

13

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. ~~225/90~~ 385/89

Transfer Application No. ---

Date of Decision : 16-2-95

Anwar Ismail Wadkar & Ors.

Petitioner

Mr. G. S. Walia

Advocate for the
Petitioners

Versus

U.O.I. & Ors.

Respondents

Mr. Suresh Kumar

Advocate for the
respondents

C O R A M :

The Hon'ble Shri Justice M.S. Deshpande, Vice-Chairman -

The Hon'ble Shri M.R. Kolhatkar, Member(A)

(1) To be referred to the Reporter or not ? —

(2) Whether it needs to be circulated to
other Benches of the Tribunal? *no.*

[Signature]
(M.S. DESHPANDE)
VC

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14

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.385/89

1. Anwar Ismail Wadkar
2. Esmail Ibrahim Solekar
3. Shahid Ibrahim Nakhwa
4. Shrikant Raghunath Ahere .. Applicants

-versus-

1. Union of India
through
Collector,
Central Excise & Customs,
P.M.C's Commercial Bldg.,
Hira Baug, Tilak Road,
Pune - 411 002.
2. Assistant Collector of
Customs and Central
Excise,
Jail Road,
Ratnagiri - 415 612. .. Respondents

Coram: Hon'ble Shri Justice M.S.Deshpande
Vice-Chairman

Hon'ble Shri M.R.Kolhatkar,
Member(A)

Appearances:

1. Mr.G.S.Walia
Counsel for the
applicant.
2. Mr.Sureshkumar
counsel for the
respondents.

ORAL JUDGMENT: Date: 16-2-95
(Per M.S.Deshpande, V.G.)

By this application the four applicants herein question the order dated 6-2-1989 by which the applicants were listed as Daily Wages workers and seeks a declaration that they are entitled to regularisation of service in their respective grades and posts with all consequential benefits from the date of their appointments.

2. Applicant No.1, A.I.Wadkar,
was appointed as Tindal on 2-6-84,
Applicant No.2, E.I.Solekar was appointed on

18-8-1984 as Greaser, and applicants No.3 & 4 S.I.Nakhwa and S.R.Ahere, were appointed as Seaman on 28-10-84 and 2-6-81 respectively. The ~~required~~ pay scales prescribed by IVth Pay Commission for the categories were: for Tindel Rs.1320-2040, and for Greaser and Seaman Rs.800-1150. The applicants came to be regularised by an order dated 22-11-85 in their respective posts but by order dated 3-12-1985(Ex.'B') these appointments were held in abeyance. Applicant No.1, A.I.Wadkar came to be regularised as Tindel w.e.f. 2-6-84 but the other three applicants were not regularised. They contend that they had put in more than 240 days in a year continuously and they are entitled to be regularised. The respondents admitted that the applicants were holding the posts as stated in the application from the dates mentioned against them but urged that they could not be granted regularisation because there ^{were} no regular posts and they did not have the qualifications as per rules. On behalf of applicant No.2 it was urged that he was regularised as Laskar because he did not have the qualification for Tindel which is a Group 'C' post. Though it was not disputed in the pleadings that applicant No.2 had been working continuously, in answer to MP 116/92 by which the applicants had asked the respondents to take the applicants on work and assign them their legitimate duties, it was contended that applicant No.2 had absented from work. By MP 583/92 leave was sought for impleading 31 persons but that application was rejected. Original applicant No.2 was mentioned as applicant No.3 therein.

③. We have already pointed out that there was no denial in the pleadings regarding the performance of the duties ^{by the applicants} from particular dates which were mentioned in the O.A. in the categories mentioned above. The applicants had been regularised by order dated 22-11-85 but their appointments were held in abeyance vide order dated 3-12-1985(Ex. 'B'). The first applicant worked as a Tindal from 2-6-84. The date of filing of present application was 16-2-89. It is apparent that the applicants even continued to work thereafter. In the affidavit filed on behalf of respondents on 30-3-94 in response to certain queries by the Tribunal mentioned in the ordersheet dt. 3-2-94, it was admitted that the applicant No.1 A.I.Wadkar had not been paid regular time scale and it was stated that his appointment made on 30-3-88 was cancelled by order dated 27-3-89. It was contended that he was appointed as Lascar vide Headquarters letter dated 13-9-91 and he took over as Lascar in pursuance of that letter and the necessary monetary benefits had been given to him. Learned counsel for the respondents contended that the applicant No.1 did not have the qualifications for the post of Tindal and therefore he could not be considered. It is clear ~~that~~ that the applicants had been working continuously over a long periods. In Bhagwati Prasad v. Delhi State Mineral Development Corporation, 1990 SCC (L&S) 174 it was observed in respect of petitioners therein who were appointed between 1983 and 1986 and had been discharging duties ever since, that practical

experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualifications prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them ~~the~~ confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. Here also as the applicants had more than three years experience and the lack of educational qualifications which would have been material at the time of entry into service cannot be used as a basis when the applicants had been continued by the respondents in their present job over a long period.

4. The next submission was that ^{were} there ~~is~~ no regular posts which could be allotted to the applicants. In the case before ~~the Supreme Court~~ the Supreme Court also a similar plea was raised and while holding that the petitioners were entitled to equal pay ~~on the~~ at par with the persons appointed on regular basis to the similar posts or discharge similar duties, they were held entitled to the scales of pay and all allowances revised from time to time for the said posts and that the regularisation should be done in a phased manner. We find in view of the identical facts which are before us same directions shall have to be given.

5. Learned counsel for the respondents, however, urged that applicant No.2 had stopped working. According to the learned counsel for the respondents, applicant no.2 would have no right to the post but this was something which occurred after the filing of the application and the right the applicants would have on the date of filing of the application cannot be denied to them only because subsequently a dispute has arisen about the second applicant having stopped working. Even though we are inclined to grant regularisation to applicant No.2 we leave it free to the respondents to take such departmental action as would be justified in respect of his absence from work or otherwise.

6. In the result we direct respondent No.1 to consider in view of order dated 22-11-85 the regularisation of applicant No.1 in the post of Tindel, applicant No.2 as Greaser and applicants No.3 and 4 as Seamen.

7. With regard to backwages we find that the applicants should be paid the wages prescribed for that post from the date of filing of application from 16-2-89. Regularisation of the applicants may be done in a phased manner when regular posts become available but their services shall not be terminated on the ground that regular posts are not available nor shall they be denied the wages as prescribed for regular employees. All monetary benefits flowing from this order

19

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shall be paid within four months from the date of communication of this order. With this direction the O.A. is disposed of with liberty to respondents to proceed against the applicant No.2 if they so choose for the alleged absence from work.

M.R. Kolhatkar
(M.R. KOLHATKAR)
Member(A)

M.S. Deshpande
(M.S. DESHPANDE)
Vice-Chairman

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