

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE- 560 038.

REVIEW APPLICATION NO.33 of 1994 IN

Dated: 1 MAR 1995

APPLICATION NO:238,341 and 394 to 455 of 1994.

APPLICANTS:- Secretary, Ministry of External Affairs, New Delhi
and another.,
v/s.

RESPONDENTS:- Sri.M.H.Shivappa and sixty three others.,

To

1. Sri.M.S.Padmaraajaiah, Senior Central Government
Standing Counsel, High Court Building, Bangalore-1.
2. Sri.K.Subba Rao, Advocate, No.27, Chandrashekar Complex,
First Floor, First Main Road, Gandhinagar, Bangalore-9.
3. Dr.M.S.Nagaraja, Advocate, No.11, Second Floor,
First Cross, Sujatha Complex, Gandhinagar, Bangalore-9.

Subject:- Forwarding of copies of the Orders passed by the
Central Administrative Tribunal, Bangalore.

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Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/ passed by this Tribunal in the above
mentioned application(s) on 16-02-1995.

Issued on
01/03/95

[Signature]

9/c


for

[Signature]
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*




R/at No.46, III Main,
Lingaiahnapalya,
Ulsoor, Bangalore.

17. K. Kempanna,
S/o Chikka Kariyappa,
aged 23 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.79, Chennarayappa Bldg,
11th Cross, A.K. Colony,
Mathikere, Bangalore.
 18. M. Shaheena Banu,
D/o Md. Obeidulla,
aged 26 years,
Casual Employee,
Passport Office, Bangalore,
No.124 B, II Main Road,
Bapujinagar,
Mysore Road, Bangalore.
 19. S. Bhaskaran,
S/o R. Subramaniam,
aged 29 years,
Casual Employee,
Passport Office, Bangalore,
No.188, Old Bypanahalli,
7th Cross, S.R.S.Nilayam,
Bangalore-38.
 20. Smt. A. Savithri Bai,
D/o C. Aganoji Rao,
aged 33 years,
Casual Employee,
Passport Office, Bangalore,
No.3371/A, V Cross,
I Main Road,
Gayathrinagar,
Bangalore.
 21. Smt. Hamsaveni,
D/o late P. Madurai,
aged 26 years,
Casual Employee,
Passport Office, Bangalore,
No.10/4, Madurai Bldg,
III Cross, ITC Main Road,
Cox Town, Jeevanahalli,
Bangalore.
 22. K.R. Babu,
aged about 24 years,
Casual Employee,
Passport Office, Bangalore,
No.1, E No.II Street,
Shivajiroad Cross,
Shinvajinagar,
Bangalore.
 23. Smt. Noor Fathima,
D/o D. Abdul Kareem,
Aged 27 years,
Casual Employee,
Passport Office, Bangalore,
No.656 III Block, 46th Cross,
Rajajinagar, Bangalore.
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24. Smt. T.N. Uma,
D/o T.R. Narayanan,
aged 28 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.I Floor,
Narayanareddy Building,
Behind Canara Bank
Marathahalli, Bangalore.
25. Smt. B. Thresa Asha,
D/o late M. Bernard,
aged 25 years,
Casual Employee,
Passport Office, Bangalore,
No.160, Shivaji Road Cross,
Shivajinagar, Bangalore.
26. Smt. S. Sarala,
D/o B.K. Channarasappa,
aged 22 years,
Casual Employee,
Passport Office, Bangalore,
No.513, 10th Cross,
6th Block, Rajajinagar,
Bangalore.
27. Smt. T. Pramila,
D/o P. Thammaiyanna,
aged 26 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.24, 8th Cross,
Jakkasandra Main Road,
Mariyamma Temple Street,
Malleswaram,
Bangalore.
28. Smt. Yashoda,
D/o B. Lakshmana,
aged 25 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.113/2, Munnekolala,
Varthur Road,
Marathalli P.O.,
Bangalore.
29. Smt. Ragina Anitha,
D/o Arumai Nathan,
aged 30 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.113/2, Munnekolala Varthur,
Marathalli P.O.,
Bangalore.



30. Sri K. Gururaja,
S/o Krishna Rao Katti,
aged 27 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.307, 9th Main, II Stage,
Rajajinagar, Malleswaram West,
Bangalore.
 31. Smt. Latha,
D/o K.V. Sundareswaran Nair,
Aged 20 years,
Casual Employee,
Passport Office, Bangalore,
R/at H/No.85, K.S. Town,
Bangalore.
 32. Smt. B.L. Shashikala,
D/o A.B. Loganathan,
aged 21 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.3/1, Sangam Road,
Bangalore.
 33. Smt. D. Vijaya Lakshmi,
D/o R. Devaraj,
Aged 24 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.1, Vellariamman Temple Street,
Vivekanagar PO,
Bangalore.
 34. Smt. L. Renuka,
D/o M. Lakshminarayanappa,
aged 22 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.69, 2nd West Cross,
L.N. Colony,
Yeshwanthapur, Bangalore.
 35. Smt. B. Kavitha,
D/o Balakrishnan,
Aged 22 years,
Casual Employee,
Passport Office, Bangalore,
R/at O.G. 79, Ramanagari,
HAL PO, Bangalore.
 36. Smt. Surya Jabeen,
D/o Maqsood Ali Khan,
aged 36 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.42[Old]85, Nandidurg Road,
Benson Town, Bangalore.
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37. Smt. Sujatha,
D/o Velayudhan,
Aged 22 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.124, 4th Cross,
Saraswathipuarm,
Ulsoor, Bangalore.
38. Smt. Rajani,
D/o M.R. Puttanna,
aged 27 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.38, New No.86,
Anthony Nicholas Street,
Ashokanagar, Bangalore.
39. Smt. A. Mary,
D/o late M. Anthony Dass,
Aged 22 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.20, 6th G Cross,
Jogpalya, Ulsoor,
Bangalore.
40. Charles Anthony Samuel,
S/o B.S. Samuel,
Aged 25 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.J., Mo 3rd Street,
No.18, Ashokanagar,
Bangalore.
41. Sri R. Ravindran,
S/o K. Ramaiah,
aged 22 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.17/4, Chinnappa Colony,
Doorvaninagar,
Vijanapura,
Bangalore.
42. Smt. Bindu,
D/o Venugopal,
aged 24 years,
Casual Employee,
Passport Office, Bangalore,
R/at Lakshmianna Bldgs,
Motappapalyam,
Indiranagar,
Bangalore.




43. Smt. B.S. Prabha,
D/o Sathyanarayana Rao,
aged 20 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.9 B No.6th Street,
Milkman Street,
Ulsoor, Bangalore.
 44. Smt. S. Shanthi,
D/o Swaminathan
Casual Employee,
Passport Office, Bangalore,
R/at No.10A Type, Kattally,
BDA Quarters,
Shivan Shetty Gardens,
Bangalore.
 45. Smt. R. Jayasree,
D/o Ramaswamy,
Aged 22 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.11/1, 4th Cross,
Sudhamanagar,
Bangalore.
 46. C. Dheganeshwaran,
S/o Chinnaraj,
Aged 30 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.216, 3rd Cross,
Kanakadasa Layout,
Lingarajapuram,
Bangalore.
 47. G. Sellembu Selvam,
S/o N. Gajendran,
aged 24 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.35, Opp:Rcback Ind.,
Old madras Road,
Thambuchettypalya,
Virgonagar, Bangalore.
 48. Smt. Wajeeha Banu,
D/o M.B. Azmathulla,
aged 27 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.233/4, Kadirappa Road,
9th Cross,
Doddigumda Coxtown,
Bangalore.
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49. Smt. R. Niveditha,
D/o Ramachandraiah,
aged 23 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.67, I 'C' Main,
Near Pipeline Road,
Binny Layout,
Vijayanagar,
Bangalore.
50. Smt. Hema M. Nath,
D/o K.S. Manjunath,
aged 23 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.46/2, 7th Main Road,
Sreeramapuram,
Bangalore.
51. Narasimha Gowda,
S/o Govinda Gowda,
Aged 24 years,
Casual Employee,
Passport Office, Bangalore,
R/at Kumara Krupa Annex II,
Bangalore.
52. C.H. Manoj Kumar,
S/o Kunhia Raman,
aged 23 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.5/365, Krishnappa Bldg.,
Jalahalli,
Bangalore-13.
53. Smt. Kumuda Selvi,
D/o E. Parasuraman, E.,
Aged 36 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.37/A, Kallahalli,
Kensington Park Road,
Shivanshetty Gardens,
Bangalore.
54. Arivalagan,
S/o S.A. Lingesan,
Aged 34 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.35/3, A. Type Defence Qrs.,
Someswarapura Exten.,
Bangalore.



55. Smt. Thamil Selvi, R.
D/o Ramamurthy,
Aged 23 years,,
Casual Employee,
Passport Office, Bangalore,
R/at No.62, G Street,
Jokkupalayam Main Road,
Ulsoor, Bangalore.
 56. S. Shashi Kumar,
S/o late S. Shanmugan,
aged 26 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.2689, 11th Main,
D Block, II Stage,
Rajajinagar, Bangalore.
 57. Smt. D. Premalatha,
D/o Dorairaj,
aged 25 years,

Casual Employee,
Passport Office, Bangalore,
R/at No.110/1, Rudrappa Garden,
Viveknagar,
Bangalore.
 58. Smt. S. Arathi,
D/o M. Shekaran,
aged 20 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.1192, HAL III Stage,
New Thip+pasandra,
Bangalore.
 59. Jagadeesha,
S/o T. Krishna M,
Aged 26 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.B.246/1, Pushpa Enterprises,
Bahbalinagar,
Jalahalli,
Bangalore.
 60. K. Shivakumar,
S/o Seshappa,
aged 23 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.508, MES Road,
Gokula, Bangalore.
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61. V.C. Rajneeth Kumar,
S/o U. Leela,
Aged 29 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.298, Puttappa Layout,
New Thippasandra,
HAL III Stage,
Bangalore.

62. Smt. M. Chitra,
D/o M. Mothu,
aged 22 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.9, 2nd Cross,
Saraswathipuram,
Ulsoor, Bangalore.

63. R. Beena Kumari,
D/o SD/o S. Ranganathan,
aged 20 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.20, J.B. Street,
Viveknagar, Bangalore

[Applicants in O.A. Nos.238 & 394-455/94]

64. Miss K.G. Asha,
D/o T.K. Gajendra Naidu,
Aged 27 years,
Casual Employee,
Passport Office, Bangalore,
R/at No.528, I Floor,
4th Cross,
K.S. Garden,
Lalbagh Road,
Bangalore

[Applicant in O.A. No.341/94]

...Respondents

[By Advocates Shri K. Subba Rao &
Dr. M.S. Nagaraja for respondents]

O R D E R

Shri A.N. Vujjanaradhya, Member [J]:

1. The respondents in O.A. No.238, 341 and 394 to 455/94 have filed this Review Application ['RA' for



short] seeking to review the order passed therein on 30.6.1994. The review applicants state that the decision in OAs was rendered on 30.6.1994 and in the meanwhile the Ministry of External Affairs, Government of India, issued additional instructions/clarifications in its letter No.V.IV/579/13/93 dated 24.6.1994 as obtained from the Department of Personnel & Training, copy of which is at Annexure R-2. In clause [g] of the said letter, the ministry has clarified engagement through Employment Exchange ['EE' for short] is mandatory for conferring temporary status upon Casual Labourers ['CL' for short] and issue of clarification under the said letter became necessary as O.M. dated 10.9.1993 did not clearly speak about the mode of recruitment of daily rated CL through EE. As none of the applicants has been recruited through EE and as the guidelines issued in circular letter dated 24.6.1994 makes it mandatory that persons engaged through EE alone could be conferred with temporary status, the applicants who have not been sponsored by the EE are not entitled to conferment of temporary status as CL. The 2nd applicant received the clarification as contained in Annexure R-2 only on 18.7.1994 and in the meanwhile the order of this Tribunal directing the respondents to confer temporary status on such of the applicants as are eligible under the scheme dated 10.9.1993 was passed on 30.6.1994, the review applicants could not bring to the notice of this Tribunal the clarifications contained in Annexure R-2.

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Had it been noticed this Tribunal might not have come to the conclusion and directed the respondents to confer temporary status to the applicants as eligible under the scheme. Therefore, the review applicants seek review of the judgment rendered in the OAs and to modify the order dated 30.6.1994 by declaring that the scheme of grant of temporary status as envisaged in O.M. dated 10.9.93 is applicable to such of the applicants who were engaged/appointed through EE and further to declare that grant of one months' pay in lieu of notice is payable to only such of the applicants who are eligible for grant of temporary status.

2. The respondents oppose this RA on the following grounds:

The review application is not maintainable in view of the delay and the reasons seeking to condone the delay are not convincing. The points made out by the review applicants are not mistakes apparent on the face of the record. In equity the review applicants cannot take advantage of their own mistake having admitted that they have violated instructions of the Government of India in the matter of appointment as they did not get the respondents appointed through EE. The administrative orders issued cannot have retrospective effect and, therefore, the letter dated 24.6.1994 cannot be retrospectively applied.

3. We have heard Shri M.S. Padmarajaiah, learned



Standing Counsel for the review applicants and Shri K. Subba Rao and Dr. M.S. Nagaraja, learned counsel for the respondents.

4. O.A. Nos.238, 341 and 394 to 455/94 were disposed of with a direction to the present review applicants to consider conferment of temporary status on such of the applicants as are eligible under the scheme dated 10.9.1993 and also pay one months' emoluments in lieu of notice of termination to such applicants within a period of four months from the date of receipt of a copy of that order. Subsequently, it is the case of the review applicants that letter at Annexure R-2 dated 24.6.1994 came to be issued by the Ministry of External Affairs clarifying certain aspects regarding grant of temporary status and regularisation of CLs. Clause [g] of Annexure R-2 states "Engagement through Employment Exchange is mandatory for conferring temporary status upon casual labourers." Stating that this letter was received by the second review applicant only on 18.7.1994 subsequent to the passing of the order, this RA is made along with M.A. No.404/94 seeking to condone the delay in filing the RA as the review application was filed only on 5.8.1994 stating that the learned Standing Counsel had dictated the memorandum of RA to his Stenographer in the evening of 28.7.1994 and had requested the Stenographer to get the application typed latest by 29.7.1994 so that the RA could be filed on 30.7.1994, the last date for filing such RA and that unfortunately his Steno-

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grapher fell ill and he had not attended the office and, therefore, there was a delay in filing the RA which could be filed only on 4.8.1994. The respondents have not denied these averments of the learned Standing Counsel in the affidavit filed by him and, therefore, we deem it proper to condone the delay of a few days and hear the application on merits.

6. O.A. No.238, 341 and 394 to 455/94 were heard in the month of June 1994 and orders were pronounced on 30.6.1994. Even though the letter from which the review applicants now seek support for seeking modification of the order under review was issued on 24.6.1994 the 2nd review applicant wants to make out that it was received only on 18.7.1994 and, therefore, application could not be filed before the orders were passed and in view of the clarification so issued, the order is required to be modified. The letter dated 24.6.1994 as at Annexure R-2 issued by the Ministry of External Affairs is not in the nature of statutory order. It is in the nature of administrative instructions and such administrative instructions cannot have retrospective operation. One of the additional clarifications sought to be issued in the said letter is for the purpose of conferment of temporary status the engagement of employees through EE is mandatory. Such instructions or guidelines cannot have retrospective effect. Shri Subba Rao rightly contended that only legislature or constitutional authority



can make a law making it operative retrospectively and not circulars or administrative instructions. He also rightly contended that such a circular cannot take away a substantial right accrued to the respondents.

7. Learned counsel representing the respondents also contended that the registration with EE is not compulsory but directory and that respondents not being sponsored by EE does not render the appointment irregular or illegal and for this contention support is sought from the decision in NARASIMHAMURTHY [M.C.] AND OTHERS V. DIRECTOR OF COLLEGIATE EDUCATION AND OTHERS reported in 1967[2] LLJ 606. It was also urged that the Employment Exchanges [Compulsory Notification of Vacancies] Act is only to enlarge and not to restrict the opportunity and the Act does not oblige any employer to always resort to seeking sponsoring of names from the EE. In this connection support was sought from the decision in the case of UNION OF INDIA AND OTHERS V. N. HARGOPAL AND OTHERS reported in 1987[3] SCC 308. Shri Padmarajaiah sought to make a distinction of these decisions contending that the decisions from which the respondents seek support refer to the recruitment to a vacancy or vacancies and not employment of CL. This distinction sought to be made out is, we have to observe, without any difference. The principle is applicable even to employment of CL. However, we have to make it clear that the administrative instructions on which the review applicants now seek to rely can only operate

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prospectively and not retrospectively and, therefore, they are not entitled to seek modification of the order dated 30.6.1994.

8. Dr. Nagaraja contended that the review applicants having violated the Government of India instructions not getting the names from EE, they are not entitled to take advantage of their own mistake and therefore they cannot maintain this RA. He also pointed out that there are no statutory instructions issued under Article 309 laying down conditions for appointment of CL and, therefore, the review applicants cannot seek to modify the order on subsequent instructions which can have only prospective operation. We see no reason to disagree with the above contentions.

9. In the result we see no merit in this review application and dismiss the same.

Sd/-

MEMBER [A]

Sd/-

MEMBER [J]



TRUE COPY

Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore