

OA 1351/94

*Duplicate for
Tingles*

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CAMP : PANAJI.

ORIGINAL APPLICATION NO.: 1351 OF 1994.

Dated this 12th the _____ day of July 1996.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).
HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

Smt. Nisha Kalangutkar ... Applicant
(By Advocate M.S. Sonak)

Versus

Union Of India & Others ... Respondents
(By Advocate Shri E. Badrinarayan)

ORIGINAL APPLICATION NO.: 260 OF 1995.

Smt. Sarita D. Desai ... Applicant
(By Advocate Shri M.S. Sonak)

Versus

Union Of India & Others ... Respondents
(By Advocate Shri E. Badrinarayan)

ORIGINAL APPLICATION NO.: 1299 OF 1995.

Shri Menino Vaz & 10 Others ... Applicants
(By Advocate Shri M.S. Sonak)

Versus

Union Of India & Others ... Respondents
(By Advocate Shri E. Badrinarayan)

: ORDER :

{ PER.: SHRI B. S. HEGDE, MEMBER (J) }

Heard Shri M.S. Sonak for the applicant and
Shri E. Badrinarayan for the respondents. The issue involved
in all these O.As. are similar and accordingly we dispose of
all these O.As. by passing a common order.

2. In these OAs. the applicants are seeking to impugn the action of the respondents in not regularising their service despite their having rendered service in officiating/ temporary capacity on casual basis since 1988 onwards. The contention of the applicants in this O.As. are that - their names were sponsored for the post of L.D.C. in the office of the Respondent No. 4 and they fulfilled the required qualification for the appointment of L.D.C. Accordingly, the applicants were appointed on officiating/ temporary capacity until further orders. They have also been paid salary in the scale of Rs. 950-1500 plus allowances admissible from time to time. Nevertheless, they were subject to number of artificial breaks in the service and the break extended from 1 to 10 days. At times, though there was no break in service, yet it has been made to appear that the appointment is separate. In this O.As. the applicants seek regularisation of their service w.e.f. the date they have been appointed initially.

3. The respondents in their reply have stated that the applicants were engaged as Lower Division Clerks purely on casual basis against leave vacancies and was not appointed to any post sanctioned by the Government. Therefore, the applicants are not coming under the definition of Government Servant. In this connection, it is submitted that the Ernakulam Bench of this Tribunal vide order dated 08.02.1991 in O.A. No. 66/90 filed by Shri K.J. Francis & 4 Others, had held as follows :-

" It is now established law that casual workers cannot be deemed to be holding posts as such. This is supported by the decision of the Supreme Court in State of Assam V/s. Kanak Chandra AIR 1967 SC 884."

Relying upon the Full Bench decision as well as Supreme Court decision referred to above, it was held that the principle laid down by the Supreme Court that the casual labour does not hold a civil post is binding as a precedent. Thereby, it is observed that the applicants are not entitled to approach this Tribunal as Government servant. Further, it was contended that these personnel were appointed against the sanctioned post on permanent basis. In order to meet additional workload due to availing of leave or for undertaking unexpected additional temporary work, the Government have empowered the various administrative authorities of the Navy to create temporary short term vacancies in excess to sanctioned post vide NI/1/S/81. In order to meet the expenditure towards the temporary short term vacancies, the Government allots funds separately every year. The short term vacancies are created purely on the basis of exigencies of services and such vacancies are filled by employment of personnel on casual basis for the specific period and on expiry of the period they automatically cease to be in employment. The Learned Counsel for the respondents submits that they have maintained the seniority list of the applicants depending upon their category and the number of services rendered by them and as and when a permanent vacancy occurs, they are being absorbed depending upon the length of service, etc. A doubt was raised during the course of hearing that L.D.C.s and U.D.Cs. are recruited through Staff Selection Commission or through Employment Exchange. In this connection, the Learned Counsel for the respondents submitted that he had verified from the department and in view of the Navy Orders issued from time to time, recruitment to Class III and IV posts are filled in order of their precedence.

- (a) Surpluses and Deficiencies Pool promulgated vide Army Order 4/S/53.
- (b) Disabled Service Personnel sponsored by the Director General, Employment and Training or the Director General Resettlement.
- (c) Candidates in whose favour the competent authority has waived the requirement of being sponsored by an employment exchange.
- (d) Employment Exchange.
- (e) Advertisement.

It is further submitted that all vacancies with the exception of casual vacancies of less than three months' duration and posts which have been specifically exempted from the operation of this scheme are to be reported to the respective sub-zone/Zone/command headquarters for adjustment of surplus personnel. A list of the posts exempted from this scheme is given in Annexure-I to this appendix. To avoid delay in filling up the posts, the local employment exchange should be simultaneously approached for sponsoring suitable candidates, although the nominees of the employment exchange are to be appointed only after the vacancies have been released by the competent authority for local recruitment. The procedure of being sponsored by an employment exchange which is a statutory obligation, can be relaxed in the following type of cases :

- (a) Wives, Sons, daughters or near relatives of Service personnel who died in harness, killed or disabled in enemy action.
- (b) Dependents of central government employees who die in harness.
- (c) Persons who cease to be in service on the ground that they failed to resume duty on expiry of the maximum period of extraordinary leave admissible to them as temporary employees.

All short term posts of less than three months' duration are to be filled through the employment exchange. Short term vacancies of over three months' duration will be filled up in the same manner as prescribed for regular vacancies vide paragraph 2 above. The terms and conditions for the employment of 'Industrial' and 'Non-industrial' personnel in short term casual posts are given in the Ministry of Defence letters dated 16.01.1954 and 26.09.1966 respectively.

4. During the course of hearing, we requested the learned counsel for the respondents to show us the seniority list maintained by the respondents and also to state whether the recruitment of L.D.C. is done by the Staff Selection Commission or by the Employment Exchange. From the above, it is clear that the casual vacancies are filled through Employment Exchange and there is no doubt that such appointments are being done through Employment Exchange nominees and not by Staff Selection Commission. Regarding seniority list, the learned counsel for the respondents furnished the seniority list maintained by the respondents in which all the three applicants names are figured in. They are being appointed on the basis of their seniority in service as and when the vacancy arises. Since the applicants have been appointed on leave vacancy and some other similar situation, they cannot seek regularisation unless their appointment is done in accordance with the rules. The Learned Counsel for the respondents, Shri E. Badrinarayan, draws our attention to the various decisions relied upon by them.

Firstly, with regard to laches, he relied on the decision in the case of Bhoop Singh V/s. Union Of India [AIR 1992 SCC 1414] wherein it was held that termination of service of petitioner alongwith many others - Petitioner challenging termination after 22 years - no explanation offered for delay - his challenge cannot be allowed merely because others similarly dismissed had been reinstated - refusal of relief cannot be said to be discriminatory, etc. In support of his contention, he also relied upon the decision in the case of Delhi Development Horticulture Employees' Union V/s. Delhi Administration [AIR 1992 SCC 789] wherein it is observed that the petitioners were given employment under the schemes which have been evolved to provide income for those who are below the poverty line and particularly during the periods when they are without any source of livelihood and, therefore, without any income whatsoever. The schemes were further meant for the rural poor, for the object of the schemes was to start tackling the problem of poverty from that end. The object was not to provide the right to work as such even to the rural poor - much less to the unemployed in general. Further it is observed, this is not to say that the problems of the unemployed deserve no consideration or sympathy. This is only to emphasise that even among the unemployed a distinction exists between those who live below and above the poverty line, those in need of partial and those in need of full employment, the educated and uneducated, the rural and urban employed, etc. Therefore, the Learned Counsel for the respondents contends that mere appointment on casual basis does not empower them to regularisation without being resorted to rules and also states that it is the policy of the respondents to meet the exigency of service to take some casual employees from time to time and the decision taken by the Government cannot be agitated before the Court of Law.

In support of his contention, he relied upon the decision in the case of Union Of India & Others V/s. Teiram Parashramji Bombhate & Others [AIR 1992 SCC 570].

5. Though the applicants have prayed for interim relief seeking direction to the respondents not to terminate their services, the Tribunal though allowed status-quo continue till 06.03.1995 and till 06.03.1995 and till further orders, ultimately, after hearing both the parties, the status-quo order passed earlier was vacated on 28.04.1995. However, the respondents were directed to continue offer employment to the applicants as LDC subject to availability of vacancy as in the past. In case the respondents employ a person other than the applicant who is junior to the applicants, that is to say, who has not worked since 09.03.1988 and who has not been engaged through Employment Exchange, then the applicant will be at liberty to approach the Tribunal for further orders.

6. In the conspectus of the facts and circumstances of the case, there is nothing on record to show that any junior employee to that of the applicants are engaged in service superseding the claim of the applicants. Since the respondents submit that they have maintained the seniority list of such of the employees like the applicants and have not superseded any of the guidelines of the Government of India in regularising the service of such employees and thus, there is no merit in the application and the same deserves to be dismissed.

7. In the result, we are satisfied, that the respondents have not overlooked the seniority list in engaging the services of the applicants as and when vacancy arises and since the appointment of the applicants till the termination of service was purely on temporary vacancy either against leave vacancy or other similar vacancy, they cannot seek regularisation from the date of their initial appointment. Accordingly, we see no merit in the O.A. and the same is dismissed. No order as to costs.

(M. R. KOLHATKAR)
MEMBER (A).

(B. S. HEGDE)
MEMBER (J).

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