

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 714/93

Transfer Application No.

Date of Decision 28.1.1997

D.D. Bade

Petitioner/s

Shri S.P.Kulkarni

Advocate for  
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri S.S.Karkera for Shri P.M.Pradhan

Advocate for  
the Respondents

CORAM :

Hon'ble Shri. M.R.Kolhatkar, Member (A)

Hon'ble Shri.

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

(2) Whether it needs to be circulated to  
other Benches of the Tribunal ? X

*M/R Kolhatkar*

(M.R.KOLHATKAR)

MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

OA.NO. 714/93

Dated this the 28th day of January 1997

CORAM: Hon'ble Shri M.R.Kolhatkar, Member (A)

Dayanand Dnyanu Bade  
residing at Room No. 6,  
Chawl No. 8, Mahatma Phule  
Nagar, near Narayan Guru High School,  
P.L.Lokhande Marg, Chembur, Bombay.

By Advocate Shri S.P.Kulkarni

... Applicant

V/S.

1. Union of India through  
Asstt. Controller of Foreign Mails,  
Foreign Post, Irwin House,  
Bellard Estate, Fort, Bombay.

2. Controller of Foreign Mails,  
Foreign Post, Irwin House,  
Bellard Estate, Fort, Bombay.

By Advocate Shri S.S.Karkera for  
Shri P.M.Pradhan, C.G.S.C.

... Respondents

O R D E R (ORAL)

(Per: Shri M.R.Kolhatkar, Member (A))

In this OA. the applicant who was working as a Casual Labourer under Respondent No. 1 has impugned the oral termination by Respondent No.1. It is not disputed that the applicant was selected as a casual labourer on daily wages through Employment Exchange and has been working as such atleast since after 12.3.1986

vide page 24 Annexure-'G'. The grievance of the applicant is that he has been terminated orally w.e.f. 23.7.1992 and that this oral termination is in violation of the "scheme relating to grant of temporary status and regularisation of casual labourers" promulgated by the Department of Posts in pursuance of the direction of the Hon'ble Supreme Court, Para 1 of which states that :-

" 1. 'Temporary Status' would be conferred on the casual labourers in employment as on 29.11.1989 and who continue to be currently employed and have rendered continuous service of at least one year; During the year they must have been engaged for a period of 240 days (206 days in the case of offices observing five days week)."

In Para 9 of the written statement the respondents have conceded that the applicant had completed 240 days in a calendar year and thus Para 1 of the scheme is applicable to the applicant. The contention of the respondents, however, is that no formal orders conferring temporary status were passed till 30.11.1992 when about 17 casual labourers<sup>admittedly juniors</sup> were given temporary status from 1.11.1992. Para 10 of the scheme states that :-

" 10. Temporary status does not debar dispensing with the service of a casual labourer after following the due procedure."

Para 11 states that :-

" 11. If a labourer with temporary status commits a misconduct and the same is proved in an enquiry after giving him reasonable opportunity, his services will be dispensed with."

3. According to the respondents, the applicant was suspected of having committed a theft in the foreign post office, viz. a parcel and the same was established in an internal enquiry and since the department was not bound to follow the provisions of Paras 10 and 11 of the scheme as the applicant was not granted temporary status, the applicant was asked not to come to the office and accordingly his services stood terminated.

4. The counsel for the applicant contends that the material date for grant of temporary status was 29.11.1989 and it is not disputed that the applicant was in service on that date. It was only because administrative procedures required to be followed were not completed that a formal order regarding grant of temporary status was not issued before the date of incident. His right to grant of temporary status therefore crystallized on 29.11.1990, viz. after one year from 29.11.1989 and the department could not but have followed the procedure envisaged in Paras 10 and 11 of the scheme. It is also to be noted that the scheme itself was promulgated on 12.4.1991 and the date of incident was subsequent to the same, namely, 22.7.1992.

5. The counsel for the applicant also relied on the following judgements :- Kashinath L.Chhade vs. The General Manager, Mahanagar Telephone Nigam Ltd. & Anr., OA.NO. 307/88 decided on 12.4.1994 reported in 1994 (3)(CAT) SLJ 208. In this case the services were terminated without giving opportunity of being heard and the Tribunal found that the applicant had completed 240 days service, <sup>and</sup> set aside the order of termination. The applicant also relied on this Tribunal's order in Tanaji Dattu Mane vs. Secretary, Department of Posts & Ors. OA.NO. 484/91. In that case, the applicant's services were terminated orally. The Tribunal proceeded on the basis that "since the applicant had been working as casual labourer since 1986 to March, 1990, and it is stated that the work is still available it would be just and proper that the respondents employ him as casual labourer. Therefore, under the circumstances the Tribunal directed the respondents to employ the applicant as casual labourer preferably within three months."

6. The applicant next relied on the decision in Rajendra Kumar vs. D.R.M.Jhansi & Anr. (1988) 7 ATC 554, in which case the Tribunal held that Railway authorities have a duty to observe principles of natural justice while terminating services of a casual labourer. This judgement was, however, delivered by referring to the guidelines of the department dated 13.12.1985.

7. In my view, Rajendra Kumar's case as well as Mane's case does not help the applicant because Rajendra Kumar's case proceeded on the interpretation of instructions of Railway Ministry and Tanaji Dattu Mane's case proceeded <sup>on the basis of</sup> ~~with~~ the principle of equity and the admission of the department that the work was available. It appears, however, that the judgement in Kashinath Chhade's case is applicable to the case but <sup>the</sup> most important aspect I am required to notice is the scheme of regularisation of the casual labourers which was promulgated as a consequence of the judgement of the Hon'ble Supreme Court. The right of the applicant to be declared as of temporary status in terms of department circular dated 12.4.1991 crystallised at least on 29.11.1990 because on 29.11.1989 the applicant was in service and had completed 240 days in a calendar year thereafter. Failure of the department to issue orders conferring temporary status on the applicant cannot take away the right of the applicant which flows from Paras 10 and 11 of the scheme and which are required to be held applicable to the applicant on or after 29.11.1990. Admittedly, the principles of natural justice are not followed. No enquiry was conducted and the applicant was simply asked not to come to office. This action of the department is in violation of the guidelines issued by the Government. Since the guidelines are in pursuance of the Hon'ble Supreme Court's decision, the guidelines enjoy sanctity and

have the blessings of the Hon'ble Supreme Court and therefore have to be read strictly.

8. In view of this discussion, I am of the view that oral termination of the applicant w.e.f. 23.7.1992 cannot be sustained. At the same time, I must consider the right of the department to see that the honest employees are employed so that consumers of postal services, i.e. citizens do not suffer. Considering the above and considering that the applicant has not pressed the claim for back wages, I dispose of the OA. by passing the following order :-

The respondents are directed to reinstate the applicant within one month from the date of communication of the order. The respondents are also directed to pass an order conferring temporary status on the applicant from or prior to 1.11.1992 when his juniors were given temporary status. Applicant's name also should be restored in the list of casual labour waiting absorption as a casual labourer. It is open to the respondents, however, to take action against the applicant in terms of Para 10 and 11 of the scheme dated 12.4.1991 on the basis of incident 22.7.1992, if they are so inclined at this stage or so advised. No backwages. No order as to costs.

*M.R. Kolhatkar*

(M.R. KOLHATKAR)

MEMBER (A)