

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:124/1997
DATED THE 31 DAY OF AUG,2001**

**CORAM:SHRI S.L.JAIN, MEMBER(J).
SHRI G.C.SRIVASTAVA, MEMBER(A)**

1. R.R.Tandel
Working as Greaser
2. M.I.Mirkar
Working as Seaman
3. M.T.Shivalkar
4. S.S.Surve
5. J.M.Shetye
6. J.S.Girap
7. S.J.Koyel
8. D.G.Shinde

... Applicants

By Advocate Shri G.S.Walia

V/s.

1. Union of India, through
Collector/Assistant Collector,
Central Excise,
Pune,
Maharashtra State.
2. Asst. Collector of Customs,
Ratnagiri,
Central Revenue Building,
Jail Road,
Ratnagiri - 415 612.

... Respondents

By Advocate Shri M.I.Sethna

(ORDER)

Per Shri G.C.Srivastava, Member(A)

The applicants (8 in number) who are working as Greaser/Seaman/ Lascar under the respondents have prayed for the following reliefs in this OA:-

- 8.a.This Hon'ble Tribunal will be pleased to order and direct the respondents to count the whole period of service of applicants from initial appointment for pensionary benefits.
 - b. This Hon'ble Tribunal will be pleased to order and direct the respondents to grant annual increments equal to number of years of service
- ...2.

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the applicants have put in respective pay scales and fix their pay accordingly and pay the arrears to the applicants with 18% compound interest thereon.

c. The Hon'ble Tribunal will be pleased to order and direct the respondents to pay the salary of the post against which applicant no.1 has been working on higher post with arrears and 18% interest thereupon.

2. According to the applicants they were initially appointed under the respondents on different dates between 11/12/82 and 18/8/84 and were ordered to be regularised in their respective posts vide order dated 22/11/85 (Exhibit-A). The said order was however held in abeyance by another order dated 3/12/85 (Exhibit-B). Later, they were formally regularised vide orders dated 1/8/89 and 17/9/91 (Exhibit-C & D) with effect from different dates between 1/8/89 and 17/9/91. They claim that they are entitled to the regular payscales of their respective posts alongwith increments on which they were initially appointed as also to counting of total number of years of service even prior to their regularisation for pension purposes.

3. In their reply the respondents have stated that the applicants who are presently working as Lascar/Greaser since 1989/91 on regular basis were initially appointed on casual basis on or about since 1984. The order dated 22/11/85 was kept in abeyance for lack of adequate number of sanctioned posts to accomodate the applicants. Regularisation of applicant nos.1 to 3 was made in 1989 after decentralisation of powers to individual collectorates and from 4 to 8 in 1991 after relaxing their upper age limit. They have been given all benefits like increments, etc from the date of their regularisation and they are not entitled for any benefits prior to this period when they worked on daily wage basis.

4. We have heard Shri G.S.Walia and Shri M.I.Sethna, learned counsels for applicants and the respondents respectively and have gone through the pleadings and documents produced on record.

5. Before we go into the merits of the case, we would like to deal with the preliminary objection raised by the respondents about limitation. According to them the cause of action pertains to pay fixation, increments, etc from about 1984 but the OA has been filed in November,96 and therefore the same is time barred and deserves to be dismissed. We, however, find that as laid down by the Supreme Court in the case of M.R.Gupta, the claim for pay fixation is a continuing cause of action and would not be barred by limitation. Accordingly, we overrule the preliminary objection about the OA being barred by limitation.

6. Now coming to the merits of the case, the main contention of the applicant is that they have been working under the respondents on daily wage basis against regular and permanent vacancies and therefore the action of the respondents in denying regular wages/salary including increments to them during the entire period upto the date of their regularisation is illegal and arbitrary. Similarly, they also contend that their action in not counting the total period of service they rendered as daily wage employees is accordingly violative of article 14 and 16 of the Constitution of India. The respondents have resisted this contention and have stated that applicants were not appointed on regular basis against permanent vacancies prior to their regularisation and as such they are not entitled to benefits like payscales, increments, etc as also to counting of service for pension purposes. They have also stated that the applicants were not

appointed against regular and permanent vacancies prior to their regularisation.

7. During arguments Shri Walia for the applicants submitted that if it is not possible to grant relief pertaining to counting of the entire service prior to regularisation for pensionary benefits, the applicants would be satisfied if half of the past service is counted for pension. He has drawn our attention to judgement of this Tribunal in OA 1185/93 and has submitted that just as 50% of the casual labour service was allowed for pension purposes in the above OA, similar directions may be issued in the present OA where also the applicants have reasonably long service of daily wage basis prior to their regularisation and which has not been allowed to be counted for pension by the respondents. We have gone through the judgement as also the facts and circumstances of the case and consider that the ends of justice will be met if similar directions are issued to the respondents as far as the relief regarding counting of period of daily wage service prior to regularisation for pension purpose is concerned.

8. As regards relief regarding grant of payscale, increments for the period when they rendered service on daily wage basis, we find that the respondents had issued an order dated 22/11/85 regularising them w.e.f. different dates on different posts but the same was later on kept in abeyance by order dated 3/12/85 for lack of sanctioned posts. However, the fact remains that the order dated 22/11/85 remained in force w.e.f. 22/11/85 to 3/12/85 and even if the same was kept in abeyance subsequently, there is no doubt that they were regularised may be for a short period and would therefore be clearly entitled to the payscale of the post against which they

were regularised. Further since this was followed by their formal regularisation in 1989 and 1991, there does not appear to be any conceivable hurdle in assuming that but for administrative problems (like centralisation of administrative power, some of the applicants being age barred and age relaxation being granted) they would have been regularised much earlier. In view of this we are of the considered view that the applicants are eligible for the pay scales along with the increments as and when due even during the period prior to their regularisation.

9. As regards relief at 8(c), the respondents have stated that the applicant no.1 is working as Greaser only and he is being utilised as such. The applicants have not rebutted this averment. Hence the relief at 8(c) cannot be granted.

10. In the light of the above discussions and also relying on the judgment of this Tribunal in OA-1185/93, we direct the respondents to count 50% of the period of service from the date(s) the respondents originally appointed them on regular basis vide order dated 22/11/85 up to the date they were formally regularised by order dated 1/8/89 as qualifying service for pension, etc. We further direct them to allow the pay scales/increments notionally to the applicants w.e.f. the same date(s)

We however make it clear that the applicants shall be paid arrears of pay/increments etc only for the period of one year prior to the filing of the OA.

11. With the above directions, the OA stands disposed of. No costs.


(G.C. SRIVASTAVA)
MEMBER(A)


(S.L. JAIN)
MEMBER(J)