

CENTRAL ADMINISTRATIVE TRIBUNAL MUMBAI BENCH

ORIGINAL APPLICATION NO:176/99 AND 546/2001

DATED THE

ith DAY OF JANUARY, 2003

CORAM: HON'BLE SHRI JUSTICE D.N.CHOWDHARY, VICE CHAIRMAN HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)

Applicants in OA No.176/1999

- Kamal K Waghela
- 2. Anand A Sawant
- Jayaben G Makhwana
- 4. Vinayak C Raut
- Rajendra B Sonawane
- Sashikant B Chowkekar
- Promod Pawar
- V.P.Ghadge
- 9. Rajendra B Parab
- 10. Sidhartha S Kamble
- 11. Vinod N Bandekar
- 12. Janardhan V Rane
- Na Ranjit S Chavan
- 14. Indrjit V Pathare
- 15. Jetendra B Nar
- 16. Ashok M Khandare
- 17. Nitin S Dunbale
- 18. Prasad V Parulekar 19. Sanjeev V Kamble
- 20. Ganpat R Lagad
- 21. Ramachandra V Dalvi
- 22. Jitendra M Chavan
- 23. Kashinath B Sonawane
- 24. Dilip K Khilare
- 25. Rahul D Meshram
- 26. Namdeo L Sakpal
- 27. Balakrishna S Patil
- 28. Sanjay S More
- 29. Sheelabhai R Chauhan
- 30. Suresh D Desai
- 31. Anil D Sawant
- 32. Sunil W Raorane
- 33. Jagdish S Mondkar
- 34. Shashikant P Chavan
- 35. Ramesh S Adhate
- 36. Suresh B Indulkar
- 37. Deepak M Panchal 38. Mahadeo R Shinde
- 39. Vilas R More
- 40. Vinod B Kadatarkar
- 41. Purshottam A Golum
- 42. Suhas B Kelekar
- 43. Sudhakar G Shinde
- 44. Bhagean R Bondre
- 45. Girish R Sawant
- 46. Vivek K Mane
- 47. Suresh L Gholap
- 48. Suresh R Mane
- 49. Ajaykumar L. Yadav

ASWOTT

- 50. Pradeep G Ghadigaonkar
- 51. Nandkumar S Mohite
- 52. Ramakant S More
- 53. Vijay A Girkar
- 54. Kuber B Wadkar
- 55. Rajendra M Salvi
- 56. Prakash T Upade
- 57. Pravinkumar D Boricha
- 58. Mangesh D Shinde
- 59. Sudhir N Gujar
- 60. Sunil N Lade
- 61. Vivek R Shinde
- 62. Atmaram V Khot
- 63. Sudhir A Salvi
- 64. Ganpati D Nayakwadi
- 65. Sanjay Y More
- 66. Rajendrakumar Y Salve
- 67. Mohammed J Abbas
- 68. Sukhadev D Shinde
- 69. Vijay P Sawant
- 70. Prabhakar R Chavan
- 71. Sanjay R Salvi
 All are working as temporary
 Status casual labourers in
 CHS departmental New Custom House,
 Ballard Estate, Mumbai-400 038.

... Applicants

By Advocate Shri S.S.Karkera

V/s.

- Union of India, Through the Secretary, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, North Block, New Delhi - 110 001
- The Chief Commissioner of Customs, New Customs House, Ballard Estate, Mumbai - 400 038.
- The Commissioner of Customs, Personal and Estt. Dept., New Customs House, Ballard Estate, Mumbai - 400 038.

Respondents

Applicant in OA 546/2001

Shri Sachin Sadashiv Malvankar, Sepoy No.2, Working in New Custom House, Mumbai - 400 038.

... Applicant

By Advocate Shri A.I.Bhatkar

...3.

V/s.

- Union of India (Through), The Chief Commissioner of Customs, New Customs House, Ballard Estate, Mumbai - 400 038.
- The Commissioner of Customs, New Custom House, Ballard Estate, Mumbai - 400 038.
- The Joint Commissioner of Customs, Personnel & Establishment Department, C/o.Commissioner of Customs, New Custom House, Ballard Estate, Mumbai - 400 038.
- 4. The Deputy Commissioner of Customs, Personnel & Establishment Department, O/o.Commissioner of Customs, New Custom House, Ballard Estate, Mumbai 400 038.

... Respondents

By Advocate Shri V.D.Vadhavkar for Shri M.I.Sethna

(ORDER)

Per Smt.Shanta Shastry, Member(A)

At the outset we find that the two OAs are inter-linked and therefore we are proceeding to dispose of these two OAs in the same order but separately.

OA No.176/99

The reliefs sought by the applicants in this case is to regularise them first in 2/3rd quota and to declare the action of the respondents in filling up of the posts through outsiders in excess of their quota as being illegal. Further a direction has been sought that the respondents should maintain the ratio of 1/3rd for outsiders and 2/3rd quota for casual labours and refrain from further recruitment of outsiders till the ratio is maintained and carry forward the vacancies earmarked for casual

labourers and to consider the applicants first for regularisation in the post of sepoy.

- 2. The applicant were working as casual labourers after being sponsored through the employment exchange since 1989 onwards. The applicants had filed OA 239/1997 for granting them temporary status as well as regularisation. The Tribunal by order dated 17/3/1998 directed the respondents to consider the case of the applicants for grant of temporary status and regularisation as per the scheme promulgated on 10/9/1993 effective from 1/9/1993 by the DOP&T. In pursuance of the directions of this Tribunal, the respondents granted temporary status to the applicants with effect from 4/6/1998. The order was further modified making the temporary status effective from 1/9/1993 vide order dated 6/8/1998. It is further submitted by the learned counsel for the applicants that 38 of the applicants who had filed the earlier OA were regularised by giving them adhoc appointment. In the case of 27 applicants, all the necessary tests were conducted and screening was done and even appointment offer was made however no orders of appointing them to Group 'D' have been issued so far.
- In the meantime the applicants submit that the respondents without considering and regularising the applicants in Group 'D' post of sepoy had called for candidates from the employment exchange in July, 1997. Physical tests of outsiders were conducted on 18/11/1997 inspite of the fact that 1/3rd quota of outsiders had already been exceeded. About 230 outsiders candidates were selected to the post of sepoy from 1994, 1995 and 1996. The respondents were making direct recruitment to Group 'D' posts of sepoy against the provisions of the scheme of the



DOP&T dated 10/9/1993. The applicants therefore preferred representation on 13/9/1998 requesting for absorbing and regularising the applicants first, and to refrain from calling any outsiders from Employment Exchange and filling posts through direct recruitment. A further representation was given on 28/10/1998 and 19/1/1999. Inspite, of their representations, since the respondents had not regularised them, the applicants have finally filed the present OA.

The applicants had also prayed for interim relief. On 5/5/1999 when the OA came up for hearing, the tribunal passed an order directing the respondents that out of 62 vacancies, casual labourers be considered for appointment on regular basis in 38 vacancies subject to their eligibility, seniority and passing of the test as per rules. All appointments in persuance of the present recruitment shall be subject to further or final order to be passed in this OA. Thereafter on 27/6/2000, the respondents were again resorting to direct recruitment of freshers against the existing vacancies of 65 sepoys due to promotion of sepoys. Therefore the applicants filed MP-414/2000. The same was allowed partly by directing the respondents to confine direct recruitment of sepoys only to 1/3rd of the vacancies. The applicants have submitted that as a result of various orders of the tribunal, the present position is 21 applicants were appointed as sepoy on adhoc basis on 13/5/1999, 5 applicants were further regularised as sepoys on adhoc basis on 28/10/1999. Two applicants were regularised on 3/8/1999 and 27/8/1999 and as already pointed out appointment offer was issued in respect of 27 other applicants but no regular appointment order has been issued till date.

- 5. According to the applicants since 65 sepoys were promoted, the resultant vacancies were available for regularising the applicants yet inspite of the exercise of screening having been completed, the respondents have not given appointment to the applicants. The applicants are therefore praying that they be granted regularisation against the 2/3rd quota for casual labourers.
- 6. The applicants have also relied on the judgement in the case of Rajkamal & Ors. V/s. Union of India & Ors 1990 13 ATC 473 reiterating that the scheme of 10/9/1993 provides for regularisation of casual labour against 2/3rd vacancies available in Group 'D' and they are to be regularised first. Without regularising them it is not proper for the respondents to send requisitions to the employment exchange for directly recruiting Group 'D' staff.
- The respondents have opposed the OA. According to them there are no vacancies available against which the applicants can be appointed on a regular basis. Even the 38 casual labourers who were appointed on adhoc basis were posted in the cost recovery post which are temporary and which cannot be treated a regular posts at all. According to the respondents, the position of the vacancies has undergone considerable change. Although 62 vacancies had been indicated on 5/5/1999, when Interim orders were issued by the Tribunal, the position in reality is that there are only 44 posts and there was a possibility of reverting the 38 casual labourers already regularised on adhoc basis and therefore any further appointment orders have been held up.
- 8. According to the respondents, although 65 sepoys were promoted yet some of the posts were down graded and therefore

actual vacancies available were only 29 and including earlier vacancies 44 vacancies would be available. Therefore it is not possible to regularise the remaining applicants at this stage. The learned counsel for the respondents also pointed out that recently the cadre restructuring has taken place in the department of Central Excise and Customs. As a result lot of posts in Group 'D' have been reduced. With the reduction in posts again, it would be a difficult task to retain even those who have already been regularised and therefore for want of vacancies the applicants will have to wait and nothing can be done in the present circumstance. It has also been stated that services of one of the employees recruited directly have been terminated for want of vacancy.

The applicants however kept on harping that vacancies were available as these vacancies have arisen in 2000 whereas the 38 applicants had been regularised against 62 vacancies which were available in 1999. Therefore it cannot be believed that there are no vacancies.

well as the respondents. The crucial point to be seen is whether there are vacancies available. As on 5/5/99, at the time the Tribunal passed the interim order, 62 vacancies had been indicated. Now the respondents are going back on the same and are stating that enough vacancies are not available. Infact, different versions are being given, at one place the number of vacancies is shown as 52, at another place 44/46 and in another place 58. There is thus no consistency in the statements being made about the vacancies. It is not at all clear and definite. In view of these conflicting statements, the respondents were asked to produce the entire record including the vacancy register

to ascertain the correct position. The same was made available and we have also perused the vacancy register and also the files with the relevant notings. It is seen from the notings in the files that a review of vacancies of Group 'D' filled in from 1989 was taken. Thereafter a final exercise was carried out and the position which emerged as on 1/11/2002 was that the sanctioned strength of sepoys was 719 and the working strength was 653 leaving 66 posts vacant. There were also 58 posts of sepoy on cost recovery basis and all the 58 had been filled. It has been further brought out in the notings that due to cadre restructuring the strength of Group 'D' post has been reduced to 580 and there is a problem. It has also been recorded that although 29 casual labourers applicants were screened selected and medically tested and it was proposed to regularise them, the Ministry of Finance had not agreed to the same because a ban had been imposed by the Ministry on filling up of the vacant posts. Lot of correspondence has been exchanged. Two reasons are given for not filling up of regular posts, one is ban on direct recruitment vide letter dated 11/8/1999. The respondents seem to have made efforts by writing several letters to the Ministry to lift the ban on filling up of the posts. But the Ministry directed by letter dated 10/4/2001 ot to go for any fresh direct recruitment till finalisation of cadre restructuring. Further there is a letter of 23/7/2001 stating that no appointment shall be made on adhoc basis by direct recruitment from Open Market. The second objection is to the filling up of Cost Recovery adhoc posts through direct recruitment. Such objections was raised by letters dated 21/8/2001 and 5/9/2001. It is seen that the cadre restructuring may result in reduction of posts but it is not shown that any orders have been issued discontinuing 285 posts of Group 'D' on account of cadre restructuring. That in reality,



the posts have not been reduced is evident from the vacancy register. As on 1/12/2002, the sanctioned strength of sepoys was shown as 719, filled posts were shown as 652 and vacancies were shown as 67. Besides 69 posts of cost recovery were shown as sanctioned post and 67 were filled up and 2 were vacant. This being the position, it cannot be said that there are no vacancies at all. There may be a ban on filling up of posts. However, that ban is only on direct recruitment whereas the applicants are those casual labourers who have already been granted temporary status and who have been working for the past 12 to 13 years. Therefore the ban cannot be made applicable for regularisation of such applicants.

In our considered view therefore the remaining applicants i.e. the 29 casual labourers who have already been selected and empanelled also need to be regularised against the 2/3rd quota of 67 posts. Those already regularised are not to be reverted. The respondents are therefore directed to act accordingly within a period of two months from the date of receipt of copy of this order. In the result, the OA is allowed. As the respondents could not provide definite information about the number of vacancies and made misleading statements, we impost a cost of Rs.5,000/- on the respondents to be paid to the CAT BAR

OA-546/2001

ASSOCIATION.

In this OA the applicant has sought a declaration to the effect that he has been selected on a regular basis to the post of Sepoy against a regular vacancy in 1/3rd quota under direct recruitment and to hold him entitled to be so appointed on a regular basis with effect from 9/8/2000. He has further prayed to continue his appointment in the cadre of sepoy on adhoc basis

in the meantime and also to restrain the respondents from holding any other selection to the appointment for the post of sepoy for a vacancy against which the applicant has been selected by the reespondents. The applicant had also prayed for interim relief to continue his appointment in the post of sepoy on adhoc basis. The interim relief was granted and continued till the final hearing of the case.

- The applicant's name was sponsored by the employment exchange for appointment to the post of sepoy on receipt of the requisition placed by the respondents. The applicant was asked to appear for physical standard test for the post of sepoy on 30/6/2000. He accordingly appeared in the test and also appeared for oral interview. He was selected alongwith others to the post of sepoy vide establishment office order dated 14/7/2000. He was placed at serial no.1 in the said order. Thereafter he was given an offer of appointment vide letter dated 18/7/2000 and after undergoing medical examination and police verification, he was appointed with effect from 9/8/2000 and was posted in the Establishment Section. According to the applicant appointment was extended from time to time vide orders dated 15/11/2000, 15/2/2001, 8/5/2001, 28/6/2001 and 30/7/2001.
- 3. The applicant contends that he has been appointed against a regular vacancy which became available on promotion from the post of sepoy to the post of Hawaldar by establishment order dated 2/6/2000. A total of 65 sepoys were promoted to the cadre of Hawaldar (ordinary grade). Thus the resultant vacancies were available.
- 4. According to the OM dated 10/9/1993 of the DOP&T in regard to grant of temporary status to casual employees 2/3rd

vacancies of Group 'D' are to be filled up from amongst those casual labourers who are granted temporary status and 1/3rd vacancies are to be filled by direct recruitment from outsiders. The applicant submits that the respondents have appointed direct recruits after passing the Physical Standard Test and oral interview vide order dated 14/7/2000. Thus, it is absolutely clear that he has been appointed against a regular vacancy and within the quota meant for direct recruits and therefore he ought to have been appointed on a regular basis from 9/8/2000 itself. His appointment cannot be really said to be adhoc because he was selected after going through the various stages of selection as for regular selection. The applicant further submits that respondents have appointed number of temporary status casual labourers as sepoys during the year 1999 against 2/3rd quota meant for them. Even such appointments though supposed to be The applicant states that his regular are termed as adhoc. appointment has been termed as adhoc because of pending OA No.176/1999, inspite of this respondents have terminated his

It is the contention of the applicant that since his appointment was a regular appointment, his service cannot be terminated without following the proper procedure of issuing show cause notice.

services.

6. The respondents have opposed the OA. According to them the applicant though selected was only selected against an adhoc vacancy of cost recovery post and he was recruited erroneously on the cost recovery post, where direct recruitment is not permitted. Infact, there were no posts even on adhoc basis, thus the applicant's appointment itself was wrong. The respondents at

the relevant time of his appointment had not considered the on filling up of posts in terms of Ministry's instructions contained in letter dated 11/8/1999. Recently also similar instructions have been issued by Government of India, Ministry of Personnel, Public Grievances & Pension, D.O.P&T vide their letter dated 23/7/2001 reiterating that no appointment shall be made on adhoc basis by direct recruitment from Open Market, where vacant posts cannot be kept vacant, adhoc appointments by promotion or deputation may be considered. Thus at the time of applicant's appointment itself there was a ban on direct recruitment. Only cost recovery vacancies were available being temporary in nature for a given period and even these adhoc posts were to be filled in by promotion from regular feeder cadre such as Malies, Sweepers, Hamals, etc.

- The respondents submit that presently on the regular sanctioned strength there are only 52 vacant posts and already 58 persons including 38 temporary status casual labourers were erroneously appointed on cost recovery post. This was due to inadvertent information furnished by the department to the Tribunal resulting in the order dated 5/5/1999 of the Tribunal in OA 176/99 directing to fill up 62 posts. Accordingly 58 posts of cost recovery persons have now to be adjusted against the 52 available posts and even thereafter there will be six persons who will be waiting to be adjusted and there is no post available on regular basis. Therefore the recruitment of applicant itself is ab initio void.
 - 8. Coming to the promotion of 65 sepoys as Hawaldars, the respondents submit that the 65 posts consisted of 36 downgraded posts and therefore only 44 vacancies existed in the regular

cadre of sepoys, out of which 2/3rd vacancies are to be filled up by way of regularisation of sepoys already working on cost and 1/3rd ought to be filled by regular basis appointment. At the relevant time, there were 58 persons working on cost recovery basis who were erroneously recruited on adhoc The respondents categorically stated that there are no basis. regular posts of sepoys, even the appointment of 58 persons already appointed as sepoys against the cost recovery posts is in Out of the 58 sepoys, 38 are those who were granted temporary status and 19 are from the open market. One of them is a Mali who was entitled to regular promotion on cost recovery basis on government instructions as such there is no vacant post of sepoys and his services have been correctly terminated. respondents have also denied that there is any tradition that even though regular selection is made for appointment/promotion, they are termed as adhoc. The respondents have again admitted that the appointments which were made as per the directions of this Tribunal dated 5/5/1999 in OA-176/99 are on the basis of inadvertant facts, omissions and errors which were not brought on record. Even the offer of appointment to Shri Ramachandra V Dalvi is only an offer and not the actual appointment letter and therefore he has not been appointed so far. The respondents regret that all these erroneous appointments have taken place due to inadvertance in that the instructions of the Ministry issued from time to time had not been brought to the notice of Tribunal.

9. The respondents have produced the relevant vacancy register as well as the files.

- 10. We have heard the learned counsel for the applicant as well as the respondents. We find that the applicant was duly appointed after following selection procedure as is followed for regular appointment. However, it is equally true that his appointment was termed as adhoc. Being an adhoc appointee he could not have any claim over any post. Infact, even though the applicant presumed that his appointment was regular, he should have taken up the matter when his appointment was extended from time to time on adhoc basis. He had not challenged at that time. Be that as it may. We have to accept the respondents statement that the applicant's appointment was adhoc.
- The respondents have pleaded that it is due to want of any vacancy that the applicant's services are being terminated. However, the vacancy picture given by the respondents is rather confusing. In one place the respondents submit that there are only 52 vacancies available at present. In another place, it is stated that there are 44 vacancies after the promotion of sepoys. The whole question hinges on the correct vacancy position. It is seen from the record and the files that in the total number of psots of sepoys as on 1/11/2002 was shown a 719 and the working strength was 653 leaving vacancies of 66, in addition there were 58 posts of sepoys working on cost recovery basis and all the 58 were filled up. Thus it adds up to 719 + 58 whereas after cadre restructuring the total number of posts allocated to Mumbai Commissionerate of sepoys is shown as 201 and another 90 posts are likely to be allocated to R&I wing making it to 291. Further, 62 posts of LDCs are also likely to be made available. Thus, according to the chart placed in the file it is seen that the total sanctioned strength of Hawaldars and sepoys

...15.



works out to 580 as against 865 earlier. Thus, there would be a reduction of 285 posts of Group 'D' consequent to cadre restructuring. Even the position of vacancies indicated here is not clear. We cannot give any clear directions in regard to the regularisation of the appointment of the applicant in view of the categorical statement made by the respondents that there is no vacancy available. However, in view of the fact that there are clear instructions of the Ministry of Finance banning any fresh direct recruitment we have to hold that the applicant's appointment was erroneous. His termination therefore is justified. We cannot find any fault with the same. TA therefore fails and is dismissed accordingly. No costs.

(SMT.SHANTA SHASTRY) MEMBER(A)

(D.N.CHOWDHARY)
VICE CHAIRMAN

abp