

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. - 54/97

FRIDAY, THIS THE 24TH DAY OF OCTOBER, 1997.

G.O.R.A.M.:

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

1. P.K. Surendran
Panambukad House,
Kumbalangi South,
Kochi-7
2. K.T. Karunan
Vadakkethara House,
Kumbalam P.O.
Kochi-6
3. Thilakan E.I.
Eithithara House,
Vallarpadam P.O.
Panambukad
Kochi-31
4. P.A. Gopia
Parampadi House,
Elamkunnapuzha P.O.
5. Sugunan N.R.
Namboorikandathil House,
Edacochi, Kochi-6
6. Bhanuprakasan P.K.
Puthenpurakkal House,
Kumbalangi P.O.
Kochi-7
7. Joseph P.G.
Palliparambil House,
Konthuruthy,
Kochi-13.
8. P.J. Cleetus
Pulinthara House,
Moolukuzhi
Mattanchery P.O.
Kochi-2
9. M.R. Joseph
Mootheril House,
Kumbalangi South P.O.
Kochi-7
10. P.V. Balakrishnan
Puthuvvelslath House,
Thekkanmalipuram
Azheekkal P.O.
Vypeen
11. P.K. Paramu
Puthenkari House,
Kumbalanghi South P.O.
Kochi-7.

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12. A.B. Mohammed Kunju
Auythu House,
Kollimugal
West Vengola P.O.
Perumbavoor
13. M.M. Prasanthan
Mannalil House,
Kumbalangi P.O.
Kochi-7
14. T. Y. Job
Thekkekalathinkal House,
Kumbalangi P.O.
Azhikakam,
Kochi-7
15. V. S. Sallapan,
Avannakamparambil House,
Water land Road,
Palluruthy,
Kochi-6
16. C. P. Baby
Chakkalath Parambil
Oil and Pipe Link Road,
19/2217, Palluruthy
Kochin-6
17. P.A. Alexander
PUthickal House,
Perumpadappu,
Kochi-6
18. P.T. Asokan,
Puthemkari
Kumbalangi South P.O.
Kochi-7.
19. C.C. John
Chelaplatty House,
Ezhupunna South P.O.
Alappuzha District
20. V. A. Rajappan
Vattathara House,
38/2304, Near KSRTC Bus stand
Kochi-35
21. M.P. Rajendran
Manneli House,
Kumbalangi,
Kochi-7
22. V.K. Trivikraman,
Vattathara House,
Kumbalangi South P.O.
Kochi-7.

By Advocate Mr. N.N. Sugunapalan

Vs.

1. Union of India represented by
its Secretary, Ministry of Defence,
New Delhi.



2. The Flag Officer Commanding-in-Chief
Southern Naval Command,
Naval Base P.O., Kochi-4
3. The Civilian Gazetted Officer
Staff Officer (Civilians) Head Quarters,
Southern Naval Command, Kochi-4
4. The Chief Staff Officer,
(Personnel & Administration)
Southern Naval Command, Kochi-4
5. C.P. Baby, Unskilled labourer
Head Quarters, Southern Naval Command,
Kochi-4.
6. V. Mohanan Nair, Unskilled labourer,
Head Quarters, Southern Naval Command,
Kochi-4
7. K.K. Mohanan, Unskilled labourer,
Head Quarters, Southern Naval Command,
Kochi-4
8. P.N. Jayan, Unskilled Labourer
Head Quarters, Southern Naval Command,
Kochi-4
9. N.P. Mani, Unskilled Labourer,
Head Quarters, Southern Naval Command,
Kochi-4
10. T. B. Byju, Unskilled Labourer
Head Quarters, Southern Naval Command,
Kochi-4.
11. Antony Ramelo, Unskilled Labourer,
Head Quarters, Southern Naval Command,
Kochi-4
12. K.T. Antony, Unskilled Labourer,
Head Quarters, Southern Naval Command,
Kochi-4.
13. A.C. Sunny, Unskilled Labourer,
Head Quarters, Southern Naval Command,
Kochi-4.
14. K.J. Poulose, Unskilled Labourer,
Head Quarters, Southern Naval Command,
Kochi-4.
15. P.P. Kumaran, Unskilled Labourer,
Head Quarters, Southern Naval Command,
Kochi-4

By Advocate Mr. T.P.M. Ibrahim Khan, SCGSC for R 1-4

Mr. RajuK. Mathew for R5, 10 - 15



The application having been heard on 27.8.97, the Tribunal on 24.10.97 delivered the following:

O-R-D-E-R

HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

The applicants have been working as Casual Workers in various establishments under the control of the second respondent i.e. the Flag Officer Commanding-in-Chief, Southern Naval Command, Cochin. Their main grievance is that though they are eligible for the grant of temporary status as well as regularisation against certain Group 'D' posts like unskilled labourers in these establishments, the second respondent has issued appointment orders for such posts in favour of certain other persons sponsored afresh by the Employment Exchange, as evidenced by the orders dated 7.10.96 at A8 and A9. These orders of the second respondent have been impugned by the applicants.

2. The applicants' case briefly is that though they have been appointed for various periods of time and over a number of years as casual workers, they have not been provided with continuous employment and deliberately certain breaks in their employment have been effected by the second respondent. The applicants have contended that the second respondent should have considered them for regularisation, i.e. regular employment to Group 'D' posts like those mentioned at A8 and A9 in the light of the principles laid down in the decisions of this Bench made in similar cases like in O.A. 85/89, OA 488/92 and OA 1815/93, instead of getting fresh names sponsored by the Employment Exchange and appointing those persons so sponsored by the Employment Exchange.

3. The applicants have finally sought the following reliefs:



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"a) Issue necessary directions to the respondents to give regular appointment as Labourer to the applicants by considering their past services with the respondents giving them appointments w.e.f. 8.10.96 and grant all service benefits arising therefrom.

b). set aside Annexures A8 and A9.

c) declare that the applicants are entitled to be regularised as Labour/Group 'D' employees in any one of the 16 Naval establishments of the respondents, at Kochi.

d) Issue necessary direction to the respondents to grant equal pay to the applicants as that of their regular counter parts in the Naval establishments as labourers who are doing the very same work of the applicants.

e) declare that the applicants are entitled to minimum pay declared by the Government of India.

f) Issue necessary directions to the respondents to grant work and pay wages to the applicants without any break in service and grant all benefits arising therefrom.

g) issue necessary directions to the respondents not to retrench the applicants otherwise than in accordance with law."

4. The official respondents have strongly resisted the claims of the applicants. In their reply statement, the respondents have stated that the applicants had been provided in the past only with casual and 'spot' employment, based on specific, ad hoc and time-bound requirements for certain jobs which had to be done. According to the respondents, the applicants, therefore, cannot demand to be treated as having worked regularly or continuously in any of the establishments under the control of the second respondent. On the contrary, it has been contended particularly on behalf of the second respondent that the second respondent is required to fill up the regular vacancies in Group 'D' posts i.e. unskilled labours only by following the provisions laid down for the purpose of such recruitment, including invitation of the names from the jurisdictional Employment Exchange. According to the respondents, since the applicants were engaged earlier purely on ad hoc basis without following the provisions for regular employment, they cannot be said to have acquired any right for consideration for employment against regular posts in Group 'D' like the unskilled labourers, covered



under A8 and A9. The respondents have cited certain Supreme Court decisions to support the line of argument that the ad hoc appointments which are not regular cannot confer any right on the incumbents i.e. the appointees.

5. The respondents have further pointed out that the decisions of this Bench given in a number of similar cases so far have not consistently upheld the right of the applicants and those similarly placed, i.e. casual labourers who have been engaged in the past intermittently and on an ad hoc basis, even if they or some of them may have been originally sponsored by the Employment Exchange, for consideration for regular appointment against vacancies in Group 'D' posts. The respondents have therefore maintained that the applicants cannot question the legality of the recruitment being made by the second respondent against the regular Group 'D' posts of unskilled labourers in the establishments under his control with persons who have been sponsored by the Employment Exchange in terms of the relevant provisions governing such regular recruitment. According to the respondents, in the light of the order passed by this Bench in O.A. 488/92 delivered on 6.4.93, A3, a list of all casual workers who have put in such intermittent service has been prepared, grading them in terms of the number of days of service so rendered. They have said further that as decided by this Bench in the said O.A. as and when casual work becomes available, the casual workers in the said gradation list are being offered employment, i.e. are being engaged. The respondents have nevertheless maintained that such a dispensation as ordered by this Bench in the said OA 488/92 cannot be deemed to have created a right in favour of the applicants to be treated as eligible for regular employment to Group 'D'



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posts when vacancies arise in such posts. The applicants and similarly placed casual workers, according to the respondents, are only eligible for engagement in a purely ad hoc and casual manner on the basis of their seniority in the gradation list for purely casual and temporary work as and when it becomes available.

6. We have given the pleadings in this case made on behalf of the applicants and the respondents as well as the arguments advanced by the learned counsel on either side our detailed and careful consideration. The relevant issues which have arisen in the present case according to us are as follows:

"a) Whether in the light of the previous decisions of this Tribunal the applicants have acquired a right to be considered for appointment to regular Group 'D' posts as and when vacancies arise in that category, and

b) Whether the impugned orders A8 and A9 appointing the party respondents in this case i.e. respondents 5 to 15, being the candidates sponsored by the Employment Exchange, afresh and without considering the applicants, are liable to be set aside.

These issues have been discussed below.

7. There is hardly any doubt that this Tribunal in its order in O.A. 85/89 decided on 28.6.91 at A2 laid down an important principle. In that O.A., the applicants who were situated similarly as the applicants in the present case, had prayed for similar declaration that they were eligible for regular appointment to certain Group 'D' posts under the command of the second respondent i.e. the Southern Naval Command, Cochin. After a detailed consideration, the

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Bench allowed that prayer. We reproduce the operative portion of the decision of the Bench in that case:

"...It is specifically pointed out in the ground H of the amended O.A. that there are 16 Naval Establishments under the second respondent and these five are industrial and eleven are non-industrial. The regular employees and the casual labourers in these 16 industrial units are under a common seniority and that the applicants can be accommodated in any other establishments even if the rice cleaning work is not available for engaging the applicants. It is admitted in the additional reply statement that "there are sixteen Naval Establishments under the second respondent. The regular employees and casual labourers borne in these units are under common roster and they are interchangeable." Our original decision to dismiss this application was based on the fact stated by the respondents that the unit in which the applicants were working has been closed and there is no scope of further absorption. We have indicated in our earlier judgment dated 23.1.90 that we would have attempted to investigate the matter in greater detail but for the statement that the unit was closed and there is no possibility of further engagement of the applicants. Now it is made clear that even if the unit in which the applicants were engaged originally was closed, they can be accommodated in other units which are run by the Naval Establishment.

The applicants have clarified this position in the amended application. The second respondent has no case that the works available in other units are such a nature that the applicants cannot be engaged for the same. Hence, we see no merit in the contention of the respondents that the rice, etc. cleaning work is not available and hence the applicants cannot be regularised.

7. The next contention of the respondents that the applicants are over aged even at the time of original engagement and hence they are not entitled to be regularised in the service of Base Victualling Yard cannot also be accepted. All the applicants were not over aged at the time of initial engagement. According to the applicants, the second applicant was within the age of 30 years and applicants 1, 3 and 4 have crossed the age of 30. That apart, this Tribunal in O.A. 86/89 considering the scope of Ministry of Personnel O.M. No. 49014/2/89 Estt.(C) dated 7.6.88, providing for relaxation of upper age limit at the time of regularisation by determining a notional age and deducting from his actual age the number of years of service he has put in as a casual labourer reckoning from the date of his initial engagement held as follows:

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"this objection should have been insisted upon only at the time of initial appointment and not at the time of regularisation."

Admittedly the applicants have been allowed under the respondents without raising any objection regarding age limit for about four years. Now it may not be fair on the part of the respondents to deny the regularisation on the ground of age bar particularly when the age of the applicants 1, 2 & 4 is calculated in the light of the above O.M. they are eligible for relaxation. Under these circumstances, the respondents are not justified in denying regularisation to all the applicants on the flimsy ground of age bar. Accordingly, in the facts and circumstances of the case we are of the view that this application is to be disposed of in the interest of justice with the direction to the respondents to consider the applicants also for regular appointment in Group 'D' post in the light of the above observation in accordance with the availability of vacancies in any of the units in the Base Victualling Yard at Cochin under the respondents so as to engage them in future and regularise their service in accordance with their seniority considering their past services. We do so. In this view of the matter we are not considering the decisions cited by the learned counsel for the applicants at the bar.

8. The application is disposed of as above."

In fact, the respondents in the present case have also made a specific reference to the decision in the same case i.e. O.A. 85/89 at A2. But the contention of the respondents in that context is that the applicants in the present case are not entitled to the benefits flowing from the principle declared by this Bench in O.A. 85/89 on account of the delay committed by the applicants in making a claim for similar benefits and particularly for regularisation and therefore, the claim made by the applicants now is time-barred. However, this line of argument does not appear very convincing, because the applicant in this case cannot be treated as if they have committed laches in this behalf. On the contrary, it is on record that the casual workers who have been employed intermittently by the administration, but also this Bench quite often with the same or similar prayers for continuous engagement based on seniority whenever work is available



and further for regularisation against vacancies in Group 'D' posts i.e. unskilled workers which have arisen from time to time in various establishments under the control of the second respondent. In fact the applicants 18 to 22 along with similarly situated persons filed O.A. 1815/93 seeking re-engagement and regularisation. The applicants 22 and 18 herein were applicants 1 & 2 respectively in that application. Annexure A1 is a copy of the order of the Tribunal in that application. It was held that *prima facie* the applicants in that Application were found to be entitled to the same benefits as given to the applicants in O.A. 85/89 and the O.A. was disposed of directing that the applicants should be re-engaged subject to the availability of work. In implementation of the above directions, the representations of the applicants in that case was disposed of by the third respondent by order dated 14th February, 1994 (Annexure A4). The relevant portion of A4 is extracted below:

"In pursuance of the directives of the Hon'ble Tribunal in O.A. 488/92 dated 6.4.93 a consolidated list of the casual labourers with available records is being examined to make out a seniority list in terms of the date of initial engagement and the number of days the individuals have worked. And from this list the undersigned will consider you along with others for spot employment. The requirement of spot employment will be displayed on a notice board at the Ernakulam Gate of the Naval Base. Whenever there is a regular vacancy of Group 'D' post, the casual labourers who ever rendered the maximum days of work and found senior and eligible in accordance with the recruitment rules will be regularised against such posts."

We are of the considered view that in the light of the orders passed by this Bench ⁴⁹ in O.A. 85/89 ~~as well as in A9~~ ⁴⁹ ~~as well as in A9~~ O.A. 165/89, 488/92 and O.A. 1815/93 and in view



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of the order at Annexure A4, the respondents, particularly the 2nd respondent who was a party in these Original Applications, were under an obligation to consider regularisation of the casual workers who had been engaged from time to time, against vacancies in the Group 'D' posts of unskilled workers.

In O.A. 488/92 passed on 6.4.93, which has been referred to by both the applicants at A3 and the respondents at R1(A), the 2nd respondent was called upon to prepare a gradation list of all casual workers based on the number of days of service put in by them and then offer them engagement as casual workers depending on the availability of work. It appears that somehow the 2nd respondent has construed the order passed by this Bench in the said O.A. 488/92 as restricting the right of the casual workers like the applicants to a consideration for engagement only as casual workers based on the seniority in the gradation list and depending on whether work of a casual nature becomes available on a particular occasion or on a particular day. We find no reason warranting for the respondents to place such a restrictive construction on that decision i.e. the decision of the Bench in O.A. 488/92, without placing it in the wider context of the principles laid down earlier by this Bench in O.A. 85/89 and O.A. 165/89 which we have mentioned above, especially when they themselves have issued Annexure A4 order which states that the casual labourers on the basis of seniority and eligibility would be absorbed as on group 'D' posts of unskilled labourers. In fact, it is clear that for the purpose of regularisation of the casual workers against group 'D' posts of unskilled labourers, in the light of the instructions and schemes that Government of India have promulgated from time to time, to which the respondents have made a reference, for engagement as casual workers



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continuously or at least for a large number of days in a year, like 240 days with six working days in a week or 206 days with 5 working days in a week, would be a pre-condition for such regularisation. Therefore, unless the right of continuous engagement was built into the arrangement for engagement of the casual workers, based on their seniority in terms of number of days of service rendered in the past, most of them would not be able to fulfil this important criterion i.e. criterion of service of 240 or 206 days in a year as the case may be. When such is the situation, the respondents, according to us, are not free to consider the decision in O.A. 488/92 in isolation.

It has to be read along with the decisions in O.A. 85/89 and O.A. 165/89.

8. The respondents have pointed out that most of the casual workers including the applicants will not be eligible for the scheme brought into force by the Government of India w.e.f. 1.9.93 called "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993" in the light of further clarification furnished by the same Government of India Office Memorandum dated 12.7.94 which they have annexed to their reply at R1(H). In fact on a number of earlier occasions this Bench has held that as long as the casual workers were originally sponsored by the Employment Exchange a fresh insistence on their being sponsored by the Employment once again at the time of consideration of their cases for regularisation against Group 'D' posts would not be necessary. On the scope of relaxation of age limit for the purpose of regularisation, the Government of India have clarified that for the purpose of grant of temporary status no age limit has been prescribed. It is,



...

therefore, clear that the casual workers who satisfy the criterion of 240 days or 206 days of work as the case may be in a year in future, or if they have already done so, in the first instance will be eligible for the grant of temporary status as a Group 'D' employee, i.e. an unskilled worker. Thereafter, in conformity with the same Government of India scheme mentioned above, as amended from time to time, they will have to be regularised against the vacancies in Group 'D' posts, treating 2/3rd of the vacancies in the Group 'D' posts as reserved for such casual workers already conferred with the temporary status of Group 'D' employees. There cannot be, in our opinion, any different interpretation of the combined effect of the orders passed by this Bench in the three OAs referred to above in particular and the operation of the scheme of the Government of India, Department of Personnel and Training, which became effective on 1.9.93, also mentioned above.

9. In the present case because of the extremely ad hoc manner in which casual labourers have been engaged so far, it is not clear whether any of them have actually completed 240 or 206 days in a year or are likely to do so in the near future. In any case, in terms of the order passed in OA 488/92 and in the light of the operation of the gradation list prepared on the basis of that order, which the respondents have already put into operation, the casual workers like the applicants will have to be offered engagement as casual workers. Since the applicants have also pointed out a few inaccuracies in the gradation list, it will be necessary for the second respondent to consider specific representations made in this behalf by the applicants and rectify these inaccuracies if the



representations are found to be correct.

10. Thereafter, it is incumbent on the second respondent to grant temporary status ^{15/49} to all such casual workers who would become so eligible in terms of the Government of India scheme in their turn. They shall also be considered for regularisation in their turn in group 'D' posts and 2/3rd vacancies arising in group 'D' will have to be reserved for the regularisation of casual labourers who have been granted temporary status. As the applicants have no case that any of them have already acquired temporary status in terms of the scheme for grant of temporary status and regularisation which came into force on 1.9.93, ⁴⁹ they have not yet become entitled for regularisation. Therefore, the applicants' prayer for striking down Annexures A8 and A9 appointment orders of Respondents 5 to 15 cannot be granted.

11. In the result, the application is disposed of with the following directions:

- i) The prayer for quashing Annexures A8 and A9 is not granted.
- ii) The respondents are directed to engage the applicants for casual work on the basis of their placement in the gradation list in preference to juniors and outsiders.
- iii) The respondents 1 to 4 shall also grant temporary status to the applicants as and when they became eligible for the same in accordance with the Scheme and consider them for regularisation in Group 'D' posts in their turn.
- iv) 2/3rd vacancies in Group 'D' arising in future under the respondents shall be reserved for

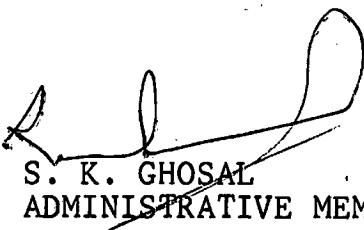


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regularisation of casual labourers in accordance with
the scheme.

There shall be no order as to costs.

Dated the 24th October, 1997.



S. K. GHOSAL
ADMINISTRATIVE MEMBER



A. V. HARIDASAN
VICE CHAIRMAN

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