

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO:496/2001

Date of Decision: 28/11/2002

Shri Suresh Dhondiba Narsale

Applicant

Shri Sai Kumar

Advocate for the
Applicant

Versus

Union of India & Anr

Respondents

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

Advocate for the
Respondents

CORAM:
Hon'ble Smt. Shanta Shastry, Member(A)

- (i) To be referred to the reported or not? ☒
- (ii) Whether it needs to be circulated to other
Benches of the Tribunal?
- (iii) Library? ☒

Shanta

(SMT. SHANTA SHASTRY)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:496/2001
DATED THE 28th DAY OF NOVEMBER, 2002

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

Suresh Dhondiba Narsale,
presently working as
Casual Worker/Hamal
in the Central Excise
Mumbai II Commissionerate,
Piramal Chambers, Parel,
Mumbai - 400 012.

residing at
Room No.9, Ram Dutt Niwas,
Santoshi Mata Road,
Near Bhandariwadi, Dahisar(West),
Mumbai - 400 068.

... Applicant

By Advocate Shri Sai Kumar

V/s.

1. Union of India,
through the Secretary,
Ministry of Finance,
Department of Revenue,
Government of India,
North Block, New Delhi - 110 011.

2. The Commissioner of Central Excise,
Mumbai II, Commissionerate, 9th Floor,
Piramal Chambers, Jijibhoy Lane,
Lalbaug, Parel,
Mumbai - 400 012.

... Respondents

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

(ORDER)

Per Smt.Shanta Shastry, Member(A)

By this OA the applicant who is working as casual labour has prayed for regularisation in Government service on the basis of the service rendered by him and to also grant him temporary status and regularisation against Group 'D' post with all consequential benefits.

2. The applicant was directly employed from 25/7/1992 on a full time basis according to him. The applicant was registered

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with Employment Exchange and passed SSC at the time of his employment. According to him he was fully eligible and appointed against a vacant post. The applicant performed different types of works as assigned to him. It is the contention of the applicant that he has worked continuously for more than 240 days every year and work done by him is of a perennial nature. He was even assigned to the budget cell from 15/2/2001.

3. The applicant submits that he gave two representations for grant of temporary status and regularisation, one of them was on 1/2/2000.

4. The applicant states further that his case is covered by OM dated 26/10/84. He also fulfills the requirements of the scheme of the Government of India introduced by OM dated 10/9/93.

5. The applicant mentions that one Smt.Laxmibai Palkar who was also working as Casual Labour in the same organisation was granted temporary status by order dated 15/11/99. She was also in a similar situation like the applicant.

6. The applicant has also relied on the judgement in a similar case in OA No.239/97 which was allowed by order dated 17/3/1998. The applicant submits that he is similarly placed to the applicant in the aforesaid OA. Further, another batch of casual labour had filed OA No.209/2000. It was also allowed by the Tribunal by order dated 7/2/2001. It was held therein that if the applicants had completed 206 days, they should be considered for grant of temporary status. In the OA it was held that it was not necessary that the Casual Labours should have been sponsored through the Employment Exchange.

7. The respondents have opposed the relief sought for. The respondents deny that the applicant is fulfilling the

conditions of the scheme of 10/9/93. The applicant was not sponsored by the Employment Exchange. The respondents have not denied that the applicant has been working as a daily wager and was directly recruited but according to them it is not correct that the applicant was appointed against any vacant post. He has been doing the work of cleaning of cabins/sweeping/swabbing and movement of records from one place to another within the office premises. The respondents admit that the applicant has completed 206 days of employment every year but because he joined on 25/7/1994 i.e. after the scheme of "Casual labour grant of temporary status 1993" had already come into operation and under the scheme only those who had put in atleast one year service as on 10/9/93 could be considered. The applicant cannot be conferred temporary status. Further, even in OA No.239/97 relied upon by the applicant, the applicants therein had been workign since 1989 and they were coming within the perview of scheme of 10/9/1993.

8. Referring to the case of Smt.Laxmibai Palkar pointed out by the applicant, the respondents submit that she had joined service prior to 7/6/1988 and was in service as on 8.4.1991 and therefore she was granted temporary status.

9. The respondents have also referred to the clarification issued by the DOP&T vide OM dated 12/7/1994, in respect of OM dated 10/9/1993, that the person has to be sponsored by the Employment Exchange. This was the ruling given by the Supreme Court in the case of Passport Officer, Trivandrum & Ors V/s. Venugopal C & Ors. It was held therein that if the department decides that only those employees who are recruited in normal

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manner i.e. through the Employment Exchange shall be given temporary status, no fault can be found with the department. The decision cannot be said to be unreasonable or arbitrary." The respondents have also brought to my notice a recent judgement of the Supreme Court, Viz. Union of India & Anr. V/s. Mohanlal & Anr. (2002) 4 SCC 573, decided on 29/4/2002. The Supreme Court held that the scheme of 10/9/1993 is not a continuous scheme and would therefore not apply to those who have been employed as Casual Labour after 10/9/1993. In the circumstances, the applicant cannot be considered for temporary status.

10. I have heard both the learned counsel for the applicant as well as the respondents and have given my careful consideration to the rival contentions.

11. It is not disputed that the applicant has put in more than 206 days of continuous service in a number of years from the day he joined and is working even now. It is not that he was not even registered with the Employment Exchange. It is true that he was not in employment as on 10/9/1993 nor had he put in 206 days of continuous service as on 1/9/1993. Therefore the ruling of the Supreme Court has to be abided by that the scheme of 1993 is not a continuous scheme. At the same time, the Government of India have been employing persons on casual basis in various departments and once again a similar situation has arisen as in the past when the scheme for casual labour was drawn up in 1993. Although the respondents have denied that the applicant was recruited against a vacant post, the fact of the matter is that the applicant has been working continuously since 1994 till date without break. Therefore, in terms of Supreme Court judgement

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in the case of State of Haryana V/s. Pyara Singh 1992 SCC L&S 825, it is to be deemed that there was regular work when a person puts in continuous service for a number of years and the Supreme Court has directed that in such cases, the persons need to be regularised. Accordingly, in my considered view, even if the respondents deny that the scheme of 10/9/1993 is applicable to the applicant, on account of continuous service put in by the applicant he deserves to be considered for regularisation. The respondents are directed to consider the applicant for regularisation. The exercise shall be carried out within a period of two months from the date of receipt of copy of this order.

12. In the result, the OA is allowed. No costs.

Shanta
(SMT SHANTA SHASTRY)
MEMBER(J)

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