

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 670 of 2011
with
Original Application No. 17 of 2011

Tuesday, this the 09th day of October, 2012

CORAM:

HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

1. O.A. No. 670/2011

1. Hussain A, S/o. Kidave M.P
Agam House, Kavaratti,
R.O. Plant Operator, Sub-Division L.P.W.D,
Kavaratti Island, U.T of Lakshadweep.
2. K.P. Kaleel, S/o. Kalid,
Kuttipape Pura House, Kavaratti,
R.O. Plant Operator, Sub-Division L.P.W.D,
Kavaratti Island, U.T of Lakshadweep.
3. Abdul Razak, S/o. Kunhi Kunhi M.,
Bamali House, R.O. Plant Operator,
Sub-Division L.P.W.D, Kavaratti Island,
U.T of Lakshadweep.
4. Shoukathali. M.P., S/o. Koyamma V,
Kavaratti Island, R.O. Plant Operator,
Sub-Division L.P.W.D,
Kavaratti Island, U.T of Lakshadweep.
5. P. Hazakoya, S/o. Mohammed Koya K.I,
Peechayath House, Kalpeni Island,
R.O. Plant Operator, Sub-Division L.P.W.D,
Kalpeni Island, U.T of Lakshadweep.
6. K.K. Mohammed Jamaludheen Koya,
S/o. Attakoya C, Kunnamkulam House,
Kalpeni Island, R.O. Plant Operator,
Sub-Division L.P.W.D, Kalpeni Island,
U.T of Lakshadweep.
7. N.P. Akber, S/o. Cheriya Koya M.P,
Nenepappada House, Kalpeni Island,
R.O. Plant Operator, Sub-Division L.P.W.D,
Kalpeni Island, U.T of Lakshadweep.

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8. T.T. Mujeeburahman, S/o. Imbichi Koya C.N.,
Thithottam House, Kalpeni Island,
R.O. Plant Operator, Sub-Division L.P.W.D,
Kalpeni Island, U.T of Lakshadweep.
9. K.O. Mohammed Rafi, S/o. Kalid K,
Kakkachiyooda House, Kalpeni Island,
R.O. Plant Operator, Sub-Division L.P.W.D,
Kalpeni Island, U.T of Lakshadweep.
10. B. Ibrahim, S/o. Aliedaruge,
Boumudinge House, Kudehi Village,
Minicoy Island, R.O. Plant Operator,
Sub-Division L.P.W.D,
Minicoy Island, U.T of Lakshadweep.
11. K. Ali, S/o. Hussain, Kouni Amindathage House,
Bada Village, Minicoy Island,
R.O. Plant Operator, Sub-Division L.P.W.D,
Minicoy Island, U.T of Lakshadweep.
12. K.C. Aboo Sala, S/o. Yusef,
Keela Kunalam House,
Amini Island, R.O. Plant Operator,
Sub-Division L.P.W.D,
Amini Island, U.T of Lakshadweep.
13. K.K. Abdul Kadar, S/o. Yousef Keelachery,
Kanjarakkada House, Amini Island,
R.O. Plant Operator, Sub-Division L.P.W.D,
Amini Island, U.T of Lakshadweep.
14. K. Sayed Shikoya, S/o. Cheriya Koya-Padippura,
Kunamkalam House, Amini Island,
R.O. Plant Operator, Sub-Division L.P.W.D,
Amini Island, U.T of Lakshadweep.
15. P.P. Attakoya, S/o. Sayed Koya Tahithottam,
Puthiya Padippura House, Amini Island,
R.O. Plant Operator, Sub-Division L.P.W.D,
Amini Island, U.T of Lakshadweep.
16. P. Sainul Abid, S/o. Hamza,
Puthiyaillam, Polakadam House,
Amini Island, R.O. Plant Operator,
Sub-Division L.P.W.D,
Amini Island, U.T of Lakshadweep.
17. M. Muthukoya, S/o. Kunhiv Madalichetta,
Manada House, Amini Island,
R.O. Plant Operator, Sub-Division L.P.W.D,
Amini Island, U.T of Lakshadweep.

18. Mohammed Iqbal. M.P,
S/o. Abdulla Koya, Ashiyoda,
Mullipalam House, Chethlath Island,
R.O. Plant Operator, Sub-Division L.P.W.D,
Cheithlath Island, U.T of Lakshadweep.
19. Mohammed Shareef P.O,
S/o. Sayed Mohammed P.K.,
Pakkiyode House, Chethlath Island,
R.O. Plant Operator, Sub-Division L.P.W.D,
Chethlath Island, U.T of Lakshadweep.
20. Hassan Koya K.B, S/o. Kasmi Cheriyapura,
Kunnaliyoda House, Chethlath Island,
R.O. Plant Operator, Sub-Division L.P.W.D,
Chethlath Island, U.T of Lakshadweep.
21. Sijjeel M., S/o. Aboobacker P,
Mammikkadiyoda House,
Agatti Island, R.O. Plant Operator,
Sub-Division L.P.W.D,
Chethlath Island, U.T of Lakshadweep.
22. Mohammed M.C., S/o. Abdul Kadar K.I,
Mydanachetta House, Chethlath Island,
R.O. Plant Operator, Sub-Division L.P.W.D,
Chethlath Island, U.T of Lakshadweep.
23. K.M. Badurudheen, S/o. A. Ahammed,
Kuttiya Mukriyoda House,
Agatti Island, R.O. Plant Operator,
Sub-Division L.P.W.D,
Agatti Island, U.T of Lakshadweep.
24. B. Kasmi, S/o. Mohammed
Badathoda House, Agatti Island,
R.O. Plant Operator, Sub-Division L.P.W.D,
Agatti Island, U.T of Lakshadweep.
25. P.P. Ayyoob, S/o. Koya,
Pandarapura House, Agatti Island
R.O. Plant Operator, Sub-Division L.P.W.D,
Agatti Island, U.T of Lakshadweep.
26. K. Alavi, S/o. Kidav Koya,
Kalkandiyoda House,
Agatti Island, R.O. Plant Operator,
Sub-Division L.P.W.D, Agatti Island,
U.T of Lakshadweep.

27. C. Kasmi, S/o. Sayed,
Cheriyan Kakkada House,
Agatti Island, R.O. Plant Operator,
Sub-Division L.P.W.D, Agatti Island,
U.T of Lakshadweep.

28. T.P. Abdulla Koya, S/o. Kojan Koya,
Thek Puthiyaillam House,
Agatti Island, R.O. Plant Operator,
Sub-Division L.P.W.D, Agatti Island,
U.T of Lakshadweep.

29. K. Mohammed Koya, S/o. Salmi Koya
Kunninamel House, Agatti Island,
R.O. Plant Operator, Sub-Division L.P.W.D,
Agatti Island, U.T of Lakshadweep.

- Applicants

(By Advocate Mr. P.V. Mohanan)

Versus

1. The Administrator,
U.T. Of Lakshadweep,
Kavaratti – 68255.

2. The Superintending Engineer,
Lakshadweep Public Works Department,
Kavaratti – 68255.

3. Union of India represented by
Ministry of Home Affairs,
North Block, New Delhi.

- Respondents

(By Advocate Mr. S. Radhakrishnan *for R1-2*
Mr. Sunil Jacob Jose, SC, for R-3)

2. O.A. No. 17/2011

K. P. Kunhikoya, S/o. A.P. Attakoya,
Kunhipuvakada House,
Kalpeni Island, U.T of Lakshadweep,
R.O. Plant Operator, PWD Sub-Division,
Kalpeni. Residing at Kalpeni.

- Applicants

(By Advocate Mr. P.V. Mohanan)

Versus

1. The Administrator,
U.T. Of Lakshadweep,
Kavaratti – 68255.

2. The Superintending Engineer,
Lakshadweep Public Works Department,
Kavaratti – 68255.

- Respondents

(By Advocate Mr. S. Radhakrishnan)

These applications having been heard on 24.09.12, the Tribunal on 6-10-12 delivered the following :

O R D E R

HON'BLE MR. K GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The Lakshadweep Administration had set up Desalination Plants in various Islands in the year 1990. Not having the expertise to operate the plants, the operation of the plant was entrusted, on payment of contract price by the Administration, to the Titanium Equipments and Anode Manufacturing Company Limited (TEAMCO) on 15.07.1991. The applicants were appointed as Plant Operators on contract basis by the TEAMCO during the period 1990-93. The Lakshadweep Administration took over the operation of the plants vide order dated 02.02.1994 with all assets and liabilities and absorbed the existing Plant Operators with effect from 02.02.1995. In the absence of the Recruitment Rules, the applicants were treated to be equivalent to NMR Mates in the Public Works department (PWD) and were paid 1/30th of the basic pay and D.A. of NMR Mates only. They were not given benefits like, HRA, CCA, Special Duty Allowance, Grade promotion under the ACP Scheme etc. In the year 2008, 60 posts of Plant Operators were sanctioned. The applicants had been working as Plant Operators since 02.02.1995 without getting all service benefits and scale of pay of NMR Mates. In pursuance of the order of the Principal Bench of this Tribunal dated 16.02.1990 in the case of ***Rajkamal and Others vs. Union of India***, the Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993

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was introduced with effect from 01.09.1993, by which temporary status was conferred on all casual labourers who were in employment on the date of the issue of the Scheme and who had rendered continuous service of at least one year (240 / 206 days). Some of the applicant filed O.A. No. 907/1996 claiming the benefit of temporary status under the Scheme. The Tribunal vide order dated 12.08.1996 directed the Union Government to examine the issue in detail and pass orders regarding modifying or clarifying the O.M. dated 10.09.1993 and pass orders granting temporary status to all those who have been engaged in the Desalination plants consistent with the statutory eligibility envisioned by the Industrial Disputes Act. No decision was taken by the Government of India. The representation dated 04.09.1998 in terms of the order of this Tribunal made by the applicants was rejected by the Executive Engineer stating that the applicants in O.A. No. 907/1996 were not eligible for conferment of temporary status as they were engaged after the cut off date of 01.09.1993. Claiming equivalence in pay and allowances and other service benefits to NMR Mates, the applicants have filed representation dated 16.12.2008 followed by another. No final order has been passed on it. Meanwhile, vide Annexure A-14 dated 04.04.2011, the Superintending Engineer, LPWD, Kavaratti, has called for the details of willing NMR temporary status labourers for considering absorption to the post of Plant Operators. In fact, there is no NMR temporary status labourers having two years experience of working in the desalination plants available in the department for absorption. The applicants are the only qualified and experienced Plant Operators working in the desalination plants in the Lakshadweep Islands. In this background, the applicants have filed these O.As for the following reliefs:

- (i) To direct the respondents to absorb the applicants in the equivalent post of Maistry/Mates in Lakshadweep PWD from 02.02.1995 in the scale of pay attached to the post with all attended benefits with all consequential benefits including the time scale of pay attached to the post of NMR Mates with attended increments in the time scale of pay with arrears of pay flowing therefrom;
- (ii) To call for the records Annexure A-14 and set aside the same in so far as it deprives the claim of the applicants for absorption as R O Plant Operators in Lakshadweep Public Works Department;
- (iii) To declare that the applicants are deemed to have been appointed to the cadre of Maistry/Mates in Lakshadweep Public Works Department with all benefits including the scale of pay attached to the post;
- (iv) To direct the respondents to consider and dispose of Annexure A-14 representation in accordance with law;
- (v) Any other appropriate order or direction as this Hon'ble Tribunal deem fit in the interest of justice.

2. The applicants contended that they ought to have been absorbed in the equivalent post of Maistry in PWD on taking over the plant reckoning the duties and responsibilities and scale of pay attached to the post of R.O. Plant Operator. But they have been absorbed as equivalent to NMR Mates in Lakshadweep PWD on hand receipts only. Their labour has been extracted without granting the scale of pay attached to the post. They should at least get the scale of pay of Mates with increments and other service benefits. They relied on the dictum laid down in *Umadevi's* case, (2006) 4 SCC 01. Inspite of the directions issued by this Tribunal, no positive decision has been taken by the Government of India till date. The sanctioned posts of Plant Operators remained vacant and the applicants have been discharging the duties of Plant Operators. Annexure A-14 is issued to deprive the applicants of the right to be absorbed in regular posts. To obviate the right of the

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applicants for absorption, the Superintending Engineer, LPWD, has called for the willingness of NMR temporary status labourers for absorption to the post Operators (LTTD Plant) when there are no temporary status employees having matriculation with 2 years experience of working in Desalination Plants are available in the department for absorption. This is arbitrary and discriminatory. The labour of the applicants as Desalination Plant Operators had been extracted from the year 1990-92 onwards without granting scale of pay attached to the post even after absorption to the equivalent post of NMR Mates.

3. In the reply statement filed by the respondents, it was submitted that the applicants were engaged as casual labourers in the year 1995, hence they could not claim temporary status and thereafter absorption to Group-D posts as per the 1993 Scheme. The applicants were brought under the department as casual labourers equivalent to NMR Mates in the year 1995. The cut off date as per the Scheme was 01.09.1993. None of the applicants have been working as Plant Operators under the Lakshadweep Public Works Department before 1995. There were no sanctioned posts of Plant Operators in the department till 2008. In the absence of specific direction from the Government of India, the claim of the applicants for absorption cannot be entertained. The representation received from the applicants is under examination. They admitted that there are no NMR temporary status labourers under the department. In the case of the applicants it is upto the Union Government to formulate any scheme as and when found necessary. The respondents have acted subject to the rules and regulations of the Government of India. Hence the notification issued by them is not arbitrary

and discriminatory. Those who wish to get placed as Plant Operators can apply for direct recruitment.

4. In the rejoinder statement, the applicant reiterated the contentions made in the O.A and submitted that they are over aged for direct recruitment.

5. We have heard Mr. P.V.Mohanan, learned counsel for the applicant, Mr. S. Radhakrishnan, learned counsel for the respondents no. 1 and 2 and Mr. Sunil Jacob Jose, learned SCGSC appearing for respondent No. 3 and perused the records.

6. The respondents were at liberty to terminate the services of the applicants when they took over the operation of the Desalination Plants as they were employees taken on contract basis by the TEAMCO. But they chose to retain them in the equivalent grade of NMR Mates and were paid for the time being in hand receipts. The respondents retained them because they were assets when the plants were taken over; they could be conveniently used to run the Desalination Plants; they were experienced and the operation of the plants could be continued smoothly to supply the drinking water to the people of the Islands, who would have included the respondents too. The applicants were consigned to oblivion and the temporary arrangements of paying them in hand receipts continued. For the last 2 decades or so, the applicants remained as daily wagers; although they were equated as NMR Mates, they were deprived of the service benefits like HRA, pay scale, increment, upgradation etc. Their labour has been extracted without paying them legitimate remuneration. This state of exploitation is quite unbecoming

of a model employer that the respondents should be.

7. The direction of this Tribunal to the Union Government in the order dated 12.08.1996 in O.A. No. 907/1996 to consider granting the benefit of temporary status modifying the Scheme for Casual Labourer, 1993, is still not complied with. The rejection of the representation of the applicants in terms of the aforesaid direction of this Tribunal vide letter dated 27.10.1998 by the Executive Engineer was highly improper, insensitive and illegal. It was done in a high handed fashion without application of mind to the relevant factors. With due diligence and follow up, the applicants could have been given the benefits of temporary status long ago.

8. The respondents have called for details of willing NMR temporary status employees with matriculation and two years experience of working in the Desalination Plants as per the Recruitment Rules for absorption as Plant Operators even when there are no NMR temporary status conferred labourers under the PWD, ignoring the fact that the applicants were the only qualified and experienced Plant Operators under them. This was like adding insult to injury. If the scale of pay and duties of the post of Plant Operators are considered, the applicants should have been equated with Maistry in the PWD; yet they were treated as contract employees without granting the pay scale of even Mates. The respondents have not shown any rule or instruction that justified the treatment meted out to the applicants.

9. Though the applicants were engaged as casual labourers by the TEAMCO, they were engaged as casual labourers in the plants owned by the

respondents and were paid out of contract price provided to the Company by them. When the management of the plants was taken over by the LPWD, they were brought under the respondents directly as casual labourers equivalent to NMR Mates. Taking a pro-active approach, the respondents on their own could have treated them as if they were engaged by them during the period from 1990-93 as casual labourers for the purpose of granting them temporary status under the Scheme introduced on the directions of the Principal Bench of this Tribunal, with the approval from the Union Government. There was no special sanctity about the date of 01.09.1993 except that it was the date on which the Scheme came into force. The spirit of the scheme to regularise the casual labourers having 240/206 days of service should have been understood by the respondents. The date of implementing the scheme could have been got relaxed under section 11 of the scheme, for the sake of the applicants. At least they could have done it in pursuance of the direction of this Tribunal dated 12.08.1996 in O.A. No. 907/1996. Not having dispensed with their service on taking over the management of the plants in 1995, the continuity of their engagement as casual labourers in the plants owned by the respondents should not have been ignored by the respondents. There was a delay of 13 years in getting the posts of Plant Operators sanctioned for running the plants. While framing the Recruitment Rules in 2009, provision could have been made by the respondents to take care of the interests of the applicants who were already in position as Plant Operators though on a casual basis for long years. Now they are age barred for direct recruitment. The stand of the respondents that in the absence of specific direction from the Government of India, they cannot entertain the claim of the applicants for absorption, betrays callousness and

lack of initiative on their part. Positive dynamism is totally absent. As claimed by the respondents, they have acted strictly in accordance with the rules and regulations of the Government of India. But they failed to render justice to the applicants by not doing what they could have done to protect their interests within the rules and regulations. Their adherence to the rules and regulations was limited to the letter of the law and not the spirit. Adherence was limited to doing the barest minimum when pushed by the Central Government. If running the plant is the responsibility of the respondents, so are the labourers who are used to run them. They should not be merely used and dispensed with. It was their bounden duty to present the case of the applicants before the Union Government and follow it up to get orders consistent with the objective of the regularization scheme and the Industrial Disputes Act. If the regularization scheme of 1993 was found inadequate, nothing prevented the respondents from framing a new scheme to protect the interests of the applicants. Had the respondents played their part properly, there was no reason for the Union Government not to have redressed the grievance of the applicants long ago.

10. In the light of the above discussion, Annexure A-14 is quashed to the extent it deprives the applicants of their claim for absorption as R.O. Plant Operators in the Lakshadweep Public Works Department. The applicants are directed to make a detailed representation to the Secretary, Ministry of Home Affairs, New Delhi, through the Administrator, Union Territory of Lakshadweep within one month of receipt of a copy of this order. The Administrator shall forward it with his recommendations to the Secretary, Ministry of Home Affairs, within a further period of one month. The Secretary, Ministry of Home

Affairs is directed to consider the case of the applicants and dispose it of by a speaking order and communicate it to the applicants within a further period of four months.

11. The O.As are allowed in part as above with no order as to costs.

(Dated, the 09th October, 2012)

sd/-
(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

sd/-
(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

CVR.