

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 205 OF 2007

Dated the 1<sup>st</sup> November, 2007

CORAM:-

HON'BLE SMT. SATHI NAIR, VICE CHAIRMAN  
HON'BLE Dr. KBS RAJAN, JUDICIAL MEMBER

KB Santhosh,  
Peon, Principal Office,  
Mercantile Marine Department,  
W. Island, Kochi-9.

[By Advocate: Mr P Santhosh Kumar ]

.. Applicant

-Versus-

1. Union of India, represented by its Secretary, Ministry of Shipping, Road Transport and Highways Department, Chennai.
2. The Principal Officer, Mercantile Marine Department, Kochi.
3. The Surveyor in Charge, Mercantile Marine Department, Kochi-682 009.

[By Advocates: Mr PM Saji, ACGSC]

... Respondents

This application having been heard on 11<sup>th</sup> October, 2007  
the Tribunal delivered the following -

ORDER

(Ms. Sathi Nair, Vice Chairman):

The applicant in this Original Application has sought for the following reliefs:

- 1) To direct the respondents to regularize the service of the applicant in the category of Group-D on completion of 2 years w.e.f. 1.1.85 with all consequential benefit;
- 2) To declare that the applicant is submitted(sic) entitled for regularization in the regular establishment in Group-D post on 1.1.85 as his appointment under the department was Peon to 7.5.1985"

According to the applicant, he joined the service of the Respondents as part time Sweeper-cum-Gardener on 1.1.85 and was continuing in the post, however, without regularization. While working as such, a post of Peon in the office of the 3<sup>rd</sup> Respondent fell vacant and by Annexure -A/1 order dated 21.1.2004 he was appointed in the post on adhoc and on short term contract basis w.e.f. 12.1.2004. Subsequently by Annexure-A/2 to A/10 orders he was allowed to continue in the post of Peon till 31.08.2006. In the meantime, he met with an accident in July 2006 and he submitted a representation alongwith medical certificate to the respondents for granting leave. The Respondents issued Annexure-A/11 order dated 31.8.2006

offering him appointment in Group-D post of peon purely on adhoc basis for a period of 89 days, but the applicant could not join as he was not completely cured and, therefore, he submitted another representation by Annexure-A/12 dated 5.9.06 praying for two month's time to report for duty. After completion of the leave period he reported for duty on 2.2.2007, but he was not allowed to join for duty and another person was appointed in the post. The applicant has contended that he is entitled for regularization as he had continued in service for more than 22 years, i.e. 18 years in the post of Sweeper-cum-Gardener and 4 years in the post of Peon. He has also relied on the Instructions of the Department OM No.490/4/18/84 EH (C) dated 7.5.85 for regularization of casual workers in Group-D posts in various Ministries / Department, subject to certain conditions, one of the conditions being that the casual workers concerned should have been recruited through the Employment Exchange.

2] Respondents filed a counsel statement initially followed by the reply statement. It is stated that the applicant was engaged as part time casual sweeper-cum-Gardner on daily wages basis not exceeding 5 days a week and no record is available to show that he had continued in the capacity as a casual worker for 18 years as claimed by the applicant, as such records are not preserved for more than 2 years and further there was no sanctioned post of sweeper-cum-Gardner in the office of the 2<sup>nd</sup> respondent. It is further averred that he had been engaged

on daily wages as Part time casual sweeper till April 2004 and all his wages were paid to him. One post of peon in the Office of 2<sup>nd</sup> respondent fell vacant on 10.6.2003 on the demise of the incumbent. The applicant applied for the post vide his letter dated 1.8.2003 alongwith Employment Exchange Registration Certificate and Educational Qualification Certificate. He was appointed on 12.1.2004 for 89 days purely on an adhoc and on short term contract basis. The appointment was being extended from time to time by orders in Annexure-A/2 to A/10. The Respondents have also obtained an undertaking from the applicant that he would not claim the benefit of the service as a matter of right for continuation or regularization to the said post and seniority. Meanwhile, the applicant in July 2006 met with an accident and had applied for leave for 4 months w.e.f. 3.7.2006 and again for 3 months from 3.11.2006. In the meantime, a fresh interview was conducted by calling applicants sponsored by local Employment Exchange and existing Adhoc employees were also allowed to attend the Selection/Interview. Applicant also attended the Interview held on 29.8.2006 and he was selected and issued the offer of appointment vide order dated 31.8.2006, however, the applicant had asked for two month's time to report for duty vide his letter dated 5.9.2006. Due to the exigencies of work in the office of Respondent No.2 the next person from the select list, who is a physically handicapped person, was appointed initially for 60 days, which was extended for another 60 days

after a day's break. The applicant again submitted a letter dated 1.1.2007 alongwith medical certificate for further three months leave. The respondents have averred that the applicant is not entitled for medical leave and he cannot claim regularization as he was not appointed by due process of selection. Respondents have further submitted that OM dated 7.5.1985 relied on by the applicant relates to regularization of casual workers but the applicant was appointed on daily wages and he was not a casual worker.

3] Further, the Ministry of Personnel & Training directed to abolish 2% of the sanctioned strength each year commencing from 2001-2002, 10% of the posts are required to be abolished and the Department cannot appoint Group -C and D employees without obtaining NOC from the Screening Committee appointed for the purposes. The Screening Committee abolished 161 posts in the Directorate General Shipping and its allied offices and two posts of peons under the jurisdiction of the 2<sup>nd</sup> respondents have been identified for abolition alongwith the other posts.

4] It is further averred that the applicant cannot claim regularization as a matter of right as he was engaged as part time casual sweeper cum gardener on daily wages only. The applicant had also given an undertaking stating that he would not claim benefit of service as a matter of right for continuation or regularization to the said posts or for seniority and would not seek any legal remedy for continuation in the said post, hence,

the OA is devoid of merit. No rejoinder was filed by the applicant.

5] We have heard Mr. Santhoshkumar, learned counsel for the applicant and Mr PM Saji, learned ACGSC for the respondents and perused the records.

The learned counsel for the applicant argued that the facts averred by him have been confirmed by the official respondents and it was only because of his serious accident that the applicant could not join the post on his appointment as Peon, hence the applicant is entitled to get the appointment against the vacancy which occurred in the office. The learned counsel for the respondents, on the other hand, submitted that the appointment orders would clearly show that the appointments were being made every time purely on adhoc and on short term contract basis for 89 days and the said contract was only renewed from time to time. The appointment orders had also stipulated the condition that he would be terminated at any time and that he had no right to claim regularization, and the applicant having given the undertaking to that effect and accepted the position, now he cannot claim for regularization. As the applicant did not join the post offered to him, the next person was offered the post. The applicant being a fresh appointee in the post of Peon and did not join the post, he cannot now put forward the claim.

6] According to the service particulars furnished by the applicant, initially he was appointed as part time Sweeper cum

Gardener and continued as such for 18 years till he joined the post of Peon on 12.1.2004. The respondents have submitted that there is no regular post of Part time Sweeper cum Gardner in the office and the applicant was engaged on daily wage basis. However, they have denied the averments that he had continuously worked for 18 years. Now it is to be seen whether the contention of the applicant is actually correct or not? It is clear that the applicant was being paid on daily wage basis as there was no regular post. It has also been submitted that he was not engaged through Employment Exchange. Therefore, the question of regularization of the applicant considering that his engagement as part time sweeper cum Gardner was on daily wage basis does not arise at all irrespective of the duration of the service. The second spell of service is in the Group-D post of Peon which fell vacant under the 2<sup>nd</sup> Respondent and to which the applicant was initially appointed on 21.1.2004 on adhoc and on short term contract basis for a period of 89 days. However, it was admitted by the respondents that the applicant was appointed after production of his Employment Certificate and Educational Qualification Certificates. The Respondents have also confirmed that extension of his appointment for a period of 89 days by Annexure-A/2 to A/10 orders, which show that he was being continued in the same post with intermittent breaks. By Annexure-A/10 order, the respondents also granted extension of all adhoc appointments till 31.8.2006. On 2.7.2006 the applicant

met with an accident i.e. before expiry of the extension given to him. Before expiry of the earlier period of appointment, the Respondents have conducted selection and interview as directed by the Director General of Shipping vide letter 26.7.2006 and all the existing adhoc employees, including the applicant were allowed to attend the Interview and the applicant was selected and was offered the appointment. The respondents also produced a copy of the said letter dated 26.7.06 as Annexure-R/1 to the reply statement, in which it has been stated that -

"...In order to streamline the adhoc appointment it has been decided to conduct fresh selection interview by calling applicant from the Regional Employment Exchange. The existing adhoc employees can also attend the selection interview. The candidates who are selected may be appointed initially for a period of one year, after obtaining undertakings as per specimen enclosed herewith."

7] Hence, the intention of the authorities is clear from this letter that it was for making appointment for a period of one year after due selection by calling applicants from the Regional Employment Exchange. The applicant was selected by due process and offered the appointment but only for 89 days on short term contract basis by Annexure-A/11. The applicant unfortunately became incapacitated for joining due to a serious accidental injury, therefore, he sought for two months time initially and then for extension of time. The Respondents neither rejected his request nor cancelled the appointment order issued to the applicant. Of course, it has been averred that since it was only an

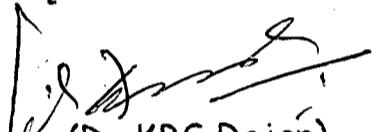
adhoc appointment, he was not entitled for medical leave. No refusal of leave was conveyed to him. Only contention put forward by the Respondents now is that due to exigencies of work in the office of 2<sup>nd</sup> Respondent, the next person in the select list was initially offered the appointment for 60 days and subsequently it was extended for another 60 days after a day's break. While there can be no objection to engaging a second person, there was no bar for the respondents to consider the applicant for further engagement in accordance with the procedure they are adopting for making adhoc appointment on short term contract basis.

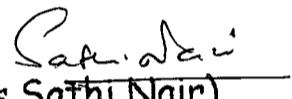
8] From the reply statement of the Respondents it is noticed that Group-D post are in the process of being abolished and, therefore, they are not in a position to make appointments on regular basis. We can appreciate the position, but as long as they are resorting to the adhoc appointment on short term basis, the applicant, who has been engaged since 2004 onwards, and has also undergone the process of selection through Employment Exchange, shall not be deprived of his right for consideration of appointment on that basis in future. While, we are not inclined to grant the relief as prayed for by the applicant for regularization, particularly so in view of the recent pronouncements of the Apex Court that such casual, adhoc, temporary appointees on short term basis have no legal right for regularization, we direct that in view of the past service record of the applicant and also in view

of the fact that the applicant could not avail the offer of appointment offered to him because of the serious accident on which he had no control and it was not willful disobedience, the applicant's case shall be viewed sympathetically and he shall be considered for adhoc appointment in Group-D post as and when he reports for duty and on expiry of the term of engagement of the present incumbent in the post.

9] The O.A. is accordingly disposed of. No costs.

[Dated the .....1<sup>st</sup>.....November, 2007]

  
(Dr. KBS Rajan)  
JUDICIAL MEMBER

  
(Ms Sathi Nair)  
VICE CHAIRMAN

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