

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 529/99

Date of Decision : 31st January 2001.

N.S. Mayekar _____ Applicant.

Shri G.S. Walia _____ Advocate for the
Applicant.

VERSUS

Union of India & Ors. _____ Respondents.

Shri M.I. Sethna _____ Advocate for the
Respondents.

CORAM :

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

- (i) To be referred to the Reporter or not ? Yes
- (ii) Whether it needs to be circulated to other ~~the~~ Benches of the Tribunal ?
- (iii) Library Yes

S.L.JAIN
(S.L.JAIN)
MEMBER (J)

mrj*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.529/99

Dated this the 31st day of January 2001.

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

Nandkumar Suresh Mayekar,
working as Seaman
under Inspector,
Customs and Central Excise,
Dabhol, Maharashtra.

... Applicant

By Advocate Shri G.S.Walia

V/S.

1. Union of India
through Collector,
Customs & Central Excise,
PMC's Commercial Building,
Hira Buag, Tilak Road, Pune.
2. Inspector of Customs & Central
Excise, Dabhol, Dist. Ratnagiri,
Maharashtra.

... Respondents

By Advocate Shri M.I.Sethna

O R D E R

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

The applicant has joined the Department of Customs and Central Excise on 1.3.1988 as Daily Wages Seaman and since then he is working as same till now without any break. The applicant is not regularised so far.

J.YK/-

..2/- 11

2. The grievance of the applicant is that as there has been continuous need of workers, he is continuing since long, either he is engaged against a regular post or the post against which the applicant is working is deemed to be substantive and permanent post. He is entitled for regularisation of his services in view of O.M.No.12034/13/91-AD-III B dated 30.3.1992, Board's Order No. F-12034/34/96 AD III dated 10.1.1997 and O.M.No.51016/2/90 Estt & C dated 10.9.1993. Hence, this OA.

3. The respondents have resisted the claim of the applicants and stated that boats/crafts have been provided at Ratnagiri and Dapoli Customs Division from time to time for anti smuggling surveillance/sea patrolling on coast line. Initially the administrative control of marine staff was directly under the Directorate of Preventive Operations, New Delhi, which was later transferred to individual Commissionerates with effect from 5.4.1989. During the period 1983-1988 a number of marine crews were appointed on daily wages basis as seamen, greasers and lascars. Their appointment was made with a condition that they are initially being appointed on adhoc basis and their continuation or regularisation shall be re-examined in due course when Recruitment Rules are framed. Subsequent to respective Commissionerate becoming cadre controlling authority, a self contained reference was forwarded to Directorate of Preventive Operations, New Delhi on 13.1.1994 vide F.No.II/31-3/E-II/91 requesting for early regularisation of their services as they

have been working for a long period on daily wages basis but not fulfilling the required conditions of age and educational qualifications as stipulated in Recruitment Rules of 1986 which prescribed certificate of Fishing Training School and VIIIth Std. Pass or equivalent which the applicants do not possess. Hence, prayed for dismissal of the OAs. along with the cost.

4. The learned counsel for the applicants relied on para 3 of an order passed by this Bench in OA.NO.385/89, Anwar Ismail Wadkar & Ors. vs. Union of India & Ors. decided on 16.2.1995 which is as under :-

" It is clear that the applicants had been working continuously over a long periods. In Bhagwati Prasad vs. Delhi State Mineral Development Corporation, 1990 SCC (L&S) 174, it was observed in respect of petitioners thereof who were appointed between 1983 and 1986 and had been discharging duties ever since, that practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualifications prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. Here also as the applicants had more than three years experience and the lack of educational qualifications which would have been material at the time of entry into service cannot be used as a basis when the applicants had been continued by the respondents in their present job over a long period."

..4/-

J. (S.M.) -

5. The next submission regarding the non availability of regular posts has also been considered in the said order in para 4 and it is directed that regularisation should be done in a phase manner and applicant is entitled to equal pay at par with the persons appointed on regular basis to the similar post or discharge similar duties.

6. The learned counsel for the respondents relied on 2000(2) SLJ 412, Shri Amit Yadav & Ors. vs. Delhi Vidyut Board through its Chairman - Para 7 and argued that the regularisation of such persons will amount to back-door entry in service. Hence, he is not entitled for the same.

" In the case of State of Himachal Pradesh vs. Suresh Kumar Verma & Another, JT 1996(2) SC 455, the Bench comprising three Judges of the Supreme Court held that "the appointment on daily wage basis is not an appointment to a post according to Rules."

"The appointment on daily wages cannot be a conduit pipe for regular appointments which would be a back-door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption....."

7. None of the parties have placed on record the appointment order of the applicant. In such circumstances, I am unable to hold that the applicant was appointed on a contract basis till selected persons are available.

J.S.R.

..5/-

8. The learned counsel for the respondents further relied on an order passed by the Apex Court in Civil Appeal No. 936/97 in case of Passport Officer, Trivandrum & Ors. vs. Venugopal C. & Ors. on 27.1.1997. On perusal of the same, I find that under the said scheme only those employees who had been recruited through the Employment Exchange would be given a temporary status and the respondents were not sponsored/recruited through the Employment Exchange. In absence of pleadings of both the parties regarding the fact of recruitment/appointment or sponsored through an Employment Exchange, the same authority does not assist the respondents.

9. The learned counsel for the applicant relied on OA.No. 1094/97 which deals with "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of the Department of Telecommunications, 1989". We are dealing with the case of Central Excise and Customs Department. Hence, the said precedent and the scheme which deals with Telecom Department does not help the applicant.

10. The Tribunal is not competent to order regularisation of the applicant in absence of the applicant's possessing the requisite eligible qualification as experience can not be a substitute for the qualification. Such an order would mean rewriting of recruitment rules or providing relaxation, which is not the jurisdiction of the Tribunal.

11. In the result, OA. deserves to be dismissed and is dismissed accordingly with no order as to costs.

J.18011 —

(S.L.JAIN)

MEMBER (J)

mrj.