

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 488/92
T. A. No. 499

DATE OF DECISION 6.4.93

Mr. K. S. Sundaran & 19 others Applicant (s)

Mr. M. C. Cherian

Advocate for the Applicant (s)

Versus

Union of India rep. by
Secretary, M/o Defence & another Respondent (s)

Mr. C. Kochunni Nair, ACGSC

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. A. V. Haridasan, Judicial Member

The Hon'ble Mr. R. Rangarajan, Administrative Member

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

JUDGEMENT

R. Rangarajan, AM

The applicants numbering 20 were working as casual labourers under the 2nd respondent, ranging from the year 1981 to 1990 onwards. Their total days of service during the above said period as on 25.3.1992 is given in Annexure-A1. As per the applicants' averment, the 2nd respondent has got 16 different units/establishments and casual labourers are engaged under a civilian Gazetted Officer as and when necessity arises. The casual labourers are interchangeable and are borne in the same seniority unit and all of them were initially engaged through the Divisional Employment Exchange, Ernakulam. As and when work is completed the labourers are discharged. When some other work of casual nature is to be executed the 2nd respondent calls for casual labourers from the Employment Exchange and thus casual labourers who were already employed are left out if the employment exchange does not recommend their name as and when requisition

are placed on them by the 2nd respondent either by written requisition or telephonic request. The Employment Exchange may send the names of those who had already worked in the naval command if they are readily available on receipt of the request or anybody who is readily available even if they had not earlier worked under the 2nd respondent. Thus there is no pattern for employing those who were discharged earlier by the 2nd respondent for want of work. Further those casual labourers who were discharged for want of work will not be recommended by the Employment Exchange if they are already overaged i.e. they crossed the age of 30 years. Even if there is work in some other unit, the 2nd respondent will discharge them and ask for fresh list from the Employment Exchange, thus creating an artificial break.

2. With the above method for recruitment for casual labourers, the discharged casual labourers have to report regularly with the Employment Exchange on Saturdays and Wednesdays, to see whether there is any chance of being engaged again. Under the above circumstances where there is no surety of their employment even on casual basis ~~as~~ on the consideration of they being the discharged casual labourers for want of work, they have approached this Tribunal ^{praying for a direction} to engage them in preference to the fresh persons and to follow the rule of "last come first go". As this principle is not followed the respondents are at liberty to pick and choose persons arbitrarily, violating the I.D.Act, Section 25(B)(1). They have thus attributed the above mode of recruitment for engaging candidates for casual nature of work to **arbitrariness and illegality**. Hence they pray for direction to the respondents to continue the applicants in service under the 2nd respondent so long as work is available and in preference to their juniors having lesser number of days of service or freshers. They also pray for a direction to the 2nd respondent to regularise their services. However at the

time of final hearing the learned counsel for the applicant limited his prayer to the extent of directing the respondents to employ them as and when work exists in preference to any person with less days of service as casual labourers or freshers.

3. As an interim order while filing the application, the applicants prayed for a direction to the 2nd respondent to continue the applicants in service during the pendency of the OA so long as any person with lesser days of service is continued as casual labourers. The interim prayer was granted as per the order dated 26.3.92.

However, this interim order was vacated vide order dated 2.4.92 on the basis of the submission by the 2nd respondent that no work is available and the applicants are being engaged even today only because of the interim order directing to maintain status quo which creates difficulties for the department.

4. A miscellaneous petition No.993/92 dated 13.7.92 was filed by the applicants wherein they have alleged that there is work and it is being executed by contractors and others after 2.4.92 to avoid creation of any records for that purpose. They have also given instances wherein the respondents have engaged on 8.6.92 and 22.6.92 freshers by placing requisitions on the employment exchange. They aver that this is a violation of the directions given by the Hon'ble Tribunal and hence prayed for direction to the respondents to engage the petitioners provisionally in preference to others who have lesser service. The MP was admitted and the respondents were directed to file the reply statement. Though the respondents have said that the statements filed by them on the MP should be taken as the statement in the main application, they have subsequently submitted the reply statement also.

5. The main contention of the respondents is that the applicants had been engaged on Spot Employment Basis. Such employment is to meet casual and non-recurring requirement of visiting ships or for receipts of goods by Rly. wagons etc. Such engagements are made as and when required by calling for casual labourers from Employment Exchange as per the instructions of Ministry of Defence at Annexure-R1. Though some casual labourers were employed by the above method after 2.4.92 also they have said that this is purely an interim measure and the candidates supplied by the employment exchange were employed to meet the exigencies of work and they have no say in this matter. They have not admitted any discrimination shown against the applicants and they are strictly employed as per the directions of their ministry. They have also not admitted that they have infringed any provisions of the I.D. Act and they have strictly followed the Rules. The applicants are daily wage coolies who are recommended by the Employment Exchange to meet unforeseen/urgent labour needs. The employment exchange in turn used to direct the candidates available in the vicinity of the Exchange at that moment and not on the basis of the overall seniority. This in their opinion is in order as the work to be completed was of urgent nature and cannot wait for following the formalities of checking up the seniority of the candidates. They further averred that there is no intentional denial of work to the applicants by the respondents as mentioned by the applicants. They further submitted that this is similar to the case in OA 215/87 which was dismissed by the Madras Bench of this Hon'ble Tribunal. They further averred that the monthly rated casuals were recruited on being sponsored by the Employment Exchange throughout Kerala and in accordance with the normal recruitment rules. Casual spot employment as is done now is necessary to meet the exigencies of service

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and such procedure for such employment is in order. Hence they requested for the dismissal of the OA with costs.

6. The applicants have more or less repeated their initial submissions in their rejoinder also but submitted that a person who is engaged in the works must be allowed to continue without replacements avoiding artificial breaks as the work in all units are under the control of the 2nd respondent. They further submitted that to effect such orderly engagement and disengagement of casual labourers the respondents should maintain necessary registers, seniority lists, etc. of the casual labourers being engaged under them.

7. We have heard the learned counsel of both parties and also perused the records carefully. The engagement and disengagement of casual labourers are being done by almost all departments wherever work of casual nature is involved. Each department has made their own rules for such engagements and disengagements in tune with the statutory instructions in force. All departments keep proper records of the casual employees from the date they are engaged. Emphasis is now being given to take even casual labourers in the initial recruitment through the Employment Exchange only to avoid complication of showing favouritism etc. at a later date. Hence the respondents in this case should also fall in line with the main stream in regard to such casual employment.

8. The respondents have stated that the candidates are employed on Spot Employment basis. This new terminology for employing casual labourers is a word coined by the respondents without any basis. Any employment which is done to meet the non-recurring requirements of duty is to be done by employing casual labourers. Such

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labourers who are employed on the spot or otherwise are casual labourers governed by normal rules. No doubt the first employment should be from those recommended by the employment exchange. Subsequently there is no need to approach the employment exchange for recruitment every time. Once the candidates are sponsored by the employment exchange and engaged by the department as casual labourers it is the responsibility of the department to further regulate their employment as per needs of the work by maintaining proper list of casual labourers showing their bio-data and the days of work done by them at various spells. The above in our opinion is the essence of instructions of the Ministry of Defence under Annexure-R1 and also various observations made by the Supreme Court and other Tribunals. The case of OA 215/87 as specially pointed out by the learned counsel for the respondents at the final hearing is the case of a single individual who was discharged on 2.8.85. The larger question of engagement and disengagement of casual labourers has not been discussed in this OA and cannot be taken as a parallel case to the present one. Hence we do not place much reliance on this judgement.

9. The employment of the applicants in various spells has not been disputed through valid records. No proper reasoning has also been given as to why these discharged labourers cannot be engaged as per their length of service as and when there is requirement as is being done in other departments.

10. Considering the above factors as analysed by us, we are of the opinion that there is need for the department to rationalise their recruitment procedure for casual labour employment. The casual labourers already employed cannot be discharged if there is work and fresh hands taken from the Employment Exchange. A list of casual labourers engaged by them should be maintained indicating

their bio-data and work details in various spells. It is but proper and just to employ these discharged casual labourers only as and when there is casual work as per their seniority in terms of their number of days of service and their immediate availability. We are firmly of the opinion that the casual labourers may be available easily without difficulty if they are asked to report to the Civilian Gazetted Officer or any other nominated officer under the Respondent-2. When they report to the concerned as above they may be engaged as per their seniority. This will obviate the need for approaching the Employment Exchange frequently. It is enough if the casual labourers once recommended initially by the concerned Employment Exchange and need not be recommended now and again for each and every spells of work. Their age should be within the prescribed limit at the time of initial engagement.

11. Considering the facts and circumstances of this case, we direct the respondents to formulate urgently the policy governing the engagement and disengagement of casual labourers in Southern Naval Command keeping in mind the observations made by us as above. We also direct that the respondents will continue the applicants in casual engagement in preference to freshers or others with lesser days of service as long as work is available. The respondents are also directed to prepare a gradation list of the casual labourers employed by them as per the number of days of service.

12. The application is disposed of as with the above directions. There will be no order as to costs.

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 (R.Rangarajan)
 Administrative Member

Recd 6/4/93
 (A.V.Haridasan)
 Judicial Member