

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.**

O.A. No. 554 of 2005

Date of order : 26.12.06

C O R A M

Hon'ble Ms. Sadhna Srivastava, Member (J)

Suchit Kumar Pandey, S/o Shri Ram Janam Pandey, resident of village Pachpoika, P.O. Pauni Hasanpur, P.S. Vaishali, District – Vaishali.

....Applicant

By Advocate : Shri N.K. Singh

Vs.

1. The Union of India through Secretary, Central Board of Excise and Custom, New Delhi.
2. Chief Commissioner of Central Excise and Custom, C.R. Building, 4th Floor, B.C. Patel Path, Patna.
3. Commissioner of Custom, C.R. Building, 4th Floor, B.C. Patel Path, Patna.
4. Joint Commissioner (P&V), Customs, C.R. Building, B.C. Patel Path, Patna.
5. The Deputy Secretary, Government of India, Ministry of Personnel Public Grievances and Pension, Department of Personnel and Training, New Delhi.
6. Administrative Officer, Customs, (H.Q.) C.R. Building, 4th Floor, B.C. Patel Path, Patna.
7. Public Relation Officer, Customs, (H.Q.) C.R. Building, 4th Floor, B.C. Patel Path, Patna.
8. Superintendent (Estt. ADMN), Customs, (H.Q.) C.R. Building, 4th Floor, B.C. Patel Path, Patna.

....Respondents

By Advocate : Shri M.K. Mishra.

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ORDERBy Sadhna Srivastava, M (J):-

By means of the present application the applicant has sought relief for quashing of order dated 17.3.2005 passed by respondent No. 4 as contained in Annexure A/8, whereby the request to grant temporary status to him has been rejected. Further, there is a prayer to accord temporary status and subsequently to consider him for regularisation.

2. The facts, as alleged in the OA, are that the applicant was engaged as despatch clerk in the month of Feb, 2000 on daily wages. He worked in 2000-01 and 2001-02 for more than 206 days in a calender year. Therefore, he prays that he is entitled for grant of temporary status.

3. The applicant has submitted representation for conferment of temporary status as well as for regularisation. It is submitted by the applicant that instead of conferring temporary status and then regularisation of service of the applicant, the respondents have verbally terminated the service of the applicants. Hence this OA.



4. The applicant has placed reliance on a judgment passed by the learned Single Bench in OA 196 of 99 dated 10.7.2003.

5. The respondents have filed reply. It is alleged therein that the post of despatch clerk is in the grade of LDC/UDC and for appointment of LDC/UDC, the Staff Selection Commission declares the vacancies position and conduct the process relating to the that appointment. Further, they have stated that the applicant was engaged as casual labour on daily wages since Feb, 2000 i.e. Much after the date of government of India's scheme of 1993 for regularisation of casual workers as temporary status staff. They have also denied that the applicant worked for 206 days in a calender year. They have placed reliance on the judgment passed by the Apex Court in Civil Appeal No. 3168/02; Union of India vs. Mohan Pal.

6. Heard learned counsel for the parties and considered the pleadings. The applicant has not challenged the verbal termination order. The reliefs sought by the

applicant is to grant him temporary status and regularisation of his service.

7. The question that would arise for consideration is whether the applicant is entitled for grant of temporary status and or for regularisation of his services?

8. It can be stated that the grant of temporary status is provided under a Scheme called " Casual Labour (Grant of Temporary Status & Regularization) Scheme, Government of India, 1993 (in short Scheme of 1993). The said Scheme came into force with effect from 10.9.1993. The Scheme expressly states that it applies only to such of those casual labour in employment on the date of issue of the said order.

Para 4.1 of the said Scheme states that temporary status would be conferred on all the casual labourers who are in employment on the date of issue of the Scheme of 1993 and who have rendered continuous service of at least one year , which means that they must have been engaged for a period of at least 240 days or 206 days in the case of 5 days week.

The Scheme further says in para 10 that in future the



guidelines , as contained in office memorandum dated 7.6.1988 should be followed strictly in the matter of engagement of casual employees in the Central Government offices.

9. The grant of temporary status to casual labour is available only under the said Scheme, subject to satisfying the conditions laid down in that Scheme. One of the conditions being that the casual labour should have been in employment on that date when the Scheme came into force i.e. 10.9.1993. It has been clearly laid down by the Hon'ble Supreme Court that this is a one time Scheme introduced by the government of India and it is not an on-going scheme. Therefore, there is no scope for considering grant of temporary status to the applicant in this case. The question of regularizing his services would arise only after the grant of temporary status under the said Scheme. Obviously, when thousand of casual labour having temporary status are awaiting for regularisation, ^{to} _{do} not consider it appropriate to enlarge the scope of 1993 Scheme. It would neither be



legal nor proper. The back door entry to the public service should be dissuaded. The proper course is only recruitment through open competition.

10. In the Union of India vs. Mohan Pal, 2002 (4) SCC page 572, the Hon'ble Supreme Court has held that the Scheme of 1993 is a one time programme applicable to casual workers who were in employment on the date of commencement of this Scheme and who had also rendered continuous service for the prescribed period. According to their Lordships, it is not possible to give temporary status to all the casual workers as and when they complete continuous service for the period prescribed in Clause (4) of the Scheme. The question that was dealt with by their Lordship in that case was whether the conferment of temporary status is a one time programme as per the Scheme or whether it is an on-going Scheme to be followed by the departments and whether the casual labour are going to be given temporary status as and when they complete 240 days or 206 days, in the case of 5 days week, of working in a year. Their



Lordships answered the question , rejecting the claim, held that this is not an on-going Scheme and held as follows - "

From Clause (4) of the Scheme It does not appear to be a general guidelines to be applied for the purpose of giving ' temporary status' to all casual workers as and when they complete one year continuous service
(Emphasis added).

11. Their Lordships gave opportunity to the Union of India to formulate any other Scheme as and when it is found necessary. The Hon'ble Supreme Court followed the above view in the case of Union of India vs. Gagan Kumar (2005) AIR ACW 3594. In that case, the CAT accepted the employee's stand that he was entitled for temporary status for having worked for 240 days and directed the employer to accord temporary status from 1988 when he completed the requisite period of 240 days, with all consequential benefits. Their Lordships held that the Tribunal's order was clearly untenable , and the High Court did not examine the rule involved in the case and set aside the order of the High



Court. There is no other rule, instructions or provisions or scheme under which the applicant can claim for grant of temporary status and subsequent regularisation of service. As per pleadings of the applicant, he was engaged only in 2000, and as such, in view of para 4 (i) of the Scheme of 1993, the applicant is not entitled for temporary status, as admittedly he was not in employment on the date when the scheme was introduced i.e. 1.1.1993. Hence the applicant cannot be given temporary status.

12. The learned counsel for the applicant has heavily relied on the judgment of this Bench (S.B.) dated 10.7.1999 (Ram Pravesh Thakur and ors vs. U.O.I. & Ors). He further invited my attention to the findings of para 20 and 21 of the judgment where the learned Member has held that there is no bar in the scheme of 1993 to grant such status to casual labourers who have been engaged after 1.9.1993 , which is otherwise also evident from Annexure A/8 and A/9 , which have been filed along with the said OA.

13. I have summoned the file of OA No. 196 of 99



(Ram Pravesh Thakur v. UOI & Others and perused Annexure A/8 and A/9 annexed with that file. I am unable to conclude from those Annexures that a Casual labour appointed after 1993 can be given the benefit of Scheme of 1993. In view of decision of Hon'ble Apex Court in the case of Mohan Pal & Gagan Kumar (Supra), I am of the considered opinion that the benefit of 1993 Scheme cannot be given to those casual labour who were not in employment on the cut-off date.

14. Resultantly, the OA is dismissed. No order as to the costs.


[Sadhna Srivastava] M [J]

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