

CENTRAL ADMINISTRATIVE TRIBUNAL

Ernakulam Bench

Dated the Tuesday the 23rd January 1990

Present:

Hon'ble Shri N.V. Krishnan, Member (Administrative)
and

Hon'ble Shri N. Dharmadan, Member (Judicial)

ORIGINAL APPLICATION : 85/89 and 165/89

1. P.X. Mary

2. A.A. Mary

3. A.P. Thressia

4. P.R. Radhamony
and

...4 applicants in OA:85/89

1. M.R. Sudhakaran

2. E.V. George

3. C.N. Babu

...3 applicants in OA:165/89

Versus

1. The Union of India represented
by the Secretary, Department of
Personnel and Administrative
Reforms, New Delhi

2. The Flag Officer Commanding-in-Chief,
Headquarters, Southern Naval Command,
Naval Base, Cochin 682 004

} Common
respondents in
both cases.

M/s. N.N. Sugunapalan & P.K. Madhoosudhanan.

: The counsels
appeared for
applicants in both
cases.

Mr. P.V. Madhavan Nambiar, SCGSC

: The counsel
appeared for
respondents in
both cases.

JudgmentShri N. Dharmadan, Judicial Member

Four applicants in OA 85/89 who are working as Casual Labourers in the Base Victualling Yard in the Cochin Naval Base under the second respondent filed this application with the grievance that their services were not regularised even though their juniors were given the benefit of regularisation. O.A. 165/89 was filed by three persons with the identical reliefs. Both the cases are heard together on consent of the parties because identical question arises for consideration in these two cases.

2. Short facts relevant for deciding the issue are as follows: The applicants were continuously working in regular vacancies for the past about three to four years. The salary was paid to them on weekly basis. According to them there were 52 casual labourers under the second respondent. Out of them 32 were regularised. T.C. Subhashini, P.P. Victoria and K.R. Dinesan are some such employees who got regularisation under the second respondent. They are all similarly situated persons who also worked along with the applicants as weekly paid casual labourers. Though these persons were regularised, the requests of the applicants were not accepted by the respondents. They have produced

Annexure-I letter issued by the Government of India, produced along with OA 85/89, which indicates that services of casual labourers will be regularised in Group-D posts provided inter-alia they had worked for 240 days or more in each year during the period of two years service under the second respondent. On the basis of this letter some of the persons who were working along with the applicants were regularised. Annexure-2, a letter, sent to one Mr. Sudhakaran indicates that casual employees who were in service in 1983 October will be entitled to regularisation. The applicant also produced copy of the judgment reported in Judgment Today 1988(4) SC 774.

3. The main contention of the applicants is that they were continuously working for more than required number of years as casual workers and they are entitled to be regularised in service. The persons who are similarly situated were granted regularisation but the request of the applicants for regularisation was not considered at all. This action, according to the applicants, is arbitrary, discriminatory and violative of the provisions of Article 14 and 16 of the Constitution of India.

4. The respondents stated in the counter affidavit that the applicants were engaged for cleaning

rice in Base victualling yard on 'nerrick rate' of pay on as and when required basis. The main function of Base victualling yard, Cochin is to arrange supply of provisions and clothing items of various shore establishments of the Navy, Naval ships based at Cochin and for visiting ships of the Indian Navy from other Commands as and when called on Southern Naval Command. Items like rice, sugar, pulses etc. are also supplied to Base Victualling Yard from the Army Supply Corps in bulk quantities. The rice received in Base Victualling Yard may sometimes be contaminated with foreign materials like grits and other items. Cleaning of contaminated rice is the responsibility of the Base Victualling Yard. The applicants and others were taken as Casual Labourers only when such works are available. This work is only occasional in nature, which is clear from Annexure-R.1. No appointment orders were issued to the applicants prescribing any service conditions. Annexure-R.2 statement shows details of number of days worked by the applicants during 1983 to 1989. From the statement it can be seen that work was provided to them for limited days only. Annexure-R.3 produced along with the counter affidavit shows that the casual employees who were taken by the second respondent upto 21.3.1979 have been considered for regularisation in Group-D posts even though they were overaged, and recruited otherwise

than through Employment Exchange provided they are eligible for regular appointment in terms of Annexure-R.3 and R.4 letters. The applicants were officially engaged in 1983 and 1985. As per the Recruitment Rules for Group-D posts the upper age limit is 30 years. The date of birth of the applicants as furnished by them to Base Victualling Yard, Cochin are as indicated below:

- (a) D.X. Mary ..1.2.1952
- (b) A.A. Mary ..1.2.1952
- (c) A.P. Thressia ..3.5.1938
- (d) P.R. Radhamoni ..7.10.1945

Hence, at the time of initial engagement in Base Victualling Yard first and second applicants in OA:85/89 were aged $31\frac{1}{2}$ years and third applicant was aged 45 years and the 4th applicant was $39\frac{1}{2}$ years old. The age of the applicants shown in the application is not correct as per records. As the age limit laid down for Group-D posts is 30 and since all the applicants are overaged even at the time of their initial engagement in Base Victualling Yard, Cochin, they cannot be regularised. The respondents also submitted that those who were already absorbed in the permanent vacancies were within the prescribed age limit and Annexure-45 and 46, certificates show that the applicants are overaged and hence their services cannot be regularised as per the orders in existence. The applicants filed rejoinder subsequently


and cited some specific instances of regularisation of persons who are overaged. They have submitted that Smt. Baby Rocky and P.P. Victoria, who were initially engaged long after the completion of 30 years of age, were given regularisation. This has been denied by the respondent in their additional reply to the rejoinder. However, these are disputed questions of facts requiring investigation initially by the administrative authorities. We are not inclined to conduct an enquiry in to this. But the important point to be considered is whether the applicants fully satisfy the requirements of absorption as regular employee. The recruitment conditions prescribed by the respondents ^{compel us to enquire} (1) whether the employee at the time of initial appointment, is within the age limit prescribed by the relevant provisions viz. 30 years stipulated in the rules, (2) whether any persons similarly situated like that of the applicants were given regularisation over-looking the claim of the applicants. With regard to both these points there is no satisfactory materials to be acted upon by this Tribunal at this stage.


5. However, we would have attempted to investigate the matter in greater detail but for the special circumstances which [✓] make such an attempt futile.

6. In this connection it is pertinent to note one important point. The learned government counsel submitted that the applicant in OA:85/89 filed a [✓] and contempt petition, CCP No.3/89, [✓] when it came up for consideration the respondents filed a statement showing that the cleaning work in the Base Victualling Yard has already been stopped and there is no scope for further absorption and employment of any persons for the work in the yard. Considering this aspect even if the applicants are found suitable and satisfy all the requirements for regular appointment, it is not possible to re-employ them on a regular basis as there is no cleaning work [✓] undertaken by the second respondent in the Yard. In the result we have to close the application without deciding the issues raised by the applicants.


7. But if the second respondent starts the cleaning works of rice in the Base Victualling Yard at

Cochin the applicants are free to approach the second respondent for regular works and also for regularisation producing all available materials and also get preference to any fresh worker to be taken for the work in the establishment. In the facts and circumstances of the cases, these two applications are dismissed. There will be no order as to costs.


(N. Dharmadan)
Member (Judicial)
23.1.90


(N.V. Krishnan)
Member (Administrative)
19.1.90

Pronounced in the open court on 23.1.90 on behalf of the Bench.


(N. Dharmadan)
Member (Judicial)
23.1.1990

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O R D E R

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

FRIDAY, THE 9TH DAY OF NOVEMBER, 1990

PRESENT

Hon'ble Mr. N.V. Krishnan .. Administrative Member
and

Hon'ble Mr. N Dharmadan .. Judicial Member

RA No: 26/90 in OA:85 & 165/89

PX Mary and others .. Applicants

Versus

UII rep. by Secretary, D/o
Personnel & Administrative .. Respondents
Reforms, New Delhi & another

Mr. TA Rajan .. Counsel for applicants

Mr. VV Sidharthan .. Counsel for respondents

O R D E R

In this review application filed by the applicants, they have stated that before the pronouncement of the judgment, an MP Dy.No.6505 dated 20.12.89 was filed for re-hearing the matter in the light of the letter dated 8.5.84 issued by the second respondent which is also produced alongwith the M.P. These matters could not be considered by us while passing judgment. Hence, this judgment is liable to be vacated. Accordingly, we vacate the judgment and post the case for final hearing on 20.12.90.

Call on 20.12.90.

Sd/-
(N Dharmadan)
Judicial Member

Sd/-
(NV Krishnan)
Administrative Member



CERTIFIED TRUE COPY
Date 14/11/90

Deputy Registrar

1. Mr. TA Rajan, Advocate, Kochi. (for applicants)
2. Mr. VV Sidharthan, ACGSC. (for respondents)

REPATCHED ON 14/11/90
DEPATCHER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 85
I. A. No.

1989

DATE OF DECISION 28.6.91

P X Mary and others Applicant (s)

Mr. T. A. Rajan Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)
Secretary, Deptt. of Personnel & A R, New Delhi & others

Mr. V V Sidharthan, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N. V. KRISHNAN, Administrative Member

The Hon'ble Mr. N. DHARMADAN, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

This application was heard and dismissed on 23.1.90 along with O.A. 165/89 placing reliance on the statement of the respondents that the Base Victualling Yard in the Cochin Naval Base, in which the applicants were originally engaged, had been closed and there is no work available under the respondents for engaging them. But the judgment was later vacated at the instance of the applicants considering the review petition with some new facts which could not be placed for our consideration at the time of disposal of the case.

2. The connected case O.A. 165/89 has been subsequently heard by a Bench consisting of Hon'ble Vice Chairman and myself and it was disposed of in the light of new facts with the observation that the applicants therein are entitled to be considered for being regularised if they are otherwise eligible taking into consideration their previous service under the respondents. The learned counsel for the applicant submitted that this application is to be allowed following the judgment in O.A. 165/89.

3. The facts in this case are as follows. The applicants were continuously working in regular vacancies for more than four years. According to them 52 casual labourers were originally engaged by the second respondent including the applicants as Casual Labourers. Out of them except few persons including the applicants all others were granted regularisation. Hence, the applicants also made repeated request for regularisation and grant of similar benefits which were granted to other persons. ^{persons.} They have produced Annexure-I to III to support their claim.

4. After the case was posted for re-hearing, the applicants have amended the original Application by incorporating additional grounds and reliefs.

5. The respondents have contended that the applicants were engaged for cleaning of contaminated rice, sugar, pulses etc. in the Yard and this work was only occasional in nature.

At present there is no work available in the Base Victualling Yard, Cochin. They further submitted that the applicants No. 1, 3 and 4 are over aged even at the time of their original engagement. As per the Recruitment Rules of Group 'D' posts the upper age limit is 30 and since they are over aged, as they have crossed the upper age limit laid down for Group 'D' officials even at the time of their initial engagement itself, they cannot be regularised.

6. We have heard the arguments of the learned counsel for both sides and gone through the documents. 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 of 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 had been closed and

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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 future 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

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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:

"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 1,3 & 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 services in accordance with their seniority considering

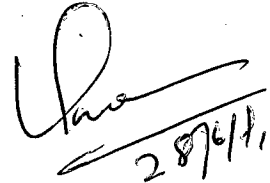
their past services. We do so. In this view of the matter we are not considering the decisions cited by the learned counsel for the applicants at the bar.

8. The application is disposed of as above. There will be no order as to costs.



(N. DHARMADAN)
JUDICIAL MEMBER

dt. 6.6.91


28/6/91

(N. V. KRISHNAN)
ADMINISTRATIVE MEMBER

KMN