

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 218 of 2006

Friday..., this the 29th day of August, 2008

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE DR. K S SUGATHAN, ADMINISTRATIVE MEMBER**

G. Sukumaran Nair,
U.D. Clerk, Material Organisation,
Southern Naval Command,
Kochi - 04

... Applicant

(By Advocate Mr. S.M. Prasanth)

v e r s u s

1. Union of india, Represented by
The Secretary to the Ministry of Defence,
New Delhi.
2. The Flag Officer-Commanding-in-Chief,
Headquarters, Southern Naval Command,
Kochi - 04
3. Smt. Ramani Purushothaman,
U.D. Clerk, Material Organisation,
Southern Naval Command,
Kochi - 04


... Respondents

(By Advocate Mr. TPM Ibrahim Khan, SCGSC for R-1&2)

The Original Application having been heard on 11.08.08, this Tribunal on 29.08.08. delivered the following :

O R D E R

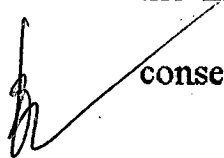
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

 The question involved in this case is as under:-

2. When compassionate appointment scheme provides for appointment against direct recruitment regular vacancies and the applicant under the scheme was appointed but only on casual basis, and later on, after being absorbed against regular vacancy, the period of casual labour service had also been regularized from the date of initial appointment by condoning the intermediate break in casual labour service, whether seniority should also be reckoned from the date of initial appointment on casual basis.

3. Brief history of the case: The applicant was initially appointed on 09-09-1980 on casual basis. He was the son of a deceased army personnel and on a reference from the Director General Resettlement, he was engaged on casual basis in the Southern Naval Command. He was absorbed against a regular vacancy w.e.f. 04-10-1982 as LDC. His next promotion as UDC was on 01-07-2002. However, respondent No. 3, whose initial appointment was only on 20-11-1980 was afforded the promotion as UDC on 16-06-1999.

4. The applicant had preferred a representation for his seniority to be reckoned w.e.f. the initial date of casual service as the same was regularized by condoning the break in between but the same was rejected by the impugned Annexure A- 6 order. The applicant claims seniority and consequential benefit.



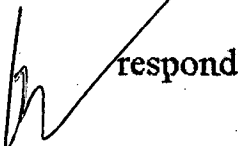
5. Respondents have contested the O.A. Their preliminary objection is as to the inordinate delay in filing the OA. The applicant wants to unsettle an affair settled in 1980, i.e. after a score of years plus, which is not permissible. It has also been submitted that regularization of the casual labour service of the applicant was in compliance with the orders of the Tribunal in OA No. 744/94. However, this service is not reckoned for seniority purposes. Vide Annexure R-1 it has been stated that according to a decision by the Apex Court (in the case of M. Dharani), even if initial casual labour appointment is regularized, seniority would reckon only with reference to the date of regular appointment. The applicant was the dependent of a deceased service personnel, but it was through the medium of the Directorate of Resettlement that he was appointed on casual basis vide Annexure R-2. As regards the private respondent, it has been submitted that the said respondent who was the widow of a sailor, was appointed on compassionate grounds against a direct recruitment vacancy (Ann R-3).

6. Applicant has moved a Misc. Application to challenge Annexure R-3 as well. Respondents have filed additional reply thereof. Again, respondents have, in their additional reply stated that periodically, the seniority list of the applicant and respondents was circulated and objections

called for but at no point of time did the applicant bring out any disparity to claim his seniority above the third respondent.

7. Counsel for the applicant argued that in so far as the delay in filing the OA, the same deserves to be condoned as in a number of cases, such delay is condoned, if the case is meritorious. He has cited a decision by the Hon'ble High Court reported in 2007(2) KLT SN 73. On merit he has submitted that the nature of the appointment of the applicant being one on compassionate grounds, he ought to have been appointed against a regular vacancy. Further, though initially he was appointed on casual basis, later on after absorption as LDC, his earlier services were regularized and as such, he is entitled to count his service rendered on casual basis for the purpose of seniority.

8. Counsel for the respondents submitted that the applicant was appointed on casual basis on being referred to by Directorate General of Resettlement and later on he was taken in the strength of the organization on regular basis. The Apex Court in the case of Union of India vs Dharani (1997) 6 SCC 148, clearly held that seniority shall reckon only from the date of regular appointment even if the past period of casual services were regularized. He has also produced the seniority list of the applicant and respondent No. 3, to substantiate that on various occasions, the list was



circulated but the applicant had not chosen to challenge the seniority position of the third respondent qua his.

9. Arguments were heard and documents perused. As to preliminary objection, no doubt court may be lenient in condoning the delay in deserving cases. However, where there is inordinate delay, or where settled matter is sought to be unsettled, the delay in challenging the action of the respondents is not easily condoned. Further, it is seen from the records produced by the respondents that seniority list was issued on various dates but the applicant has not challenged his position in the list. Thus, the cause of action having arisen much earlier, the applicant could wake up only as late as in 2002 or thereafter to challenge his seniority position w.e.f. 1980. This is certainly a case where there has been inordinate delay in approaching the Tribunal, which was constituted as early as in 1985. Admittedly, there has been no application for condonation of delay. Where there is no application for condonation of delay, the delay cannot be condoned by the Tribunal. The apex court in the case of Ramesh Chand Sharma v. Udham Singh Kamal, (1999) 8 SCC 304 held as under:-

5. Section 21 reads as under:

"21. Limitation.—(1) A Tribunal shall not admit an application, —

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) * * *

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

Relying upon the aforesaid provisions, it was contended on behalf of the appellants that the OA filed by the first respondent Udham Singh Kamal was barred by limitation. No application for condonation of delay was filed. In the absence of any application under sub-section (3) of Section 21 praying for condonation of delay, the Tribunal had no jurisdiction to admit and dispose of the OA on merits. It was, therefore, contended that the Tribunal had totally overlooked the statutory provision contained in Section 21 of the Act and, therefore, the impugned order be set aside.

6. Learned counsel for the first respondent urged that after his representation was rejected by the Himachal Pradesh Government on 2-7-1991, he had made another representation pointing out the factual position and, therefore, the period of limitation needs to be counted not from 2-7-1991 but from the date of rejection of his second representation (no date mentioned). He also urged that the vacancy arose because one Shri Sita Ram Dholeta who was holding the post and working as Translator-cum-Legal Assistant went on deputation in March 1990 by keeping a lien on the said post. This respondent was under a bona fide belief that until the lien comes to an end, there may not be a clear vacancy and, therefore, as and when such vacancy arises, his claim would be considered. It is in these circumstances, he did not file OA at an early date. If there be any delay, the same may be condoned.

7. On a perusal of the materials on record and after hearing counsel for the parties, we are of the opinion that the explanation sought to be given before us cannot be entertained as no foundation thereof was laid before the Tribunal. It was open to the first respondent to make proper application under Section 21(3) of the Act for condonation of delay and having not done so, he cannot be permitted to take up such contention at this late stage. In our opinion, the OA filed before the Tribunal after the expiry of three years could not

have been admitted and disposed of on merits in view of the statutory provision contained in Section 21(1) of the Administrative Tribunals Act, 1985. The law in this behalf is now settled (see Secy. to Govt. of India v. Shivram Mahadu Gaikwad)."

10. Thus, on the basis of non filing of application for condonation of delay itself, the case could be rejected. However, since it has also been held by the Apex Court in the case of Collector, Land Acquisition v. Katiji, (1987) 2 SCC 107, "*Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*" a look at the merit would also be appropriate.

11. The applicant had been appointed at the instance of the Director General Resettlement. True, his father was serving in the Army and he sought employment. However, this appointment cannot strictly be treated as compassionate appointment for which a scheme is laid down, comparative merits used to be seen and the most deserving case is given compassionate appointment. Thus, the appointment of the applicant on casual basis at the instance of the Director General Resettlement, cannot be compared to the compassionate appointment of respondent No. 3. In the case of Respondent No. 3, she being the widow of a sailor, who died while in service, her appointment was against a direct recruitment vacancy and based on the

scheme of compassionate appointment. In contra distinction to the above, the appointment of the applicant being against a casual vacancy, and his absorption being posterior to the regular appointment of respondent No 3, his case cannot be treated as one of compassionate appointment to hold that the appointment was made against regular vacancy. Even after his regularization of the casual service, his entitlement to count seniority is not based on any rules or regulation. Respondents have relied upon the decision in the case of M. Dharani (Supra) to substantiate that the applicant cannot have a claim for seniority from the date of initial appointment. The Apex Court in the case of *Union of India v. M. Dharani*, (1997) 6 SCC 148, held as under:-

This is an appeal from a judgment and order of the Central Administrative Tribunal, Ernakulam Bench, dated 23-4-1993. The respondents, who are four in number, were engaged as tracers. According to the appellants, they were appointed in short-term vacancies either against leave vacancies or to meet additional commitments of urgent nature of the Navy. The respondents were so employed in the Directorate of Installation, Naval Training, Cochin. Respondents 1 to 4 were engaged for the first time on 18-10-1984, 5-2-1986, 18-8-1986 and 3-11-1986 respectively. They were continued in employment with breaks in service. Their services were regularised with effect from 30-8-1991 on terms and conditions set out in the letter granting them regularisation. The respondents moved the Central Administrative Tribunal, Ernakulam Bench, claiming regularisation from their date of initial appointment as casual workers and for all consequential benefits. Their application is allowed. Hence this appeal.

2. *Under the Ministry of Defence Letter No. 3(3)/65/118203 dated 26-9-1966, as amended from time to time, the terms and conditions under which the service of casual employees could be regularised were set out. Under clause (a) of that letter non-industrial personnel who had been employed for more than one year without break should be converted into regular employees with effect from the date of their initial employment as casual employees if the commandants*

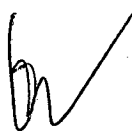
etc. are satisfied that their services will be required on a long-term basis. The terms and conditions of regularisation of service of casual non-industrial employees were further laid down in the letter of the Ministry of Defence dated 24-11-1967. Clause 2 of this letter sets out that the past service rendered from the date of appointment by such of the casual non-industrial personnel who are converted as regular non-industrial employees, will be treated as having been rendered in the regular capacity. However, by a further letter from the Ministry of Defence (corrigendum) dated 27-5-1980, amendments were made, inter alia, in clause 2 of the letter of 24-11-1967. Clause 2 of the letter of 24-11-1967 as amended provided that on regularisation the employees will be entitled to all benefits as for regular employees excepting seniority, probationary period and grant of quasi-permanent status which aspects will be regulated under orders issued from time to time. Service rendered on casual basis prior to appointment on regular basis shall not count for seniority. Thus after the letter of 27-5-1980, on regularisation, for determining the seniority of employees whose services were regularised, their service as casual employees could not be taken into account. All these letters were superseded by the letter of 31-1-1991 issued by the Ministry of Defence. It said that henceforth, the terms and conditions of employment of casual labour and regularisation of their services will be done on conditions laid down in the letter of 31-1-1991. The revised instructions which would govern such regularisation are set out therein. Under clause 3, the regularisation of service of non-industrial casual personnel already appointed shall be regulated as laid down in that clause. Sub-clauses (f) and (g) of clause 3 are as follows:

"3. (f) Seniority of employees appointed to regular establishments will be reckoned with only from the date of regular appointment.

3. (g) Service rendered on casual basis prior to appointment in regular establishment shall not be counted for the purpose of pay fixation etc."

3. Pursuant to the policy of regularisation laid down in this letter of 31-1-1991 the respondents were absorbed in regular service with effect from 30-8-1991. The order absorbing these four respondents in regular service clearly sets out that their seniority in the grade of tracers will commence from the date of their regularisation. Clause 3 of this letter further provides that service rendered on casual basis prior to appointment in regular establishment shall not be counted for the purpose of pay fixation etc.

4. The respondents have thus been regularised in accordance with the existing policy of regularisation and on terms and conditions set out in that policy. In view of the clear terms of this policy, the Tribunal was not justified in granting to the respondents the benefit




of seniority from the date of their initial employment as casual workers; nor was the Tribunal justified in granting to the respondents all consequential benefits. The Tribunal has relied upon an earlier decision of the Full Bench of the Tribunal in *A. Ramakrishnan Nair v. Union of India*¹ which, however, was concerned with regularisation of casual employees in accordance with the letter of the Ministry of Defence dated 24-11-1967. The Tribunal, however, has failed to note that the present regularisations are not under the Defence Ministry's letter of 24-11-1967. The scheme of regularisation applicable to the respondents is as laid down in the letter of the Ministry of Defence of 31-1-1991 which contains terms and conditions somewhat different from those earlier provided. In view of the express scheme of regularisation as contained in the letter of 31-1-1991, the Tribunal was not justified in giving the above directions.

5. The respondents also drew our attention to a letter of 26-6-1995 issued by the Ministry of Defence under which judgments of the Central Administrative Tribunal, New Bombay Bench in applications which are mentioned therein, were implemented. The letter states that the question of extending the benefits of the above judgments to non-petitioners who are similarly placed has also been considered by the Government in accordance with the Central Administrative Tribunal's directives and it has been decided to implement the Central Administrative Tribunal, Bombay's directions. This letter, however, refers to applications made in 1988 before the Central Administrative Tribunal, New Bombay Bench. The judgments of the Central Administrative Tribunal, New Bombay Bench have not been produced before us and we are not in a position to consider whether any directions given in those judgments would be applicable to the respondents herein or not. Hence we can only observe that if the respondents are entitled to the benefit of the letter of 26-6-1995 they will be entitled to make a representation to that effect before the appropriate authority who will decide the same in accordance with law.

6. The appeal is, therefore, allowed. There will, however, be no order as to costs.

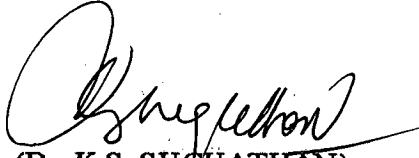
12. Thus, taking into consideration (a) the nature of initial appointment of the applicant, (b) the decision of the Apex Court in the case of *M. Dharani* and (c) the cause of action having arisen sometimes in 1980 (d) the applicant not having agitated against his seniority position on those




occasions when the seniority list was circulated and (e) the fact that there has been no application for condonation of delay we are of the considered view that the OA deserves to be dismissed both on merit and on limitation. We accordingly order so.

13. The O.A. is dismissed but in the circumstances, there shall be no orders as to costs.

(Dated, the 29th August, 2008)


(Dr. K.S. SUGUATHAN)
ADMINISTRATIVE MEMBER


(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.