

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 777/2001

DATE OF DECISION: 14th October 2002

Shri D.K. Jadhav

Applicant.

Shri Uday Warunjikar

Advocate for
Applicant.

Verses

Union of India and others

Respondents.

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

Advocate for

CORAM

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

(1) To be referred to the Reporter or not? *yes*

(2) Whether it needs to be circulated to *no*
other Benches of the Tribunal?

(3) Library. *yes*

S.L. Jain
(S.L. Jain)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO: 777/2001

the 14th day of OCTOBER 2002

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

D.K. Jadhav
R/at Banpatti Chawl,
Khaara Wadi,
Pimpri, Pune.

...Applicant

By Advocate Shri Uday Warunjikar

V/s

1. The Union of India through
The Secretary,
Ministry of Finance,
New Delhi.
2. The Deputy Commissioner
Central Excise & Customs
Pune II Division,
Having office at
Near Akurdi Railway Station
Akurdi, Pune.

...Respondents.

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

O R D E R

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

This is an application under Section 19 of Administrative Tribunals Act 1985 to quash and set aside the termination order dated 14.8.2001 with a direction to the respondents to regularise the service of the applicant in the post of Sweeper.

2. The applicant preferred an application to the respondents for grant of temporary status which was vide their letter dated January 2000 stating that since the applicant was not recruited prior to 7.6.1988 and also not through Employment Exchange, Temporary status cannot be granted to him (annexure A-4).

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3. The applicant claims that he was working under respondent as Sweeper since 20.9.1989 continuously though there was artificial break. The respondents had terminated his service on 14.8.2001. The learned counsel for the applicant submits that though the services of the applicant is temporary in nature and on daily wages basis, but as the applicant continued in the same post for such long period the work is available and there is requirement of such work. He has completed more than 240 days in a year, entitled to protection and regularisation. Hence this OA for the above said relief.

4. The claim of the applicant is resisted by the respondents. It is being stated that there was no regular sanctioned post of Sweeper in the then Pune VI Central Excise Division (now Pune II Division). It was the practice to engage the sweeper on daily wages basis for clearing of office premises of the Division and the Ranges thereunder. The applicant was appointed as Casual labour sweeper in the then Pune VI Division (Now Pune II Division) on daily wages basis with effect from 1.5.1990 vide letter dated 3.5.1990 (Annexure A-2) for a period of six months. Thereafter, he was temporarily employed as sweeper for five months from 1.11.1990 vide letter dated 14.2.1991. Further employed as such with effect from 2.4.1991 for a period of 11 months vide letter dated 19.4.1991 (Exhibit R-3). Again temporarily employed as sweeper with effect from 3.4.1992 for a period of 11 months vide letter dated 6.4.1992 (Exhibit R-4). The applicant was appointed as sweeper on purely

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daily wage basis for the period from 15.5.1992 to 29.5.1992 (Exhibit R-5). Thereafter on purely daily wage basis for other periods as shown in Annexure A-3 to OA, by issuing appointment/termination order from time to time.

5. Since the Division Office was shifted to new office complex, i.e. Excise Bhavan Building at Akurdi, Pune, where some other four Divisional Offices were also accommodated, the cleaning, security and gardening of the said premises was given on contract basis and as per guidelines/instructions, it was improper to continue engaging anybody separately for sweeping of Pune II Division. The D.C. Pune II is not empowered to continue engaging anybody separately for sweeping of Pune II Division. As such the services of the applicant were terminated by D.C. Pune II Division vide order dated 14.8.2001 (Annexure A.1). The services of the applicant were being terminated periodically since 1992 and he did not have continuous 240 days service in a year. As such, not entitled for conferring of temporary status. The services of the applicant were on daily wages basis for short period and cannot have any claim for regularisation in the Government Service. The applicant was not engaged against any regular post and appointment was purely on daily wages basis he cannot claim any kind of right or protection in this regard. Grant of temporary status as per DOPT's letter No. 51016/2/90-Estt (c) dated 10.9.1993 (Exhibit R-10) the applicant was not fulfilling the condition of one year service as on 10.9.1993 and he did not merit consideration even for temporary

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status as clarified in the letter dated 10.1.1997 of Central Board of Excise and Customs under F.No. 12034/34/96-AD.III.B (Exhibit R-11), in view of the clarification issued by DOPT's letter No. 49014/2/93-Estt.(c) dated 12.7.1994 (Exhibit R-12), as the applicant was not engaged through / sponsored by the employment exchange. The applicant has not preferred any representation before the Higher authority of the department against the order challenged. Hence prayed for dismissal of the OA alongwith cost.

6. The applicant's request for grant of temporary status has been turned down vide Annexure A-4 January 2000. The applicant filed this OA on 24.10.2001, beyond a period of one year and has not even claimed the relief of conferment of temporary status. As such the order rejecting the request of the applicant for temporary status (Annexure A-4) stands good.

7. In addition to it, the Supreme Court in the case of Passport Officer, Trivandrum and others V/s Venugopal and others decided on 27.1.1997, the memorandum dated 12.7.1994 which states that only those employee who had been recruited through Employment Exchange would be given temporary status was upheld. The claim of the applicant is not based on the facts that he was sponsored through Employment Exchange, as such rejection for conferment of temporary status even on merits holds good.

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8. The applicant has not calculated the working days in Annexure A-3. Perusal of the same makes it clear that he was worked in the year 1989 from a period commencing with 20.9.1989, in the year 1990 commencing with 20.1.90 to 1.5.1990, 8.6.1990 to 14.12.1990, 19.4.1991 onwards without specifying any date. In the year 1992 for total period of 130 days. In the year 1989, 1991, 1992 he has not worked for 240 days. Merely working of 240 days in a year does not make the applicant entitled for Regularisation. First he must be conferred with Temporary Status, for which his claim was rejected which holds good as such he cannot be considered for regularisation without having temporary status.

9. It is clear that the Casual Labourer who have been granted temporary status are entitled to be considered for Group 'D' cadre in their respective office. As per the Scheme by Department of Personnel and Training. The applicant is not holding temporary status his consideration for Group 'D' cadre cannot be looked into.

10. Regarding adopting of contract labour policy it is suffice to state that this Tribunal has no jurisdiction to entertain the grievance in respect of the same. If the applicant has any grievance he is free to agitate the same in a competent forum.

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11. Change of place i.e. change of office from Pune VI Division (now Pune II Division) to Akurdi, Pune namely Excise Bhavan Building at Akurdi, Pune where some other four Divisional Offices were also accommodated and the cleaning, sweeping, security and gradening of the said premises was given on contract basis.

12. The applicant on the date of commencement of the Scheme i.e. Casual Labourer (Temporary Status and Regularisation Scheme) with effect from 1.9.1993 have not rendered at least one year i.e. 240 days (206 days in case of office observing 5 days week) and even on 1.9.1993 he was not in employment, as such is not entitled to any benefit under the Scheme. In this respect the judgement reported in 2002(2) ATJ 215 Union of India and others V/s Mohan Pal etc. etc. decided on 29.6.2002 by the Apex Court 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 casual 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)."

13. On the basis of the said authority, the applicant's claim has no merit and the same deserves to be dismissed.

14. In the result OA deserves to be dismissed and is dismissed accordingly with no order as to costs.

S.L. Jain
(S.L. Jain)
Member(J)