

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO. 754 & 755 OF 2000

, THE 5TH DAY OF JULY, 2001

SMT. SHANTA SHAstry.

... MEMBER (A)

1. Navanath Namdeo Mate,
age about 23 years, occ. nil,
residing at and post
Khadakvasla, Taluka Haveli,
District Pune.
2. Sugandh Chand,
age about 32 years, occ. nil,
residing at NDA Khadakvasla,
Pune-411 023.
3. Narayan Maruti Dhavade,
age about 39 years, occ. nil,
Residing at Kondhave Dhavade,
Taluka Haveli, Dist. Pune.
4. Ramachandra Shivappa Ghadage,
age about 32 years, occ. nil,
Residing at Kondhave Dhavade,
Taluka Haveli, Dist. Pune.
5. Kashinath Dinkar Gadekar,
age about 37 years occ. nil,
Residing at Warje Malvadi,
Ramnagar, Pune 411 029.
6. Saraswati P. Nair,
age about 37 years, occ. nil,
Residing at 153/4 Bombay-Pune
Road, Dehu Road.
7. Ramdas Dagadu Tikhe,
age about 30 years, occ. nil,
Residing at NDA Khadakvasla,
Pune 411 023.
8. Sakharam Sopan Kindare,
age about 32 years, occ. nil,
residing at Uttamnagar, NDA
Khadakvasla, Pune 411 023.
9. Narayan Vishnu Wanjale,
age about 39 years, occ. nil,
residing at Ahire, Taluka Haveli,
District Pune.

10. Sitaram Sopan Mate,
age about 33 years, occ nil,
Residing at Kondhave Dhavade,
NDA Khadakwasla,
Pune-411 023.
11. Muralidhar Madane,
age adult occ nil,
residing at NDA Khadakwasla,
Pune 411 023.
12. Navanath Chokha Gade,
age about 37 years, occ. nil,
residing at Warje Ramnagar,
Pune-411 029.
13. Dayashankar Biharilal Pardeshi,
age about 30 years, occ nil,
residing at Indrayani Darshan,
Type I, 524/11, Dehu Road,
Pune-412 101.
14. Pandarinath Ramchandra Kondhalkar
age about 35 years, occ nil,
residing at Wadgaon Bk, Tal: Haveli,
District Pune.
15. Raghunath Chauhan,
age adult, occ nil,
residing at and post Kondve Dhawde.
16. Ankush Shankar Madane,
age adult, occ nil,
residing at Followers Quarters,
119/1, NDA, Khadakwasla,
Pune 411 033.
17. Joseph Michel,
age about 32 years, occ nil,
residing at C/o L.N.A. Swamy,
dhobi line, Kirkee Bazaar,
Pune-411 003.
18. Jawar Ramjanam Ramjianram,
age 30 years, occ nil,
residing at 53/10, NDA,
Khadakwasla,
Pune-411 023. .. Applicants in OA
754/2000
1. Shikandar Popat Shaikh,
Adult, Occupation Nil
Residing near Corporation
Hospital, Kothrud,
Pune-411 029.

: 3 :

2. Shri Ashok D Kawade,
Adult, Occupation Nil,
Residing at Koregaon Park,
Kavadewadi, Pune-411 001.
3. Shri Dilip T. Dagade,
Adult, occupation Nil,
Residing at bavdhan Budruk,
Taluka Mulashi, District Pune.
4. Shri Vilas H. Sutar,
Adult, Occupation Nil,
Residing at Uttamnagar,
Post NDA, Taluka Haveli,
District Pune.
5. Navanath N. Kivale,
Adult, occupation Nil,
Residing at Nandoshi, Taluka
haveli, District Pune.

... Applicants
in OA 755/2000

By Advocate Shri Avinash Shivade.

Versus

1. Union of India
through the Secretary,
Ministry of Defence,
South Block,
New delhi.
2. National Defence Academy,
through the Commandant,
National Defence Academy,
Khadakvasla,
Pune-411 023.

... Respondents

By Advocate Shri R.K. Shetty.

O R D E R

In these applications, the issues are identical and the reliefs claimed are also the same. The applicants also belong to the same organisation. Therefore, I am proceeding to dispose them off together by a common order.

2. I have heard the learned counsel Shri Avinash Shivade for the applicants and Shri R.K. Shetty for the respondents in both these OAs.

O.A. No. 754/2000

3. The applicants were engaged by the National Defence Academy, Khadakvasla, Pune in different spells in different categories of group 'D' against short term vacancies during the period from 1972 to 1998. The details of their engagement have been furnished in the OA and in respect of some applicants, experience certificates in regard to their engagement and working issued by the department have also been brought on record. These applicants have worked as Groundsmen, Safaiwala, Gardener, Grooms, Tandel, LDC, Mess Waiter, Masalchi, Fatigueman etc. Some of them with worked artificial breaks in their service. Some worked as casual labour also on daily wages. The services of these applicants were not continued on the ground that there was a ban on recruitment. Whereas, the respondents appointed several persons from time to time, for example S/Shri Ashok Dhumal, Raju Kindare, Ashok Thakar, Sunil Takke, etc. The applicants, have therefore, sought for a direction to the respondents to appoint them in service in any post in class IV category on a permanent basis ignoring their present age. Some of the applicants are also belonging to the backward classes.

4. The applicants have relied on a number of judgments of this Tribunal as well as the High Court in support of their contentions. These are WP No.1230/84 in the case of Ananda Tanaji Kamble Vs. NDA and another. This was an individual case, which was decided on 29.9.84. the applicant therein had been appointed and removed from service for 76 times and finally his regularisation was rejected on the ground that he was over aged. The Hon'ble High Court allowed the petition and directed the respondents to appoint the petitioner on regular basis in the first available vacancy to the post of Groom in class IV cadre or in any other vacancy at the earliest opportunity. The other decisions are in OA Nos. 7114 to 78/88, 1314 to 1316/92, 1352/92, 414 to 416/94 and 1010/94 decided on 23.8.95 OA 1164/93 by this Bench of the Tribunal, W.P. No.6444/98 in the High Court (Appellate Side).

5. The learned counsel for the respondents submits that all applicants are not similarly placed. Out of 18 applicants in the OA, applicants No. 1 and 16 have not served in the NDA at any time as per the records available with them. Though the applicants 17 and 18 have produced copies of certificates of their employment they have also not rendered any government service at any time as per available records. As regards remaining 14 applicants, they of are two categories. There is a category of 11 applicants, who have served in purely

temporary capacity against regular employees proceeding on leave. They were paid the pay and allowances on monthly basis. The second category is of applicants No.3, 8 and 15, who were employed on casual basis on daily wages for the work of casual nature. The appointment against the leave vacancies were made under the provisions of Army Instructions 187/1961. Such services of a person automatically ceases when the regular employee rejoins duty on the expiry of leave. There are no provisions for regularisation of services of such persons, who are employed on leave vacancies on monthly basis. The respondents have also considered the provisions of the various Office Memoranda issued by the DOP & T regarding regularising the services of the casual labourers. According to the OM dated 26th July, 1979 the casual services of a person can be regularised only if he has put in 240 days of service in each of the preceding two years. The OM dated 7th June, 1988 also has similar provisions and is to be read along with the OM dated 26th July, 1979. There is a further OM dated 10th September, 93 regarding grant of temporary status and regularisation of casual labourers. Again a class IV employee has to essentially put in 240 days of service as on 1.1.1993 as per that scheme. The respondents submit that in the light of this OM the applicants' cases have been considered, none of the applicants fulfills the criteria of having put in 240 days of service in a year and therefore, their claim for regularisation cannot be considered. The judgments

cited by the applicants, the learned counsel submits that all these judgments were in personem and not in rem. The applicants' cases are to be considered in the light of the latest judgment on the subject delivered on 3rd June, 1999 by this Tribunal, which judgment is in rem. In this judgment rendered in respect of OA Nos. 208/98, 458/98, 594/98, 595/98 and 1013/98, it was directed that the respondents shall prepare a seniority list of casual labourers who had been engaged by the NDA for consideration for regularisation against group "D" vacancies based on the date of engagement and length of service, provided they were eligible for regularisation in terms of the scheme as laid down vide DOP & T OM dated 10th September, 93 and 7th June, 88. The respondents have prepared the seniority list accordingly and found none of ~~the~~ applicants who are at different serial numbers in the seniority list can be considered for regularisation or for grant of temporary status. The respondents have given complete details of each of the applicants to show that none of them has rendered 240 days of service in the preceding two years as required under the DOP & T OM. The respondents have therefore, sought dismissal of the application.

O.A. NO. 755/2000

6. This OA is filed by 5 applicants who are similarly placed to the applicants in OA No.754/2000, details of which have been narrated above. In this

case, the applicants had earlier approached the Hon'ble High Court in WP No.6444/94. The High Court directed the applicants to approach this Tribunal. Prior to approaching the High Court, the applicants had applied for regularisation of their services by preferring their applications in the Industrial Court. The Industrial court decided the reference by holding that the NDA was not an Industry. However, inspite of that the Industrial Tribunal recorded a finding that the applicants had not worked for 240 days. The High Court, therefore, held that the Industrial Tribunal has no jurisdiction to enter into the merits of the matter having given the finding that NDA was not an Industry. Thus, the applicants have finally approached this Tribunal. The applicants' contention is that this Tribunal has decided in several matters that casual employees, who have worked for NDA were to be reinstated. The casual labours cannot be treated as commodities to be hired and fired. The applicants submit that there are hundreds of vacancies in the NDA. Instead of appointing persons on permanent basis, the NDA appointed persons on purely temporary basis. The respondents were given the artificial breaks after 89 days of service. The applicants say that they are entitled to count the entire period including holidays in their total work experience. This aspect has not been considered by the respondents. The applicants are also relying on the various judgments and orders of this Tribunal already cited in OA 754/2000.

7. The respondents have taken the same stand as in OA 754/2000. The applicants in this OA served as casual labourers on daily wages during the year 1990. The respondents have also stated that the applicants have not put in 240 days of service in each of the preceding 2 years as required under the scheme of 10th September, 93. Since the applicants do not fulfil the condition of 240 days of service, they are not eligible for regularisation. Further, the respondents have referred to judgment dated 3rd June, 1999 in OA 208/98, 458/98, 594/98, 595/98, 1013/98. The respondents have examined the case of the applicants in the light of the aforesaid judgment as well as in terms of OMs dated 7th June, 1988, 10th September, 93 and 26th July, 1979 and have found that the applicants do not fulfil the conditions for being eligible for regularisation. The other arguments are the same as in OA 754/2000.

8. I have given careful consideration to the rival contentions and have also perused the various judgments including the judgment in rem delivered on 3rd June, 99 in OA Nos. 208/98 and other connected matters. The tenor of the most of the orders passed in the earlier OAs is that these applicants should be considered for reengagement against vacancies as and when they arise on priority. The latest judgment of 3rd June, 99 however, directed in clear terms as follows:-

- (a) The respondents will prepare the seniority list of the applicants along with the other casual labourers who had been engaged earlier or at present being engaged for consideration for regularisation against the Group 'D' vacancies based on the date of engagement and length of service.
- (b) The regularisation of the applicants along with others as per the seniority list to be prepared as indicated in (a) above will be done if found eligible in terms of the scheme as laid down as per O.Ms. dated 10.09.1993 and 07.06.1998 by the Department of Personnel & Training against the existing and future vacancies when the respondents decide to fill up the vacancies keeping in view the ban imposed. The applicants along with other casual labourers will be regularised against vacancies as per the quota laid down in the O.M. dated 10.09.1993 before going to open market for recruitment to fill up the vacancies.
- (c) The applicants shall be allowed relaxation of age as provided in the O.M. dated 06.06.1988 in case the applicants were engaged within the age limit at the initial engagement.
- (d) The seniority list as indicated in (a) shall be prepared by the respondents within a period of six months from the date of receipt of the order and the same will be notified.
- (e) In respect of the applicants where the respondents have not accepted the claim of being engaged against leave vacancies or had been engaged as Regiment employee, directions as detailed in para 13 will be followed.
- (f) In the circumstances of the case, there will be no order as to costs."

9. The respondents have accordingly prepared the seniority list and given proper placement to the applicants in the seniority list. Further, the respondents have examined the cases of the individual applicants in terms of the OMs dated 10.9.93 and 7.6.88. Also age relaxation has been provided. Inspsite of that, since the applicants do not fulfil the major requirement of 240 days of service, the respondents have

not regularised the services of the applicants. In view of the exercise done by the respondents, I can only pass a direction as in the previous matters that the applicants in both these OAs should be considered on their merits when the fresh vacancies are to be filled. More over, it is not very clear from the details of the service rendered by the applicants as given by the respondents as to whether the respondents took into consideration the artificial breaks given. If, after taking into consideration the artificial breaks, the total service rendered by these applicants works out to more than 240 days, then the respondents shall consider them for reengagement against first available vacancy and for grant of temporary status and regularisation. I, therefore, direct the respondents that they should offer employment to the applicants as and when vacancy arises by relaxing the age limit as also indicated in the judgment dated 3.6.99. After such appointment they may be regularised in the available vacancy according to their turn. The applicants shall be given preference over outsiders and juniors. The OAs are disposed of accordingly. I do not order any costs.

MEMBER (A)

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