

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXXXX~~

104 of 1991

DATE OF DECISION 21.1.92

Panduranga Krishna Rao Dude Applicant (s)
and another

Mr.M.Girijavallabhan Advocate for the Applicant (s)

Versus

Union of India rep.by Secretary Respondent (s)
Ministry of Food Processing, New Delhi
and others

Mr.N.N.Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr.S.P.Mukerji - Vice Chairman

and

The Hon'ble Mr.N.Dharmadan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? ye
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

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

This is the third time these two applicants are approaching before this Tribunal. This application has been filed for regularisation in service.

2. The applicants are working under the third respondent as Jr.Deckhands. The first applicant is working from 1980 and the second applicant from 1981. When their services were terminated they have approached before the Hon'ble High Court challenging the termination. The High Court in Writ Appeal directed reinstatement of the applicants. Accordingly they were reinstated in service but denied backwages. They filed another Original Petition before the High Court for backwages and regularisation. This O.P. was transferred to this Tribunal and it was heard and disposed of by Annexure.A. judgment dated 1.3.89. In that judgment

we have directed the respondents to consider the question of regularisation of service of the applicants. That judgment was passed on 1.3.99. The operative portion reads as follows:

"As the reply filed by the respondents is silent with respect to the relief claimed by the applicants not to keep them out of service intermittently, it was submitted by counsel of applicant that a direction may be issued to the respondents in that behalf. It is not in dispute that the applicants have been under the engagement of the respondents for a pretty long period. It is admitted that from 12.7.84 they have been allowed to serve without any break. In the circumstances the respondents are bound to consider the question of regularising the service of the applicants, so that intermittent breaks could be avoided."

3. The applicants submitted that nothing was done by the respondents after Annexure.A judgment. Even the casual leaves applied for by the applicants are not being granted by the respondents on the ground that the applicants are not eligible for the same under the rules. Un^{der} these circumstances, the applicants have filed this application under Section 19 of the Administrative Tribunals Act praying for the following reliefs:

- "(a) to direct the respondents to forthwith regularise the services of the applicants with all consequential benefits like leave and other service privileges retrospectively in compliance with the direction in Annexure.A.
- (b) to declare that the applicants are 'workmen' entitled to all the protections under the Industrial Disputes Act, 1947 and the non-regularisation of their services is highly illegal and improper.
- (c) to grant such further and other reliefs this Hon'ble Tribunal deems just in the circumstances of the case.
- (d) to award the costs of the O.A."

4. The respondents in the reply statement submitted that the applicants are holding posts not covered

by rules for considering their regularisation as directed by this Tribunal in Annexure-A judgment, but they have stated in paragraph 7 that in obedience of the orders of this Tribunal the applicants have been allowed to continue on casual basis with intermittent break due to their own absence from duty on medical grounds. The question of regularisation of the services of the applicants is under the active consideration of the department and orders will be issued after getting approval from the Government and final decision thereof.

5. The applicants have filed a rejoinder denying all the statements in the reply statement and submitted that they are working continuously for more than three years and the respondents have denied them the statutory service benefits. The Recruitment Rules relied on by them, according to the applicants, are not applicable to the applicants. But they are entitled to regularisation in accordance with law having regard to the fact that they have long service under the third respondent and there are existing vacancies of the posts of Jr. Deckhand from 1980 and 1981 onwards.

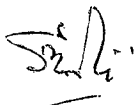
6. Having heard the matter we are of the view that the applicants' claim for regularisation should have been considered by the respondents even in spite of the fact that there are no specific rules applicable for the regularisation of the service of the applicants. In the light of the directions of this Tribunal in Annexure-A judgment the respondents should have taken into consideration the fact that these two persons were working in two vacant posts from 1980 and 1981 respectively. This fact indicates that the services of the applicants are necessary under the respondents and they can be accommodated

by creating even supernumerary ^{ex-cadre} posts if cadre posts covered by the existing Rules are not available governing the matter.

7. Having regard to the facts and circumstances of the case that the two applicants are continuously working from 1980 and 1981 respectively, they are entitled to regularisation in the light of the law laid down by the Supreme Court on the subject. It is after adverting these facts that we have passed earlier direction in Annexure-A judgment for consideration of regularisation. We thought that the Government would have considered the regularisation of the applicants in the light of the law laid down by the Courts. But they have not considered the same in the spirit in which the same was issued by this Tribunal. Under these circumstances we are of the view that no useful purpose will be served in this case if we again leave the matter to the discretion of the Government and issue further directions as per the request made by the learned counsel for the respondents who appeared before us today.

8. In the result having regard to the facts and circumstances of this case we direct the respondents to regularise the services of the applicants either by creating supernumerary ^{ex-cadre} posts or passing orders in relaxation of the existing ^{AS} rules. This shall be done within a period of two months from the date of receipt of copy of the judgment. The application is accordingly allowed to the extent indicated above. There will be no order as to costs.


(N.D. HARMADAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

21.1.92