

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 817/94

DATE OF DECISION: 26th Nov, 99

Shri Babu Dagdu Kadu and others Applicant.

Shri P.A.Prabhakaran. Advocate for
Applicant.

Versus

Union of India and others. Respondents.

Shri R.K.Shetty. Advocate for
Respondent(s)

CORAM

Hon'ble Shri D.S. Baweja, Member (A)

Hon'ble Shri S.L. Jain, Member (J)

- (1) To be referred to the Reporter or not? No
- (2) Whether it needs to be circulated to
other Benches of the Tribunal? No
- (3) Library. yes

S.L. Jain
(S.L.Jain)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:817/94

the 26th day of November 1999

CORAM: Hon'ble Shri D.S.Baweja, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

1. Bhau Dagdu Kadu
2. Radhakrishna Pillai R.
3. Yesudas
4. Stanley Jhon V.
5. Prakash Pandurang Panchal
6. Suresh Fale
7. Seetaram J. Bhalerao
8. Francis Swamy
9. Navanath Baban Marathe
10. Ganesh Kridhna Ghare
11. R.D.Bodke.

C/o Secretary
M.E.S. Employees Union,
Lonavala Branch,
Garrison Engineer,
I.N.S.Shivaji.

...Applicants.

By Advocate Shri P.A.Prabhakaran.

V/s

1. Union of India through
Secretary,
Ministry of Defence
New Delhi.
2. Engineer-in-Chief
Army Head Quarters
E/B (C)
Directorate Kashmir House
DHQ, PO New Delhi.
3. Chief Engineer,
Southern Command Pune.

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P. A. Prabhakaran

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4. Chief Engineer, Bombay Zone
26 Asseya Bldg., Colaba,
Bombay.
5. Command Works Engineer,
(Sub) Powai, Bhandup,
Bombay.
6. Garrison Engineer,
Naval Works, INS Shivaji
Lonavala.

...Respondents

By Advocate Shri R.K.Shetty.

O R D E R

{Per Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act 1985 to regularise as Group 'D' employees with effect from the dates of their initial appointment as mentioned in para 4.3 of the application, Seniority on the principles laid down by the Ernakulam Bench in their judgement dated 19.2.1992 in V.K. Pazhimal and 29 others in OA 30/91, Arrears with interest at the market rate alongwith costs.

2. At the commencement of the hearing the learned counsel for the applicant stated that applicant No.3 no more survives, services of the applicant No.12 S.L. Walke has been regularised as per order dated 5.3.1993.

3. The applicants are Majdoors employed in Military Engineering Service, Lonavala, in employment for a long period with intermittant breaks. The details of service particulars of the applicants are detailed in para 4.3 which are as under:

S.L. Jain

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S.No	Name	Date of appointment	Total No of days of service put in (Excluding the Artificial Break)	Date of Termination of Service (Orally communicated)
1.	B.D.Kadu	21.10.80	644	13.1.86
2.	Radhakrishna Pillai	16.1.84	614	13.1.86
3.	K.Yesudas	13.8.84	356	19.8.85
4.	Stanly Jhon	17.9.83	525	13.1.86
5.	P.P.Panchal	1.9.84	356	19.8.85
6.	Suresh Fale	20.9.83	356	10.12.84
7.	Francis Swami	9.4.84	267	10.12.84
8.	Seetaram J Bhalerao	31.8.84	347	19.3.86
9.	Navanath Baban Marathe	6.5.85	258	19.3.86
10	Ganeshkrishna Gare	13.8.84	267	8.11.85
11	R.D.Bodke	20.4.85	168	19.8.85
12.	S.L.Walke	13.8.84	436	13.8.86

Some of the applicants were asked not to report on duty from 1984 and onwards.

4. The claim of the applicants is based on the ground that Mazdoors of I.N.S.Shivaji's Branch and another Branch of the Ernakulam were asked not to report on duty. They agitated the said issue before Central Administrative Tribunal Ernakulam Bench in the case of V.K. Pazhnimala and 29 others in OA 30/91 were already granted regularisation following the judgement of Central Administrative Tribunal Bench, Bombay right from the initial

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appointment. It is also claimed that in view of policy decision of 7th June 1988 all the daily wages employees were directed to be regularised vide order dated 8.4.1991. Southern Command Engineer's Branch forwarded the letter of the Chief of the Naval Staff dated 19.5.1992 for regularisation but no steps were taken in this respect. On completion of 240 working days, they were entitled for regularisation but the respondents did not took any steps even inspite of reminder in October 1993 to respondent No.1. As the applicants fulfill conditions mentioned in policy decision 7.6.1988, other similarly situated employees are regularised, the respondents though duty bound to do so, failed to do so. Hence this OA for the above said relief.

5. The claim is resisted by the respondents on the ground that it is barred by time as the cause of action arose in 1985-86 and OA is filed after lapse of 8-10 years, there were no regular or permanent posts as there was no regular work or requirement of vacancies of the applicants. There was ban on recruitment, their case for future would be borne in mind if some work crops up subject to their fulfilling the requirement. They were appointed on casual basis for intermittently works on a specific job after obtaining sanction from the competent authority as casual labourers. They were appointed for 89 days and thereafter depending upon the work requirements in MES.

D.C. Sharma

6. In OA 30/91 the applicants were appointed on casual basis intermittently against permanent posts. Hence the said order is not applicable to the present case. As the applicants were not in service on 7.6.1988 as required by DOP&T OM dated 8.4.1991, nor appointed for regular nature of work, could not be appointed against the regular vacancy, hence discharged. Hence prayed for dismissal of the OA alongwith costs.

7. The applicants filed the rejoinder, contended that the reply is filed by respondent No.6, which does not state that it is being filed on behalf of all the respondents, having an authority to file the same on their behalf. The reason being that the answering respondent failed to carry out the instruction of the Superior Officers. OA is not barred by time as applicant No.12 S.L.Valke has been regularised on 5.3.1993. Similarly situated persons were regularised as per order of OA 30/92 and 31/92 as per Exhibit 1, reminder pending and respondents asked for regularisation on 25.9.92. Annexure A/4 and A/5 is contrary to the reply of the respondents.

8. On perusal of the order passed in OA 30/91 V.K.Pazhanimala & 29 others V/s Union of India and others, we find that the reliefs sought in the said case was regarding the date of regularisation as per initial appointment by condoning the break in service and the matter for regularisation was not under consideration.

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9. The O.M.No.49014/86-Estt. dated 7.6.1988 is relied on by the applicant. On perusal of para 10 of the same it is mentioned that the regularisation of the service of the Casual workers will continue to be governed by the instructions issued by this department in this regard. While considering such regularisation a Casual worker may be given relaxation in the upper age limit only if at the time of initial recruitment as a casual worker, he had not crossed the upper age limit for the relevant post. The applicant has also relied on O.M. No.49014/4/90-Estt.(L) Ministry of Personnel, Public Grievances & Pension (Department of Personnel & Training) dated 8.4.1991. Perusal of para 2 and 3 makes it clear that it was decided that those who were appointed before 7.6.1988 and who are in service on 8.4.1991 may be considered for regular appointment to grade 'D' post in terms of general instructions even if they were recruited otherwise than through employment exchange and had crossed the upper age limit prescribed for the post, provided they are otherwise eligible for regular appointment in all other respects. Thus it was a pre-condition that the casual workers were recruited before 7.6.1988 and who are in service.

10.....On perusal of para 4.3 of the OA it is true that the applicants were recruited prior to 7.6.1988 but none of the applicants were in service on 8.4.1991 or even on 7.6.1988. Their services were terminated prior to 14.8.1986. Hence the applicants are not entitled to any relief in view of Annexure A-2 dated 7.6.1988 and Annexure A-1 dated 8.4.1991.

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11. The applicants were casual workers on intermittent works on a specific job, hence the order of the Tribunal in OA 30/91 does not help them. Further, they were not appointed against regular post/vacancy.

12. The respondents counsel relied on an order passed by the High Court of Karnataka at Bangalore in Writ Petition No. 968 1295 to 1306/99 on 18.6.1999 by which the termination of the services of the casual labourer was upheld on the ground that the work was of casual nature.

13. The learned counsel for the applicants also relied on the order passed on OA No.580/89 decided by Central Administrative Tribunal, Madras Bench in case of A.P.Balasubramaniam and 34 others V/s Union of India and others. The criteria adopted for regularising the services of casual labour in the said case is "Two years as a casual labour with 240 days (offices observing six days weeks) or 206 days (offices observing five days week) or more of service as such during each year. The details submitted by the applicants as stated above in para 3 of the order do not fulfill the said criteria. Hence the said authority also does not help the applicants.

14. The respondents have fairly stated that the case of the applicants for future vacancies would be borne in mind, if some work crops up subject to their fulfilling the requirement.

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10. In the result we do not find any merit in this OA and the OA deserves to be dismissed and is dismissed accordingly with no order as to costs.

S.L. Jain
(S.L.JAIN)
MEMBER(J)

D.S. Baweja
(D.S.BAWEJA)
MEMBER(A)

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