

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

OPEN COURT/PRE DELIVERY JUDGEMENT IN OA 908/95.

Hon'ble Vice Chairman / Member (J) /

Member (A) may kindly see the above judgement for
approval / signature.

S: (Signature)
~~V.C./ Member (J) / Member (A)~~

Hon'ble Vice Chairman

Hon'ble Member (J)

Hon'ble Member (A)

I agree.

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 918/95

Date of Decision : 31st January 2001

B.I.Mirkar & Ors. Applicant.

Shri G.S.Walia Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents.

Shri V.D.Vadhavkar for
Shri M.I.Sethna Advocate for the
Respondents.

CORAM :

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

The Hon'ble Smt.Shanta Shastry, Member (A)

- (i) To be referred to the Reporter or not ? yes
- (ii) Whether it needs to be circulated to other no
Benches of the Tribunal ?
- (iii) Library yes

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

mrj*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.918/95

Dated this the 31st day of January 2001.

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

Hon'ble Smt. Shanta Shastry, Member (A)

1. B.I.Mirkar
2. J.M.Farnandes
3. P.R.Mane
4. S.T.Joshi
5. S.L.Pilankar
6. V.T.Kubal
7. A.M.Fernandes
8. V.E.Yadav
9. S.D.Shivalkar
10. V.B.Keer

All Applicants are working
as Seamen and Greaser under
Assistant Collector of Customs
and Central Excise, Jail Road,
Ratnagiri, Maharashtra.

...Applicants

By Advocate Shri G.S.Walia

V/S.

1. Union of India through
Collector,
Customs & Central Excise,
P.M.C's Commercial Building,
Hira Baug, Tilak Road, Pune.
2. Assistant Collector of
Customs and Central Excise,
Jail Road,
Ratnagiri, Maharashtra.

... Respondents

By Advocate Shri V.D.Vadhavkar
for Shri M.I.Sethna

..2/-

S.I.871

O R D E R

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

The applicants have claimed the declaration and direction to the respondents that they are entitled for regularisation of their services in the respective grades and posts in which they were originally appointed along with the arrears of pay and consequential benefits and regular pay scales.

2. The applicants were appointed as seamen as per the dates mentioned in para 4.1 in Marine Division of the Customs and Excise Department at Ratnagiri. By perusal of the same, it is made out that they are appointed from 20.3.1976 to 20.6.1984 in the scale of Rs.800-1050 meant for regular Seaman but they were appointed in various grades as Daily Wages Workers. By Establishment Order No. 391 of 1985 Ex.'B' dated 22.11.1985, the applicants were sought to be regularised in the pay scale of Rs.196-232 as was prevailing at that time. However, the said Establishment Order No. 391 of 1985 was sought to be held in abeyance vide Establishment Order 410/85 dated 3.12.1985 (Ex.'C'). There has been continuous need of workers with the respondents. The applicants are not regularised so far.

3. The grievance of the applicants is that as there has been continuous need of workers, they are continuing since long, either they are engaged against a regular post or the post

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..3/-

against which the applicants are working is deemed to be substantive and permanent post. They are entitled for regularisation of their services in view of O.M.No.12034/13/91-AD -III B dated 30.3.1992, Board's Order No. F-12034/34/96 AD III dated 10.1.1997 and O.M.No.51016/2/90 Estt & C dated 10.9.1993. Hence, these OAs.

4. The respondents have resisted the claim of the applicants and stated that boats/crafts have been provided at Ratnagiri and Dapoli Customs Division from time to time for anti smuggling surveillance/sea patrolling on coast line.

The respondents have further resisted the claim of the applicants on the ground that in OA.No.385/89 the applicants filed an application (M.P.No.583/92) to join them as applicants. The Tribunal passed an order dated 29.11.1994 (Ex.5) and rejected the same. No appeal has been preferred against the same. Hence, the applicants are not entitled to agitate the matter again based on principles of res-judicata. It is further stated that the Ministry vide their letter dated 15.3.1995 (Ex-3) conveyed relaxation of age and other eligibility criteria required as per the Recruitment Rules but were silent regarding date of regularisation and grade in which to be regularised. Hence, prayed for dismissal of the OA. along with the costs.

SDR/-

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5. The learned counsel for the applicants relied on para 3 of an order passed by this Bench in OA.NO.385/89, Anwar Ismail Wadkar & Ors. vs. Union of India & Ors. decided on 16.2.1995 which is as under and argued that the requisite qualification as stated by the respondents are necessary in view of Recruitment Rules, 1986, such qualifications were not necessary at the time of appointment of the applicants, hence, their case needs to be examined at the time of their recruitment regarding the qualification/eligibility condition :-

" It is clear that the applicants had been working continuously over a long periods. In Bhagwati Prasad vs. Delhi State Mineral Development Corporation, 1990 SCC (L&S) 174, it was observed in respect of petitioners thereof who were appointed between 1983 and 1986 and had been discharging duties ever since, that practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualifications prescribed for the different posts is undoubtedly a factor to be applicants had more than three years experience and the lack of educational qualifications which would have been material at the time of entry into service cannot be used as a basis when the applicants had been continued by the respondents in their present job over a long period."

6. The next submission regarding the non availability of regular posts has also been considered in the same order in para 4 and it is directed that regularisation should be done in a phased manner and applicants were entitled to equal pay at par with the persons appointed on regular basis to the similar post or discharge similar duties.

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7. The Learned counsel for the respondents relied on 2000(2) SLJ 412, Shri Amit Yadav & Ors. vs. Delhi Vidyut Board through its Chairman and argued that the regularisation of such persons will amount to back-door entry in service. Hence, they are not entitled for the same. I have perused the said judgement of the Hon'ble High Court and find that it was a case of applicants appointed on contract till selected persons are available.

8. None of the parties have placed on record the appointment order of the applicants. In such circumstances, we are unable to hold that the applicants were appointed on a contract basis till selected persons are available. Not only this, the applicants were regularised while Establishment Order No. 391 of 1985 which was later on kept in abeyance vide Establishment Order No. 410 of 1985. Hence, the said authority does not help the respondents.

In addition to it, the respondents have themselves created hopes in the minds of the applicants that they are being regularised and in fact ordered for regularisation.

9. The learned counsel for the respondents further relied on an order passed by the Apex Court in Civil Appeal No. 936/97 in case of Passport Officer, Trivandrum & Ors. vs. Venugopal C. & Ors. on 27.1.1997. On perusal of the same, I find that under the said scheme only those employees who had been recruited through the Employment Exchange would be given a temporary status

Ans -

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and the respondents were not sponsored/recruitted through the Employment Exchange. In absence of pleadings of both the parties regarding the fact of recruitment/appointment or sponsored through an Employment Exchange, the same authority does not assist the respondents.

10. The learned counsel for the respondents argued that regularisation would mean a conduit pipe for irregular appointment. As the appointment of the applicants is not irregular one, we are not in agreement with the learned counsel for the respondents, particularly in absence of such pleadings from either side.

11. The learned counsel for the applicant relied on an order passed in OA.No. 1094/97 which deals with "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of the Department of Telecommunications, 1989". We are dealing with the case of Central Excise and Customs Department. Hence, the said precedent which deals with Telecom Department does not help the applicants.

12. The order relied on by the applicants' counsel in OA.NO.385/89 Anwar Ismail Wadkar vs. Union of India & ors. deals with the Department of Central Excise and Customs who are respondents in the present case also. Hence, the said order squarely applies to the present case.

S.W.M

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13. With regard to difference in back wages, the applicants are entitled from the date of filing of the application, i.e. to say 3.5.1999.

14. We have perused the order passed by this Bench in OA.NO.385/89 H.M.Pawaskar & Ors. vs. Union of India & Ors. along with M.P.No.583/92, in which the prayer was to allow them to join as applicants in the aforesaid original application as Sr.No.5 to 33 with consequential amendments for which separate application is being filed. The order passed in the said OA. in respect of the said M.P. is as under :-

"Heard Shri G.S.Walia, counsel for the applicant and Shri Suresh Kumar for Shri M.I.Sethna, counsel for the respondents.

Applicants have filed M.P.583/92 for impleading the parties as applicants. M.P.583/92 is rejected."

On perusal of the same, we are of the considered opinion that only the application of the applicants for impleading them as applicants was rejected but their claim was not considered and decided on merits.

15. The respondents have brought on record the order passed by Ministry of Finance, Central Board of Excise & Customs dated 15.3.1995 which clearly lays down that those appointed on Marine Crew Personnel of various Collectorates of Central Excise and Customs who were recruited on ad-hoc/temporary/contract basis

but do not fulfil requisites age/other eligibility criteria of the Recruitment Rules, the Government is pleased to relax the Recruitment Rules to facilitate regularisation of recruitment of the following group of Marine Crew which includes for PUNE 13. It is true that no date for regularisation has been mentioned in the said order. If no date is fixed, the respondents are not entitled to delay the matter on this count. Normally, until and unless the order specifically provides for it's retrospective effect, it must be presumed that it has the prospective effect. In such circumstances, the respondents ought to have considered the matter for regularisation w.e.f 15.3.1995.

16. The learned counsel for the respondents argued that whether the applicant's case is covered under the post~~s~~ sanctioned 13 or not is to be examined by the respondents. The perusal of the pleadings makes it clear that such a plea is not raised by the respondents. It is not their contention that applicants are beyond those 13 posts sanctioned or there are more than 13 Daily Wagers of the cadre to which the applicants ~~belong~~ ^{belong} Hence, such plea cannot be allowed to be raised at this stage.

17. The learned counsel for the respondents relied on 1998 SCC (L&S) 1459, State of U.P. & Ors. vs. Braham Dev, and argued that experience could not be a substitute for the educational qualification in respect of the statutory rules. We agree with the same proposition but when respondents themselves

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have decided to allow age relaxation and qualification, now it does not lie in their mouth to agitate the matter, particularly when after filing the written statement, they have not taken any steps to withdraw the said order or challenge the said order on any ground available to them.

18. The learned counsel for the applicants relied on an order passed in case of SLJ and 3 Ors. vs. Union of India & Ors. on 8.11.2000 by one of us (Smt. Shanta Shastray, Member (A) allowing the application in the similar circumstances.

19. As stated above, the applicants' claim for regularisation ~~is~~ now cannot be negatived by the respondents on any plea.

20. In the result, OA. is allowed and the respondents are directed to regularise the applicants ~~as per~~ ^{in Group 'D'} The applicants are entitled from the date of filing of the OA. equal pay at par with the persons appointed on regular basis to similar posts/discharge similar duties. The difference of pay be paid and regularisation be ordered within three months from the date of receipt of a copy of this order. No order as to costs.

Smt. Shanta Shastray

(SMT. SHANTA SHASTRY)

MEMBER (A)

S.L.Jain

(S.L.JAIN)

MEMBER (J)

mrj.