have heard Ms.S.Banerjee, Id.counsel appearing for the applicants and Mr.B.Mukherjee, Id.counsel appearing for the respondents and have gone through the pleadings. The Id.counsel for the applicants argued that Govt. of India vide O.M. No.



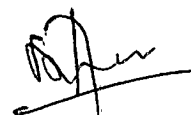
*49014/19/84 Estt(C) dated 26.10.84 and 28.11.84 declared that 5 days week in Central Govt. offices of which G.S.I. is one. If a casual worker puts more than 206 days in service in consecutive 2 years, then he is entitled to be absorbed in the regular service. The applicants were engaged to the post of Group 'D' post and they performed duties more than 206 days in a year continuously as per DOP&T's above mentioned circular. For regularization to the post of Group 'D', 90 applicants filed the instant OA and during pendency of this case 22 applicants have been already absorbed to the post of Group 'D'. That for engagement to the post of Group 'D' in respect of the applicants who are the applicants No. 3,12,15,23,44,47 and 89, the then Director (Personnel) Mr.R.N.Dutta vide his letter No. 1117/SP/A-12031/Engagement/CM/2000/179 dated 12.3.2001 requested the Director (M-I), Dept. of Mines, New Delhi by annexing a list of some eligible candidates amongst whom the name of the aforesaid applicants of the original applicants were in the zone of consideration. However, inspite of the above mentioned letter of Director (Personnel) nothing have been done by the concerned authorities and subsequently the next Director (Personnel), Mr.B.K.Das wrote another letter along with the enclosures of list of eligible candidates vide letter No. A-12031/CW/2000/17D to the Secretary to the Govt. of India, Ministry of Mines, New Delhi for engagement of the applicants of the original application and amongst them the name of the above mentioned candidates are also very much within the zone of consideration. Ld.counsel further argued that since no action was taken thereafter another Director (Personnel) of Geological Survey of India, Sri K.P.Gautam sent another letter being No. 1700(SP)/A/12031/Engagment/CW/2001/170 dated 4.7.03 to the Secretary to the Govt. of India, Ministry of Mines, New Delhi for conveying approval for regularization of 131 casual workers in Group 'D' post in Kolkata based offices of Geological Survey of India but nothing have been done till today. The ld.counsel has argued that the proposal for regularization of eligible contingent workers of G.S.I. was sent to the Ministry after due scrutiny of working days vide letter dated 12.3.01, 31.7.01 and 3/4.7.03. However, the ld.counsel for the applicant has argued that when the Dept. has scrutinized the eligibility of the candidates and recommended their names for regularization it was wrong on the



- part of the respondents to deny the same. However, a letter has been annexed now by the respondents dated 20.10.03 signed by said Shri K.P.Gautam, Director (Personnel) of G.S.I. stating withdrawal of the proposal submitted by them earlier.

6. The Id.counsel for the respondents has argued that the applicants who were found eligible after scrutiny had been regularized. The Id.counsel for the respondents has stated that most of the 131 casual workers have not been found eligible for regularization based on various DOP&T directions and Supreme Court judgments in this matter and therefore the Ministry was requested not to communicate any decision in this regard as they have already informed the casual workers as well as CAT their ineligibility for regularization and therefore, the proposals submitted by the office is treated as 'withdrawn'. Ld.counsel for the respondents referred to the letter No. A-12031/Engagement/CW/17D-Vol.I dated 20.10.03 in support of his contention.

7. From the perusal of the pleadings and after hearing the parties it appears that the casual workers had been working in various capacities with the G.S.I. on different instant of time. The respondents in their written reply have admitted that out of 90 applicants, 22 have been provided employment in Group 'D' and another 23 cases have been scrutinised at the initial stage and are now in the final stage (Annexure R-II). The cases of remaining 45 applicants are now at different stages of verification and it is expected that the cases of the remaining 45 applicants will be settled as soon as possible. From the perusal of the pleadings it appears that the contention about the regularization of the applicants by the respondents was governed by three O.M.s issued by the DOP&T. The O.M. dated 21.3.79 provides that the employee who have put in at least 240 days (or 206 days in office having 5 days a week) as casual labourers (including broken periods of service) during each of the two years of service referred to above shall be eligible for regularization. The broken period of service rendered as casual employee shall be taken into account for purpose of regularization in regular establishment provided that one stretch of service is more than six months. They should also be eligible in respect of maximum age on the date of regularization. For this purpose casual employees may be allowed to deduct from their actual age, the period served by them as casual employees, and if after deducting




- these periods, they are within the maximum age limit, they should be considered eligible for regularization. The O.M. dated 26.10.84 deals with implementation of instruction relating to regularization of services of casual worker in Group 'D' post, in the organization observing 5 days week. Here it is mentioned that if they have put in two years of service as casual worker, with 206 days of service during each year (as against the usual 240 days), they will be eligible for consideration. The O.M. dated 8.4.91 states relaxation in age limit and sponsorship through Employment Exchange, in case of casual worker extended upto 7.6.88. Based on these instructions a reference was made by the then Director (Personnel), G.S.I. addressed to the Director (M-I), Dept. of Mines, New Delhi for regularization of casual hands against the Group 'D' post in G.S.I. in letter No. 1117/SP/A-12031/Engagement/CM/2000/179 dated 12.3.01. Subsequently another letter No.A-12031/CW/2000/17D dated 30.7.01 was sent by the next Director (Personnel) Mr.B.K.Das addressed to Secretary to the Govt. of India, Ministry of Mines, New Delhi for regularisation of casual workers in Group 'D' post in unreserved category. This letter was with reference to letter dated 29.3.01. Since nothing was heard, it appears that another letter was written by Mr.K.P.Gautam, Director (Personnel) on behalf of Director General, G.S.I. addressed to Secretary, Govt. of India, Ministry of Mines, New Delhi vide letter dated 4.7.03 regarding regularization of casual hands against the Group 'D' post in G.S.I. This letter was written in continuation of letter dated 29.3.01 and 31.7.01. Thus it is obvious that the Director (Personnel) of the G.S.I. and subsequent Director (Personnel), Mr.B.K.Das being satisfied with the contention of the applicants made a reference to the Director, Dept. of Mines, New Delhi and to Secretary to the Govt. of India, Ministry of Mines, New Delhi. Subsequently the Director General have made a reference to the Secretary to the Govt. of India for regularization of casual hands against Group 'D' post. This letter was issued by Mr.K.P.Gautam on behalf of Director General, G.S.I., Kolkata. It is surprising to note that Mr.K.P.Gautam, Director (Personnel) wrote another letter to Secretary, Govt. of India making the request to the Minister not to communicate any decision as they have already communicated the applicants about their ineligibility for regularisation and the proposal submitted by them vide their letters dated

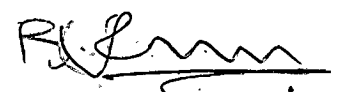


29.3.01 and 31.7.01 respectively. It is an established point of law that when one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceedings between himself and such person or his representative to deny the truth. Thus the letter written by Mr.K.P.Gautam, Director (Personnel) on behalf of Director General on 20.10.03 contradicts his own submissions made by him in his earlier letter written on behalf of the Director General dated 4.7.03 which was issued in continuation to the letter written by Director (Personnel), Kolkata dated 12.3.01 and 30.7.01. The letter dated 20.10.03 does not depict how the applicants were not eligible when they have earlier been found eligible as per DOP&T's guidelines. It is entirely unbecoming on the part of the Director General and particularly the said K.P.Gautam for issuing two contradictory letters.

8. In view of the above facts, the letters issued by the Director General dated 22.10.03 is quashed. The respondents will consider the claims of the present applicants in the context of DOP&T circulars referred to by them and in case they are found eligible they should be absorbed against regular Group 'D' post and according to their turn. In case they are found not eligible the respondents must clearly indicate as to why they have not been found eligible and to pass a speaking order giving complete reasons unlike the orders passed by them in the present context. We depreciate the action taken by the respondents in not complying with the orders of the Tribunal and delaying the matters unnecessarily. The entire exercise should be completed, without fail, within a period of 6 months from the date of receipt of the order, without asking for any further extension. A detailed speaking order be passed accordingly.

9. The OA is accordingly disposed of. No order as to costs.


MEMBER(A)
in


MEMBER(J)