

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 275/94

Date of Decision: 14/7/99

Miss Bharati D. Walnuskar

Applicant.

Shri D.V.Gangal

Advocate for
Applicant.

Versus

Union of India & Anr.

Respondent(s)

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

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman.

Hon'ble Shri. B.N.Bahadur, Member(A).

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?


(R.G. VAIDYANATHA)
VICE CHAIRMAN

abp.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

GULESTAN BLDG.NO.6, 4TH FLOOR.,

PRESCOT ROAD, FORT, MUMBAI-400001.

ORIGINAL APPLICATION NO.275/94.

DATED THE 14TH DAY OF JULY, 1999.

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

HON'BLE SHRI B.N.BAHADUR, MEMBER(A)

Miss Bharati D Walnuskar,
Residing at:
Sector No.3,
Building No.B/10/2/2:3, C.B.D.,
Belapur, New Bombay - 400 614.

... Applicant.

By Advocate Shri D.V.Gangal.

V/s.

The Union of India
Through

1. The Chief Post Master General,
General Post Office,
Bombay - 400 001.

2. The Superintendent,
of Post Offices,
New Bombay Offices,
New Panvel - 410 206.

... Respondents.

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

I O R D E R I

I Per Shri R.G.Vaidyanatha, Vice Chairman I

This is an application filed under section-19 of Administrative Tribunals Act. We have heard both the Counsels.

2. The short point for consideration in this case is whether the applicant who had worked as part-time casual labourer for certain period is entitled to reinstatement/regularisation. The applicant's case is that she had worked for 340 days during different spells of time during 1992-93. Her services came to be



terminated by oral order and she is no longer in service from 12/10/93 and onwards. She also alleges that some juniors have been subsequently inducted by the department on casual basis. She therefore wants the order of termination to be quashed and she should be reinstated and her services should be regularised with all consequential benefits.

3. Respondents in their reply have disputed the period of work of the applicant. According to them, the applicant had worked as Part time Casual Labourer only for a period of 236 days. She is not entitled for regularisation under the scheme. They have denied the allegation that some juniors were appointed or engaged in the place of the applicant. According to the respondents, the question of regularisation will not arise in case of part-time employees.

After hearing both sides and considering the legal points, we find that the applicant is not entitled to the reliefs prayed for by her.

4. It has been decided by ~~some~~^{some} judgements of this Tribunal including the Full Bench in Sakubai's case reported in 1991-93-80, Full Bench judgements ~~that~~^{that} regularisation of casual labourers scheme will apply to part time employees also. The respondents counsel has brought to our notice that the decision of Full Bench was reversed by Supreme Court in Civil Appeal No.301/94 vide judgement delivered in April, 97, reported in (1998(1)ATJ-556) /copy of which has been placed before us. The Supreme Court has clearly ruled that the Tribunal's view that

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part time employees are entitled to temporary status and consequential benefit of regularisation is not correct. The appeal was allowed on that account.

5. Subsequently, the said decision of the Supreme Court was re-affirmed by another bench of Supreme Court in judgement dated 24/10/97 in Civil Appeal No.7457/97 where also it is reiterated that part time employees are not entitled to get temporary status under the rules.

The Learned counsel for applicant contended that even if the applicant as a part time employee will not get regularisation, still her case should be considered in view of the law declared by Supreme Court in "State of Haryana and Ors v/s. Piara Singh and Ors" reported in 1992 SCC(L&S)823. After discussing the various questions, the Supreme Court has given broad guidelines in paras 45 to 51.

In para-45, the Supreme Court has clearly stated that normal selection is through regular recruitment. It is also noticed that due to administrative exigencies appointments may be made on adhoc or temporary basis but such an employee may be replaced by a regular selected employee.

In para-49, it is observed that if an adhoc or temporary employee is continued for a fairly long spell, the authorities may consider his case for regularisation subject to eligibility and qualification. Therefore, the Supreme Court has clearly ruled that normal selection is through regular recruitment. Only

the employees who have worked for a long spell may be considered for regularisation subject to their fulfilling the conditions mentioned in the Recruitment Rules.

In the present case, the applicant had worked only during 1992-93 and that too for 340 days according to her and 236 days according to the respondents. It is not such a lengthy period so as to attract the rule laid down by Supreme Court in Piara Singh's case.

6. Therefore, in our view, even on the basis of Piara Singh's case, the applicant cannot get any direction to the respondents to regularise her service in the de-casualisation scheme. The learned counsel for respondents pointed out that the scheme will apply to only Group 'D' posts and not to Group 'C' posts, since according to them, postal assistant is a Group 'C' post. Since we ^{have held} ~~have held~~ that the applicant is not entitled to benefit of regularisation, we need not consider the rival contentions on this point about the application of regularisation scheme to Group 'C' post.

7. Another submission made by counsel for applicant is that she was an adhoc employee and adhoc employee should not be replaced by another adhoc employee and he further argued that he has given some instances where some of her juniors were appointed subsequently. There is no sufficient material before us in support of this argument. We ^{do not say} ~~also say~~

that there is no material to show that those employees had never worked previously as part time Casual Labourers.

If the scheme is not applicable to part time employees, the question of seniority of part time employees will not arise, as the same will not be maintained by department and therefore we cannot accept the contention of the applicant that those persons mentioned in para-4.5 of OA are juniors to ^{her} ~~her~~. Sufficient materials/particulars are wanting., hence we cannot express any opinion at this point.

8. Counsel for respondents states that Postal Assistant is a Group 'C' post for which there are specific recruitment rules issued in 1990 and recruitment is to be made ~~only on that basis~~. Therefore, the applicant will have to apply for direct recruitment under the rules as and when the applications are called for. It is only in a case where lengthy spell of adhoc service has been rendered, the adhoc employee could be considered for regularisation as stated in para-49 of the judgement of the Supreme Court mentioned above.

In case there is sufficient work in the postal department and if the applicant offers herself either for a part time or full time job, the administration may consider her case and employ her on casual basis subject to her seniority and eligibility.

9. ^{In} the result, the application fails
and is hereby dismissed.. There will be no orders
as to costs.

B.N. Bahadur

(B.N. BAHADUR) 14/7/99.
MEMBER(A)

R.G. Vaidyanatha

(R.G. VAIDYANATHA)
VICE CHAIRMAN

abp.