

Central Administrative Tribunal Lucknow Bench Lucknow.

Original Application No: 127/2006.
This, the 21st-day of September 2006.

Hon. Mr. M. Kanthaiah, Member(J)
Hon. Mr. P. K. Chatterji, Member, (A)

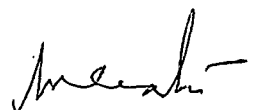
1. Jag Ram, aged about 34 years, s/o Sri Ram Het, R/o 51, Ram Tirath Marg, Narhi, Lucknow.
2. Gopal Chand Srivastava, aged about 33 years, S/o Sri Rajeshwari Prasad Srivastava, R/o House No. 2/29, guru Ravidas Nagar, Wazir Hasan Road, Lucknow.
3. Dharmanand, aged about 28 years, s/o Sri Suresh Lal, R/o Sanjay Gandhi Nagar, Prayag Narain Road, Baloo Adda, Lucknow.

Applicants.

By Advocate Shri A. K. Srivastava.

VERSUS

1. Union of India , through its Secretary Department of Finance Revenue, Central Board of Excise & Customs, New Delhi.
2. Chief Commissioner of Central Excise/Customs, Vidhan Sabha Marg, Lucknow.
3. Commissioner Central Excise, Civil Lines, Allahabad.
4. Commissioner Customs, Kendriya Bhawan, 5th Floor, Hall No. 3, Sector H, Aliganj, Lucknow.
5. Dy. Commissioner/Joint Commissioner Customs, Customs (Headquarters), P&V Kendriya Bhawan, 5th Floor, Hall No. 3, Sector H, Aliganj, Lucknow.



6. Superintendent (Headquarters) Customs Headquarters
Office of the Commissioner of Customs, 5th Floor, Kendriya
Bhawan, Sector-F, Aliganj, Lucknow.

Respondents.

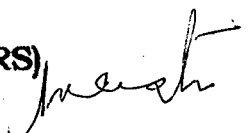
By Advocate Shri S. K. Awasthi.

Order

By Hon'ble Shri P. K. Chatterji, Member(A)

The applicants in this O.A. 127/2005, three in number, were working from time to time as Farrash in the Customs / Excise Department of the Central Government. They were engaged to work as Farrash on contract basis for a period of one year from different dates. Applicant No. 1 was engaged from 29.7.94. Applicant No. 2 was initially engaged from 1.5.95 and applicant No. 3 was engaged from 27.6.96 (Sweeper/Jamadar). They were all paid daily wages @ 49.00 per day in the respondents establishment and which their engagement was extended from time-to-time.

2. The applicants were pressing for granting temporary status and regularization before the respondents from time to time and in the year 2002 they filed O.A. 125/2005 before this Tribunal requesting the Tribunal to direct the respondents to confer temporary status on the applicants as they had completed 206 days of service. This O.A. was disposed of vide order dated 22nd February, 2002. In the order, the Tribunal directed the respondents to dispose of the representations of the applicants having regard to the decision passed in an earlier O.A. 640/95 by reasoned and speaking order. In compliance with this order, the Dy. Commissioner (HQRS) Customs (HQRS)



Lucknow considered the representation but rejected the same by order-dated 7.6.2002. Being aggrieved by this rejection, the applicants challenged the order dated 7.6.2002 before this Tribunal by filing O.A. 147/2005. The Tribunal decided the case by judgment dated 16.9.2005. The relevant portion is extracted below:

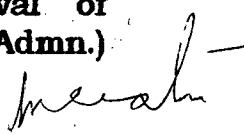
"1. Applicants who are engaged on causal basis though it is disputed by the respondents that they were contract employees yet they seek benefit of a decision of this Court in O.A. 524/2001 in Vimal Prakash Yadav & Ors. Vs. Chief Commissioner of Central Excise & Customs, decided on 5.10.2001 wherein on the ground that juniors have been regularised applicants who had been engaged in 1998 have been directed to be regularised.

2. Learned counsel of applicants would contend that the same benefit should be given to applicants.

3. But for a decision of the Apex court in SLP No. 2240/2000 Union of India V. Mohan Pal and Others DOPT Scheme of 10.9.93 has been held to be one time measure and it has been interpreted in such a manner that those causal workers who were engaged on 1.10.93 would be accorded temporary status and further consideration for regularization. As applicants were not in employment on the aforesaid cut off date they are not entitled to have the benefit of the Scheme. The decision which has been rendered earlier to the decision of the Apex Court in Mohan Pal (Supra) cannot be operated as in our constitution negative equality has no place. However, taking cognizance of DOPT Schemes of 7.6.88 and 1984 claim of applicants if they have completed the requisite period within two years and are sponsored through employment exchange shall be considered by the respondents. O.A. is accordingly disposed of. No costs."

3. In pursuance of the directions given by the Tribunal on 16.9.2005 (Annexure 1, 2 and 3) making following observations:

"In view of the CAT order dated 16.9.2005, after examining your case it is found that since neither your name has been sponsored through Employment Exchange nor you are fulfilling the criteria of DOPT scheme, your claim cannot be entertained by the Department. This issues with the approval of commissioner of Customs/Joint commissioner (Admn.) Customs, Lucknow."



4. Feeling aggrieved by the judgment dated 16.9.2005 and the order of the respondents dated 19/20.12.2005, the applicants filed a writ petition 153/SB/06 before the Hon'ble High Court Allahabad which by its order dated 2.2.2006 dismissed there existed writ petition holding that they are accorded an alternative remedy before the Tribunal, and therefore, the applicants filed the present O.A. challenging the impugned order dated 19.20.12.2005. The reliefs sought by the applicants are as follows:

"a) To issue an appropriate order or direction thereby setting aside the impugned orders no. C.N. II(3)15/Hqr/2003 Pt./7933, C.N. II(3)15/HQR/2003Pt. /7934 & C.N. II(3)15/Hqr/2003 Pt. 7935 dated 19/20.12.2005 passed by the respondent No. 6 as contained in Annexure-1 to 3 to 3 to this original application;

b) To issue an appropriate order or direction thereby directing the respondents to give temporary status and regularize the service of Custom Department of the Government of India

c) To issue an appropriate order or direction thereby directing the respondents to give all consequential benefits arising out of regularization of services of the applicants in the office of Custom Department of the Government of India.

d) To issue a suitable order or direction which this Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.

e) To award the cost of this original application. "



5. The respondents have categorically denied the claim of the applicant saying that they were engaged purely on contract and ad hoc basis, therefore their claim for regularization is not tenable. Secondly, they were not sponsored through Employment Exchange. The claim for temporary status is also not tenable for the reasons that the one time exception which was accorded by the DOPT related to such casual labourers who had completed the specified length of service as on 1.10.2003. As the applicants had joined as contractual labor after that date the one time dispensation of the DOPT cannot be accorded to them. The respondents have further submitted that the impugned order dated 19/20/12/2005 was passed in pursuance of and in consonance the judgment and order dated 16.9.2005 passed by this Tribunal in O.A. 147/05. The Tribunal specifically directed that taking cognizance DOPT schemes of 7.6.88 and 1984 claims of the applicant, if they have completed requisite period within two periods and are sponsored through employment exchange shall be considered by the respondents. The respondents had considered the representation of the applicants in the light of these directions and it was found that the applicants were not eligible as they were neither sponsored through Employment exchange nor fulfill the condition of DOPT Schemes.

5. We have gone through the pleadings and the arguments and also the relevant orders of the Tribunals referred to by both the parties. The main point for consideration is whether the order dated 19/20.12.2005 fulfills the requirement laid down in O.A. 147/2005. Perusal of the Tribunal's order shows that the

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Tribunal did not agree that the decision of the Apex Court in Mohan Pal and others vs. Union of India would apply to the applicants. In the said judgment of the Apex court, scheme of 10.9.93 held to be one time measure for those who were engaged on 1.10.93 for the purpose of according temporary status. The applicants were not in service at that time. Decisions which were referred to, those pertaining to the before the decision of the Apex Court in Mohan Pal (Supra) could not be operated as according to the tribunal there was no place for negative equality in our constitution.

5. What the Tribunal directed was that their cases should be examined taking cognizance of DOPT Schemes of 7.6.88 and 1984 and if they had completed the requisite period of service within 2 years and were sponsored through employment exchange, the respondents will take appropriate decision. We have satisfied that the respondents complied with the directive of the Tribunal.

6. For these reasons, the O.A. is not allowed. However, during the hearing, it was brought to our notice by the learned counsel for the applicant that applicant ;No. 3 was subsequently regularised as Group 'D' by the respondents although vide order dated 19/20.12.2005 they rejected his representation on the same ground. The learned counsel for the applicant^{is} of the view that if all the applicants were on equal footing and their circumstances were identical and if favorable decision could be taken in respect of applicant No. 3, the same could be taken in respect of applicants No. 1 and 2. a well. The learned counsel for the respondents was asked by the Tribunal

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whether applicant No. 3 was regularised in service, he could not deny the same.

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7. For this reason, we direct that the respondents would consider the case of applicants No. 1 and 2 on the same basis and grounds as applicant No. 3 for engagement on regular basis. This may be done within a period of 4 months and appropriate orders may be issued.

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(P.K. Chatterji)
Member (A)

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(M. Kanthaiah)
Member (J)