

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 306/88
TxXXXXNo.

198

DATE OF DECISION 21-8-1991Shri D.V.Bhingarde & Ors.

Petitioner

Mr. M.V.Palkar

Advocate for the Petitioner(s)

Versus

The Flag Officer Commanding-in- Respondent
Chief, Western Naval Command, Bombay & Ors.Mr. A.I.Bhatkar

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. U.C.Srivastava, Vice-Chairman

The Hon'ble Mr. M.Y.Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


 (U.C.Srivastava)
 v/c

(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

O.A.306/88.

Shri D.V. Bhingarde & 164 Others
Lower Division Clerks,
Headquarters,
Western Naval Command,
Shahid Bhagat Singh Marg,
BOMBAY - 400 001.

.. Applicants.

V/s.

1. The Flag Officer Commanding-in-chief,
Headquarters,
Western Naval Command,
Shahid Bhagat Singh Marg,
BOMBAY - 400 001.

2. The Chief Staff Officer,
(Personnel & Administration),
Headquarters, Western Naval Command,
Shahid Bhagat Singh Marg,
BOMBAY - 400 001.

3. The Staff Officer (Civilian),
Headquarters, Western Naval Command,
Shahid Bhagat Singh Marg,
BOMBAY - 400 001.

.. Respondents.

Coram : Hon'ble Vice Chairman Shri U.C. Srivastava
Hon'ble Member (A) Shri M.Y. Priolkar.

Appearances :

Mr. M.V. Palkar, Advocate
for the applicant.

Mr. A.I. Bhatkar, holding
the brief of Mr. M.I. Sethna,
Counsel for the Respondents.

JUDGMENT :

DATED: 21-6-1991.

(Per: Hon'ble Shri U.C. Srivastava, Vice Chairman)

The applicants, 165 in number, who were appointed as Clerks on temporary/casual basis through Employment Exchange from 1.1.1974 to October 1978 by Western Naval Command, Bombay have prayed that the respondents be directed to regularise the services of

(d)

each applicant in regular cadre from the date of their appointment ignoring the break in service and direct the respondents to extend all service benefits. The applicant in support of their case have placed reliance on the Andhra Pradesh High Court in Writ Petition No. 239 of 1980 in P.V. Ramana and 99 Others vs. Union of India & Others decided on 15.6.1977 and the circular which was issued by the respondents in the case of one Mr. Ranga Rao dated 6.3.1987 by which services were regularised. The grievance of the applicants is that despite the Andhra Pradesh High Court judgment the respondents decided to implement the same in respect of the applicants to that petition only and for others it was stated that the earlier instruction will apply. During the pendency of the case one of the applicants, Mrs. S.V. Shirwadkar, applicant at Sl. No.86 expired and her name was deleted from the application.

2. The applicants have stated that they have been appointed from time to time through Employment Exchange against temporary vacancies but they continued to work except that they used to get regular break of 6 or 7 days at regular intervals and they were appointed to the same post which they were holding before the break. From November 1978 the respondents have discontinued the said practice/procedure of appointing Clerks on temporary/casual basis and Clerks appointed since November 1978 have been absorbed in regular cadre after completion of one year's service by each of them and they will be entitled to all facilities available to regular/permanent cadre after completion of one year's service. According to the

applicants between 1.1.1974 and October 1978 about 600 Clerks including the applicants were appointed through Employment Exchange on temporary/casual basis. In the appointment letters issued to some of the applicants it was mentioned that they were appointed on temporary basis. Even some of the Clerks who were appointed during this period and who were given breaks were retained as temporary/casual and their services were also absorbed in regular cadre. But all these persons belong to Backward Class/ Scheduled Caste and in respect of it the ratio of 65 to 35 was not maintained. Although during the period 35% of the other persons like the applicants could have been absorbed but they have not absorbed along with 65% of BC/SC Candidates. The applicants were continuously agitating against the same through various channels including the Union but failed to get any relief and that is why they have approached this Tribunal.

3. The written reply filed by the officiating Chief Staff Officer (P&A) of the Western Naval Command is neither detailed nor very specific. In it it has been stated that the applicants are working as LDC in the Navy but the appointments were made specifically for three months against temporary vacancies and from time to time they have been continued on such temporary appointments. The posts on which they were temporarily appointed were sanctioned as temporary vacancies. It was further stated that so far as SC/ST candidates are concerned they were appointed strictly as per 40 point roster prescribed by the Government and the question of absorption of the applicants does not arise as they were appointed against temporary vacancies. But it was

further stated that they have also been informed that the case is under sympathetic consideration by the Government yet they have approached the Tribunal.

4. The above facts indicate that the process of appointment of Clerks in the Department is that the names are invited through the Employment Exchange and applicants also were appointed through the Employment Exchange though for temporary periods. These temporary vacancies, although the vacancies are such large in number and it is strange that the temporary vacancies are still continuing and these vacancies are large in number. For several years the persons are continued in the said post meaning thereby that the posts that exist it is the choice of the Department to turn it temporary and obtain sanction every now and then for continuation of the same for some reason or other. There is no denial of the fact that no appeal before the Supreme Court was filed against the Andhra Pradesh High Court Judgement. Andhra Pradesh High Court followed the earlier judgement given by one of the Members of the Bench and the same is as follows:-

" To substantiate their assertions, the petitioners furnished particulars in each case as to when they were appointed and in what establishments and seek relief to treat them Regular employees of accord them the reliefs, they are entitled to, in one or all among the following Instructions, issued by the Govt. of India, from time to time.

- (a) In letter No.2(17)51/10805/D(Civ.) dated September. 10, 1983 of the Ministry of Defence, the Instructions are, if for any reason a person is appointed for more than six months, he is not to be discharged and re-employed and he shall be deemed to be in service without break. Such individuals are not to be considered, casual, but Regular employees:
- (b) In the instructions issued to all commands in Lr.No.1(67)/333/D(Lab), dt. January,54, the instructions in (a), are reiterations:
- (c) In

(12)

Instructions in Lr. No. 3/65/11828/D(Civ. II) dt. September, 26, 1966, non-industrial personnel employed for one year without break should be converted into Regular employees: (d) In M of D letter VO 18636/D9, Apts. dt. December, 29, 1966 it is directed, all shortterm posts of less than three months duration, are to be filled through the Employment Exchange and five guidelines were issued as to how and from that source recruitments are to be made: (a) In Lr. No. 8348/EC-4/Org. (d) 13754/D-(Civ)-II of the Ministry of Defence, dated November 24, 1967, in para 4 it is ordered in cases involving break in casual services, benefits of these orders will be admissible from the Commencement of only the latest spell of continuous service without break and breaks, if any, should be ignored: (f) In Lr. No. 79962/EIC dt. February 10, 1969, instructions were, after three months, services of casual personnel should not be terminated instead, seniority lists should be prepared."

A similar matter also engaged attention of a Bench of this Tribunal of which one of us (M.Y. Priolkar) was a Member. In the case of N.R. Naik & Ors. vs. Union of India and Ors. OAs 516 & 732/88 decided on 25.8.89 the Bench took into consideration the Ministry of Defence letter dated 26.9.1966 which dealt with the question of rationalising the terms and conditions of casual industrial and non-industrial employees in the Defence organisation and its corrigendum issued vide letter dated 6.3.1967. The Bench also took into consideration the Ministry of Defence corrigendum dated 27th May 1980 after correction in 1986 the earlier letter was as follows:-

"I am also directed to say that the post service rendered from the date of appointment by such of the casual, non-industrial personnel including those mentioned in para 1 above who are converted as regular non-industrial employees will be treated as having been rendered in the regular capacity. They will be entitled to all benefits as for regular employees viz., fixation of pay, grant of annual increment, calculation of leave, pension and gratuity terminal benefits, three years limit of children education allowance,

reinbursement, tuition fees, house rent allowance, travelling allowance, compensatory and other allowances, medical attendance, medical re-imbursement and compulsory contribution to General Provident Fund/Contributory Provident Fund, advance of pay., EXCEPTING SENIORITY, probationary period and grant of quasi-permanency status which aspects will be regularised under the orders issued from time to time in respect of persons appointed on regular basis.
SERVICE RENDERED ON CASUAL BASIS PRIOR TO APPOINTMENT ON REGULAR BASIS SHALL NOT COUNT FOR SENIORITY. The financial benefit will however be allowed from the date of issue of these orders or the date from which the individual is converted into a regular employees whichever is later."

The Bench held that respondents shall have to ignore artificial breaks and give all the benefits due to the applicants in view of the letter dated 24th November, 1967 as amended by the corrigendum dated 27.5.1980 and the Bench also proposed to give benefit of this order to other similarly placed employees. The order dated 25.8.1989 of the Bench is as follows:-

- "(i) Respondents shall give all benefits due to the applicants in both the cases as per the Ministry of Defence letter No.83482/EC-4/Org.4(Civ)(d)/13754/D(Civ-II) dated 24.11.1967 as amended by corrigendum No.13051/OS-SC(ii)/2968/D(Civ-II) dated 27.5.1980, from the dates on which the applicants were initially appointed on casual basis, by ignoring the artificial or technical breaks in their services.
- (ii) Respondents shall fix the seniority of the applicants in their respective grade from the dates on which they are absorbed against regular vacancies.
- (iii) Respondent No.4 shall give benefit of this order to other employees working in the establishments under him and who are similarly placed like the applicants before us.

(iv) Respondents shall implement the above directions within six months from the date of receipt of a copy of this order."

We adhere to the same and consequently give the same directions mentioned above except that for implementation we will reduce the period to three months in view of the general directions given earlier.



(M.Y. PRIOLKAR)
MEMBER(A).



(U.C. SRIVASTAVA)
VICE CHAIRMAN.