

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO. : 845 of 1996.

Dated this Wednesday the 23rd day of January, 2002.

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

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

Pandu Ranga Krishna Rao Dude,
Junior Deckhand,
Fisheries Survey of India,
Residing at -
Village Kadegaon,
Tal. Vai, Dist. Satara,
Pin - 412 803.

Applicant

(By Advocate Shri D. V. Gangal)

VERSUS

1. The Union of India
through the Secretary,
Ministry of Food Processing,
New Delhi.
2. The Director General,
Fisheries Survey of India,
Botawalla Chamber,
Sir P. M. Road,
Mumbai.

Respondents.

(By Advocate Shri R. K. Shetty)

ORDER

PER : Shri B. N. Bahadur, Member (A).

The Applicant in this case comes up to the Tribunal
seeking the relief as follows :

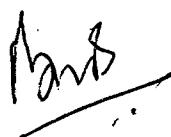
The Applicant, therefore, prays this
Honourable Tribunal may be graciously pleased to
call for the records of the case from the

Respondents and after examining the same, issue a Writ of mandamus directing the Respondents :-

- (i) To regularise the services with effect from 26/2/80 or from such other date which may be found just and fair.
- (ii) To grant regular scale of pay to the Applicant from 26/2/80 or from such other date deemed fit by the Honourable Tribunal.
- (iii) Direct the Respondents to grant to the Applicant incremental salary, provident fund, gratuity, pension, leave, promotion and all other recurring benefits by virtue of his regularisation of service with effect from the date arrived at by this Honourable Tribunal.
- (iv) To grant any other and further benefits in the nature and circumstances of the case with cost, interest and for which act of kindness the Applicant as a duty bound shall ever pray.

In short, the grievance of the Applicant is that his regularisation as Junior Deckhand, which has been provided to him w.e.f. 01.08.1992 should in fact be provided to him from 24.02.1980 i.e. the date of his initial appointment on casual basis. The Applicant states the facts of his case as follows :

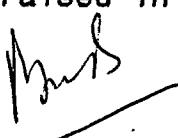
He was working initially on casual basis as Deckhand-cum-Cook in Respondents' employment. When his services were sought to be terminated, he filed a Writ Petition before the Kerala High Court which ordered his reinstatement with backwages (Annexure A-1). Consideration of regularisation was also considered and ordered vide another Transfer Application No. 14 of 1988 (Annexure A-2) which was not done until the Applicant again filed O.A. No. 104 of 1991 where orders dated 21.01.1992 were provided



directing regularisation (Annexure A-3). However, a further O.A. No. 978/94 had to be filed before the Ernakulam Bench which through its order dated 07.07.1995 gave a positive order to regularise the service of the Applicant. This regularisation having been provided from 01.08.1992 and the Applicant being aggrieved submitted a representation on grounds cited in the application. The Applicant has now come up with the grievance as discussed above.

2. The Applicant stated that there is some technical delay in filing the O.A. for the condonation of which he has filed M.P. No. 647/96.

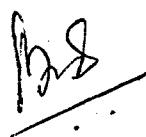
3. The Respondents in the case have filed a Written Statement of reply, first making the point that the Applicant makes a false statement that he has been regularised in pursuance of judgement dated 07.07.1995 since the Applicant has actually been regularised well before 07.07.1995 as could be clear from the judgement dated 07.07.1995 (exhibit R-1). The department has filed a copy of the judgement dated 21.01.1992 in O.A. No. 104/91 from which they seek support. The Respondents state that since the judgement clearly mentions that regularisation has already been considered, the matter is barred by the principles of resjudicatta. The Respondents thus make a plea here also on the ground of the application being barred by the principles of resjudicatta. It is also contended that the matter is barred by limitation and the cause of action dating to 1980 cannot be raised in 1996.



4. It is contended in the Written Statement that since the very issue of regularisation was decided in the aforesaid judgement of 21.01.1992 (O.A. No. 104/91), the relief now sought cannot be provided. The Applicant has been regularised in keeping with this decision of the Ernakulam Bench.

5. In para 8 of the Written Statement the Respondents come to the facts of the case and describe the career and engagement dates of the Applicant to make the point that Applicant was appointed only on casual basis with intermittent break between 16.02.1980 and 31.07.1992. The further litigation process, already mentioned in the O.A., has then been described with the Respondents taking their own contention in regard to the litigation.

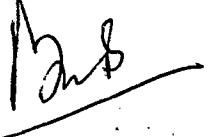
6. We have seen all papers in the case and have considered the arguments made before us by the Learned Counsel on both sides. Learned Counsel, Shri D. V. Gangal, who appeared for the Applicant, argued the case in detail taking us over to the orders made in the litigation process described. He first took us over to the order of Ernakulam Bench of this Tribunal in O.A. No. 978/94 dated 07.07.1995 where liberty for representation was provided. This representation was made (Annexure A-4, page 23) and disposed of vide memorandum dated 27.05.1996 (Annexure A-5). The Learned Counsel stated that the ratio decided by the Hon'ble Supreme Court in the well known matter of State of Haryana & Others V/s. Piara Singh & Others reported at 1992 SCC (L&S) 825



were very relevant to the case of the Applicant herein. He went through the reply of Respondents in the aforesaid memorandum dated 27.05.1996 stating that there was clear admission that Applicant was appointed and this was enough to bring the ratio of piyara Singh's case in his favour. Admitting that there were breaks in his service during the period from 1980 to 12.07.1984, Learned Counsel stated that Applicant could be provided with lesser relief of regularisation w.e.f. 12.07.1984. He contended that the document at page 16 i.e. judgement of Ernakulam Bench dated 01.03.1989 clearly showed that there was no break in service after 12.07.1984.

7. Arguing on the rule position, Learned Counsel drew support from O.M.No.24.1.1961 (Page 225 in Swamy's Complete Manual on Establishment & Administration - 7th Edition) Chapter 22 Casual Labour (Appointment of Casual Labour to Group 'D' post) was also argued on behalf of Respondents that he was fulfilling all conditions in the Recruitment Rules and hence on the basis of rules also his case was fully covered.

8. Arguing the matter for the Respondents, their Learned Counsel, Shri R. K. Shetty, first raised the point of the case being hit by the principles analogous to resjudicata/constructive resjudicata. As per contentions taken in the Written Statement of Respondents, Shri Shetty also sought to draw support from the case decided by Allahabad Bench of this Tribunal in the case of Ram Sagar & Others V/s. Union of India & Others [2001 (1) AI SLJ



36] especially to the contents in para 13. Learned Counsel also took the point relating to the matter being hit by the law of limitation, delay and laches. Shri Shetty then produced the Recruitment Rules applicable, taking the contention that the Applicant was a cook earlier and was regarded as a Cook. Recruitment to the present post requires a pass at 8th Class level whereas the Applicant had passed only 5th Class.

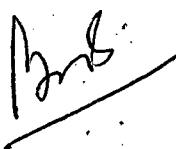
9. The point relating to non-joinder of party was also raised by the Learned Counsel, Shri Shetty, who stated that this was a seniority matter and hence non joinder was an important flaw in Applicant's case. Shri Shetty made the point that Applicant is in fact trying to treat this O.A. as an appeal on the judgement of the Ernakulam Bench of the Tribunal.

10. Rearguing briefly, Learned Counsel, Shri Gangal stated that the case was not hit by the law of limitation, as the cause of action comes only after the date of order of the Ernakulam Bench. It was also reiterated that the Applicant was working continuously w.e.f. 12.07.1984 as seen in para 2 of the judgement dated 978/94. In the first place we find that it was admitted on behalf of the applicant that since the continuous appointment was only w.e.f. 12.7.1984, the prayer may be taken to be made only with regard to this date. We would also not at the start that the matter has indeed gone to the various Benches of the Tribunal from time to time and has been considered also on more than one

occasion by Ernakulam Bench of this Tribunal. Both respondents and applicants have annexed copies of the judgment which have been importantly dependent upon by both sides. We must note these judgments here chronologically. The judgments are as follows:-

	Page
(a) Judgment of High Court of Kerela dtd.20.6.84	- 12
(b) Judgment of Ernakulam Bench	dtd.01.3.89 - 15
(c) Judgment of Ernakulam Bench	dtd.21.1.92 - 19
(d) Judgment of Ernakulam Bench	dtd.07.7.95 - 44

In the judgment of the High Court dated 20.6.1984, the applicant had gone up along with two other junior deck hands and has indeed described himself as working as Cook in the fisheries Survey of India in Cochin against termination of services. In the judgment of the Ernakulam Bench of this Tribunal dated 1.3.1989, the applicant and others had gone up to the Tribunal since backwages were not paid even though they had been reinstated in service. The Ernakulam Bench had disposed of this OA noting that applicants had been allowed to work without any break w.e.f. 12.7.1984 and ordering that the respondents were bound to decide the question of regularising the service of applicants. The final operative order was that respondents were directed to do so, subject to the eligibility of the applicants for holding the post on regular basis.



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11. Now further in the case disposed of by Ernakulam Bench of this Tribunal on 21.1.1992 (Page 19), the applicant along with others went up to the Tribunal for the third time for regularisation in service. Again the case was disposed of with a direction to respondents to regularise the services of the applicant either by creating supernumerary post or by passing orders in relaxation of existing rules. In the further judgment of the same Bench dated 7.7.1995 (Page 44) the Division Bench at Ernakulam noted that the respondents had since issued orders regularising the services of the applicant from 1.8.1992. In that OA the applicant had prayed that the benefits like increments and leave should be granted from 12.7.1984. On request by applicant, he was allowed to make a representation which had to be disposed of.

12. Now in this OA before us (845/96) we are informed that representation was made as a consequence (copy at page 23) on 21.7.1995 and has been disposed of by rejection vide letter dated 27.5.1996 (page 25).

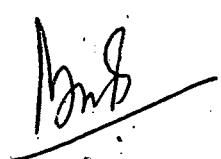
13. We have considered all papers in the case and the arguments made on both sides. In the first place we find that the application having been filed on 26.7.1996 whereas the rejection of the representation is dated 27.5.1996. Hence the plea of limitation, as taken is wrong. Now we come to the point raised about the matter being hit by the principles of res judicata or



the principles of analogous *res judicata*. As per description of the cases filed and decisions given thereon, given in detail in paragraph above, we find that even on the last occasion i.e. vide order of Ernakulam Bench dated 7.7.1995 an opportunity has been provided to the applicant to make a representation. In view of this, it cannot be said that the application is hit by principles of *res judicata*/constructive *res judicata* or principles analogous to *res judicata*. We, therefore proceed to examine the matter on its merits.

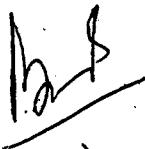
14. In the reply to the representation, it is stated that the period of appointment prior to 1.8.1992 i.e. date from which regular appointment has now been provided, was appointment on casual basis and the applicant "was not appointed to the post of Junior Deckhand in the time-scale during that period". Hence, none of the financial benefits could be made for the period 12.7.1984 to 31.7.1992.

15. Examining the decision on merit in regard to the case for availability of all benefits w.e.f. 12.7.1984 rather than from 31.7.1992, it is to be seen that the Hon'ble Supreme Court had laid down principles in a number of judgments as to under what circumstances *ad-hoc* appointments can be treated as regular and benefits provided. The main criteria laid down is that casual appointment should be through regular process after following due procedure, should not conflict with the recruitment rules and should be fully in consonance with the recruitment rules that is



to say the concerned appointee should possess all qualifications and requirements as laid down in recruitment rules. It has been stated by the respondents in Para 8 of the written statement that the applicant did not fulfil requirements as per recruitment rules in force and hence could not be regularised but allow to continue on casual basis with breaks. In the Recruitment Rules provided to us, the post of Cook indeed shows requirement of qualification upto 8th Standard with two years experience as a Cook in a Fishing Vessels. This point was debated by the learned counsel for the respondents to show that the qualification was upto 8th and this did not mean that he should be 8th Class pass. It is difficult to accept the argument that the phrase upto 8th Standard would mean from Class I to Class VII. In the absence of any concrete proof of the applicant possessing the required qualification being furnished by the applicant we will have to go by the averments made by the respondents (we are guided in this regard by the judgment of the Hon'ble Supreme Court reported at JT 2001 (2) 268. Therefore once the applicant is not fulfilling the rules, the benefits of regularisation cannot come by way of judicial determination or direction by a Tribunal.

16. It is important to note in regard to the regularisation provided w.e.f. 1992 this has come about as a result of a Court direction and this Bench is now barred from going into that. This is also an important reason as to why we cannot re-enter an



area already covered to this limited extent. Hence the decision of regularisation will remain as presently accorded to the applicant by the respondents. No benefits in terms of the period from 12.7.1984 to 31.12.1992 is to be given.

17. In view of the above discussion, this OA is hereby dismissed with no order as to costs.

S. L. Jain
(S. L. Jain)
Member (J)

B. N. Bahadur

(B. N. Bahadur) 23/1/02
Member (A)

osn 23/1/2002

On Judgement despatched
to Applicant/Respondent(s)
on 11/1/02

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