

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH: MUMBAI

ORIGINAL APPLICATION NO. 722/00

THIS THE ^{22nd} DAY OF JUNE, 2004

CORAM: HON'BLE SHRI MUZAFFAR HUSAIN. MEMBER (J)

Vilas B. Parab,
Post Koloshi via Shirgaon,
Taluka - Kankavli,
Dist. Sindhudurg (Mah) .. Applicant

By Advocate Shri R.P. Saxena.

Versus

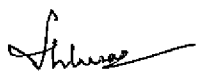
Union of India, through
The General Manager,
Canteen Stores Department,
Adelphi 119. M.K. Road,
Mumbai-400 020. .. Respondent

By Advocate Shri R.R. Shetty.

O R D E R

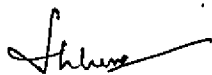
The applicant is seeking the relief for regularisation as labourer or for grant of temporary status as casual labour against the order dated 08.6.1999 and 10.7.2000 passed by the respondents informing the inability to regularise the applicant as labourer or to grant temporary status in casual labour.

2. The brief facts of the case are that the applicant had worked in the Canteen Stores Department, Bombay Area Depot as Casual Labour with effect from 01.02.1980 to 27.9.1986 continuously. On 1985 he appeared before the Selection Board for regularisation and he was empanelled for the posts Watchman and Mazdoor validity of the panel was for 18.4.1985 to 17.4.1986.



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Though a common seniority roll was prepared for all Group "D" casual workers centrally and regularisation order had been issued according to the position in the general seniority list, this was not done and a number of juniors to the applicant were regularised, but not the applicant. These included all the casual labourers who were parties in OA 183/91, decided by the Tribunal on 04.8.1994 may be about a hundred of them. The applicant is still eligible to appoint as Mazdoor in terms of the recruitment rules, 1991. He has submitted a representation dated 18.02.1999 which was rejected by the impugned order dated 08.6.1999. While in the case of the applicant, his request was not accepted on the ground that there was no provision to do so. In the similar request of Shri J.B. Shingote was not accepted by the respondents holding that he was not a empanelled candidate. The applicant further stated that though a few casual labourers have been appointed on regular basis even after the expiry of the local panel, he was denied the same on the alleged ground of no provision. His representation dated 22.10.1999 requesting that his service record as casual labour may be verified for considering his appointment as casual labourer was rejected reiterating that there was no provision. According to the applicant the principle of last come first go should have been followed and the applicant should have been engaged and regularised in preference to those who joined on subsequent dates. While not



doing so that his case for equality before law and equal opportunity as enshrined in Articles 14 and 16 of the Constitution were violated. Therefore, the action of the respondents in not regularising the services of the applicant as labourer is arbitrary and illegal. Hence this OA.

3. The respondents resisted the claim of the applicant stating that the OA is vague on account of the fact that the junior who have been engaged as having been engaged are not shown and also hit by limitation as the cause of action arose as far back in September 1986 i.e. 15 years before filing of this OA and mere fact that similarly placed individuals have been granted the benefit, the applicant cannot seek the same by filing a fresh OA. It is also stated that the applicant has also not fulfilled the condition of OM dated 07.6.1988 and 10.9.1993 for regularisation. The applicant has in this case has taken more than 13 years in filing the representation. They have also stated that as per record Shri Vilas B. Parab was engaged as daily rated Group-D staff with effect from 17.12.1980 to September, 86. So his name was empanelled for the post of watchman and mazdoor during 1985. He was not offered appointment as his turn has not come up to him either of the post within the validity period of the panel i.e. upto 17.10.1986 after extension of six months. Since the applicant was no more continued in service as daily




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rated, he could not be considered for inclusion in the panel drawn subsequently based on all India seniority.

4. This application was dismissed on the preliminary ground of limitation by the Tribunal order dated 21st June, 2001. The said order has been set aside by the Hon'ble High Court of Judicature at Bombay vide order dated 13.10.2000 in W.P. No.2848/01 and delay condoned in filing the OA and remanded back for hearing on merit.

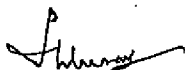
5. Learned counsel for the applicant has contended that the applicant had worked in canteen stores department Bombay area as casual labour with effect from 01.02.1980 to September, 1986 continuously. He appeared before the Selection Board on 19.3.1985 for regularisation when he was empanelled for watchman / mazdoor. The said panel was valid from 18.4.85 to 17.4.86. As per government instructions common seniority roll was to be prepared for all Group-D casual worker centrally and regularisation order could be issued according to position in general seniority list. But the respondents did not comply with the above instructions and a number of juniors to the applicant were regularised. He also contended that the respondents had regularised the services of all the casual labours who were party in OA 183/91 decided by this Tribunal on 04.8.1994 but the services of the



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applicant were not regularised. Learned counsel has further contended that S/Shri H.N. Nisal, Suryakant D. Marne who were below the applicant in the panel for Mazdoor have been regularised in service. S/Shri Shanker R. Kadam and Ramesh Aganna have been regularised on 21.12.1998 on the basis of a panel for Mazdoor drawn on 16.10.1990 (valid upto 15.4.1992) notwithstanding the fact that the individuals were in service w.e.f. 01.01.1986 to 15.1.1989 and they were not in service w.e.f. 16.01.1989 and onwards at all. The applicant was having better chance for regularisation in comparison to his juniors who were appointed after expiry of local panel.

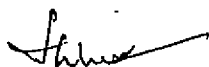
5. Learned counsel for the respondents on the other hand has contended that the name of applicant was empanelled for the post of watchman and mazdoor - during 1985 but he was not offered appointment as his turn has not come upto either of the post within the validity period of penal i.e. 17th October, 1986 and after extension of six months. From the said penal no junior to the applicant was given appointment since the applicant has no more continued in service as daily rated, he could not be considered for inclusion in the panel drawn subsequently based on all India seniority. He has also contended that the scheme of grant of temporary status and regularisation of casual labour came into force with effect from 01.9.1993 but the



applicant was engaged with effect from 17.12.1980 to September, 1986 prior to issue of the said order. Hence these rules are not applicable to the applicant as he was not in service on 01.9.1993. He has further contended that all the individuals who were shown in the CAT judgment dated 04.8.1994 in OA 183/91 and order dated 01.4.97 in ~~OA 183/91~~ and CP 01.95 were given casual appointment since the applicant was not a party in the said OA and the Hon'ble Court order has not extended to similarly placed employees, the applicant was not given appointment.

6. I have considered the rival contention raised by learned counsel for the parties and perused the material placed on record.

7. It is an undisputed fact that the applicant was engaged as daily rated Group-D staff with effect from 17.12.1980 to 30.9.1986 and he was empanelled for the post of watchman / mazdoor during the year 1985. But his services could not be regularised though Shri Shanker R. Kadam and Ramesh Aganna who were engaged as daily rated Group-D staff (casual labour) with effect from 01.01.1986 to 15.01.1989 and they were empanelled for the post of mazdoor during the year 1990. Their services have been regularised with effect from 21.12.1998. The contention of the applicant that the applicant left the services will not make any difference



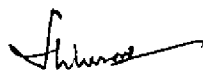
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since the persons junior to the applicant were regularised with effect from 21.12.1998 although they were not in service from 15.01.1989. The claim of the applicant cannot be ignored on the flimsy ground that the applicant was not in service. Since the juniors to the applicant were also not in service and their services were regularised, this plea cannot be allowed to be sustained. Learned counsel for the applicant raised the contention that there is no rule or authority regarding validity period of the panel for one year and six months. Learned counsel has placed reliance on the decision of CAT in R.K. Jain Vs. Delhi Administration - AISLJ 1990 (1) CAT 347. It was held by the Tribunal that without exhausting the panel the respondents proceeded to fill the post by inviting application by direct appointment - held - it is not valid. Applicant having been empanelled has a right to be appointed and they cannot be by passed as such. The Tribunal in para 8 and 9 held as follows:

8. In this context a reference may also be made to a Notification dated 8th February, 1982 issued by the Ministry of Home Affairs, Department of Personnel and Administrative Reforms regarding validity period of list of selected candidates prepared on the basis of direct recruitment/departement Competitive Examination. The rule is, once a person is declared successful according to merit list of selected candidates, which is based on the declared number of vacancies, the appointing authority has the responsibility to appoint him even if the number of vacancies undergoes a change, after his name has been included in the list of selected candidates.

9. The matter had come up for

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consideration before their Lordships in the case of Prem Prakash v. Union of India. Their Lordships laid down:

"It is clear from this notification that if selected candidates are available from the previous list there should either be no further recruitment until those candidates are absorbed or in the alternative vacancies which are declared for the subsequent years should take into account the number of persons who are already in the list of selected candidates who are still awaiting appointment. The notification further shows that there should be no limit on the period of validity of the list of selected candidates prepared to the extent of declared vacancies. Once a person is declared successful according to the merit list of selected candidates the appointing authority has the responsibility to appoint him even if the number of vacancies undergoes a change after his name is included in the list of selected candidates."

8. Learned counsel for the applicant has also placed reliance on the decision of CAT Principal Bench, New Delhi in Raj Kamal & Ors. Vs. Union of India AISLJ 1990 (2) (cat) 169. The Tribunal held in this case the applicants were casual labours for many years. Terminated as no vacancy in Ministry of Supplies - Held they must be engaged in any Ministry where there is vacancy. Learned counsel for the applicant has also placed reliance on the decision of CAT in Bombay Customs Group-D Officers Union & Ors. Vs. Union of India & Ors. - AISLJ 1992 (3) (CAT) 73. In this case the plea that applicants are not being appointed due to sports quota, compassionate ground, canteen employees being appointed - Respondents plea that panel had expired - No rule regarding ^{life of} panel or to appoint canteen workers. Applicants to be considered in preference to canteen employees.



9. Learned counsel for the respondents on the other hand contended that according to Swamy's Establishment and Administration Rule 17.13.1 "The panel for promotion drawn up by DPC for selection posts would normally be valid for one year. It should cease to be in force on the expiry of a period of one year and six months or when a fresh panel is prepared, whichever is earlier."

10. It is not denied by the respondents that Shri Shanker R. Kadam and Ramesh Aganna have been regularised in service on 21.12.1998 on the basis of the panel of mazdoor drawn on 16.10.1990 (valid upto 15.4.1992). It is also seen that they were in service from 01.01.1986 to 15.01.1989 and they were not in service on 15.01.1989 and onward at all. Whereas the applicant joined service on 17.12.1980 to 27.9.1986 continuously for a period of more than six years and he appeared before the selection Board on 19.3.1985 for regularisation. Therefore, juniors to the applicant were regularised by the respondents. They have also admitted in para 8 of the written statement that the individuals shown in CAT judgment dated 04.8.1994 in OA 183/91 and order dated 14.7.95 in CP 01.95 were given casual appointment. They have also admitted in para 21 of the written statement that the casual labour regularised on the basis of court order. Thus, it is not denied by the respondents that similarly placed persons have been regularised by the court order. It



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has been held by Apex Court in case of Rajpal Vs. State of Haryana & Ors. JT 1995 (8) SC 450 -

"In view of the order passed by this Court in S.L.P. (C) Nos. 3099-3100/85 & batch, the persons similarly situated were admittedly taken into service and then services have been regularised. Under these circumstances, since the applicant, who is the only person left out in the field also stands in the same position, we think, on this special circumstance, he is also entitled to the same relief."

In Inder Pal Yadav & Ors v. Union of India & Ors AISLJ 1985 (2) 58 Hon'ble Apex Court in para 5 observed -

" xxxxxxxxxxxxxxxx Therefore, some of the retrenched workmen failed to knock at the doors of the court of justice because these doors do not open unless huge expenses are incurred. Choice in such a situation' even without crystal gazing is between incurring expenses for a litigation with uncertain outcome and hunger from day to day. It is a Hobson's choice. therefore, those who could not come to the court need not be at a comparative disadvantage to those who rushed inhere. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court." xxxxxxxxxxxx

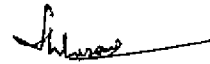
The five judges Bench of Apex Court in case of K.C. Sharma Vs. Union of India & Ors. AISLJ 1998 (1) 54 it was held that the application filed by similarly placed persons should not be rejected for bar of limitation.

11. I am therefore, of the view that the applicant having been empanelled had right to be appointed and he cannot be by-passed. To deny the relief as given to similarly placed persons will amount to discrimination. The OA accordingly succeeds. The Respondents are directed to take the applicant in service within a



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period of two months from the date of receipt of copy of the order, but applicant shall not be entitled to backwages. he shall however, be entitled to all consequential benefits from 29.9.1999 i.e. one year prior to filing of this OA. In the circumstances there is no order as to costs.



(MUZAFFAR HUSAIN)
MEMBER (J)

Gajan

del. 22/6/04
Order/Judgement despatched
to Applicant *28/6/04*
on _____

MP