

Ob. in CA KU 2/93

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NOS.: 1247/93 AND 1258/93.

Dated this Wednesday, the 28th day of January, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

1. Raju J. Chandaliya,
Ex-Safaiwala.
2. Smt. Shakunta M. Mali,
Ex-Broom.
3. Shri D. K. Dedge,
Ex-Groundsman
4. Shri S. S. More,
Ex-Broom.
5. Mrs. Sumitra C. Balmiki,
Ex-Safaiwala.
6. Smt. Krishna Meghraj Balmiki,
Ex-Safaiwala.
7. Kishorilal Kari,
Ex-Groundsman.
8. B. N. Kamble,
Ex-Milk Distribution Man,
M. D. Farm.

National Defence Academy,
Khadakwasla,
Pune - 411 023.

(By Advocate Shri S. P. Saxena)

1. A.S. Gaikwad,
Ex-Groom.
2. J. Anthiah,
Ex-groom.
3. B. S. Negi,
Ex-groom.
4. D. P. Deshmukh,
Ex-Groundsman.
5. C. B. Kondhekar,
Ex-Groom.

Naikwade
Shri T. S. S.
Shri T. S. S.
.. Applicants in
O.A. No. 1247/93.

.. Applicants in
O.A. No. 1258/93.

6. D. Y. Patekar,
Ex-Groundsman/Luscar.

7. B. D. Barku,
Ex-Mess Boy.

8. James Raypen,
Ex-Groom,

9. Salahudin S. Shaikh,
Ex-Cycle Repairer.

National Defence Academy,
Khadakwasla, Poona - 411 023.

(By Advocate Shri S. P. Saxena)

... Applicants in
O.A. No. 1258/93.

VERSUS

1. Union Of India
through the Secretary,
Ministry of Defence,
New Delhi - 110 011.

2. The Commandant,
National Defence Academy,
Khadakwasla,
Poona - 411 023.

(By Advocate Shri R. K. Shetty).

.. Respondents in
O.A. Nos. 1247/93
and 1258/93.

: ORAL ORDER :

PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN

These are two applications filed under Section 19 of the Administrative Tribunals Act, 1985. The respondents have filed reply. We have heard the Learned Counsels appearing on both the sides.

2. In both these cases, the applicants came to be employed with the respondents against leave vacancy or short term vacancy or casual vacancy. It is alleged that the respondents were appointing the applicants from time to time with intermittent artificial break for number of years. The applicants were not given formal appointment orders. The applicants'

services are to be regularised according to law. The applicants were sponsored for regular appointment through Employment Exchange. They are entitled to be absorbed on permanent basis or alternatively, their services are to be regularised but the applicants came to be terminated illegally by the respondents and they have not offered any other appointment to the applicants. Hence, the applicants have filed these two O.As. directing the respondents to absorb them or to regularise them in their service and for other consequential reliefs.

3. In the reply, the respondents state that whenever there was some leave vacancy of Class-IV employees, the applicants were taken on temporary basis. It is stated that applicant Nos. 2 and 8 in O.A. No. 1247/93 and applicant no. 7 in O.A. No. 1258/93, never worked under the respondents as per the available records. It is also stated that the applicants were appointed on contract basis for a specific period and hence they cannot ask for regularisation of their service. Then they have given details of the period of work done by the various applicants, except three persons, and that the applicants are not entitled for the benefit of either absorption or regularisation as per rules, hence it is prayed that both the applications should be dismissed.

4. The learned counsel for the applicants contended that all the applicants are entitled to

be regularised as per rules and the respondents should be directed to appoint them in regular vacancies and confirm them. On the other hand, the Learned Counsel for the respondents contended that the applicants had been appointed on contract basis in substitute vacancies for short periods and they have no right to claim either absorption or regularisation.

5. The Learned Counsel for the applicant brought to our notice an identical case decided by this Tribunal in O.A. No. 1314/92 and connected cases vide order dated 23.08.1995. That was an identical case where this Tribunal gave a direction to the respondents that whenever a vacancy arises, the applicants in the case should be considered for appointment and regularisation after relaxing the age limit.

But the Learned Counsel for the respondents placed reliance on the decision of the Supreme Court reported in 1992 (21) ATC 377 [Director, Institute of Management Development, U.P. V/s. Pushpa Srivastava (Smt.)]. That was a case where the appointment was in respect of a project and since the project came to an end by efflux of time, it was held by the Supreme Court that the applicant in ^{that} the case has no right to continue in the post and claim regularisation in service. In our view, that decision is based on the peculiar facts of that case and has no bearing on the point under consideration.

As far as the present case is concerned, our view is that the point is covered by a decision of the Supreme Court in the case of State of Haryana and Others V/s. Piara Singh & Others reported in 1992 (21) ATC 403. The Supreme Court has observed in para 46 that an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. Then, it is further observed in para 51 that in case of casual labourer, efforts must be made to regularise them as far as possible and as early as possible, subject to their fulfilling the qualifications and subject ofcourse, to the availability of work. It is also pointed out that if a casual labourer is continued for a fairly long spell of two or three years, then a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the authority concerned to examine the feasibility of his regularisation.

We, therefore, feel that in the light of the observations made by the Supreme Court and in the light of the earlier decision of this Tribunal in O.A. No. 1314/92 and connected cases, the applicant in these cases are entitled to certain directions regarding appointment.

6. As already stated, in both these cases, the respondents have taken a specific plea that

three of the applicants have never worked under the Respondents as per the available records. Those three persons are applicant nos. 2 and 8 in O.A. No. 1247/93 and applicant no. 7 in O.A. No. 1258/93. These three applicants have not produced any material before the Tribunal to show that they have worked under the respondents but the respondents have themselves admitted that all the applicants in these two cases, except the three applicants, have worked under them for different spells of time ranging over a period of few years, therefore, those applicants will have to be given reliefs as observed by this Tribunal in O.A. No. 1314/92. As far as the disputed cases of three applicants mentioned above, we feel that a direction should be given that their cases should be considered by the department on the basis of records and then pass a speaking order whether their claim should be accepted or not. If any adverse order is passed, then they can file a fresh O.A. challenging the same according to law.

As far as the age relaxation is concerned, the Learned Counsel for the respondents contend that as per rules, only the period during which the applicants worked are to be relaxed and not the entire period till now. But, in the judgement of this Tribunal in O.A. No. 1314/92, it is stated that if the applicants at the time

of initial appointment were within the age limit, then they should be now considered for fresh appointment without going into the question of age limit. We have already pointed out that the applicants came to be appointed after they were sponsored through Employment Exchange. They have already worked in the department for few years with intermittent breaks. Now, this litigation has been pending for nearly five years, therefore, we feel that a direction given in the previous case regarding age limit is just and reasonable and we should follow the same guidelines.

The Learned Counsel for the respondents contend that the applicants should satisfy medical test. We feel that the applicants should satisfy the medical test for being appointed to a regular vacancy.

7. In the result, both the O.As. are allowed partly as follows :-

- (i) Whenever next vacancy arise, the respondents shall consider the case of the applicants in these two cases on the basis of their seniority, which shall be counted from the date of their initial appointment.

(ii) While filing up the vacancies which would arise, the respondents should not go in for open market i.e. Employment Exchange, till the list of applicants in these two O.As. are exhausted.

(iii) The applicants' case shall be considered by the respondents for appointment to regular vacancy, provided they are within the age limit as per rules on the date of their initial appointment in the casual or substitute vacancy.

(iv) The applicants should satisfy the medical test before they are appointed to a regular vacancy.

(v) As far as applicant nos. 2 Smt. Shakunta M. Mali, and applicant no. 8, Shri B.N. Kamble, in O.A. No. 1247/93 and applicant no. 7 - Shri B. D. Barku, in O.A. No. 1258/97 are concerned, they may make representations to the respondents about the duration of work done by them and by producing whatever documents they have to show that they have worked under the respondents-department at any time. The applicants may make such a representation within a period

of two months from the date of receipt of this order. Then, the Competent Authority shall decide their claim and accept it or reject it by a speaking order within a period of two months thereafter. If the claim is rejected, then it is open to those applicants to approach this Tribunal according to law.

(vi) In the circumstances of the case, there will be no order as to costs.

MEMBER (A).

VICE-CHAIRMAN.

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