

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CIRCUIT SITTING AT PANAJI, GOA

O.A. No. 214 of 1996

DATED: THIS 9th DAY OF OCTOBER, 1998

CORAM: Hon. Shri Justice K.M. Agarwal, Chairman
Hon. Shri N. Sahu, Member(A)

Smt. Sugandha Laxman Kadam
Rice Cleaner
Victualling Store
INS Hansa
Vasco-da-Gama,
Goa,
Resident of M.No.16
Non-Mon, Vasco-da-Gama
Goa & 7 others
(By Adv. S G Bhebe)

..Applicants

v/s.

1. Union of India
represented by
Defence Secretary
South Block
New Delhi

2. Chief of Naval Staff
Naval Headquarters
Sena Bhavan
New Delhi

3. Flag Officer
Commanding-in-Chief
Headquarters
Southern Naval Command
Cochin 4 (Naval Base)

4. Flag Officer Commanding
Headquarters, Goa Area,
Vasco-da-Gama, Goa
(By Adv. Mr. S.R. Rivankar)

..Respondents

O R D E R

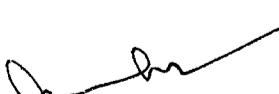
(Per: N. Sahu, Member(A))

1. Eight applicants prayed for a direction to the Respondents to regularise their services from the date of their initial appointment and to pay them the salary in the scale Rs.750-940 as paid to similarly situated employees. The admitted facts leading to the above claims are briefly as under:

2. The applicants have been working as rice cleaners at INS Hansa / INS Mandvi, Goa Naval area for periods ranging from 10 to 20 years as exhibited

in Annexure-I to the O.A. Some of them are paid at the rate of Rs.36 per day and five of them are paid at the rate of Rs.600 per month. They claim that Respondent No.4 Flag Officer Commanding, Headquarters, Goa Area, Vasco da Gama, Goa, is their disciplinary authority. They claim salary equivalent to those paid to Cooks, Dish Washers and Sweepers. The fact that they continued for such a long time itself implicitly points out to the perennial nature of work and the need for their engagement for such work on regular basis. They invoke the notification of the Ministry of Personnel 'Casual Labourers - Grant of Temporary Status and Regularisation Scheme, 1993'(10.9.93) and seek temporary status initially and thereafter absorption and regularisation in Group D posts. For this purpose also they rely on the decision of the Tribunal of Ernakulam Bench in O.A. No. 328/89 decided on 25.5.90, in which case also the S.L.P. was dismissed.

3. The Respondents resist the claim of the applicants on the ground that they have not been appointed to any "Post". In fact there has never been nor going to be any sanctioned post for rice cleaners and that there are no "orders" ^{of} ~~to~~ appointment under the first Respondent even for temporary periods. Admittedly there is no evidence whatsoever of their appointment. These applicants were engaged by INS Mansa or INS Mandovi on need basis purely on a local preference rates. The most important point is that they have been paid for the last several years their wages not from any public fund or from any approved Head of Expenditure of Government, but from the Junior Sailors Mess Fund (JSMF). This fund represents contributions by the sailors themselves. It is also stated that



as the Rice Cleaners are not engaged by the Government for any Government work or they are paid from any budget funds they cannot be compared with other employees like Cooks, Sweepers whose emoluments are paid from Government funds under approved heads of expenditure. For this very reason the notification of the Ministry of Personnel dated 10.9.93 (supra) would not apply to the applicants.

7. The respondents rely on the decision of the High Court of Kerala in W.P.No.1129/96 decided on 1.2.96. The Kerala High Court dismissed the Petition on the ground that the petitioners were not appointed against any post but only on a casual basis for short periods. Adverting to the reliance placed on the decision of Ernakulam Bench the respondents distinguished that case by saying that the employees in that case were employed on continuous basis and also paid from Government funds. Even the departmental rules and regulations relating to leave, disciplinary proceedings were applied to those employees. The applicants are being engaged purely on need basis and they are not paid from public funds. The respondents also rely on a decision of the Ernakulam Bench of the Tribunal in O.A.No.66/90 order dated 8.2.91. This Division Bench referred to a Full Bench decision of the Tribunal in the case of REHAMATULLA KHAN vs. UNION OF INDIA & ORS. The principle laid down is a casual labour does not hold a civil post and has no enforceable right for regularisation of his services.

4. In a rejoinder filed during the course of hearing, the applicant denied many of the averments made in the counter. At para 7 of the rejoinder the applicant states by referring to certain correspondence that they were paid from the public funds.

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They also referred to the minutes of steering Committee meeting held on 29.7.98 in which recommendations were sent for absorption of about 29 rice cleaners to the Naval Headquarters.

5. We have carefully considered the rival submissions made by the learned counsel and the crucial averments made in the counter, repeatedly that the applicants were not appointed by the Government and were not paid from any public fund has been refuted in the rejoinder. Though several references were made, no document or corroborative material has been filed to substantiate the ~~claims of the applicants~~. We rely on the counter affidavits which repeatedly stated that the applicants were engaged only by the JSMF for cleaning rice for the Sailors Mess and they are paid from the voluntary contributions of the sailors. As the applicants have no evidence of their securing appointment at any time in the last decade or so from any Government authority they cannot claim any enforceable right for absorption. The notification of the Ministry of Personnel (supra) would not apply to the cases of casual labourers engaged by voluntary agencies, however long the applicants have ^{high} served as rice cleaners, would not change their status ~~of daily wage labourers~~. The learned counsel for the applicants relied on a decision of the Ernakulam Bench of CAT in O.A.No. 54/97 decided on 24.10.97 which itself relied on other decisions of the Ernakulam Bench. We have carefully perused the order relied upon. The distinguishing feature in the applicants case in this O.A. is that both the engagement as well as payment for wages are not by the Government or from the Government funds and because of this distinguishing feature the decision cited above



..5..

would not be of any assistance to the applicants.

6. We agree with the stand taken by the Respondents that such on the spot ad-hoc engagement by a non-governmental organisation and paid from the contributions of the sailors would not be covered by the Notification issued by the Ministry of Personnel dated 10.9.93. We, therefore, hold that the applicants have no case and accordingly the O.A. is dismissed without any order as to costs.

Transcribed
(N. Sahu)
Member(A)

KM
(K.M. Agarwal)
Chairman

trk