

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NOs.528/99, 530/99 & 548/99

Dated this the 31st day of January 2001.

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

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|-------------------------------------|-------------|
| 1. Ramesh Gajanjan Tavsalkar | (OA.528/99) |
| 2. Hirachandra Harishchandra Bhagat | (OA.530/99) |
| 3. R.D.Palekar | (OA.548/99) |

All are working as Seaman
under Inspector/Asst.Collector
Customs & Central Excise
Dabhol/Dapoli, Maharashtra.

...Applicants

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/Asst.Collector,
Customs & Central Excise,
Dabhol/Dapoli,
Maharashtra.

(In all the OAs.)..Respondents

By Advocate Shri M.I.Sethna

ORDER

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

As the same question of law is involved in all these applications, I proceed to decide them together by this common order.

2. The applicant (in OA.528/99), (OA.530/99) & (OA.548/99) has joined the Department of Customs and Central Excise on 10.2.1985, 25.3.1983 & 25.3.1983 respectively as Daily Wages Seaman and since then he is working as same till now without any break. By Establishment Order No. 391 of 1985 Ex.'B' dated 22.11.1985, the applicant was sought to be regularised in the pay scale of Rs.196-232 as was prevailing at that time. However, the said Establishment Order No. 391 of 1985 was sought to be held in abeyance vide Establishment Order 410/85 dated 3.12.1985 (Ex.'C'). There has been continuous need of workers with the respondents. The applicants are not regularised so far.

3. The grievance of the applicants is that as there has been continuous need of workers, they are continuing since long, either they are engaged against a regular post or the post against which the applicants are working is deemed to be substantive and permanent post. They are entitled for regularisation of their 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, these OAs.

4. 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. Vide Establishment Order No.391/85 dated 22.11.1985, many crews were regularised in their respective cadre subject to condition that they are found medically fit, their character and antecedents are satisfactory. However, within 30 days of issuance of the above order, another Establishment Order No. 410/85 dated 3.12.1985 was issued in which Establishment Order No. 391/85 was held in abeyance till further orders as per the instructions received from the Joint Director, Marine, Mumbai for want of necessary approval from Ministry of Finance. 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.

5. 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 and argued that the requisite qualification as stated by the respondents are necessary in view of Recruitment Rules, 1986, such qualifications were not necessary at the time of appointment of the applicants, hence, their case needs to be examined at the time of their recruitment regarding the qualification/eligibility condition :-

" 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."

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

7. The learned counsel for the respondents relied on 2000(2) SLJ 412, Shri Amit Yadav & Ors. vs. Delhi Vidyut Board through its Chairman and argued that the regularisation of such persons will amount to back-door entry in service. Hence, they are not entitled for the same. I have perused the said judgement of the Hon'ble High Court and find that it was a case of applicants appointed on contract till selected persons are available.

8. None of the parties have placed on record the appointment order of the applicants. In such circumstances, I am unable to hold that the applicants were appointed on a contract basis till selected persons are available. Not only this, the applicants were regularised while Establishment Order No. 391 of 1985 which was later on kept in abeyance vide Establishment Order No. 410 of 1985. Hence, the said authority does not help the respondents.

In addition to it, the respondents have themselves created hopes in the minds of the applicants that they are being regularised.

9. 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.

10. The learned counsel for the respondents argued that regularisation would mean a conduit pipe for irregular appointment. As the appointment of the applicants is not irregular one, I am not in agreement with the learned counsel for the respondents, particularly in absence of such pleadings from either side.

11. 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 which deals with Telecom Department does not help the applicants.

12. The order relied on by the applicants' counsel in OA.NO.385/89 Anwar Ismail Wadkar vs. Union of India & ors. deals with the Department of Central Excise and Customs who are respondents in the present case also. Hence, the said order squarely applies to the present case.

13. With regard to difference in back wages, the applicants are entitled from the date of filing of the application, i.e. to say 3.5.1999.

14. In the result, OAs. are allowed and the respondents are directed to regularise the applicants in a phase manner when regular posts becomes available and the applicants are entitled from the date of filing of the OA. equal pay at par with the persons appointed on regular basis to the similar posts/dischage similar duties. The difference of the same be paid within 3 months from the date of receipt of the copy of the order. No order as to costs.

(S.L.JAIN)

MEMBER (J)

mrj.