

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

C.P.No.46/99 in OA.NO.176/99

Dated this the 16th day of March 2000.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

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

Smt.Kamal K.Waghela & Ors.

...Applicants

By Advocate Shri S.S.Karkera

V/S.

Union of India & Ors.

...Respondents

By Advocate Shri M.I.Sethna
along with Shri V.D.Vadhavkar

O R D E R

{Per: Shri D.S.Baweja, Member (A)}

This Contempt Application has been filed by the 71 applicants alleging non compliance of the interim order dated 5.5.1999 in OA.NO.176/99.

2. OA.NO.176/99 has been filed by 71 applicants who were working as Temporary status casual labourers in Customs Department at Mumbai seeking direction to the respondents to regularise their services against 2/3 quota of Group 'D' vacancies meant for regularisation of casual labourers with temporary recruitment against status before resorting to ~~direct~~ quota of 1/3 vacancies. The

applicants have filed this OA. when the recruitment from the market was started. Initially, the interim stay was granted directing the respondents not to proceed with the interview for selection for the post of Sepoy. However, subsequently this interim order was modified by the order dated 5.5.1999 providing as under :-

"Accordingly, by way of interim order, we direct the department that out of 62 vacancies, casual labourers to be considered and appointed for 38 vacancies subject to their eligibility, seniority and passing the test as per rules. All appointments in pursuance of this present recruitment is subject to further or final order to be passed in the OA."

The applicants state that respondents have conducted physical test and interview of 74 departmental casual labourers which included the applicants in the present C.P. as well as in the OA. The select list was finalised on 18.3.1999. The applicants state that no panel has been published but it is their understanding that all the 74 casual labourers had passed in the physical test and interview and have been placed on the panel. As per the order dated 13.5.1999, 31 casual labourers comprising of 18 other categories, 6 OBC and 7 SC casual labourers have been regularised. Subsequently, 2 more casual labourers have been regularised as per order dated 3.8.1999 and 27.8.1999. It is further brought out by the applicants that the respondents have converted 5 reserved posts ^{and 3 of ST} 2 of OBC into S.C. category as S.T.+ OBC candidates were not available in the panel with a view to give appointment to those of the candidates who are placed on the

panel. However, the respondents instead of filling up these 5 vacancies from the waiting list of the panel finalised on 18.3.1999 have treated these 5 vacancies as new vacancies and ^{for interview} have issued Notification/ of 15 casual labourers. It is the case of the applicants that the respondents have not cancelled the panel finalised on 18.3.1999 and without exhausting the panel, the respondents cannot resort to prepare fresh panel to fill up ^{converted to} the 5 vacancies ^(L) Scheduled Caste category. It is further stated that the interview ^(S) for filling up of the 5 vacancies was ^{also} held on 28.10.1999 and the appointment orders/ issued on the same date which clearly shows the motivated action of Respondent No. 3. With these details, the applicants contend that the respondents have committed the Contempt of Court as the ^{ir} action is in violation of interim order dated 5.5.1999. The applicants ^{have} further add that the respondents/ willfully and deliberately disobeyed the order of the Tribunal and therefore deserve to be punished for Contempt of the Court.

3. Notices were issued to the respondents and the respondents have filed the reply through Shri B.A.D'Mello, Assistant Commissioner of Customs, Mumbai. The respondents submit that 130 casual labourers with temporary status were called for physical test but only 116 appeared for the test. Out of 116 only 74 passed the physical test and were found educationally qualified for being appointed against the regular vacancies. These 74 candidates were called for interview. As per the interim order, 38 vacancies were to be filled up from

amongst the temporary status casual labourers which comprised of 18 general, 12 OBC, 3 ST and 5 SC. No ST candidates were available in the temporary status casual labourers and therefore these 3 vacancies could not be filled up. Further due to less availability candidates in OBC category, 2 vacancies also could not be filled up. For the remaining 33 vacancies, orders were issued on 13.5.1999, 3.8.1999 and 27.8.1999. All the appointments were done as per the existing Recruitment Rules, i.e. by selection in order of merit of marks obtained in personal interview. Due to non availability of ST and OBC candidates, the 5 vacancies earmarked for these two categories were converted to SC category as per the order dated 22.10.1999. Since these are converted vacancies due to non availability of particular category of the candidates, these 5 vacancies have been treated as fresh and accordingly recruitment process was followed to fill up these vacancies. The selection was finalised on 28.10.1999 and the appointments were also done on the same date. The respondents refute the contention of the applicants that physical test was conducted for the fresh selection. The respondents submit that all the casual labourers with temporary status called for personal interview on 28.10.1999 had already passed in physical test conducted earlier. It is further contended by the respondents that the direction to fill up the 38 vacancies from the temporary status casual labourers and 38 vacancies have been filled up to comply with the order of the Tribunal. With these averments, the respondents plead that there is no dis-obedience of the order of the Tribunal and no Contempt

of Court has been committed. The respondents ^{however} add that irrespective of these submissions, the respondents express their unconditional apology if any such breach has been committed in obeying the order of the Tribunal.

4. The applicants have not filed any rejoinder reply.

5. Heard the arguments of Shri s.s.Karkera, learned counsel for the applicants and Shri M.I.Sethna along with Shri V.D.Vadhavkar, learned counsel for the respondents.

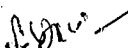
6. From the interim order dated 5.5.1999, it is noted that the direction was to fill up 38 vacancies, out of 62 vacancies representing 2/3 quota to be filled by departmental candidates among the temporary status casual labourers subject to meeting the conditions of eligibility, seniority and passing the test as per the rules. From the averments made by the respondents as well as the applicants, it is noted that 38 vacancies from the ^{status} ~~temporary~~ casual labourers have been filled up. The only dispute is with regard to the method followed in filling up the vacancies. In fact, the dispute is only in respect of 5 vacancies. 3 belonging to ST category and 2 belonging to OBC category. ^{These} ~~These~~ belong to these categories could not be filled up as adequate candidates ~~were~~ not available among the temporary status casual labourers. These 5 vacancies ^{been} ~~have~~ ^{up} converted to be filled ~~by~~ by SC category. The respondents have contended that these vacancies have been filled treating them as

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fresh vacancies by making the new panel while the applicants have contended that these vacancies should also been filled up out of the waiting list of the panel prepared on 18.3.1999. From these rival submissions, it is clear that there is a serious dispute with regard to mode of filling up the 5 vacancies. For resolving this issue, the matter ~~will have~~ ^{to be} gone into merits. It is not the scope of the contempt proceedings to go into the merits of the issue and to arrive at the findings and to issue any directions to the respondents. We find that there is a substantial compliance of the interim order dated 5.5.1999 ~~as~~ 38 vacancies have been filled from the serving casual labourers against 2/3 quota. If the applicants are aggrieved by the procedure followed by the respondents, then this ^{fresh} ~~gives a~~ cause of action to the applicants and they can agitate the matter accordingly but this cannot be a subject matter of the contempt application. In this connection, we refer to the judgement of the Hon'ble Supreme Court in the case of J.S.Parihar vs. Ganpat Duggar & Ors., 1996 SCC (L&S) 1422 wherein it is held that the merits of the compliance of Court's orders cannot be examined in the contempt proceedings. In the present case, as brought out earlier, there is a compliance of the interim order dated 5.5.1999 as 38 posts have been filled up from the temporary status casual labourers against the quota. We thus find that there is no willful disobedience of the Tribunal's order. If the applicants are aggrieved by the method followed by the filling up the 5 vacancies after conversion to SC category, then they can seek remedy ^{if so desired} by filing a fresh OA. as per the law.

This issue cannot be agitated through Contempt of Court proceedings.

7. In the result, we do not find any merit in the contempt application and the same is dismissed with no order as to costs.


(S.L.JAIN)

MEMBER (J)


(D.S.BAWEJA)

MEMBER (A)

mrj.