

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A. No.569 of 1996

Date of order 17-10-2000

1. Kamal Nayan Sharma, son of Sri Ram Narayan Singh, Village Rajpur, PO Nawara, P.S. Nawara, District Patna.
2. Manoj Kumar Dubey, son of Sri Mahesh Chandra Dubey, Village and PO Gagori, District Khagaria.
3. Raju Singh, son of Sri Radhe Kant Singh, Village Sahpur Patti, District Bhojpur.
4. Om Prakash Sharma, son of Late Ganeo Lal Sharma, village Mathaulee, PO Mathauli, District Bhojpur.
5. Suresh Sharma, son of Sri Ramlagen Sharma, resident of village Prahladpur, P.S. Ghoswari, District Patna.

...Applicants

-versus-

1. The Union of India, Ministry of Finance through its Secretary, New Delhi.
2. The Commissioner, Central Excise and Customs, Revenue Building, Bailey Road, Patna.
3. The Dy.Commissioner(~~Preventive~~ and Vigilance), Central Excise and Custom, Revenue Building, Patna.
4. The Assistant Commissioner, Central Excise and Customs, Revenue Building, Patna.
5. The Personnel Relation Officer, Central Excise and Customs, Revenue Building, Bihar, Patna.
6. The Accounts Officer, Central Excise and Customs, Revenue Building, Patna.

... Respondents

Counsel for the applicants .. Shri Gautam Bose.

Counsel for the respondents .. Shri V.M.K.Sinha.

CORAM : Hon'ble Mr. Justice S.Narayan, V.C.

Hon'ble Mr. L.R.K.Prasad, Member (A)

OR D E R

L.R.K.Prasad, Member (A):-

This application has been filed seeking

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following reliefs :-

- (i) verbal termination order of the applicants by respondent no.3 be quashed.
- (ii) To direct the respondent authorities to grant them temporary status and all consequential benefits in terms of Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Govt. of India, 1993.
- (iii) The respondents should be directed to follow the O.M. dated 10.9.1993 of Govt. of India which was passed in compliance with the orders of the principal Bench of CAT, New Delhi, in case of Raj Kamal and others vs. Union of India.

2. We have heard the learned counsel for the parties and perused the materials on record.

3. The applicants (five in number) were engaged on daily rates basis as Faras. While applicant nos.1 and 2 are said to have been engaged on daily rates basis on 1.12.1992 by the concerned respondent, applicant no.3 on 18.2.1993, applicant no.4 on 3.5.1993 and applicant no.5 on 1.7.1994. They remained in the said status till 11.7.1996, whereafter, they were disengaged. The applicants have claimed that as they have been appointed as Faras on daily rates basis against vacant regular posts by the Administrative Officer (Headquarters), they are entitled to be granted temporary status and subsequent regularisation of their services in accordance with Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Govt. of India, 1993. It is alleged by the applicants that the respondents have terminated their services by ignoring the prescribed rules and regulations on the subject and



without giving them show cause inspite of the fact that they have worked for more than 2062 days and their appointment was against regular vacant posts. In support of their claim, they have submitted documents which are at Annexures-A/4, A/5 and A/6. It is their claim that as per the existing rules and regulations/scheme and the various rulings of the court, their services cannot be terminated. On the other hand, they should be granted temporary status and subsequent regularisation of their services in accordance with law.

4. This application has been strongly opposed by the respondents. According to them, applicant nos.1 and 2 were engaged on 1.12.1992, applicant no.3 on 18.2.1993, applicant no.4 on 3.5.1993 and applicant no.5 on 1.7.1994, as temporary casual labourer verbally by the then Administrative Officer, Headquarters, to perform the work of Faras in the office of concerned respondent. They were disengaged verbally by the concerned Administrative Officer. They were engaged on daily basis to meet the daily requirements of work. They have categorically stated that their cases are not covered by the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1993. Moreover, the case of D.K. Azad and others (O.A.358/95) is totally on a different footing in which the applicants had been claiming temporary status which they were already having. On the other hand, in the instant case, the applicants have never been granted temporary status as they were not eligible for the same. It is clarified that at the time of engagement of the applicants, there were no sanctioned posts of Faras and their engagement was according to work requirement and not against vacant sanctioned posts of Faras.

5. It is the stand of the applicants that even if they were engaged by verbal order, they are entitled for grant of temporary status as per the prescribed Scheme of the Govt. of India specially when they had completed more than 206 days in a calendar year.

6. We have considered the entire matter in the light of submissions made by the learned counsel for the parties and materials on record. The admitted fact is that the applicants had been engaged on the dates, as mentioned above for the work of Faras and they continued in the said status upto 11.7.1996. While it is the stand of the applicants that they were appointed against vacant regular posts of Faras, the same has been denied by the respondents who have stated that their engagement was purely according to work requirement for temporary period. They were engaged under the verbal orders of the Administrative Officer and also disengaged in the same way. As such, neither any formal appointment letter was issued to them for the post of Faras, nor any process for such appointment was followed. There is no written evidence to show that they were engaged against sanctioned vacant posts of Faras with the understanding that their cases will be considered for regular appointment in due course. Moreover, the main issue is whether their cases are covered by the Scheme of Govt. of India, namely, Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1993 or not? In this regard, it would be appropriate to refer to the relevant Scheme for better appreciation of the matter. The said scheme was brought into force with effect from 1.9.1993 which is applicable to casual labourers in

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employment of the Ministries/Departments of Govt. of India and their attaches Subordinate Offices on the date of issue of these orders. However, the same is not applicable to casual labourers working in Railways, Department of Telecommunications and Department of Posts who are already having their own scheme. Therefore, the scheme for grant of temporary status and regularisation of services of casual labourers, which was issued by the Department of Personnel & Training, Govt. of India, is applicable to Ministry of Finance, which is the Administrative Ministry for Customs and Central Excise. The relevant portion of the Scheme is reproduced below:-

" (i) Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this O.M. and who have rendered a continuous service of at least one year which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week).

(ii) Such conferment of temporary status would be without reference to the creation/ availability of regular Group 'D' posts.

(iii) Conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on need basis. He may be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work.

(iv) Such casual labourers who acquire temporary status will not, however, be brought on to the permanent establishment unless they are selected through regular selection process for Group 'D' posts."

7. The above scheme also deals with entitlement of casual labourers when they are granted temporary status and procedure to be followed for filling up group 'D' posts. The above scheme was drawn up in pursuance to the order of the principal bench of CAT passed in case of Raj Kamal and others vs. Union of India on 16.2.1990.

8. The above scheme, namely, Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1993, issued by the Department of Personnel & Training, Govt. of India, vide their O.M. No.51016/2/90-Estt. (C) dated 10.9.1993 makes it very clear that temporary status would be conferred on all casual labourers who are in employment on the date of issue of the said O.M. and who have rendered a continuous service of at least one year which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week). The conferment of temporary status on casual labourer would be without reference to creation/availability of regular group 'D' posts. In the instant case, we find that the applicants had ~~only~~ been verbally engaged to perform the duties of Faras on daily rates basis. They were not given any appointment or engagement letter by the competent authority. While it is the claim of the applicants that they have worked for more than 206 days in a calendar year, the same has been denied by the respondents. Both the parties have relied on the Govt. of India Scheme 1993 regarding grant of temporary status to casual labourers and their regularisation in services. It is noted that while applicant nos.1 to 4 were performing the duties as casual labourers on the dat

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~~Issue~~ of the O.M. of the Govt. of India regarding the scheme for grant of temporary status, as referred to above, applicant no.5 was engaged on 1.7.1994 after issue of the said O.M. Therefore, applicant no.5 was not engaged to perform the duties of casual labourer as Faras before the issue of the relevant O.M. of the Govt. of India. Hence, the question of granting him temporary status does not arise.

9. So far as applicants nos.1 to 4 are concerned, even though they were performing the job as casual labourers prior to the date of issue of the O.M. under verbal order, they do not fulfil the eligibility criteria relating to rendering continuous service of at least one year and the prescribed number of days. The applicants have also not submitted any authentic documents to show that they were engaged as casual labourers for prescribed number of days which would entitle them for grant of temporary status. Moreover, their engagement was as per work requirement and not against any regular sanctioned post. They were also disengaged under verbal order. There is no indication to show that any prescribed procedure was followed for their engagement.

10. In view of the facts and circumstances of the case, as discussed above, we ~~have~~ reached ^{to 16} ~~to a~~ conclusion that this O.A. has no merit and the same is, accordingly, dismissed with no order as to the costs.

Parbat
17/10/2000

(L.R.K.Prasad)
Member (A)

Sarayu
17-10-2000

(S.Narayan)
Vice-Chairman