IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

1. ORIGINAL APPLICATION NO. 1050/96.
2. ORIGINAL APPLICATION NO. 1166/96.

Pronounced this the 17th day of March 1998.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

1. Mr.Amul Mahadeo Bhagat,
Building No.464/6,
N.A.D. Karanja,
Taluka: Uran,
District Raigarh. ... Applicant in OA 1050/96.

(By Advocate Shri P.A.Prabhakaran)

V/s.

The Commodore,
Senior Officer,
Naval Station,
Karanja,
INS Tunir,
C/o.Fleet Mail Office,
Mumbai - 400 001. ... Respondents in OA 1050/96.

(By Advocate Shri V.S.Masurkar).

2. Jitendra Raghunath Dhembre,
At Kegaon, Ambilwadi,
Taluka Uran,
Dist. Raigad. ... Applicant in OA 1166/96.

(By Advocate Shri P.A.Prabhakaran)

V/s.

1. Union of India,
through Secretary,
Ministry of Defence,
South Block,
New Delhi.

2. Senior Officer Karanja,
(PO) NAD Karanja,
Taluka Uran,
Dist. Raigad,
Pin - 400 704. ... Respondents in OA 1166/96.

(By Advocate Shri V.S.Masurkar).

O R D E R

(Per Shri M.R.Kolhatkar, Member(A))

As the facts in these two O.As. are similar and the reliefs claimed also are similar and party respondents are common, these O.As. are being disposed of by a common order.

2. In O.A. 1050/96, the applicant claims to be working as Labourer on casual basis since about June, 1987 till about 19.9.1996. He had applied for regularisation when his services were orally terminated. The applicant

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has therefore claimed the relief of regularisation w.e.f. 1987.

3. Secondly, the applicant was considered for the post of Chowkidar with the respondents. He belonged to SC category and as such his name was sponsored by the Employment Exchange, but he was not selected. Therefore, the applicant is claiming the relief of being appointed as Chowkidar with retrospective effect. So far as the applicant in O.A. No.1166/96 is concerned, he claims to be working as an unskilled Labourer from 1990 till 18.10.1996. However, when he requested for regularisation, his services were terminated. Secondly, the applicant was considered for the post of Ammunition Repair/Labour (SSK) on 17.8.1995. He had appeared for the interview. He also appeared for another interview for the post of unskilled Labourer on 22.10.1996. The applicant has, however, not been selected for either posts. Therefore, the applicant has also claimed the relief of being appointed to the post of Ammunition Repair Labour/Unskilled Labourer.

4. The respondents have filed their written statement and have opposed the O.A. First of all, some preliminary objections are taken. The first objection is that the OAs suffer from the vice of multiple reliefs viz. two separate reliefs are claimed. The first relief is that of regularisation as a Casual Labourer and the second relief is that of an appointment to a specific post. The applicants can claim either of the two reliefs, but they cannot claim both the reliefs in a single O.A. Therefore, the O.As are vitiated. Secondly, it is stated that the

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relief relating to appointment to the post of Chowkidar so far as O.A. 1050/96 is concerned is time barred because the interview for the post took place in December, 1990, whereas, the applicant has approached this Tribunal in October, 1996. It is argued that the time limit in terms of Sec. 21 of the Central Administrative Tribunal (Procedure) Rules, 1987 has not been observed and since A.T. Act to be lays down strict limitation periods, the O.A. is required dismissed on that ground. The third preliminary objection is that the parties are not properly cited. In O.A. 1050/96 Commodore, Senior Officer, Naval Station, Karanja is made as the sole respondent. There are several authorities in the Indian Navy which employ Civilian Personnel. Commodore, Senior Officer does not have any power to entertain Civilian Staff. Therefore, the O.A. should be dismissed on these preliminary grounds. This objection also applies to the second O.A. 1166/96, but not to the same extent because in that O.A. the Secretary Ministry of Defence is cited as one of the party respondents.

5. I am not inclined to reject the O.A. by accepting these preliminary technical objections. First of all, the applicants are working as Casual Labourers and their ignorance relating to the various authorities under the Indian Navy who employ them can not be the sole ground for denying the reliefs to them. The Respondent Department does not also appear to have any handicap suffered from in giving the reply to the O.As. Moreover, in OA 1166/96 the applicant has admittedly joined the Secretary, Ministry of Defence as a party respondent. Secondly, basically the applicants are interested in getting the relief of regular employment.

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The basic relief is that of regularisation whether in a particular group 'D' post or whether as Casual Labour. Therefore, the multiplicity of relief is more apparent than real. The point regarding the limitation, especially in relation to appointment of the applicant in O.A. 1050/96 appears to have merit. The respondents have pointed out that there was one general and one ST vacancy of Chowkidar. The applicant's name was sponsored by the Employment Exchange, but he did not belong to ST category, but belonged to SC category. The Board Proceedings for recruitment to the post of Chowkidar was not approved by the Competent Authority (vide Ex. R-3 to the W.S.). Whether the non-approval was right or wrong could certainly have been challenged by the applicant within the limitation period. There is no doubt that there is delay in challenging the non-selection and the delay amounts to more than 5 years. Therefore, I am not inclined to go into the question of non-selection of the applicant in OA 1050/96 for the post of Chowkidar.

6. So far as the applicant in O.A. No.1166/96 is concerned, the respondents have stated that he was considered for the post of Ammunition Repair Labourer and he has not been selected (vide Ex. R-2 to the W.S.). So far as the second post for which he was interviewed is concerned, the results are still awaited. It is not the contention of the applicant that there is a seniority list of the Casual Labourers and there are some juniors to him who have been selected for the position of Ammunition Repair Labourer in preference to him. The counsel for the applicant would state that the respondents are bent upon denying an opportunity of regular appointment to him

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because the respondents have not liked the action of the applicant making the application for regularisation. These contentions are speculative and I am not inclined to go into them. I am therefore, of the view that,so far as the appointment to a specific position is concerned the applicant in O.A.1166/96 has also not made out a case and I am not in a position to grant any relief to the applicant on that count.

7. Therefore, I am required to consider the main relief sought by the applicants viz. the relief of regularisation on the ground that the applicants are allegedly working in one case from 1987 and in the other case from 1990, both of them are more or less continuously working with artifical breaks and therefore, in terms of Central Government Orders relating to the regularisation of Casual Labourers as well as in terms of case law they are entitled to be regularised. On this point the stand of the respondents is that the applicant in OA 1050/96 has worked for 20 days in August, 1993, 10 days in June, 1994 and 20 days in January, 1995. Similarly, the applicant in OA No.1166/96 has worked for 10 days in 1994 and 10 days in 1995. So far as the remaining periods are concerned the applicants were engaged on part-time basis and were paid out of the Karanja Welfare Fund and Karanja Amenities Fund depending on the health of the funds. According to the respondents, these are Non-Public Funds and since the applicants had not worked as Casual Labourers with the Government for the requisite number of days, the question of regularisation of the same does not arise.

8. The counsel for the applicant contends that in O.A. No.1050/96 there is a certificate by Lieutenant Commander which states that the applicant is working on

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temporary basis as Casual Employee in this organisation from 17.11.1991 to 12.2.1992. In the case of applicant in O.A. 1166/96 there is a certificate also from Lieutenant Commander that the applicant had been serving in this Establishment since 3 years as a Casual and Temporary Labour.

9. The applicant also points out that respondents have filed Attendance Rolls for different periods from which it is seen that the applicant in OA 1166/96 was working at least since 30.12.1992 (Ex. R-4). In the written statement, there is also a record showing that he had completed more than two years of service for which he was given bonus(this appears as Annexure to the written statement/not in OA 1166/96) but in O.A. 1050/96 (at page 36) in which Shri Dhembre (applicant in OA 1166/96) is shown to have worked for more than two years in 1994. It is also contended by the counsel for the applicant that the rate at which the applicants are paid is the same and the payment has been made by the Naval Authorities only. Therefore, the distinction between Public Funds and Non-Public Funds sought to be made out by the respondents is an artificial one and the applicants should for all practical purposes/be regarded to have been employed by the Naval Establishment.

10. The applicants have relied on the following case-law, R.Manmohan V/s. Union of India (O.A. No.1230/92 decided on 16.3.1993 by the Bombay Bench of the Tribunal). This is an unreported Judgment which has been annexed with the O.A. 1166/96. I have seen the Judgment. The ratio of the Judgment is that "although there is a change in nomenclature of the post viz. Switch Board Attendant and

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Electrician, the posts are the same and the applicants were classified at the time they were interviewed and because I.T.I. Certificate as a qualification was introduced only in September,1991. Therefore, the applicants were directed to be regularised." In my view, Rammohan's case proceeded on the facts of that particular case and therefore it does not help the applicants.

11. The counsel for the applicants has next relied on Manas Kumar Mity & Ors. V/s. UOI & Ors. (1997) 36 ATC 450. This was a case relating to Casual Labourers engaged by the Income-tax Department who had sought regularisation on the ground that they had completed 206 days of work in a year continuously for two years. The applicants had not been sponsored by the Employment Exchange. However, there was a provision for considering Casual Labour not-sponsored by the Employment Exchange before a particular date. The Tribunal considered that the cut off date was not sacrosanct and therefore, it had directed the department to consider the petitioners for the Group 'D' posts against available vacancies along with other candidates sponsored by the Employment Exchange. In the present case no specific instructions relating to regularisation of Casual Labour or relating to consideration of casual labour for appointment to Group 'D' posts pertaining to the Defence Ministry have been pointed out to me. I am therefore, of the view, that the Manas Kumar Mity's case does not help the applicant

12. Lastly, the counsel for the applicant has invited my attention to the Judgment of the Hon'ble Supreme Court in the case of State of Haryana and Ors. V/s. Piara Singh and Ors. (1992 SCC (L&S) 825)

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That was a case decided by a three Judge Bench of the Supreme Court in which certain principles regarding ad hoc temporary employees in the Government Service were laid down in paras 45 to 51 of that Judgment. As they are important and material, the same are reproduced below:

> "45. The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may some times call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.
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> 46. Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.
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> 47. Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered faily.
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> 48. An unqualified person ought to be appointed only when qualified persons are not available through the above processes.
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> 49. If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.

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> 50. The proper course would be that each State prepares a scheme, if one is not already in vogue, for regularisation of such employees consistent with its reservation policy and if a scheme is already framed, the same may be made consistent with our observations herein so as to reduce avoidable litigation in this behalf. If and when such person is regularised he should be placed immediately below the last regularly appointed employee in that category, class or service, as the case may be.
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> 51. So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell - say two or three years - a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the authority concerned to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person...".

13. In my view, the ratio of Piara Singh's case certainly applies to the facts of the present case. On the basis of respondents' own record it is seen that applicants in both the cases have been engaged from 30.12.1992 with artificial breaks upto October, 1996. Applicant in O.A. No.1066/96 has also been paid bonus for having worked for more than two years in 1994. The contention of the respondents that applicants were being paid out of Non-Public Fund and therefore are not entitled to any relief is only technical. The learned counsel for respondents has produced before me operating instructions for Non-Public Funds including Karanja Welfare Fund and Karanja Amenities Fund. It is seen that one of the source of income of Karanja Welfare Fund is "Yearly grant from HQWNC". Both the funds are utilised inter alia for payment to the Casual Labourers employed for conservancy in common areas of Naval Station Karanja. The Accounts of both are operated by Senior Officer Karanja. It is clear that the so called non-public funds have been operated by Governmental Authorities, they are partly financed by Government and used for public purpose and

payment has been witnessed by Senior Naval Officers. Therefore, the applicants are entitled to the relief of being re-engaged on casual basis for work in connection with either Navy or in connection with the so called non-public funds as in the past, so long as the work is available. The applicants are also entitled to be engaged on a priority basis over the persons who might have been engaged later on. The O.As. are therefore disposed of by passing the following order.

O R D E R

1. The respondents who had earlier engaged applicants on casual basis are directed to consider the case of the applicants for re-engagement on casual basis on the same terms and conditions as applicable in October, 1996 when the applicants were terminated.
2. The applicants are entitled to be engaged in preference to other people who have a smaller length of casual service, keeping in view the principles laid down by the Hon'ble Supreme Court that the ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee.
3. Action in this regard should be taken within one month from the date of communication of this order.
4. There would be no orders as to costs.

(M.R.KOLHATKAR)
MEMBER(A).

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