

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.537/2002.

Tuesday, this the 11th day of November, 2003.

C O R A M

HON'BLE MR.T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. C.Ambika,
Casual Labourer,
Passport Office, Kozhikode,
Residing at 'Malika Veedu',
Cherooty Road, Kozhikode-1
2. A.P.Ambujakshy,
Casual Labourer,
Passport Office, Kozhikode,
Residing at 'Kalakandiparamp',
Post Puthiyara, Kozhikode.

..Applicants.

[By Advocate Mr. Shafik M.A.]

Versus

1. Union of India represented by
The Secretary to the Government of India,
Ministry of External Affairs,
New Delhi.
2. The Chief Passport Officer & Joint Secretary (CPV),
Ministry of External Affairs,
New Delhi.
3. The Passport Officer,
Passport Office, Kozhikode.
4. The Secretary,
Ministry of Personnel, Public Grievances & Pension,
New Delhi.

..Respondents.

[By Advocate Mr. Sunil Jose, ACGSC]

[The application having been heard on 11th November, 2003,
the Tribunal on the same day delivered the following:]

O R D E R

HON'BLE MR. T.N.T.NAYAR, ADMINISTRATIVE MEMBER

There are two applicants in this case. Both of them are casual labourers working under the third respondent. The first applicant entered casual service under the third respondent from April, 1989, and has been rendering unbroken casual service since 7.7.1992. The second applicant again was originally engaged in

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April, 1989, and has been continuing in unbroken casual service with effect from 25.5.1992. The facts concerning the two applicants' continuous engagement in casual service since 7.7.1992 and 25.5.1992 respectively are not denied. The applicants are aggrieved that inspite of the long and continuous casual service, they have not been conferred with the temporary status on the basis of Annexure A/2 Scheme dated 10.9.1993 so far for the purpose of their eventual regularisation. The applicants questioned the validity of the reason for refusing the conferment of temporary status to them, namely, non-sponsorship of their names by the relevant Employment Exchange at the time of initial engagement. It would appear that the second respondent by a fax message dated 27.6.2002 informed the third respondent that the applicants were not eligible for grant of temporary status since they were not engaged through Employment Exchange as such sponsorship was essential for conferment of temporary status. The respondents have relied on the Department of Personnel and Training O.M.No. 12.7.1994 which on challenge, happened to be upheld by Hon'ble Supreme Court in S.L.P. No. 2368/97 vide judgement dated 27.1.1997. The applicants seek, inter alia, the following reliefs by challenging the aforesaid fax communication (Annexure A/1) and also the Department of Personnel and Training O.M. dated 12.7.1994 (Annexure A-1a) making the sponsorship by Employment Exchange as a mandatory condition:

- "(i) To declare that the applicants are entitled to be conferred with the temporary status as per the Annexure A-2 Scheme, since they have the requisite conditions specified therein and to direct the respondents to confer such temporary status to the applicants with effect from 1.9.1993 and to grant all consequential benefits including regular appointment as Group D, with effect from the date on which the other similarly situated casual labourers were regularised, with arrears of pay;
- (ia) To call for the records relating to Annexure A-1a and to quash the same;

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- (ii) To declare that any proposal to terminate the services of the applicants in order to deny them the rights conferred by the Annexure A-2 Scheme is illegal, arbitrary and ab initio void and illegal and to quash any order or such proposal".

2. Without denying the facts concerning the services rendered by the applicants, the respondents have, in their reply statement, opposed the claim of the applicants for conferment of temporary status firstly on the ground that they were not sponsored by the Employment Exchange at the time of initial engagement and secondly, on the ground that, in any case, the mandatory condition regarding the sponsorship by Employment Exchange as contained in the DOP&T O.M. dated 12.7.1994 (Annexure R/1) has been upheld by the Hon'ble Supreme Court in the S.L.P. filed by the respondents vide judgement dated 27.1.1997 in S.L.P. No. 2368/97 (Annexure R/2) which really are the genesis of the applicants' grievance in the present O.A.

3. In the rejoinder, the applicant has stated that even those applicants in respect of whom the judgement of Hon'ble Supreme Court in S.L.P. No. 2368/97 would operate adversely, are still continuing and their names are reflected in Annexure A/8 seniority list of casual labourers and they might on seniority basis be considered for filling up the posts of Record Sorter, Daftry, Peon and Night Watchman etc.. Thus, by their own action, the respondents have recognised the claim of the persons even for regular appointment to be legitimate. In the additional reply statement, the respondents have reiterated their consistent stand that non-sponsorship of applicants' names by the Employment Exchange would be fatal to their claim and that alone was the reason why they could not be considered for conferment of temporary status. However, in paragraph 5 of the additional

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reply statement, the respondents have stated that the applicants' names were likely to be considered for inclusion in the seniority list as soon as the Ministry prepares a fresh seniority list.

4. I have gone through the record and heard Shri M.A. Shafik, learned counsel for the applicant and Shri Sunil Jose, learned ACGSC.

5. According to Shri Shafik though the Hon'ble Supreme Court upheld the validity of the condition regarding sponsorship of candidates by the Employment Exchange as contained in DOP&T O.M. dated 12.7.1994, it should be noted that Hon'ble Supreme Court has laid down a clear legal principle in regard to the unreasonableness of restricting the selection only to candidates sponsored by Employment Exchange even in relation to regular appointment as per the decision in the case of Excise Superintendent Malkapatnam Krishna District, A.P versus K.B.N. Visweshwara Rao and Others, (1996) 6 SCC 216. It is also stated by the learned counsel for the applicant that the said decision had been followed in a number of subsequent decisions of Hon'ble Supreme Court itself and in numerous cases involving the very issue of denial of conferment of temporary status on grounds of non-sponsorship by Employment Exchange considered by the C.A.T. He would, therefore, plead that by applying the general principle laid down by Hon'ble Supreme Court in Malkapatnam's case (supra) and several other decisions based on the same decision, the applicants genuine claim for conferment of temporary status should be considered. It is also pointed out by the learned counsel for the applicant that since even those persons in respect of whom the Hon'ble Supreme Court has upheld the

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condition regarding sponsorship by Employment Exchange, are still continuing in the same organisation and are being considered even for regularisation as is borne out by Annexure A/8. The applicants have, therefore, a legitimate grievance to be redressed, the learned counsel urge.

6. Shri Sunil Jose, ACGSC, on the other hand, has placed reliance on Annexure R/2 judgement of the Hon'ble Supreme Court confirming the validity of the condition regarding sponsorship by Employment Exchange contained in Annexure R/1 O.M. and pleaded that there was no need to invoke the decision in Malkapatnam's case (supra) since the judgement of Hon'ble Supreme Court in Annexure R/2 turns on the sponsorship by Employment Exchange in relation to casual workers under the same respondent.

7. On a consideration of the facts and legal position emerging from the case record and from the contentions put forth by both sides, I find that inspite of long and continuous services as casual workers, these two applicants are likely to lose their livelihood in the light of the judgement of Hon'ble Supreme Court in S.L.P. No. 2368/97 dated 27.1.1997 upholding the DOP&T O.M. dated 12.7.1994. The Apex Court, in Excise Superintendent Malkapatnam, Krishna District, A.P. versus K.B.N. Visweshwara Rao and others (supra), held: "It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the Employment Exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the Employment Exchange. Under these circumstances, many a deserving candidate

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is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the Employment Exchange and Employment Exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and the employment news bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates." The position in this case, however, is that if the finding of the Hon'ble Supreme Court in S.L.P. No.2368/97 is applied, the applicants would have no case for conferment of temporary status at all. But I am relieved to find that the respondents are not keen to precipitate such an unfortunate event: It is seen that even those persons who are adversely affected by the Hon'ble Supreme Court's decision aforesaid, are included in Annexure A/8 seniority list thereby holding out the much need promise of livelihood for them. I observe that it is not merely for the conferment of temporary status that those persons are included in the list but for the special purpose of filling up of the vacancies of Record Sorter, Daftry, Peon and Night Watchman - all Group 'D' posts. Thus, according to me, if those people who would be adversely affected by the aforesaid judgement of Hon'ble Supreme Court are allowed a fresh lease of life in the organisation, the applicants' case

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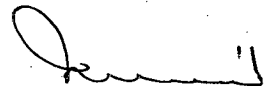
could as well be treated with equal sympathy and consideration. The applicants' eligibility in all other respects has been recognised. It is significant to refer to the following observations made by the respondents in para 5 of the additional reply statement: "...It is clarified that the casual workers are regularised strictly in accordance with zonal seniority list irrespective of the fact that whether they are holding temporary status or not. With regard to Annexure 8, it is submitted that the present seniority list includes the officials engaged as on 4.3.1992 only, whereas the applicants Smt. C.Ambika was engaged with effect from 7.7.1992 and Smt. A.P.Ambujakshy was engaged with effect from 25.5.1992 only. Hence, their names are likely to be considered for inclusion in the seniority list only when the Ministry prepares a fresh seniority list". I am of the considered view that although the applicants' case cannot be considered purely on a legal basis, in view of the respondents' own stand in paragraph 5 of the additional reply statement quoted above, it is necessary to direct the respondents to expeditiously prepare the seniority list updating the same by including the applicants also therein in order that their case also might be considered for regular appointment to Group 'D' post in their turn in adherence to their seniority position. I would like to emphasize here that this is a principle that has been accepted by the respondents themselves and, therefore, they will do well to prepare the list within a time frame.

8. Accordingly, I dispose of the Original Application by issuing a direction to the respondents to prepare a fresh seniority list by updating the same and including the applicants herein according to their legitimate seniority position for the

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purpose of considering them for conferment of temporary status and/or regular appointment in Group 'D' post in their turn. This exercise shall be carried out within a period of four months from the date of receipt of a copy of this order. It is made clear that status quo with regard to the applicants' position regarding engagement under the third respondent as on today shall continue till the matter is disposed of as directed above. No costs.

(Dated, the 11th November, 2003)



(T.N.T. NAYAR)
ADMINISTRATIVE MEMBER

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