

(Signature)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO: 156/2000
DATED THE 7th DAY OF 02 2001

CORAM: HON'BLE SMT. SHANTA SHAstry, MEMBER(A)

1. Smt. Saroj Rajput
2. Mr. Chandrashekhar Jadhav
3. Mr. Neeraj Kumar
4. Mr. Parvesh Lal
5. Mr. Ranjan Kumar
6. Mr. Vilas B. Pawadman
7. Mr. Jayram J. Sawant

...Applicants in
OA-156/2000

All working as Casual Labour in the
Office of Joint Director General of
Foreign Trade, New C.G.O. Building,
New Marine Lines, Churchgate.

1. M.B. Rajguru
2. Smt. Smita B. Mate
3. Mr. R.S. Patole

All working as Casual Worker in the
Office of the Joint Director General
of Foreign Trade, Pune.

4. Mr. Kishore Shankar Valantra
Working as Casual Worker in the
Office of the Joint Director
General of Foreign Trade, Mumbai.

...Applicants in
OA 184/2000

By Advocate Shri S. Ramamurthy.

V/s

1. Union of India through
The Secretary,
Ministry of Commerce,
Government of India
Udyog Bhavan, New Delhi.
2. The Director General of Foreign
Trade, Office of Directorate
General of Foreign Trade,
Udyog Bhavan, New Delhi.
3. The Joint Director General of
Foreign Trade, New CGO Building,
New Marine Lines, Churchgate,
Mumbai.
4. The Joint Director General of
Foreign Trade, Pune 'C' Block
PMT Commercial Complex,
Shankarseth Road, Swargate
Pune.

...Respondents

By Advocate Shri R.K. Shetty.

...Respondent in
OA 184/2000.

:2:

(ORDER)

Per Smt. Shanta Shastry, Member(A)

The issues involved, the reliefs sought in these two OAs are identical. Facts are also similar and are argued by the same advocates. Therefore I proceed to dispose off these OAs by a common order. For convenience I am discussing OA No. 156/2000.

2. The applicants, seven in number have sought regularisation of their services in group 'D' posts on the basis of service rendered by them and to restrain the respondents from replacing their services by employees of a contractor. They have further prayed for their regularisation before taking up of any other persons for employment against the posts under the respondents. They have also sought interim relief to restrain respondents from taking any steps to terminate or discontinue their services.

3. The applicants were engaged on daily wages basis on different dates as follows in the Office of the Joint Director General of Foreign Trade, Mumbai to do sundry jobs like sweeping, dusting, shifting records, etc.

1)	Smt. Saroj Rajput	September 1991
2)	Mr. Chandrashekhar Jadhav	August 1995
3)	Mr. Neeraj Kumar	August 1995
4)	Mr. Parvesh Rawal	November 1995
5)	Mr. Ranjan Kumar	8/1/1999
6)	Mr. Vilas Pawadial	8/1/1999
7)	Mr. Jayaram J Sawant	8/1/1999

4. They were initially paid Rs.56/- per day but are at present being paid Rs.112.20 per day but in a consolidated manner

at the end of the month. They claim that they have completed 206 days of service in a year and are doing jobs of perennial nature. They are also registered with the employment exchange. They were within the age limit at the time of initial appointment. They suspect that the respondents want to replace them by contractors. According to the applicants, they were entitled to be regularised in group 'D' posts in terms of OM dated 10/9/93 of the D.O.P.& T.

5. The respondents oppose the prayer. The Learned counsel for the respondents categorically asserts that there is no work any more. These applicants were engaged due to exigencies of work of an unexpected nature. Due to liberalisation and globalisation of international trade the work load in respect of the items of negative lists had been reduced. Movement of files within the office is also substantially reduced on account of massive and complete computerisation and on line licensing. In support of this the respondents have put up a note indicating the quantum and scale of computerisation achieved in the office of the respondents so far. In view of this there is no requirement of fresh intake of people by way of regularisation. The applicants' services are of a purely sundry nature and will not help in improving the quality of work.

6. The sanctioned strength of group 'D' is 74 and the applicants are in excess. Moreover they are not eligible for regularisation. According to the learned counsel, the scheme of 10/9/93 of the D.O.P & T regarding casual labour - grant of temporary status and regularisation stipulates that only those in employment as on 1/9/93 and who had put in one year's work; i.e. 206 days in case of 5 day week and 240 days work in case of 6 day week prior to 1/9/93 are eligible for regularisation on being

sponsored through employment exchange. In the present case barring applicant no.1 who was in employment on 1/9/93 others do not fulfill the requirement of the scheme. The learned counsel reiterates that there is no work and the services of the applicants are liable to be terminated. However, in respect of applicant no.1 the respondents are willing to examine granting of temporary status and then acting according to rule 7 of the scheme of 10/9/1993. There is no proposal for appointment of contractor. The Department will decide to employ casual labour on daily wage basis or contract basis from time to time depending on the nature of work. There is also a ban on fresh recruitment.

7. The learned counsel for the applicant contends that the applicants are entitled for regularisation in group 'D' vacancies. No fresh posts are required to be created. According to the OM dated 10/9/1993, out of every 3 vacancies, 2 vacancies should be filled up only by casual labour already working in the respective office. The interpretation by respondents that only those working as on 1/9/1993 and who have put in one year's service as on that day alone are eligible is not correct. It is a scheme drawn up as a beneficial and welfare measure in pursuance of a judgement of the Principal Bench of the Tribunal and cannot be restricted to only those working as on 1/9/93. Considering the case of applicant no.1 alone will be discriminatory.

8. The learned counsel further points out that the note of respondents on quantum and scale of computerisation does not give any facts and figures as to the quantity of workload reduced for group 'D' posts. The sanctioned strength of 74 posts is not reduced. This apart, the respondents have appointed 8-10 persons afresh as Joint DDG, Assistant DDG, Dy DDG, etc. during the last two months. Supporting group 'D' staff will be required for

these new officers. He argues that if the work assigned to them was of unexpected nature the respondents would not have continued the applicants for several years. Inspite of ban imposed on fresh adhoc appointments in 1992, the respondents engaged the applicants thereof. The learned counsel relies on the judgement of Supreme Court in the case of State of Haryana & Ors. V/s Piara Singh & Ors. He also has produced copy of judgement and order dated 9/11/20000 in a group of OAs led by OA No.478/98 pronounced by the undersigned wherein facts were similar and OAs were allowed.

9. I have given careful consideration to the arguments advanced by the learned counsel for the parties.

10. The learned counsel for the respondents is relying on the order dated 6/12/99 in OA No.518/99 holding not to terminate the services of similarly placed applicants as long as there is sufficient work and to take action in terms of rule 7 of the D.O.P.& T scheme dated 10/9/93 in case the services of the applicants were to be terminated by giving one month's notice and the reason for termination.

11. The main reasons put forth by the respondents for not regularising but terminating the services of the applicants are that there is no work any more and that they do not fulfil conditions of the scheme of D.O.P. & T. The applicants have harped that there is work. They have supported this by stating how the respondents have only recently added 8-10 posts at higher level thus necessitating supporting staff. I agree with the applicant's that the respondents have not put in any solid material to show that there is reduction in work as far as the work done by the applicants is concerned, sweeping, dusting, etc

cannot be reduced unless the office space is reduced. There is no reduction in the sanctioned strength either. Moreover, the first phase of the scheme of 10/9/93 is the grant of temporary status. Regularisation comes thereafter. If the applicants have put in 206 days of service in one year as claimed by them then in my considered view they have to be given temporary status even though they were not in position as on 1/9/93. The scheme while stating to consider those who were in employment as on 1/9/93 should be considered for regularisation has not stated anywhere that those employed after that date should not be considered at all. In fact it has been held by the Principal Bench of this Tribunal that the cut off date of 1/9/93 is not sacrosanct. Therefore the applicants case needs to be considered, keeping in view the objective and spirit of the scheme for grant of temporary status and regularisation of casual labour. Also in view of the judgement of the Supreme Court in the matter of State of Haryana & Ors. V/s. Piara Singh others, it has been clearly laid down in para 51 that "so far as workcharged and casual labour are concerned the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications if any prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell say two or three years a presumption may arise that there is regular need for his services. In such a situation it becomes obligatory for the authority concerned to examine the feasibility of his regularisation. While doing so that authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court security of tenure is

necessary for an employee to give his best to the job."

12. In the light of the above discussion, the applicants should be considered for grant of temporary status. I however find that no details of the number of days of work put in by the applicants have been given by them. They need to be given and verified by respondents. Accordingly, the applicants are directed to give a detailed representation within a fortnight to the respondents indicating the number of days of service put in by them. The respondents shall consider the same after verification and pass a speaking order on grant of temporary status irrespective of whether they were in service on 1/9/93 or not within a month thereafter. The respondents shall further consider regularisation of the applicants as per rules depending upon availability of work. They shall not engage any freshers or juniors in preference to the applicants.

13. The OAs are disposed off accordingly. No costs.

(SHANTA SHAstry)
MEMBER(A)

abp