CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:159/96, 161/96, 162/96, 163/96, 182/96 and 184/96

the 2nd day of Feb., 2000

CORAM: Hon'ble Shri B.N.Bahadur, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

1. Patta Rameya,
Residing at
B.S.Patil Chawl,
R.No.1283,
Aggerwadi,Mankhurd. ...Applicant in OA 159/96

2. Ramesh Bala Gawade,
Residing at
Varadkar Chawl,
Adarsh Nagar, Jambli Pada,
Kalina, Santacruz, Mumbai. ...Applicant in OA 161/96

3. Bhaskar Sadanand Gouda
Residing at
Ramabai Ambedkar Nagar,
R.No. 574,E.E.Highway Road,
Ghatkopar(E), Mumbai. ...Applicant in OA 162/96

4. Vishwas Bapu Kamble
Residing at
Gajanan Colony Chawl No. 24,
Room No.4. Govandi
Mumbai. ...Applicant in OA 163/96

5. Chandrakant Sahadeo Morye
Residing at
106/736, M.H.B. Colony,
Jogeshwari (E) Mumbai. ...Applicant in OA 182/96

6. Ashok Sudam More
Residing at
B.D.D. Chawl No.98
R.No. 63, Worli,Mumbai. ...Applicant in OA 184/96

By Advocate Shri B.Ranganathan.

V/s

1. The Union of India through
the Chairman and Secretary
Department of Atomic Energy
South Block, New Delhi.

2. The Head Personnel Division
Bhabha Atomic Research Centre,
Government of India,
Central Complex, Trombay,
Mumbai.

3. The Head Civil Engineering Division
Bhavha Atomic Research Centre,
North Site, Trombay, Mumbai.

4. The Assistsant Personnel Officer
Bhabha Atomic Research Centre
Personnel Division,
Recruitment Section,
Central Complex, Trombay,Mumbai. ...Respondents.

By Advocate Shri R.K.Shetty.

O R D E R

{Per Shri S.L.Jain, Member(J)}

These are the applications under Section 19 of the Administrative Tribunals Act 1985 to quash and set aside the impugned order dated 19.1.1996 Annexure A1 as they being illegal and bad in law, offering appointments to the applicants in the post of Helper A(CM) at the initial pay of Rs. 750/- in the pay scale of Rs. 750-12-870-14-940 with a direction to the respondents to regularise the applicants in the post for which they have been interviewed and specially in the posts which are available with the respondents in the appropriate trade and allow the applicants to continue in the Highly Skilled labourers post on the emoluments which they are drawing at present.

2. Every applicant has filed separate application for the above said relief. As the impugned order is one and the same and the common question of law is involved, hence all the applications are taken together for deciding the matter.

3. The applicants filed OA 828/90 in the C.A.T. Bombay Bench which was decided on 8.10.1992 and the following order was passed:-

> " It appears to be an admitted position that the applicants have been in service continuously for more than 3 years. However, we are not expressing any considered opinion on the exact duration of the service of each of the applicants. That will be a matter to be gone into by the authority concerned. Such of the applicants who have completed 3 years of service shall be paid on monthly rated basis and not on daily basis. The respondents shall commence to pay such of the applicants who have completed 3 years of service on monthly rated basis from the date of the filing of this application in this Tribunal which is 23.11.1990."

4. The Contempt Pettion No.71/93 was filed which was disposed of vide order dated 22.11.1993 in which the respondents have gien an undertaking as under:

> " The applicants would be given temporary status from 1.9.1993 and the increments which should become payable by virtue of temporary status if they fulfil the conditions which are laid down in the circular dated 10.9.1993 would also be paid."

5. The finding is only to the effect that such of the applicants who have completed 3 years of service shall be paid on monthly rated basis.

6. All the applicants were sponsored by the Employment Exchange. The particulars of the appointment of the applicants, their qualification, posting receipt of interview calls etc are as under:

	OA 159/96	OA 161/96	OA 162/96
Qualification:	VIIIth passed.	Xth	IXth
Entered as: Unskilled Casual labour in Civil Engineering Division on Daily rated basis (B.A.R.)	19.1.1990	31.3.1983	31.3.1983
Semi skilled casual labour.	01.8.1986	19.1.1990	1.8.1996
B/A (T) on FTA (called for interview and posted)	22.1.1990	22.1.1990	19.1.1990
Highly Skilled labour(classified)	7.6.1993	7.6.1993	7.6.1993
Called for interview for the post of Helper B(T) Fixed term appointment.	8.12.1993	8.12.1993	8.12.1993

	OA 163/96	OA 182/96	OA 184/96
Qualification:	Xth	VIIIth	VIIIth
Entered as: Unskilled Casual labour in Civil Engineering Division on Daily rated basis (B.A.R)	29.12.1982	4.7.1983	11.7.1983
Semi skilled casual labour.	1.12.1985	1.12.1985	1.8.1986
B/A (T) on FTA	22.1.1990	22.1.1990	22.1.1990
Highly Skilled labour .	7.6.1993	7.6.1993	7.6.1993
Helper B(T) Fixed term appointment.	8.12.1993	8.12.1993	8.12.1993

7. The grievance of the applicants is that in the year 1993, they had already completed 10 to 12 years, they were classified as Highly skilled Labour with effect from 7.6.1993, were granted higher pay scale, they were called for interview for the post of Helper B/(T) on Fixed Term appointment vide letter dated 8.12.1993, never called for the interview for the post of Helper(CM), however vide letter dated 18.1.1996 they were informed to fill in 7 sets of Attestation Forms and 4 sets of Special Security Questionare for the post of Helper A (CM), on 19.1.1996 they were offered an appointment on the post of Helper A (CM) in the pay scale of Rs. 750-12-870-14-940 alongwith the duties to be performed and in case they do not accept the offer of appointment and place of posting, the applicant's name shall be deleted from the panel and casual employment of the applicant shall be discontinued. They preferred representation dated 29.1.1996 which is still pending.

8. They contend that as per leter dated 18.11.1997 the casual labourers who are continuously employed for 240 days in each of the preceeding two years (including breaks) are eligible for regularisation. In view of circular dated 10.9.1993 the qualifications are prescribed for the post of Helper A(Trade), Helper (CM) and grant of temporary status and regularisation of casual worker -formulation of a scheme etc. procedure for filling group 'D' post. The respondent No.3 requested the respondent No.2 to regularise the casual labourers

who had put 12 to 15 years of service in his division- namely Civil Engineering Division. 10 vacancies have arisen on account of retirement or death. Hence this OA for the above said reliefs.

9. The respondents have resisted the claim of the applicants and alleged that as they have continued with the BARC for a number of years, a humanitarian approach was taken to regularise them against available vacancies. They were not appointed against any regular posts which carry identifiable job descriptions. Since the projects have been completed and the facilties have been commissioned, the need for casual employment is no more existing, except for a very infrequent jobs like movement of heavy material etc. The available vacancies are only in the grade of Helper / A(CM), the job description of which is house keeping. In view of letter No. 49014/2/86.Estt(C) dated 7.6.1988, Casual Labourers are to be absorbed in group 'D' posts against available vacancies and the services of the rest of them are to be dispensed with. Offers to the applicants are issued according to their empanelment in the panel. This appointment is only to absorb them initially in available vacanies and to consider them for appropriate position, subsequently as and when their turn comes, subject to availability of vacancies. Helper (A)/CM and Helper (A) are carrying identical grades of pay without any difference in their increment rates. This practice is regularly being followed. In case the applicants do not accept the present offers, their regularisation would get postponed

further, people who would be offered these posts would stand better placed for conversion to Helper/A as they would rank senior to these applicants. Before the panel was drawn, all the applicants were specifically asked to state whether they would be interested in being considered for Helper (CM) and that applicants declared that they would be prepared to accept the post of Helper /A(CM)/ Helper A which occurs first. In view of the fact the post is being offered to them on a clear understanding that as and when post of Helper /A occurs, they would be given preference in absorption according to their position. The applicants were never interviewed for the post of Helper(CM). Hence pr_ayed for dismissal of OAs.

10. Letter dated 19.1.1990 was a call letter sent to them for a fixed term appointment which is like a contract appointment. Only limited number of people were required only a few were offered the post accordidng to their rank and the applicants are not one of them. There are number of people who have been offered with the post of Helper A (CM) who are senior to the applicant. The work component of the centre for such employment were decreasing fast and would extinct shortly. By a circular No. PA/80(1) /93-R-III/1022 dated September 10, 1993, applications were called for casual labourers clearly indicating that they are called for interview for the position of HelpoerA/B or Helper (CM) and an undertaking to the same is also taken from the applicants. They were considered for the post of Helper (CM) also as they appeared voluntarily for invteview for empanelment

of the said post. Hence they are precluded to change their position now. OA is premature. Ex-A/10 is classified document, unauthorisedly removed from the file which is in violation of rules. Better than the temporary status is provided. The suggestion is not in tune with the procedure and norms being followed. Hence it could not be considered, as it is only of a recommendation and regulariation is a matter of policy.

11. The applicants have filed the rejoinder and have reiterated the facts mentioned in the OA and alleged that there are adequate vacancies to accommodate the applicants has clearly established by the order dated 4.10.1995. Standard forms of applications where the applicants have agreed to accept the post of Helper A/B (Trade) whichever occurs earlier are being misused and the said undertaking cannot be acted upon against them. They possess requisite educational qualification for the post of Helper B (T). in view of circular dated 10.9.1993 and they cannot be compelled to take the post of Helper 'A' for which qualification prescribed is 3rd standard.

12. On perusal of letter dated 4.10.1995, we find that " for quite some time the name of remaining casual labourers numbering about 7 have not been offered regular appointment as no regular vacancy is identified by recruitment section" This fact clearly states that there are no vacancies in the Architect and Civil Engineering division. Hence the contention of the application that there exists vacancy has no bearing.

13. On perusal of the interview cards issued by the respondents, we are of the considered view that the applicants were interviewed only in respect pf the post of Helper B(T), though there are undertaking by the applicants to the effect that they shall be prepared to accept the post of Helper 'A'(C.M.)/Helper A/B(Trade) whichever occurs first. In our considered view the said undertaking is of no consequence as respondents being the employer are not competent to enforce the same for the reason that the personal services cannot be enforced.

14. As the applicants have been interviewed only for the post of Helper B(T) on fixed term appointment the applicants cannot be compelled to work on the post of Helper 'A'(C.M) or any other post. In case of failure of the applicants to accept the job, their regularisation can be postponed further and the person who appear below in the panel may be offered those post, thus they shall be senior to the applicants but shall have no right for conversion to Helper 'A' as no such rule or law exists. Hence no dis-qualification shall arise by not accepting the said post for further vacancies. As we do not find any vacancy to exists, so the applicants cannot be regularised and hence they are not entitled to the pay of highly skilled labourers or for any other posts.

15. The learned Advocate forthe applicants relied on 1996 (1) ATJ 192 Shri Raghunath Dube V/s Union of India and others and argued that as the applicants are working as Highly Skilled labour and interviewed for Helper B (T), they deserve to be absorbed for the said posts only. We find a substance in the same contention but they carry a risk of retrechment for want of vacancy as isclear from para 5 of the said order.

16. The learned Advocate for the applicants relied on A.I.R. 1999 SC 1624 V.M. Chandra V/s Union of India and others and argued that even casual labour employees have designation such as engagement of a peon on casual basis and engagement of a clerk on casual basis and after a long term of service when they posses the qualifications as required, they deserves to be absorbed in the said post. As the applicants were engaged as casual labour unskilled, subsequently found fit and termed as semi skilled and later on as Highly skilled, it is in the fitness of the things that on the availability of the vacancies, they deserve to be absorbed as Highly skilled labour.

17. We agree to the proposition that Temporary Status - granting of it does not depend on the availability of the vacancy or seniority, as employee has only to satisfy the condition regarding service for a number of days as held in (1995) 31 ATC 534 Mahindra Singh and others V/s Union of India and others but the said question does not arise in the present case looking ;to the reliefs claimed.

18. In the result it is made clear that the applicants are at liberty to comply with the order of 19th January 1996, failure to comply with the same shall not be a bar for their consideration in the vacancies to arise in future and they shall be considered as per their turn ignoring the persons who have accepted offer of appointment as Helper 'A' (CM). The OAs are disposed of with the above observations. No order as to costs.

(S.L.Jain)
Member(J)

(B.N.Bahadur)
Member(A)

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