

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

Original Application No.346/1995

Dated: 05.01.2001

Panchaling Patil

Applicant.

Shri G.S.Walia

Advocate for  
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S.Masurkar

Advocate for  
Respondent(s)

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? *Yes*

(2) Whether it needs to be circulated to  
other Benches of the Tribunal? *No*

*B.N.BAHADUR*  
MEMBER (A)

THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

Original Application No.346/95

Dated this Friday the 5th Day of January 2001.

Coram: Hon'ble Shri B.N. Bahadur, Member (A)  
And  
Hon'ble Shri S.L. Jain, Member (J)

Panchaling Patil,  
working as Senior Foreman  
(Air Radio)  
in the Naval Aircraft Yard  
Dabolim  
GOA 403 801.  
and residing at Hira Niwas, Flat No.5  
II floor, Mangoor Hill,  
Vasco-da-Gama, Goa,  
Pin 403 801.

Applicant

(Represented by Shri R. Ramesh, Advocate)

vs.

1. Union of India through  
The Secretary,  
Ministry of Defence,  
South Block,  
New Delhi 110 001.
2. Chief of Naval Staff,  
Naval Headquarters,  
New Delhi 110 001.
3. Flag Officer Commanding,  
Headquarters Goa Area,  
Vasco-da-Gama,  
Goa 403 802.
4. The Captain Superintendent,  
Naval Aircraft Yard,  
Dabolim  
Goa 403 801.

Respondents.

(Shri V.S. Masurkar, Adv.)

ORDER

[Per B.N.Bahadur, M (A)]

This is an Application made by Shri Panchaling Patil,  
Senior Foreman (Air Radio), Naval Aircraft Yard, Goa, seeking a

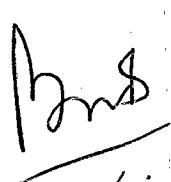
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*B.N.B*

relief from this Tribunal, for a direction to the Respondents, to regularise his services as Senior Foreman (Air Radio) from the date of his initial Appointment, viz. 29.9.1987. He also seeks a declaration that continuing him on casual terms is arbitrary, and violative of the Constitution of India. Consequential benefits of payment of arrears/other benefits are also sought. An amendment had been made in this Application, due to subsequent events, and the Applicant had added three prayers through this Amendment. (P.15A). Here the Applicant challenges the order passed by the Respondents on 23.7.1999 absorbing the Applicant only as Ty. regular Foreman instead of Senior Foreman. Thus, the Applicant effectively now challenges these orders, and seeks a declaration that he is entitled to be regularised only as Senior Foreman, w.e.f. 29.9.1987, with consequential benefits, and not merely as Foreman.

2. While the above paragraph sums up the basic facts and issues involved, the Applicant details out, in his application, the facts of his employment with the present Respondents. He states that after discharge as Chief Petty Officer, (Electrical Radio), from employment in the Indian Navy on 31.7.1987, the Applicant was sponsored by Rajya Sainik Board in response to a regular advertisement for the post of Senior Foreman (Air Radio). After an interview, he was so appointed in an officiating/temporary capacity w.e.f. 29.9.1987, until further orders (E.H.). He worked there without break, but was not provided any increments. He was assured that his appointment would be made permanent in due course, since it was against a

...3.



clear vacancy. On 30.4.1994, he made a representation for such regularisation (Ex.B). The ground taken in the representation, *inter alia* was that five similarly situated persons, were regularised after the expiry of one year and were enjoying all benefits available to regular employees.

3. The applicant avers that this representation was forwarded with full recommendation (Ex.I). However, his case was then rejected, as we have briefly described in paragraph 1 and 2, Through incorporation of additional paragraphs, vide an amendment, the applicant has further described the events, after the order dated 23.7.1999 was made, whereby regularisation has been provided to the applicant as regular Foreman and that too w.e.f. 7.6.1999, on a probation of two years.

4. The Respondents have filed a reply, resisting the claims of the Applicant. It is averred that the Applicant was engaged as Senior Foreman (Air Radio) against a short term casual vacancy due to shortages of cadre/service personnel. Further, that the applicant was not appointed to any post sanctioned by the Govt. and hence could not be classified as a Govt. Servant Support is drawn from the decision of the Ernakulam Bench of this Tribunal dated 8.2.1991 in O.A. No.66/90 filed by Shri K.J. Francis and others, and the contention made that the casual workers cannot be held as holding any posts, as such.

5. The above reply statement further goes on to aver that the Naval Aircraft Yard (NAY) in Goa is under the administrative Control of Respondent No.3 and depending on workload and requirements various categories of posts have been sanctioned.

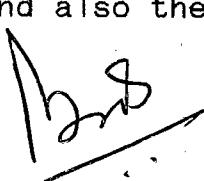
Both category of staff i.e. service personnel and civilian personnel had distinct work jobs; service personnel are engaged on board of warships etc. whereas the civilian personnel are at shore ships. However, due to shortages of service personnel, sanction of equivalent civilian personnel is granted as a temporary measure. The averment is made that person engaged on a short term vacancy or continued due to exigencies of service does not come to acquire any claim of regular employment as a matter of right. In the background of these facts, the Respondents then goes on to deal with the case of the present applicant, who, they contend was appointed on a short term casual vacancy in lieu of a sailor, without a Govt. sanctioned billet. It is in view of this reason that no regularisation for the period could be made.

6. In a rejoinder filed by the Applicant, he makes the point that he continued for a period of 8 years on the said post, without any break, and that he was fully qualified, at the time of the appointment. He also reiterates the point about discrimination vis-a-vis the five persons regularised as described in the Original Application. He contends that he was employed against a duly sanctioned post, and not against any casual vacancies.

7. A Sur Rejoinder has been filed on behalf of the Respondent denying the claims made.

8. We have heard the learned Counsel of both sides, Shri Ramamurthy and Shri V.S. Masurkar, respectively, for the Applicants and Respondents.

9. Shri Ramamurthy took us through the facts of the case, and also the developments leading to the need for the amendments.



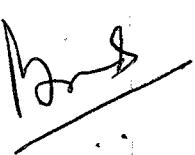
He pointed out that the crucial issues to be decided were, the ones as raised in the amended portion under "relief sought".

10. Shri Ramamurthy took us directly to the order of appointments of 5 persons (including the applicant) made vide order dated 23rd July, 1999 and argued that it was wrong to absorb the applicant as temporary Foreman and not as Senior Foreman. He also referred to the defence taken by Respondents that the post of Senior Foreman did not exist now, and all are only designated as Foreman at present. He strongly asserted that the posts of Senior Foreman very much continued to exist. He exemplified this stand by stating that the Respondents are holding examination for the posts of "Senior Foreman" and even proceeded to produce certain documents to make this point e.g. a communication dated 22.6.2000 addressed to the Chief of Naval Staff, Naval Headquarters (DCP) viz. seniority roll of Senior Foreman (NAY). A similar document dated 11.3.2000 was shown. Yet another letter from Naval Dockyard, Mumbai dated 27th July, 2000 relating to departmental qualifying examination and Dockyard Notice No. 2/2000 were shown to make the same point that the post of "Senior Foreman" continued to exist. Learned Counsel drew our attention to the Annexure letters, filed by the Applicants viz. Ex.L2, L3 and L4 at the time of amendments and made the point that as per instructions of the MOD, non industrial personnel who are in employment for more than one year, without break, should be converted into regular employment from the date of their initial employment, as casual employees, if the Commandants etc. were satisfied that their services will be required on a long term basis. It was also argued that the (with reference to Ex. L.3 that five persons were regularised

vide order of Naval Headquarters of 22.12.1999. Shri Ramamurthy further maintained the point with reference to the Recruitment/Promotion Rules as described in page 104 of the Paper Book) that the Applicant has satisfied all conditions required in the Recruitment Rules.

11. Arguing the case on behalf of the Respondents, their learned Counsel Shri V.S.Masurkar, reiterated the point that the Applicant was employed in the place of a service personnel where vacancies existed only on a temporary basis, as explained in the Written Statement. He asserted that the relief sought in the O.A. had in fact been granted by way of the regularisation already made from the date of sanction by the Ministry of Defence. It was even argued that departmental remedy had not been exhausted by the Applicant, who had asked for a new remedy by way of an amendment.

12. Arguing further, Shri Masurkar referred to paragraph 4 to 6 of their Written Statements of the Respondents, describing the circumstances under which such temporary appointments came to be made. (These have already been reproduced above by us). He further depended on paragraph 9 of the written statement to make the point that there was no sanctioned Govt. billet and the Applicant has merely been appointed as a Civilian in lieu of a sailor on a short term vacancy of Senior Civil Foreman ( Air Radio). In this connection, the learned Counsel referred us to the Orders of the Respondents, copies of which are filed at pages 63, 64 and 65 of the Paper Book. This clearly shows the position of the sanctioned posts from time to time and it was not possible for the Respondents to regularise the Applicant in the absence of a sanctioned post being available. Hence regularisation from the

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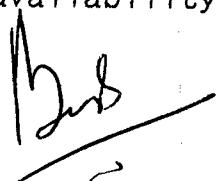
initial date as demanded would go against the availability of sanctioned posts.

13. Shri Masurkar further asserted that the order of 23rd July, 1990 provided no rights to the applicant for regularisation right from 1987. For other issues, Learned Counsel depended upon the written statement of Respondents.

14. The central issue that is to be decided in the O.A. is whether regularisation, which has now been provided w.e.f. 7.6.1999 has to be provided to the Applicant right from the date of his employment in 1987. In this connection, the issues that will come up for examination will be issues such as whether the appointment was against a regular vacancy and as part of process for filling up of vacancies on regular basis; also whether sanctioned post/s existed at that time etc. A related issue that will need to be examined to decide the central issue would be to determine as to whether there is substance in the allegation that there has been hostile discrimination against the applicant as alleged by him, vis-a-vis some five persons who are appointed around the same time as the Applicant.

15. A separate issue that will arise for consideration would be to ascertain whether the regularisation made should be as "Senior Foreman" as "Foreman" as made in the order dt. 23.7.1999.

16. It has been explained by the Respondents that the Applicant was appointed only in the process of filing up of temporary vacancies, which existed because enough service personnel was not available. For this purpose, persons like the Applicant who did possess qualifications required to the post were nevertheless appointed only on temporary basis pending availability of service personnel. It is also asserted by the

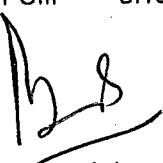


Respondents, as an important defence, that no sanctioned posts were available for all these years and, in fact, the point was made that unless and until sanctioned posts are available, no regular appointment can be made. A sample of an earlier notification for filling up vacancies was produced by Counsel for Applicant but in the absence of any proof as to whether the Notification was for full time regular vacancy, there is no alternative but to accept the assertion made by the Respondents that this was a process undertaken for filling up the posts on a stopgap basis. No doubt, as contended by the Applicant, he had possessed all qualifications for the posts but this in itself cannot be a ground to prove that Applicant was selected for a regular post and appointed accordingly on regular basis. It is clear from the papers at Exhibits 'G' and 'H', that the Applicant was interviewed and appointed as Senior Foreman Air (Radio). In fact there are two Orders, both signed by the Commander and both dt. 29.9.1987. The first one, appoints the Applicant as "Senior Foreman (Air Radio) in an officiating/Temporary Capacity". The second order, states that he is "appointed as Casual Senior Foreman (Air Radio) against existing vacancy". Through this second Order, 5 other persons viz. S/Shri Ravji, Gurudas, Naik, Harmalkar, and A.Peter have been appointed as Casual Labourers against vacancies sanctioned vide an order dt. 29.9.1987. It must be stated that it is indeed unfortunate that fuller details about the nature of employment which have now become disputed have not been set out in the two orders. There is no doubt however, that appointments are not stated to be regular appointments. Nor are there any indication to that effect in the orders.

16. It is also to be seen in this regard, that for long years, no representation seems to have been made on the grievances now being agitated, at least from the papers on record. Representation are seen to have been made, only in 1994. In fact, Learned Counsel for the applicant had responded to this aspect of the infirmity of the Applicant's case, during arguments. Shri Ramamurthy stated that the Applicant had through out been promised that he would be considered, and he did not want to come to the Court/Tribunal in view of assurances given. In legal terms, this is a weak argument for the applicant to take. In fact, at least when the alleged discrimination vis-a-vis the five persons came about, the Applicant should have been more alert and gone about in a more positive way to agitate his grievance.

17. As regards to the discrimination alleged vis-a-vis five persons, specially during arguments made by Learned Counsel for the Applicant, we find that this point has been made in para 4(c) of the Application. As stated therein, reference is made to the representation at Ex. B dt. 30th May, 1994, where it is mentioned that individuals who have been appointed in 1985 under the same authority letter have been absorbed. No names of these persons have been mentioned in this representation. On going through further records, submitted, we find 5 names mentioned, in a representation, dt. 21.11.1994. In this application, it is alleged that these five persons, have been made regularised as Senior Foreman. In fact this second representation of 21.11.1994, comes as a response, to some reply given by the Respondents vide their letter dt. 5.9.1994, as can be discerned from the very first paragraph of this representation

...10.



(dt. 21.11.1994). It is stated that five persons who are also Ex-Navy retired personnel have been appointed in like circumstances, but have been regularised. No further details are mentioned, e.g. date of order of regularisation etc. These five persons are the same persons who are regularised vide order dt. 23.7.1999, except one Mr. S.L. Alhuwalia. Now on this point regarding hostile discrimination vis-a-vis these five persons, We are not persuaded to be convinced that hostile discrimination by Respondents is evident.

18. Even assuming that some of these persons or all of them have been provided the "certain benefits", there is no clear prejudice to the applicant, unless he avers and proves that there is an element of a junior being considered. It is nowhere even mentioned that these persons were junior and therefore no rights can accrue to the applicant on this count.

19. Another grievance, which was strenuously agitated at the time of the argument was that regularisation has been provided vide order dt. 23rd July only as Foreman and not as Senior Foreman. The stand taken by the respondents in reply on this point is that consequent on the implementation of the report of the Vth Pay Commission, the post of Senior Foreman has been re-designated as Foreman in all Naval Establishments. This is contained in para 5 of the Affidavit filed on behalf of Respondents in reply to M.P. No. 185/2000 filed in this O.A. Government Orders through which this has been cited. Learned Counsel for the Applicant argued that this stand is not based on facts and produced some papers across the bar purporting to be communications/seniority rolls in which the designation "Senior Foreman" has been used. The short point of the applicant is that

his seniority will suffer if he is regularised as Foreman. Here, we will go by the stated position of the Government and hold them to the declaration made in Affidavit (para 5 of their affidavit cited above). The respondents having committed that no prejudice will be caused to the applicant since the designation of Senior Foreman is now changed to Foreman, it will be assumed that no prejudice to applicant's seniority on this account. We note this position on record and therefore do not find it necessary to provide any relief to the applicant since none is necessary in the light of the stated position.

20. Consequently, this OA is hereby dismissed subject to the observations in preceding paragraph. No orders as to costs.

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

B.

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

05/01/01

**CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH: :MUMBAI**

**REVIEW APPLICATION NO. 56/03  
IN  
ORIGINAL APPLICATION NO. 346/95**

**THIS THE 11 TH DAY OF MARCH, 2005**

**CORAM: HON'BLE SHRI ANAND KUMAR BHATT. MEMBER (A)  
HON'BLE SHRI MUZAFFAR HUSAIN MEMBER (J)**

Panchaling Patil ... Applicant

By Advocate Shri V.G. Jabra.

Versus

Union of India & Others. ... Respondents

By Advocate Shri V.S. Masurkar.

**O R D E R**  
Hon'ble Shri Muzaffar Husain. Member (J)

The applicant/ petitioner has filed this petition to review the judgment and order dated 05.01.2001 passed in OA No.346/95.

2. The petitioner has stated that the Tribunal recorded the undertaking of respondents and disposed of the matter by observing that it was not necessary to provide further relief since the respondents have given the commitment that no prejudice will be caused to the applicant. The applicant sent several representation for payment of benefit due to him retrospectively from the date of initial appointment. He received the communication dated 30.5.2000.



The respondents issued letter dated 30.12.2002 stating that the applicant's case was dismissed by the Tribunal vide order dated 05.01.2001 and therefore, it cannot be re-opened. The communication was intimated to the petitioner on 21.01.2003. On pursuing his claim with the respondents further, Respondent No.5 directed the applicant to seek clarification from the Tribunal that the applicant is entitled to payment of benefits from the date of initial appointment. The rightful claim of the applicant has been denied by the respondents. Since last communication of the respondents was received on 21.01.2003 and respondents had directed the applicant to seek clarification of the Hon'ble Tribunal only in March, 2003.

3. The applicant has taken the ground that the matter was disposed on the basis of the statement / undertaking of the respondents that the applicant will not be discriminated. Failure to pay him the benefit due on regularisation though paid to other similarly placed persons amounts to prejudicial treatment. The claim of the applicant has been denied the benefit merely on the misconceived interpretation of the order. The order of the Tribunal as well as the undertaking of the respondents recorded therein, clearly demonstrate that the applicant is entitled in both regularisation as well as consequential payment of the benefit. The denial of consequential benefit after confirmation amounts to hostile discrimination.

4. We have heard learned counsel for the parties.

A handwritten signature in black ink, appearing to read "Shivaji".

5. The applicant / petitioner is seeking clarification of the order dated 05.01.2001 and seeking direction for respondents to abide by the undertaking given before the Tribunal as recorded in the order dated 05.01.2001. In para 19 of the order Tribunal observed as under -

"Another grievance, which was strenuously agitated at the time of the argument was that regularisation has been provided vide order dated 23<sup>rd</sup> July only as foreman and not as Senior Foreman. The stand taken by the respondents in reply on this point is that consequent on the implementation of the report of the Vth Pay Commission, the post of Senior Foreman has been re-designated as Foreman in all Naval Establishments. This is clarified in para 5 of the Affidavit filed on behalf of respondents in reply to M.P. No.185/2000 filed in this O.A. Government orders through which this has been cited. Learned counsel for the applicant argued that this stand is not based on facts and produced some papers across the bar purporting to be communications / seniority rolls in which the designation "Senior foreman" has been used. The short point of the applicant is that his seniority will suffer if he is regularised as Foreman. Here, we will go by the stated position of the Government and hold them to be declaration made in Affidavit (para 5 of their affidavit cited above). The respondents having committed that no prejudice will be caused to the applicant since the designation of Senior Foreman is now changed to Foreman, it will be assumed that no prejudice to applicant's seniority on this account. We note this position on record and therefore do not find it necessary to provide any relief to the applicant since none is necessary in the light of the stated position." and para 20 reads as follows "Consequently, this OA is hereby dismissed subject to the observations in preceding paragraph. No order as to costs."

We notice that OA 346/95 was dismissed by the Tribunal vide order dated 05.01.2001 as the court did not



find it necessary to provide any relief to the applicant and it was observed that the respondents having committed that no prejudice will be caused to the applicant <sup>since his designation of</sup> of Senior Foreman is now changed to Foreman. It will be presumed that no prejudice will be caused to the applicant's seniority on this count. In this position, Tribunal did not find it necessary to provide any relief to the applicant. There appears no error apparent on the face of the record as required under Order 47 Rule 1 CPC. The applicant is not seeking review on the ground of error apparent on the face of record or discovery of new facts, but seeking direction for respondents to abide by the undertaking given by the Tribunal. This is not scope of judicial review.

6. The scope of judicial review under Section 22 (3)(f) of the Administrative Tribunals Act 1985 is very limited. It restricts only to the grounds mentioned under Order 47 Rule 1 CPC. It precludes the reassessment of fact and law for recalling earlier order passed on merit, unless there is a discovery of new and important matter or evidence which after exercise of due diligence was not within his knowledge or could not be brought by him at the time when the judgement was made, or on account of some error apparent on the face of the record or for any sufficient reason. The Hon'ble Apex Court in Ajit Kumar Rath V/s. State of Orissa & Ors 1999 (9) Supreme 321 has held:



"Section 22(3)(f) indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47 Rule-1 CPC. It would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgement."

In Union of India Vs. Tarit Ranjan Das 2004 (1) SCSLJ

47 the Apex Court held -

Administrative Tribunals Act, 1985 - Section 22 - Review - Held the scope of review is very limited and it is not permissible for the forum hearing the review application to act as an appellate authority in respect of the original order by a fresh and rehearing the matter to facilitate a change of opinion on merits.

7. The review petition is also barred by limitation as the original order in OA was passed on 05.01.2001 and the



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**BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**MUMBAI BENCH**

R.P. No. 56 OF 2003  
IN  
O.A. NO/346 OF /1995

PUNCHALING PATIL ) ..Applicant

VERSUS

Union of India & Others ) ..Respondants

**WRITTEN STATEMENT ON BEHALF OF THE RESPONDENTS**

I, Rear Admiral Shekhar K Sinha, NM & BAR (01480-N), Flag Officer Commanding, Goa Area, Respondent No. 3 on behalf of Union of India and others herein having my office at Vasco-da-Gama, Goa-403801 do hereby solemnly affirm and state as under:

1. I say that I have read a copy of the Review Petition 56/2003. I have also perused all the relevant documents available in my office in connection with the issues involved in this application and thus conversant with the facts and circumstances of the present case and able to depose to that effect in this petition. I say that the present written reply is being filed by me on behalf of all the respondents in this case.



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2. At the outset of the applicant has not made out any case for review of the judgement, but indirectly seeking re-hearing of the O.A. and therefore the Review Petition deserves to be dismissed with cost.
3. It is submitted that the Review Petition is barred by the law of limitation and on this ground also deserves to be dismissed.
4. Without prejudice to what is stated hereinafter, I say and submit that the Review Petition as filed does not disclose any course of action which needs to be entertained by this Honorable Tribunal at this stage. In fact, by way of abundant caution I deny each and every statement, contention and allegation made in the petition, which is in any way contrary to, or inconsistent with, what has been stated herein as if the same were specifically set out herein and traversed. In order to assist the Honorable Tribunal to approach the issue involved, I have hereinafter precisely given certain relevant facts.
5. Applicant was initially appointed as Senior Foreman against the short term casual vacancy due to shortage of cadre of

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Service personnel and not against any Government Civilian Sanctioned post. Therefore, the applicant is not coming under the definition of Government servant as held by the Honorable Central Administrative Tribunal at Ernakulam in Para 4 of order dated 08 Feb 91 in the OA of 66/90 filed by Shri KJ Francies and four others which reads :-

" 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 Vs. Kanak Chandra AIR 1967 SC 884. A Larger Bench of this Hon'ble Tribunal presided over by the Honorable Chairman Mr. Justice Amitav Benerji in T. 161 of 1986 and other group of cases (Rehamatullah Khan and others Vs. Union of India and Others) reported in full Bench Judgement of the Central Administrative Tribunal (1986-1989), published by the Bahri Brothers and reported on page 323 relying on the Supreme Courts ruling in the aforesaid case and other ruling laid down that the principle laid down by the Supreme Court that the casual labour does not hold a civil post is binding as a precedent ".

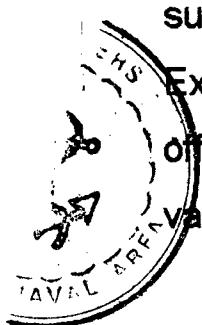


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6. It is submitted that Naval Aircraft Yard in Goa is under the Administrative Control of the Flag Officer Commanding, Goa Area Vasco -da-Gama, Goa the 3<sup>rd</sup> respondent in the present Review Petition. Depending upon the workload and exigencies of services both service and Civilian Personnel in different trade and categories have been appointed by the Central Govt against the sanctioned post on permanent basis at Naval Aircraft Yard, Goa(earlier Base Maintenance Facility, Goa a Sub Department of Indian Naval Ship Hansa). Service Personnel may be employed on board war Ships/Aircraft Carrier/shore establishment, whereas the Civilian personnel can be employed only at shore establishments.
  
7. There are occasions that due to Service exigencies and other service casualties i.e. retirement, promotion etc. a temporary shortage of Service Personnel occurs in the cadre and the Chief of the Naval Staff Respondent No. 2 in the present RP, therefore, is authorised to sanction the employment of equivalent Civilian Personnel on need basis, as a temporary measure until the availability of Service Personnel thereto, subject to the condition that the borne strength of Service personnel and the Civilian Personnel employed against the sanctioned service post, will not exceed the total sanctioned strength of Service Personnel in each branch and rank vide Navy Instructions 101/61.

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8. There was shortage of sailors in the rank of Air Radio/MCH/CLEAR MCH/CH MECH (AR) which is equivalent to Sr. Foreman(AIR RADIO) and therefore Naval Headquarters had sanctioned the employment of Civilian in lieu of sailors against which the applicant was also employed, for short duration and the same has been revised/extended from time to time.
9. A person engaged against a short term vacancy for specific period ceases to be in employment on expiry of the period of employment. An employee may thus continue for longer period depending upon the exigencies of service and shortage in the stabilized service cadre and therefore the applicant cannot claim regular employment as a right.
10. Without Prejudice to the aforesaid contentions, the respondent would like to reply the application parawise as under.
11. With reference to Para 1 & 2 of the Review Petition, It is submitted that the applicant was sponsored by Employment Exchange and appointed as Senior Foreman(Air Radio in officiating/temporary capacity) in lieu of sailor on a casual vacancy w.e.f. 29 Sep 87.



12. With reference to Para 3 of the R.P., the contention is denied. The applicant was employed on casual basis vide Headquarters, Go Naval Area appointment letter 39/276/2/1(S.No.76//87) dated 29 Sep 87 (EXB -R - 1) in lieu of sailor with periodical extension of service as and when accorded by the Chief of the Naval Staff for this purpose. It is denied that the applicant was assured at any point of that his appointment would be made permanent in due course of time.

13. With reference to Para 4 of R.P., it is stated that the representation of the Petitioner was given due consideration and the same was timely taken up with higher authorities. The applicant in the present R.P. moved to CAT interalia for relief including regularisation of service as Senior Foreman from the date of his initial appointment and other benefits. Meanwhile the applicant was absorbed as TY Regular Foreman against the sanction Govt. of India, Ministry of India letter CS/1431/CIV/NHQ/1200/DO/D(N-II) dated 07 Jun 99 and retained.

14. With reference at Para 5 of R.P., it is submitted that the appointment of applicant as Sr. Foreman was regularised and sanctioned by the Government w.e.f. 07 Jun 99. Eventhough, the post of Sr. Foreman to Foreman was re-designated by the Government his seniority and Pay Scale was protected and therefore, no prejudice has been caused to the applicant.

Contd.....7/-

15. With reference to Para 6 of R.P., it is submitted that the applicant has put part of the expression used in one single context in the said order 05 Jan 2001 in OA No. 346/95 and is misleading the Honorable Tribunal. The Honorable Tribunal has in the said order at Para 19 held that " the respondents having committed that no prejudice will be caused to the applicant since the designation of the Senior Foreman is now changed to Foreman, it will be assumed that no prejudice to applicant's seniority on this account." .

✓16. With reference to Para 7 to 11 of the R.P., it is submitted that the applicant is not similarly placed with other casual employees of Central Government Services. The present applicant was appointed by the Chief of the Naval Staff purely on casual basis in lieu of sailors under the Provision of Navy Order (Civ) 4/94 and Navy Instruction 101/61 (EXB-R-2) as amended thereafter. The applicant's case also did not merit under the purview of this Honorable Tribunal Orders dated 24/25 Aug 1989 and 05 Jan 2001. Hence the applicant's plea for regularisation and other consequential benefits was rightly turned down.



17. With reference to averment made at Para 12 of the R.P., it is devised that OA No. 346/95 has been dismissed merely on the undertaking and commitments given by the respondent that there shall be no discrimination against the applicant. It may be noted that the applicant squarely failed to prove that any hostile discrimination has been done against him or he has any legally enforceable right which has been infringed.
  
18. With reference to Para 13 of the R.P., it is submitted that the applicant was absorbed and retained as TY. Regular Foreman vide Headquarters, Goa Naval Area letter No. 39/276/2/1(S.No.10/99) dated 23 Jul 99 w.e.f. 07 Jun 99 as sanctioned vide Govt of India letter No. CS/4431/CIV/NHQ/1200/DO/D (N-II) dated 07 Jun 99 (EXB-R-3) on surrender of 08 sailor's vacancies. Therefore, the services of these Supervisors cannot be regularised from ante date as the permanent vacancies are only from 07 Jun 99. The services rendered by these Senior Foreman prior to Govt sanction were purely on temporary nature in lieu of sailors under the provisions of Navy Instruction 101/61 and can not be regularised.

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19. With reference to Para 14 of the R.P., it is submitted that the applicant be put to strict proof that the respondent No. 5 of the present RP has directed the applicant to seek a clarification from this Honorable Tribunal regarding his entitlement to payment of benefits from the date of his initial appointment, as alleged.

20. With reference to Para 15 of the R.P., it is humbly submitted there has been no misinterpretation of the order of the Honorable Tribunal dated 05 Jan 2001 and further that has been no miscarriage of justice in the present case.

21. Regarding Para 16 of R.P., there are no comments to offer.

22. With reference to Para 17(A) of the R.P., it is submitted that the OA No. 346/95 filed by the applicant was dismissed by the Honorable CAT, Mumbai vide Order No. 05 Jan 2001 as the court did not find it necessary to provide any relief to the applicant since none is necessary in the light of stated position. The said matter was dismissed inter alia on the grounds including that the applicant failed to prove any hostile

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discrimination or prejudicial treatment to him view re-designation of senior Foreman to Foreman, and his seniority on this account. Therefore, the grounds advanced by the applicant for any interference is misleading and merit no consideration

23. With reference to Para 17 (B) of the R.P., is totally misconceived. It is submitted that no prejudicial and discriminatory treatment has been meted out to the applicant by denying him his rightful claim. No rightful/legitimate dues/benefits has been denied to the applicant consequent upon his absorption in regular service w.e.f. 07 Jun 1999 and there arose no occasion of Violation of Article 14 of Constitution of India.

24. With reference to 17(C) of the R.P., the averment is misleading and incorrect. The applicant has not been denied of any rightful benefit for any period of time and there has not been any Violation of Article 21 of the Constitution of India, as alleged.

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25. With reference to Para 17(D) of the R.P., the contention is denied. It is submitted that the benefit payable to the applicant have not been denied merely on misconceived interpretation of the orders of this Honorable Tribunal. It is further denied that any patent illegality and miscarriage of justice at alleged has been meted to the applicant.
26. With reference to Para 17(E) of the R.P., it is submitted that the applicant has been regularised as Senior Foreman (now re-designated as Foreman) and has been given the consequential payment benefits from the date of his regularisation i.e. 07 Jun 99.
27. With reference to Para 17(F) of R.P., it is submitted that there has been no hostile discrimination of whatsoever nature and the contravention of the orders passed by the Honorable Tribunal amounting to gross miscarriage of justice.

with reference to Para 17(G) of the R.P., it is stated that no  
rightful claim have been denied to the applicant, as evident  
from the averments made earlier..



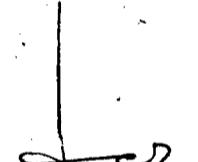
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29. With reference to Para 18 of R.P., it is submitted that the applicant has been communicated about the contents of Naval Headquarters letter No. CP(SC)/4578/WNC dated 31 Mar 2003 (EXB-R-4) verbally in the month of May 03. Further it is submitted that the applicant be put to strict proof about his contention that respondents has directed him to seek clarification and order of this Honorable Tribunal for payment of benefits to him in Mar 2003. The applicant, as he may please, has moved this Honorable Tribunal and there is no directions alleged.
30. With reference to Para 19 of the R.P., it is submitted that there has been no contravention of the Order of the Honorable Tribunal and the grounds for interference forwarded by the applicant in this present RP is farfetched, untenable and imaginary.
31. With reference to Para 20 of the R.P., it is submitted that the applicant was engaged as Sr. Foreman in a casual/short term vacancy in lieu of sailor under the provision of Navy Order(Civ) 4/94 and Navy Instruction 101/61 extended from time to time. It is further submitted that the applicant is not at par with other

similarly placed service personnel and has been denied such benefit. The applicant in the present R.P. has been appointed as Senior Foreman in lieu of sailor was absorbed as Foreman and regularised with effect from 07 Jun 99 on surrender of 08 sailor's vacancies. The permanent vacancy, therefore, arose only from 07 Jun 99 and the benefits have been extended to him from the said date.

32. With reference to Para 21 & 22 of the R.P., in view of the true position stated in Para 5 to 31 above, no further comments.
33. With reference to prayer clause 23 (a) to 23 (e) of the R.P., in view the true position stated in Para 5 to 32 above, the R.P. has no merit whatsoever and hence same may be dismissed with cost.



  
(Shekhar K Sinha)  
Rear Admiral  
Flag Officer Commanding  
Goa Area

Place : Vasco da Gama, Goa

Dated : 13 May 2004

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