

7

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1078/94.

M.P. No.: 768/98.

Dated this Monday, the 18th day of January, 1999.

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

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

Yeshwant L. Parab & 15 Others ... Applicant  
(By Advocate Shri D.V. Gangal)

VERSUS

Union Of India & Others ... Respondents.  
(By Advocate Shri V.S. Masurkar)

TRIBUNAL'S ORDER :

This is an M.P. for amendment of the O.A.  
Pending grant of amendment, the first applicant has prayed for certain interim reliefs. The respondents have filed objections to M.P. Since today we are at the fag end of the day, there is no time to hear regarding the petition for amendment. The Learned Counsel for the applicant presses for interim relief as prayed for in the M.P. We have heard both counsels on this limited point.

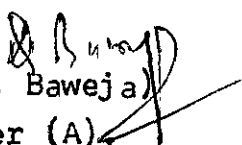
2. The applicants have filed this O.A. for regularisation of their service. Now the administration has taken a decision to regularise the services of the applicants. They have already issued orders to all the applicants. Except the first applicant, Yeshwant L. Parab, all other- applicants have accepted the order of posting and regularisation. The first applicant, being aggrieved by the order of posting and regularisation dated 26.11.1998,


  
...2

has approached this Tribunal for staying that order.

3. The Learned Counsel for the respondents pointed out that there are nearly 500 employees and they are to be regularised and given proper postings. We are told, most of them have been already given posting. Applicant Nos. 2 to 16 have been given posting at Bombay and Goa. As far as the first applicant is concerned, he is posted to Visakhapatnam. Therefore, the first applicant should comply with that order and join his posting at Visakhapatnam. In case he succeeds in the O.A. in convincing the Tribunal that his services should be regularised and he must be absorbed either at Goa or Bombay, the Tribunal can issue appropriate direction. Hence, at this stage, we are not inclined to interfere with the impugned order dated 26.11.1998, declaration dated 29.09.1998 and another order dated 29.09.1998. Liberty to the applicant to join the new place of posting at Visakhapatnam without prejudice to any of the contentions in the present O.A. In case he succeeds in the O.A. and the Tribunal is convinced that he should be absorbed at Goa or Bombay, the Tribunal can always give appropriate direction and the first applicant can be re-posted either to Goa or Bombay.

4. Place the M.P. for amendment <sup>for</sup> and further hearing on 05.02.1999.

  
(D. S. Baweja)  
Member (A)

  
(R. G. Vaidyanatha)  
Vice-Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:1078/94

DATE OF DECISION:

*15th of February 2000*

Shri Yeshwant L. Parab and 15 others Applicant.

Shri D.V. Gangal Advocate for  
Applicant.

Versus

Union of India and others Respondents.

Shri V. S. Nasurkar Advocate for  
Respondents

CORAM

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

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

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

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

(3) Library.

*No*

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

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:1078/94

*This Tuesday the 15<sup>th</sup> day of February 2000.*

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

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

*(15-02-2000)*

1. Yeshwant L. Parab
2. Ranganath T. Kudnekar
3. Govind M.N. Dessai
4. Lawrence F.Rebello
5. Smt. Ranjita R. Parab
6. Ramdas B. Fernandes
7. Prasad S. Naik
8. Bhanudas L. Shirodkar
9. Joro C.S. Gracias
10. Jyotibha L. Kumbhar
11. Mrs. Meena N. Naik
12. C.K. Pillai
13. Ladko N. Naik
14. Pramod X Naik
15. Kanta B. Gaude
16. Premanand P.Naik.

All the above applicants are working  
as Assistant Store Keepers in the Naval  
Stores Depot, at Goa Naval Base,  
under the Administrative Control of  
Southern Naval Command, Cochin.

...Applicants

By Advocate Shri D.V.Gangal

V/s

1. Union of India through  
The Flag Officer  
Commanding-in-Chief  
Southern Naval Command  
Cochin, Kerala

*P.C. D... - ...2...*

:2:

2. The Flag Officer Commanding  
Head quarters, Goa Area,  
Vascp-da-Gama, Goa.

...Respondents

By Advocate Shri V.S.Masurkar.

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 quash and set aside the Office Orders by which 89 days' appointments are granted on Casual basis, directing the respondents to treat the applicants as regular from their dates of appointments with all monetary and non-monetary benefits, to hold and declare that the policy of issuing office orders of appointing the applicants for 89 days is ultra-virously constitutional and the vacancies existed for regularisation of the applicants from their dates of appointment.

2. The applicant's case, in brief, is that the respondents submitted requisition for the post of Assistant Store Keepers to the Employment Exchange Goa. They received call letters from the Employment Exchange for written test and interview by respondent No.2. They were subjected to written test and interview, in which they were declared empanelled for appointment against vacancies. Applicant No.3, Govind Mahadeo Naik Dessai was appointed on 23.4.1986 and rest of the applicants were appointed vide order dated 26.10.1987 on officiating/temporary capacity.

*[Handwritten signature]*

...3...

:3:

3. The grievance of the applicants is that regular vacancies exists and against the same they were temporarily appointed in officiating capacity. The fact that they were appointed on casual basis is missing in appointment letter. The applicant M.N. Dessai, applicant No.3 and Lawrence F. Rebellow, applicant No.4 worked for five years without break. The other applicants were given a break of two days after 89 days. The respondents have taken the advantage of their need of employment and the employment market being hopelessly bad the applicants continued to work for 89 days at a time with break of two days. Applicant No. 3, Shri M.N. Dessai and Applicant No.4 Shri Lawrence F. Rebellow were given break vide letter dated 31.1.1994. The public policy is not to exploit the youth and any action of the Government, contrary to this public policy is void and it contravens Section 23 of the Contract Act. They have submitted their representation dated 30.8.1994. They are denied all the benefits available to permanent employees, their seniority position and they have not<sup>been</sup> given their promotional prospects. They are not regularised and confirmed. Hence this OA for the aforesaid reliefs.

4. The respondents admitted that the applicants are being sponsored by the Employment Exchange and they are appointed on the dates mentioned. They alleged that the application is mis-conceived and does not have any merit as they are appointed on casual basis, not to any sanctioned post, there are 12 Naval

D.C. 811 /

...4...

units in Goa under the administrative control of the Flag Officer, Commanding Headquarters, Goa Area Vasco-da-Gama, Goa. The posts are sanctioned by the said Naval Units by the Government and personnel are appointed against the sanctioned posts on permanent basis. In order to meet additional temporary work, the Government have empowered the various administrative authorities of the Navy to create temporary short term vacancies in excess to sanctioned posts vide NI 1/S/81 marked as Annexure R2. In order to meet the expenditure towards the temporary short term vacancies the Government allots funds separately every year. The short term vacancies automatically cease to be on the expiry of the period mentioned. Though it is not necessary to appoint the casual employees strictly as per the Recruitment Rules, in order to be fair and reasonable the practice followed by respondent No.2 is that whenever short term vacancies are created such vacancies are notified to the local Employment Exchange and personnel are selected to the posts from the Employment Exchange nominees after test and interview. A person engaged against a short term vacancy for the specific period on casual basis ceases to be in employment on expiry of the period of engagement. However he can be re-appointed against similarly created short term vacancies afresh depending upon the exigencies of service without coming through the Employment Exchange. Thus a casual employee may continue for longer periods in different posts depending upon the exigencies of requirement from time to time. As the posts are created afresh on different dates there will be

:5:

gap between the ceasure of employment of casual employee and his subsequent appointment against fresh vacancies. Whenever permanent vacancy occurs due to retirement of permanent employees, such vacancies are filled by absorbing the casual employees in the concerned trade based on their seniority of initial engagement. The appointment of the applicants are on contract basis. Annexure A2 is in respect of labour in Group 'D' post while post of Assistant Store Keeper is Group 'C' post.

5. Applicant No.3 Govind M.N. Dessai had already been absorbed on regular vacancy and joined at INS Shivaji, Lonawala on 7.10.1994 alongwith two other similarly placed persons. Continuous engagement on casual basis does not confer any right for regular appointment. As the period of service is not continuous and for short term, the question of grant of increment etc. does not arise. The absorption of remaining applicants will be in accordance with seniority and select list of existing sanction and billet. Regularisation can be only against sanctined posts. Hence prayed for dismissal of the OA alongwith costs.

6. Vide order No. SE/2163/Regularisation dated 26.11.1998 by Naval Headquarters, New Delhi, Applicant No.1, 2, 7, 9, and 13 to 16 named Yeshwant L. Parab, R.T. Kudnekar, P.S.Naik, Joro C.S. Gracias, Ladko N. Naik, Pramod X. Naik, Kanta B.Gaude and Premanand P. Naik respectively have been regularised.

*P.L.D.* ....6....



7. Applicant has filed an application M.P. 768/98 seeking amendment in the O.A. which was considered and allowed on 05.02.1999. The amendment could not be carried out within the time granted. On 07.05.1999 time was extended to carry out the amendment within six weeks. But no amendment was carried out.

8. The perusal of the appointment order of the applicants No. 14, 13, 1 and 2 which is annexed by the applicants themselves as Annexure-21, it is clear that they have been appointed as casuals. The similar orders are said to have been passed in respect of other applicants also. The Learned Counsel for the applicants relied on the scheme called "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993" and argued that the applicants seek to be regularised in view of the said scheme. Firstly, the said scheme is meant for labourers and not for Group 'C' employees. Secondly, the scheme is by Department of Personnel & Training. We are dealing with the case of Ministry of Defence, hence the same is not at all applicable to the applicants.

9. The Learned Counsel for the respondents relied on the scheme regarding terms and conditions of the Services of Casual Industrial and Non-Industrial employees issued on 26.09.1996 vide letter no. 3(3)/65/11828/D. On perusal of the said scheme we are of the considered opinion that a person in employment for more than one year without break should be converted into regular employee with effect from the date of their initial employment as

S. S. M. -

casual employees, if the comandents, etc. are satisfied that their services will be required on a long term basis. The said fact is borne out by para (a) of the said scheme. The said terms and conditions of services of Casual Non-Industrial Employees were modified by letter no. 23482/BC-4/Org.4(civ)(d)/13754/D (Civ-II) dated 24.11.1967 and clarified by letter no. 09776/32/OSBC/3604/D(Civ.I) dated 30.04.1968, further clarified by letter No. CP(A)/5107 dated 22.02.1974, again clarified by letter of Controller General of Defence Accounts and instructions dated 27.05.1980.

10. The Learned Counsel for the respondents relied on an order passed by Ernakulam Bench of Central Administrative Tribunal in a group matter (O.A.No. 967/90, 973/90, 30/91, 383/91, 572/91 and 1579/91) decided on 01.07.1974, on an order of this Bench sitting at Goa in O.A.No. 1298/95 decided on 09.10.1998, 1997 SCC (L&S) 1484 (Union of India & Others V/s. M. Dharani & Others) decided on 08.07.1997 and 1998 (2) ATJ 504 {Benjamin Jairaj Kurasu & Others V/s. Union Of India & Others}. We have considered the said decisions and we are of the considered opinion that the said decisions are not at all relevant at this stage for the reasons that the question of seniority after regularisation is not in dispute in the present case but the dispute is regarding regularisation itself.

P. S. -

11. It is true that vide letter dated 31.01.1994 (Annexure A-18), the applicants Shri G.M.N. Desai, who was appointed on 24.03.1986, Shri Manoj Kholkar, Shri L. F. Rebellow and Shri P. J. Parab who were appointed vide order dated 26.10.1987, were given technical break on 31.07.1994. As they were not employed on regular vacancies, the act of the respondents cannot be said to be an illegal one.

12. We have perused the appointment orders of the applicants which are attached to the O.A. marked as A-2 to A-17 and we find that all were appointed on officiating/temporary capacity till further orders. It cannot be said that they were appointed against a regular vacancy permanently. Hence, the applicants are not entitled to any benefits which the permanent employees are entitled to.

13. The fact that they were sponsored by the Employment Exchange and after due selection they were employed, does not add anything to their casual employment. The said fact may be relevant after regularisation. It is true that lakhs of persons are unemployed and the Government as a model employer is not expected to exploit the situation but it does not mean that in the absence of a post, a person can be appointed. Mere continuance of the post for a long period does not mean that the

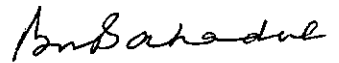
*[Signature]*

post existed or situation is being exploited. To say that would mean to act against the whole system. The technical breaks given to the applicants were in view of the sanction for a limited period and after the expiry of the said sanction, if further sanction is received, extension is awarded for the said period with technical break.

14. In the result, we do not find any reason to regularise the services of the applicants No. 4, 5, 6, 8, 10, 11 & 12 (the respondents have already regularised the services of the remaining applicants, as stated above in para 5 and 6 of the order). The applicants are not entitled to any monetary or non-monetary benefits, as there existed no vacancies. Hence, the O.A. deserves to be dismissed and is dismissed accordingly. No order as to costs.

  
(S. L. JAIN)  
MEMBER (J)

ns/os\*



---

(B. N. BAHADUR)  
MEMBER (A).

15-02-2000