

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.795/2000

Dated this the 10th day of October 2002.

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

1. K.N.Kuwar
2. B.D.Salunke
3. R.P.Patil
4. S.B.Brahame
5. R.D.Patil
6. H.M.Thorat
7. A.S.Patil
8. D.N.Salunke
9. P.A.Chavan
- 10.D.J.Bagul
- 11.K.B.Baviskar

...Applicants

All are working as Khalasis
under Central Water Commission,
Dhule.

By Advocate Shri R.G.Walia
for Shri G.S.Walia

V/S.

1. Union of India
through The Superintending
Engineer, Central Water Commission,
Narmada Campus, Jakat Naka,
Vadodara.
2. The Executive Engineer,
TAPI Division,
Central Water Commission
Surat, Sangrampura,
Surat.

...Respondents

By Advocate Shri V.S.Masurkar

..2/-

Shri V.S. Masurkar

O R D E R

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

The applicants are seeking regularisation of their services as Khalasis.

2. The applicants' claim is that they are working under respondents as Khalasis since last 14-20 years in different spells. Initially, they were engaged for atleast 120 days, i.e. four and a half month from 15th June to 31st December, but subsequently they were engaged every year on work-charge basis and for different spells not exceeding 89 days. After the said period of 89 days, some of the applicants were given one day's technical break and they were re-engaged thereafter for some more period. As the respondents required their services every year and they are so engaged establishes that there is a regular work available with the respondents. Some Class-IV posts available with the respondents' department and earlier some persons who were engaged as work-charge Khalasis were absorbed against regular posts. 10 posts of regular Khalsis are vacant/available with the respondents. As they have completed 120 days working before 1992, therefore they had attained temporary status. They are to be absorbed first before any other person is appointed from open market against the post which are presently vacant.

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3. The claim of the applicants is resisted by the respondents stating the fact that joint application by 11 persons is not maintainable in law since they are differently situated so far as the period of their engagement and service particulars are concerned. They have not represented to the higher authorities with regard to their grievances and therefore OA. is premature. On merits, it is stated that the applicants were engaged during monsoon period depending on behaviour of monsoon in each year subject to condition that they made themselves available. However, such engagement has not so far exceeded 120 days.

4. The Tapi Division, CWC, Surat is engaged in Flood forecasting work and Hydrological observation work of various river basins like Narmada, Tapi, Damanganga, Purna, Ambika, Vaitarna etc. The work charged/regular staff manages the regular work of the division for which 104 Khalasis on regular basis are appointed, out of which only 4 posts are lying vacant. The applicants were engaged only for seasonal work during monsoon. During monsoon the extra work of round the clock nature, i.e hourly water level, rainfall observation at shorter intervals/additional discharge observation etc. is managed by engaging seasonal Khalasis for a period of 3-4 months only depending upon the activity of monsoon of each site. There is no regular work available with Tapi division for seasonal Khalasis. Seasonal Khalasis were being regularised as and when needed in the work charged establishment of CWC, as per the recruitment

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provision in CWC till 1988. The said provision was reviewed in the light of the judgement of CAT,Guwahati and Calcutta Bench and a Scheme for grant of temporary status and regularisation of seasonal Khalasis in the work-charged establishment of Central Water Commission, 1997 was formulated by the Ministry of Water Resources (Ex.R-2). The details regarding the year of the applicants' working are incorporated in para 9 of the written statement.

5. As per provision of para 5.1 and 10.1 of the Scheme, temporary status is to be conferred to those seasonal Khalasis engaged on work-charged establishment who have completed 120 days continuous service as on 1.6.1997 or persons who were engaged any time during the preceding one year and have rendered a minimum of 120 days continuous service in that year and only such seasonal Khalasis with temporary status will be considered of filling up of vacant posts in regular work-charged post on seniority-cum-fitness basis. There is not a single seasonal Khalasis who has completed 120 days continuous service as required in the rules as such none of the applicants are entitled to get the temporary status. Apart from their engagement is seasonal only and they have no right for regularisation, hence prayed for dismissal of OA.

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6. The learned counsel for the applicants relied on 2002 (1) ATJ 160 - an order passed by CAT, Jaipur Bench in case of Gajendra Singh & Ors. vs. Union of India & Ors. decided on 18.10.2001 which lays down the proposition that "Scheme for grant of temporary status and regularisation to seasonal Khalasis in the work-charged establishment of Central Water Commission - essential condition for grant of temporary status is that such seasonal Khalasis during the preceding one year should have rendered a minimum of 120 days continuous service - applicants who are bieng engaged for the last so many years for 89 days in a year cannot be denied the benefit of the temporary status under the Scheme - direction given to modify the scheme to incorporate that the panel of 120 days should be reckoned taking into account vacancies/spells of engagement as seasonal Khalasis provided the gap between the two spells of employees has been caused due to the season being over and the department itself directing them not to come to work in that season after particular specified date.

7. The learned counsel for the respondents relied on 2002 (2) ATJ 215 - Union of India & Ors. vs. Mohan Pal and Ors. decided on 29.4.2002 by the Apex Court of the Land which lays down the proposition as extracted below :-

"However, we make it clear that the Scheme of 1.9.1993 is not an ongoing Scheme and the 'temporary' status can be conferred on the casual labourers under that Scheme only on fulfilling the conditions incorporated in Clause 4 of the Scheme, namely, they should have been causal labourers in employment as on the date of the commencement of the Scheme and they should have rendered continuous service of at least one year, i.e., at least 240 days in a year or 206 days (in case of offices having 5 days a week)."

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8. The learned counsel for the respondents further relied on 2002 SCC (L&S) 398 - Punjab State Electricity Board and Anr. vs. Wazir Singh decided on 11.3.2002 by the Apex Court of the land wherein Circular dated 19.9.1991 was subject of consideration extracting the Circular in para 4 of the judgement and decision thereon in para 5 which is extracted below :-

"4. The relevant portion of the circular dated 19.9.1991 reads as follows :

"The matter regarding conversion of daily-wage workers into work-charged workers has been reviewed by the Board and it has been decided that all daily-wage workers who have put in 500 working days in the service of the Board up to Thirteenth September Eighty Eight (13.9.1988) and are continuing in service of Board shall be eligible to be converted into work-charged workers. These conversions will be subject to availability of work-charged posts and no further appointments will be made on daily-wage basis."

5. The High Court read the circular only upto the cut-off date and not thereafter. The latter part, which clearly states "and are continuing in service of Board" in order to become eligible to be converted into work-charged employees was lost sight of by the High Court. Therefore, it was held that the sole condition to be fulfilled was that the daily-wage worker should have put in 500 working days up to the cut-off date. That interpretation will not be correct in the circumstances of the case, when two conditions had been imposed; firstly, that the daily-wage worker concerned should not only put in 500 working days in service upto the cut-off date, and secondly, should be in continuous service up to the date of issuance of the circular in order to become eligible to be converted into a work-charged worker. The second aspect could not have been ignored at all."

9. The learned counsel for the applicants relied on 2000 (1) ATJ 558 - Pradeep Kumar vs. Ms. Geeta Sagar decided on 27.1.2000 by CAT, Principal Bench, New Delhi wherein while dealing with Casual Labour (Grant of Temporary Status and Regularisation) Scheme, 1993, it is held that casual labourers if otherwise satisfy the eligibility qualifications as per the scheme cannot be denied grant of temporary status on the ground that they were not sponsored by Employment Exchange. In the said case, Circular dated 12.7.1994 issued by DOP&T was subject matter for consideration. It is worth mentioning that the Apex Court judgement in the case of Passport Officer, Trivandrum and Ors. vs. Venugopal C. & Ors. decided on 27.1.1997 referred above was not brought to the notice of the Bench wherein it has been held as under :-

"that a decision to the effect that if recruitment was not through the Employment Exchange, and also granted temporary status, an O.M. which clarifies that under the scheme only those employees who have been recruited through Employment Exchange will be given temporary status was held to be not acting in arbitrary manner and no fault can be found with the department as the said decision was not inconsistent with Article 14 of the Constitution.

10. In view of the judgement of the Apex Court, I have no hesitation in stating that the view taken by the Principal Bench, New Delhi in case of Pradeep Kumar vs. Ms. Geeta Sagar cannot be held to be a good law.

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11. The cases relied on by the learned counsel for the applicants Union of India vs. Mohan Pal etc. and Punjab State Electricity Board and Anr. vs. Wazir which were decided later in time than the order of Jaipur Bench in case of Gajendra Singh & Ors. vs. Union of India & Ors., the proposition laid down is that the conditions required for applicability of the Scheme must be complied with and the Schemes are not on-going Scheme. The said criteria deserves to be applied by interpreting the present Scheme. The Scheme known as "Scheme for Grant of Temporary Status and Regularisation of seasonal Khalasis in work-charge establishment of Central Water Commission, 1997" which is in force with effect from 1.6.1997 applies to those seasonal Khalasis who are presently employed and have rendered 120 days of continuous service in the CWC are such seasonal Khalasis who were engaged any time during the preceding one year and have worked 120 days continuously in that year. The fact of 120 days continuous service of any of the applicants is being denied by the respondents which remains unrebutted. In view of para 3 of the said Scheme, the applicants have not rendered minimum of 120 days continuous service as such they are not entitled either to temporary status or regularisation.

12. In the result, I do not find any merit in the OA. It is liable to be dismissed and is dismissed accordingly with no order as to costs.

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

mrj.