

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NOS.700, 701 AND 702/99.

Friday this the 9th day of March 2001.

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

1. Original Application No.700/99.

Ashok Shukleshwar Chaudhary,
C/o. Shanti General Stores,
Manmad,
Nashik.

...Applicant.

2. Original Application No.701/99.

Ashok Ramji Gaikwad,
Behind Kalika Mandir,
near LIC Office, Ram Gadkari Chowk,
Nashik.

...Applicant.

3. Original Application No.702/99.

Akhilak Ahmad Yousuf Khan Pathan,
Naikwadpura,
H.No.4030,
At P.O. Nashik.
(By Advocate Shri S.P.Kulkarni in
all the above three OAs.)

...Applicant.

Vs.

1. Union of India through
Assistant Collector,
Central Excise & Customs,
Nashik, II Division,
At P.O. Nashik.

2. Superintendent,
Central Excise & Customs,
Nashik II Division,
At P.O. Nashik.

3. Commissioner,
Central Excise & Customs,
Town Centre, CIDCO,
Aurangabad - 431 003.

(By Advocate Shri M.I.Sethna
in all the above three cases.)

...Respondents.

: O R D E R :

{(Per Shri B.N.Bahadur, Member (A))}

We are considering here three OAs bearing No.700, 701, and
702/99. These three applications were heard together, and are

being disposed of through this common order, in view of the similarity of the nature of the cases. We take up the facts in OA No.700/99 for convenience.

2. The Applicant in this OA, has come up to the Tribunal seeking the relief, in substance, for a direction to Respondents to finalise the claim of regularisation of the Applicant as per seniority in the vacancies of Sweeper/ Sepoy. Also, for a direction to pay wages on the basis of minimum of scale of Group 'D' applicable to regular staff with arrears for one year.

3. The facts of the case, as brought out by the Applicant, are that the applicant, and in fact, the Applicants in the other two OAs were appointed as Sweeper initially from 1.8.1993 vide office order dt. 23.7.1992 in the pay of Rs.350/- p.m. on the basis of a circular dt. 25.9.1990 (not available with applicants). They were continued vide order dt. 3.8.1993 and posted at places as shown.

4. The Applicant contends that he/they were attending to full time duty of Sweeping Offices, and other odd jobs, and as such these posts of Sweeper should be held as full time, and employees held as entitled to temporary status. It is averred that all three applicants are continuing to work till date, with pay raised to Rs. 500/- w.e.f. March, 1999. Representations have been made for claiming temporary status, and on other grievances regarding pay etc. It is with such grievances that the applicant/s is/are before the Tribunal seeking the reliefs as described.

5. The Respondents in the case have filed a written statement in

reply, resisting the claims of the Applicant and taking the defence that the applicant was not appointed as Sweeper, but was asked to work on contract basis at Rs. 350/- p.m. It is also averred that he was not a full time employee, and did not work on holidays either. It is further averred that, even though the word "appointed" has been used, as done in official language, the phrase "contract basis" have also been used. It is also contended that for the period between April, 1990 to March, 1991, the Applicant has been wrongly recommended for bonus, which was never sanctioned or given to him. Further details are mentioned in the written statement and certain arguments and grounds are expounded by the Respondents who conclude by saying that the Applicant has no right for regular employment.

6. We have seen all the papers in the case and have heard the Learned Counsels on either side viz. Shri S.P.Kulkarni for the Applicants and Shri M.I.Sethna with Shri Vadhavkar for the Respondents. We have also seen the case law cited.

7. Arguing the case on behalf of the Applicants, Shri S.P.Kulkarni made the point that this was not a contract arrangement, and the Applicants have been working continuously, on daily basis. It was also argued that the work was perrennial in nature, and in any case, contract system is not allowed for such work. The letter of the Inspector Central Excise at Manmad at A-10 is cited in support and the point made that, in fact, the Applicants are casual labourers.

8. The Learned Counsel also made the point that even if they were part-time, the Applicants are entitled to regularisation in

terms of the ratio settled by the Hon'ble Supreme Court in the well known case of Sakhubai (1998 (1) SC SLJ 180). Learned Counsel stated that all that Applicants were asking was for a consideration for regularisation as per seniority and for daily wages as prayed for in para 8(c) of the OA. Shri Kulkarni cited the following cases in support of his contentions:

- 1) 1997 (3) AISLJ 226 (Ramprasad Rai Vs. UOI)
- 2) 2000 (2) AISLJ 485 (CAT, Bangalore - Puttaswamy's case)
- 3) 1999 (3) Supreme 277 (HSEB Vs. Suresh & Ors.)

Concluding his arguments, Shri Kulkarni stated that the scheme drawn up by the Department of Personnel was helpful to the case of the Applicants.

9. Arguing the case on behalf of the Respondents, their Learned Counsel, after reiterating the facts and grounds taken in the written statement, made the point that the Applicants were part-time employees, and were merely on a contract and did not even have the status of casual workers. Referring to the communication at Annexure - A-2 (at page 16) of the paper book, Learned Counsel made the point that this showed his contentions to be true, that the Applicants were admittedly part-time and hence the ratio of the case of Sakubhai was not applicable to them (on this point, counsel for the Applicant had reacted to say that Applicants were not part-time).

10. Learned Counsel for the Respondents further took me over the Office Order at A-4 to state that if Applicants were aggrieved by the nature of their appointment (contract) per se, they should

A

have challenged that at the appropriate time. This was not done, and the order remains valid. He stressed the point by stating that even a void order was subject to limitation, and then strenuously made the point that the application was also barred by limitation, delay and laches.

11. It was argued further that the support drawn to the effect that the Scheme of DOP helped the applicants was not true, since the Scheme was available to casual labour only. Learned Counsel drew attention to the document at page 22 in OA 702 to make the point that appointment on contract basis was admitted.

12. The Counsel for Respondents further argued that the case-laws cited on behalf of the Applicant did not, in fact, help the Applicants'. Each case was commented upon to substantiate the arguments advanced; for example, it was stated that R.P. Rai's case pertains to casual labour, and records were not available in that case. Regarding the Judgment relating to HSEB, it was pointed out that this Tribunal has no jurisdiction regarding workmen.

13. The following case-laws were cited on behalf of the Respondents.

(1) Amit Yadav Vs. Delhi Vidhyut Board (2002 AISLJ 412)

(2) Council of Scientific & Industrial Research & Ors.

Vs. Dr. Ajay Kumar Jain (2000 (3) AISLJ 339,

to make the point that daily rate appointment cannot be a conduit to a regular appointment.

14. At the first instance, it can be seen from the documents

and the circumstances surrounding the appointments and the nature of work admittedly done by the applicants were such as to lead to the conclusion that they were working on a part-time basis. Thus they could not be taken as being Casual Labour in the manner that the system of casual labour operates with the Government. Hence, the benefits that would become available to employees who are clearly casual labours cannot be available to the present applicants. Such benefits come either through Scheme of the Government designed for such casual labour or through specific Rules, or from case-law decided by the Apex Courts. An argument was made by the Learned Counsel for the Applicant that the appointments could not have been on contract since contract employment is not allowed for such work. If this was per se the objection and grievance, then, as rightly contended by the Counsel for Respondents, the matter should have been contested at that stage, which is now several years behind us. Hence, delay, laches and limitation will not allow contesting this point per se. In the facts and circumstances obtaining here, the word "contract" seems to have been loosely used in the sense of the employment being part-time and not regular.

15. Once we have got passed this point, then the case-law cited by the Applicant will not come to his rescue. In fact, the ratio of the Judgment cited in the matter of Amit Yadav Vs. Delhi Vidhyut Board would be relevant in this connection. A similar conclusion would apply in the three OAs which are admittedly similar.

16. In view of the above position, these three OAs (700/99, 701/99 and 702/99) are hereby dismissed with no orders as to costs.

(B.N. Datta)
MEMBER(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

R.P. NO.: 33/01 IN O.A. NO.: 702/99.

Dated this Friday, the 15th day of June, 2001.

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

Akhilak Ahmad Y.K. Pathan ... Applicant

VERSUS

Union of India & Others ... Respondents.

ORDER ON R.P. ON CIRCULATION.

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

 This is a Review Petition No. 33/01 filed by the applicant in O.A. No. 702/99, which was disposed of by the undersigned (jointly with two other O.A. Nos. 700/99 and 701/99 on 19.03.2001). The Review Petition is filed on the ground that there are apparent errors of facts and errors of law in the judgement, in that applicant was working on part-time basis. The point made further in the Review Petition is that the grounds taken by the Tribunal in not providing the benefit to the Applicant are not correct. Certain other reasoning is also cited in grievance ^{by} ~~to~~ the grounds taken by the Tribunal in the judgement.

2. On careful consideration of the Review Petition, we find that there are no errors apparent on the face of record or errors in law. The applicant may be justified in having grievance on

B.N.B.

...2

the grounds taken and the reasoning of the judgement. For these grievances the remedy does not lie in a Review Petition and lies somewhere else. Hence this Review Petition cannot be considered or allowed in view of the above discussions. The Review Petition is, therefore, rejected.

B. N. Bahadur

(B. N. BAHADUR)
MEMBER (A)

OS*