

(7)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.313/89, O.A.314/89, O.A.315/89 & O.A.316/89

1. Mr.Ranshi Raja Vala,
residing at
Zolawadi,
Bucharwada,
Diu.

.. Applicant in
O.A.313/89

2. Mr.Karasan Soma Solanki,
Casual Labourer,
Office of the Sectional Officer,
Electricity Dept.,
Diu.

.. Applicant in
O.A.314/89

3. Mr.Dita Bhika Vara,
Casual Labourer,
Electricity Department,
Sub-Divn.IV,
Diu.

.. Applicant in
O.A.315/89

4. Mr.Soma Bhika Vara,
Casual Labourer,
Electricity Department,
Sub Divn.IV,
Diu.

.. Applicant in
O.A.316/89.

vs.

1. Union of India
through
The Administrator,
Union Territory of Daman & Diu,
Cabo Raj Nivas,
Panaji, Goa.
2. The Chief Secretary,
The Administration of
Union Territory of Daman
& Diu, Secretariate, Daman,
Moti Daman.
3. The Collector, Diu,
Office of the Collector of
Diu,
Diu.
4. The Executive Engineer,
Electricity Department,
Nani Daman.
5. The Assistant Engineer,
Electricity Office, Diu.

.. Respondents in all
the above applica-
tions.

(4)

Coram: Hon'ble Shri P.S.Chaudhuri, Member(A)
Hon'ble Shri T.Chandrasekhara Reddy, Member(J)

Appearances:

1. Mr.S.R.Atre
Advocate for the
Applicants.
2. ^{K.P.}Mr./Tipnis for
Mr.R.M.Agrawal
Advocate for the
Respondents.

JUDGMENT:
(Per P.S.Chaudhuri, Member(A))

Date: 3-6-1991

This analogous cluster of 4 applications all filed on 26-4-1989 under Section 19 of the Administrative Tribunals Act, 1985 can conveniently be disposed of by a common judgment and order as all the 4 applications involve a common set of facts and question of law. In all the 4 applications the applicants who are working as Casual Labourer under the 5th respondent are seeking a direction to the respondents to regularise the applicant and to grant the applicant from the date of his initial appointment all the benefits which are received and available to a Government servant working on a regular basis and/or permanently as labourer, including regular pay scale, gratuity, pension etc. from the date of initial appointment.

2. The facts may be briefly stated. After the liberation of Goa, Daman and Diu on 19-12-1961, the power house and all distribution lines in Diu, Ghoghla and Fudam area was handled by Diu Municipal Council, Diu, upto 1-10-1964. Thereafter, grid supply is being received from the Gujarat State Electricity Board Power House, Una since about 2-12-1965. The internal line installation and other minor works were carried out by the Gujarat

Electricity Board on deposit work basis upto March 1970 and the 4 applicants have been employed from 16-11-1970 as casual labour on daily wages. Initially the applicants were paid at the rate of Rs.4/- per day and thereafter the rates was revised from time to time and they were paid their wages as per the rates approved by the Government from time to time. On 15-4-1982 the applicants submitted individual representations for regularisation of their services. It is the case of the respondents that this request could not be considered on account of the applicants' being overaged. However, the Chief Electrical Engineer, Panaji increased their rate of wages in terms of a circular dated 6-9-1983 and continued their employment. From 1970 onwards the office in which the applicants are working has engaged 29 labourers including the applicants, of whom 9 have been regularised but the applicants could not be considered on account of their being overaged at the time of their appointment as casual labourer with effect from 16-11-1970. Their age particulars are:-

Sr.No.	O.A.No.	Name of Applicant	D.O.B	Date of engagement on NMR	Age at the time of engagement on NMR
(1)	(2)	(3)	(4)	(5)	(6)
1.	313/89	Ranshi Raja Vala	18-11-36	16-11-70	34 Yrs.
2.	314/89	Karsan SomaSolanki	16-6-1919	-do-	51 Yrs.
3.	315/89	Dita Bhikha Vara	7-8-1922	-do-	48 Yrs.
4.	316/89	Soma Bhikha Vara	1-2-1930	-do-	40 Yrs.

It is the case of the respondents that during 1970 there were no guidelines or instructions not to engage any labourers more than 30 years and such a directive was only received on 30-11-1984 from the Executive Engineer, Division-I, Panaji.

10

The respondents have also fairly admitted that during 1970, since no labourers were available, whosoever used to come forward used to be accommodated to meet the requirements of the office. The applicants made several representations for their regularisation as a special case considering the long years of service that they had put in. On 7-3-1987 a proposal was put up by the Executive Engineer, Electrical to consider their case as a special one on humanitarian grounds to see whether any financial benefit could be given to them depending on their years of working. This was rejected on 13-3-1989 on the ground that there were no Government instructions regarding financial help. It was also indicated that their appointment could not be regularised when the posts of Helper were filled up in the Electricity Department at Diu as the applicants were overaged at the time of their appointment. Being aggrieved, the applicants filed these applications.

3. The respondents have opposed the applications by filing their written statement. We have heard Mr. S.R. Atre, learned counsel for the applicants and Mr. ^{K.P.} Tipnis, holding the brief of Mr. R.M. Agarwal, learned counsel for the respondents.

4. The sole point on which the respondents rely for opposing the applicants' applications is, that the applicants were overaged at the time of their appointment. We are quite unable to go along with this submission. It is the respondents' own submission that no one else was forthcoming to do the work that had to be done in 1970 when the applicants were engaged for doing this work. It is not as if the upper age limit

for appointment can not be relaxed. Article 51 of the Civil Service Regulations specifically states" a person whose age exceeds twenty five years may not ordinarily be admitted into the pensionable service of the State without sanction of the head of the department."

A plain reading of the Government of India's decision No.4 dated 21-5-1940 below this article in Chaudri's Compilation of the Civil Service Regulations, Volume 1, 13th Edition makes it clear that it was anticipated that exceptions to the age limit would become necessary. The circumstances under which the applicants were engaged was certainly not an ordinary one in as much as in stark contrast to the normal scenario of hundreds of people falling over each other to get a job, no one else was forthcoming to do the work for which the applicants were engaged. This was certainly a case in which a departure from the ordinary practice was not merely called for but was warranted. It is also not as if there were no vacancies against which the applicants could be regularised. The respondents have fairly conceded that more than 4 persons appointed after the applicants were appointed have since been regularised. It is also not as if the applicants working has not been satisfactory. When forwarding their representations regarding regularisation their superior officers have repeatedly emphasised that they are working sincerely since 1970 and are still found to be hard workers and very honest in their work. Thus in no view of the matter can it be contended that the applicants could not be regularised. Mr. Atre contended that the applicants were entitled to be regularised as

they were entitled to equal pay for equal work - see Surinder Singh and another v. Engineer-In-Chief, C.P.W.D. and others, 1986 SCC(L&S) 189. He further contended that they were entitled to notional appointment to the regular cadre with effect from the date of first regular appointment in the cadre from the date of their continuous employment - see S.Krishnan v. Union of India and another - (1991)15 ATC 254. In S.Krishnan's case (Supra) the arrears of pay and allowances have been restricted to three years prior to the filing of the application on the analogy of three years limitation in suits for recovery of dues. We are in respectful agreement with this proposition and propose to pass a similar order.

5. At this stage it would be necessary to mention that the applicants in O.As No.314,315 and 316/89 have since or long since passed the prescribed age of superannuation. Nonetheless, the respondents are still continuing with their services. Since we propose directing the respondents to regularise their services, the inevitable consequence will be that the respondents will have to give them extension of service till such date as they choose to dispense with their service on superannuation.

6. We accordingly direct the respondents to regularise the service of the applicants from the date of their continuous employment and to pay them pay and allowances to which they are entitled as a consequence of such regularisation. Arrears will, however, only be payable with effect from 26-4-1986 i.e.

-: 7 :-

three years before the applications were filed on 26-4-1989. Any payments due shall be made within a period of four months from the date of receipt of a copy of this order. In the circumstances of the case there will be no order as to costs.