

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 209/2000

DATE OF DECISION: 7/02/2001

Shri Bhushan Gurav and 4 others . Applicant.

Shri R. Ramesh

-----Advocate for
Applicant.

Versus

Union of India & 2 Ors.

-----Respondents.

Shri M.I. Sethna

-----Advocate for
Respondents.

CORAM:

Hon'ble Smt. Shanta Shastry Member(A)

1. To be referred to the Reporter or not? |
2. Whether it needs to be circulated to
other Benches of the Tribunal?
3. Library. ✓


(SHANTA SHASTRY)
MEMBER(A)

abp



**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:209/2000
DATED THE 7th DAY OF Feb 2001**

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

1. Shri Bhushan Gurav,
Casual Worker/Hamal,
2. Shri Naresh Solanki,
Casual Worker/Sweeper
3. Smt.Daksha Solanki
Casual Worker/Sweeper
4. Shri Sunil Ghadi,
Casual Worker/Hamal
5. Shri A.M.Chavan,
Casual Worker/Hamal.

... Applicants

All the applicants working in Central Excise
Mumbai V Collectorate, Utpad Shulk Bhavan,
Bandra-Kurla Complex, Mumbai - 400 050.

By Advocate Shri R.Ramesh

V/s.

1. Union of India,
through the Secretary,
Ministry of Finance,
Department of Revenue,
Government of India,
New Delhi-110 011.
2. The Commissioner of Central Excise,
Mumbai V. Commissionerate,
C/24, Utpad Shulk Bhavan,
Bandra Kurla Complex,
Mumbai - 400 051.

... Respondents.

By Advocate Shri M.I.Sethna

(ORDER)

Per Smt.Shanta Shastri, Member(A)

The prayer of the applicants in this OA is to grant them temporary status and regularisation against vacant group 'D' posts with all consequential benefits flowing therefrom on the basis of the service rendered by them on the so called casual post under respondent no.2. They have also sought to permit them

...2.

:2:

to file the OA jointly. They had further prayed for interim relief in terms of para 9 of the OA. Statusquo was directed to be maintained as an ad interim measure.

2. The applicants are presently working as casual workers/hamal etc in the Office of the Commissioner of Central Excise, Mumbai V Commissionerate, Mumbai i.e. Respondent No.2. Their service particulars as given in the OA are as follows:-

Sl.No.	Name	Date of Joining
1.	Shri Bhushan Gurav	2/8/1993
2.	Shri Naresh Solanki	6/12/1993 Mumbai V
3.	Shri Daksha Solanki	19/4/1993 Mumbai V
4.	Shri Sunil Ghadi	14/9/1994
5.	Shri A.M.Chavan	1994

3. Applicants 1 to 4 were recruited directly without reference to Employment Exchange but all of them were registered with the Employment Exchange at the time of their initial recruitment. Applicant No.5 however was sponsored through the Employment Exchange. He was initially appointed under Mumbai II Commissionerate and later on bifurcation and creation of Mumbai V Commissionerate has been posted in Mumbai V Commissionerate. In fact he had been working in Kandivali Division since 19th August, 1988. Applicant No.4 also had been working since 27/12/1989. All the applicants were within the age limit and had the necessary qualifications at the time of their initial engagement. According to the applicants they were appointed against vacant posts. Their work is of a perenial nature. They have been performing different duties such as cleaning of cabins, sweeping, swobbing, serving in conference rooms and the visitors to the office, dusting office furniture, equipment cleaning of toilets,

...3.

movement of records, getting eatables and beverages from the canteen, vacuum cleaning carpets, computer, etc. watering the plants booking tickets and other miscellaneous jobs.

4. They are paid daily wages at the rate of Rs.112/- per day in a consolidated manner at the end of the month. While Applicants 4 and 5 have been working without break applicant 1 to 3 have been given artificial breaks. However all the applicants have put in a minimum of 206 days every year. Representations were made by applicants 4 and 5 for grant of temporary status and subsequent regularisation. The respondents have confirmed that they have put in 206 days in a year.

5. It is the contention of the learned counsel for applicants that in view of the fact that they have been working continuously since their initial appointment and have completed 206 days of work in a year they are entitled for grant of temporary status and subsequent regularisation in terms of the scheme for casual labour - grant of temporary status and regularisation introduced vide O.M. dated 10/9/1993 by D.O.P. & T. Further, in a similar case of casual labour working in the Office of the Commissioner of Customs, Mumbai, this Tribunal had allowed OA No.239/97 vide judgement and order dated 17/3/1998 and had directed grant of temporary status and regularisation to the said applicants. The present applicants are similarly placed and therefore are entitled to be granted same benefits.

6. The learned counsel has further drawn attention to the case of one Smt.Laxmibai Palker who was also working under respondent no.2 as casual worker and who has been granted temporary status w.e.f. 10/9/93 vide order dated 15/11/1999. The applicants are similarly situated. Infact Smt.Palker was

clubbed with them for purposes of payment of wages as per exhibit A (page-77 of the OA).

7. The respondents have opposed the claim of the applicants. The respondents have confirmed the service particulars as given by the applicants except in the case of applicant no.3. According to them the applicant no.3 has worked only from 2/8/99 to 31/12/99 as a casual worker on daily wage basis. In regard to applicant nos 4 and 5 they had worked as part time casual labourers prior to 1993 i.e. in 1988 and 1989 respectively. Except for applicant no.1 none of the others were in employment as on 10/9/93 but applicant no.1 had not put in 206 days upto the date of 10/9/93. Applicant no.5 though sponsored through the Employment Exchange was also not in employment on 10/9/93 and had not served for 206 days in one year prior to 10/9/93. Thus, none of the applicants is eligible to be considered for grant of temporary status and regularisation. They do not fulfil the main conditions of sponsorship through employment exchange and continuous service of 206 days in one year as on 10/9/93. They were not engaged against any vacant posts. They were engaged depending upon exigency of work or to supplement regular staff.

8. The learned counsel also refutes that the applicants are performing all the duties as claimed by them. Infact, there is no scope for performing of some of the duties. They have made false averment in this regard.

9. The learned counsel submits that sponsorship through Employment Exchange is the basic essential condition for recruitment and grant of temporary status as clarified by the Department of Personnel and Training vide O.M. dated 12/7/1994 in

para 2. There are clear instructions not to engage casual labour after 1985 and without reference to the Employment Exchange. The learned counsel relies on the judgement of the Delhi High Court in the case of Amrit Yadav and Ors. V/s. Delhi Vidhyut Board through its Chairman reported in 2000(2) AISLJ 412 holding that the petitioners cannot remain on the post beyond the contract period. The learned counsel has also cited the judgement of Supreme Court in the case of Passport Officer, Trivandrum & Ors. V/s. Venugopal C and Ors in Civil Appeal NO. 936 of 1997 holding that as per clarification dated 12/4/1994 a sponsorship through Employment Exchange is mandatory.

10. The learned counsel for the applicants has clarified the status of the applicant no.3 in the rejoinder and has stated that she was initially recruited from 19/4/93 in Mumbai II Commissionerate and has referred to a letter dated 31/12/1999 written by the Superintendent PRO (Headquarters) Central Excise Mumbai V to the Assistant Commissioner Administrative Section of Mumbai II Commissionerate. The respondents have only reiterated that applicant no.3 was engaged from 2/8/99 to 31/12/99 only without commenting on the earlier service. The learned counsel for the applicant is relying on the judgement in OA No.239/1997 of this Tribunal as well as in a group of OAs decided on 9/11/2000 by the under mentioned in OA nos. 478/98 etc.

11. I have carefully heard the learned counsel for both parties and have considered the argument advanced. There is no denying that the applicants except applicant no.3 have put in 206 days of service in a year after their initial recruitment and that they are in continuous service. Applicants 1 to 4 are registered with the employment exchange but are not sponsored

through it. The thrust of the arguments of the respondents' counsel is that they do not fulfil the conditions of the scheme of 10/9/93 of the Department of Personnel and Training as they were not in employment as on 10/9/93 barring one of them, they had not completed one years continuous service as on 10/9/93.

12. In my considered view these grounds are no longer valid. The issue regarding whether the scheme of 10/9/93 can be made applicable to those who were not in employment as on 1/10/93 and who were not recruited through the employment exchange should be granted temporary status and regularisation under the scheme of 10/9/93, has been discussed at length in several judgements of this Tribunal. The scheme of 10/9/93 came to be formulated in pursuance of the judgement in the case of Rajkamal and Ors V/s. Union of India. It was specifically mentioned in para - 21 of that judgement that the fact that some of the casual labourers had not been sponsored by Employment Exchange should not stand in the way of their absorption. Therefore the clarification cannot provide for something which was not intended in the judgement. This has been brought out in great detail in the judgement dated 18/6/99 of the Ernakulam Bench of this Tribunal in the case of T.B.Abdul V/s. Union of India & Ors in OA No.165/98. In OA 907/96 decided on 12/8/96 by the Ernakulam Bench of the Tribunal, it was held that there is no special sanctity about the cut off date of 10/9/93, relying upon the judgement of the Hon. Supreme Court in the case of D.R.Nim (AIR 1967 SC 1301). The Bench harped on the yardstick of putting in 240 days of service in a year as the material condition. Similarly, in the case of Ashok Kumar Gupta V/s. Union of India in OA 1744/98 decided on 27/6/99 by the Principal Bench, the view was taken that the scheme for grant of temporary status is a continuing scheme and all those

persons who are engaged even after the scheme came into existence are eligible for its benefits. In another OA-1446/98, the Principal Bench of the Tribunal took the view as a welfare measure, the scheme has to be interpreted wide enough to include even those who had the required number of days of service in a year to their credit even after 9/9/93. The judgement in the case of Amit Yadav V/s. Delhi Vidyut Board 2000(2)SLJ Delhi H.C. 412, the issue was about contract appointments. It was held that the contract appointment ceases after the expiry of the contract period. The learned counsel has also drawn support from a judgement dated 27/1/97 of the Hon. Supreme Court of India in the case of Passport Officer, Trivandrum & Ors. V/s. Venugopal C and Ors in Civil Appeal No.936 of 1997.

13. Apart from these catena of judgements, I would like to place reliance on the judgement of the three judges Bench of the Supreme Court in the Case of State of Haryana and Ors. V/s. Piara Singh (1992)21 ATC - 403 wherein the Hon. Supreme Court has laid down in no uncertain terms in para-51 as follows:-

51. So far as the work-charged employees 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, the 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. In this behalf, we do commend the orders of the Government of Haryana (contained in its letter dated April 6, 1990 referred to hereinbefore) both in relation to work charged employees as well as casual as casual labour."

14. This judgement of three judges Bench holds good. In my considered view, there is ample support for the stand that not being sponsored through employment exchange or not being in employment as on 10/9/93 with a continuous service of one year cannot be a bar for being considered for regularisation of casual labourers who have put in long continuous service of three to fours.

15. In my considered view therefore the applicants are entitled to grant of temporary status from the day they have completed 206 days of service in a year and subsequent regularisation as per rules. As far as applicant no.3 is concerned the details of her service particulars needs to be verified with reference to the letter dated 31/12/99 cited by the applicants in their rejoinder. And if the claim of applicant no.3 is found correct, she too be considered for grant of temporary status and regularisation in due course as per rules.

16. I therefore give the following directions. The respondents shall consider the applicants 1,2,4 & 5 for grant of temporary status irrespective of whether they were in employment on 10/9/93 and had put in 206 days of work before 10/9/93 or not and whether they were sponsored through employment exchange or not, from the day each of them has completed 206 days of work in a year. Subsequently, they may be considered for regularisation in due course as per rules and subject to availability of work.

:9:

In the case of applicant no.3 the respondents shall verify the service particulars on the basis of the letter dated 31/12/99 referred to in para 12 above and if confirmed shall grant temporary status to her also and subsequent regularisation as in the case of the other applicants. The OA is allowed thus. I do not order any costs.

Shanta P-
(SHANTA SHASTRY)
MEMBER(A)