

27/8

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: **1/97**

Date of Decision: **18.9.97**

Anil Anant Kamble & Ors.

Applicant.

Shri B.Dattamoorthy.

Advocate for
Applicant.

Versus

Union of India & Anr.

Respondent(s)

Shri R.K.Shetty.

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. **M.R.Kolhatkar, Member(A).**

Hon'ble Shri. -

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 1/1997.

Thursday, this the 18th day of September 1997.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

1. Anil Anant Kamble,
2. Vijay Raghunath Khandare and
3. T.R.Sukumaran and
4. Mahananda Balu Pawar,
Departmental Canteen,
Advanced Training Institute,
Mumbai - 400 022.

...Applicants.

(By Advocate Shri B.Dattamoorthy)

V/s.

1. Union of India through
the Director of Apprenticeship
Training, Ministry of Labour,
Office of the Director General,
Employment and Training,
New Delhi - 110 001.
2. The Director,
Advanced Training Institute,
V.N.Purav Marg,
Sion,
Mumbai - 400 022.

... Respondents.

(By Advocate Shri R.K.Shetty).

ORDER

(Per Shri M.R.Kolhatkar, Member(A))

This O.A. is an outgrowth of an earlier O.A.
viz. O.A. No.327/93 decided by a Division Bench of this
Tribunal on 4.7.1995. By the Chairman's Notification
No.1/32/87- JA dt. 4.12.1996, cases relating to Casual
Labour have been added to the list of cases which
can be heard by a Single Bench. Accordingly, this
matter came before me as ^aSingle Bench.

2. In the earlier O.A., the applicants who had been working in the departmental canteen of the Advanced Training Institute, Mumbai under the Ministry of Labour for varying periods between March, 1987 to June, 1989 were terminated on 14.4.1993. The prayer of the applicants was to quash the termination order and to regularise their services. The applicants relied on the Judgment of Principal Bench of the Tribunal in Bishamber Dutt & Ors. V/s. Union of India & Anr. (O.A. No. 1686/93 decided on 4.2.1994), which was also a case pertaining to employees of the departmental canteen in the Ministry of Labour Principal Bench of the and the Tribunal had disposed of the matter by directing the respondents to consider the cases of the applicants for being given temporary status in accordance with the Scheme dt. 10.9.1993.

3. The Tribunal, however, found that the in O.A. 327/93 applicants were already terminated and therefore, disposed of the O.A. by directing the respondents to consider the cases of the applicants for employment in the departmental canteen as and when the authorities employ people.

4. It appears that out of the 5 applicants in O.A. 327/93 one applicant viz. Ashok S. Lomte was employed in the canteen in a vacancy available. The present applicants viz. four applicants in the earlier O.A., however, have not been provided any employment.

5. The contention of the counsel for the respondents is that there are no vacancies in the departmental canteen to consider the applicants.

6. The counsel for the applicants, however, contends that there are vacancies available for Group 'D' posts in various Institutions under the Ministry of Labour working on the premises of Advanced Training Institute, Mumbai and that the respondents should be directed to consider the case of the applicants for appointment to any of these posts.

7. The counsel for the respondents, however, contends that there are two vacancies in the post of Safaiwala which have to be filled according to statutory Recruitment Rules, the recruitment is also subject to Roster point and is required to be done through Employment Exchange. The respondents have further stated that they have in fact appointed a person belonging to ST community to the post of Safaiwala on 2.4.1997 and that the candidate in question was sponsored by Local Employment Exchange.

8. The counsel for the respondents has also taken a stand that the present O.A. is hit by principles of res judicata or principles analogous thereto.

9. With reference to the preliminary objection, I have seen the O.A. (O.A. 327/93). The main prayer in the O.A. was to quash and set aside the orders of termination and to issue directions to the respondents to regularise the services of the applicants.

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In the present O.A., however, the prayer is a different one viz. to direct the respondents to consider the question of appointment of applicants to any of the vacancies under the Ministry of Labour in Mumbai.

I am therefore, of the view that the relief sought in the present O.A. is quite distinct from the relief sought in the earlier O.A. and therefore the O.A. is not liable to be dismissed on the ground of res judicata.

10. The learned counsel for the applicant has relied on the case of Parimal Chandra Raha and Ors. V/s. Life Insurance Corporation of India & Ors. (1995) 30 ATC 2821. In that case, the question before the Hon'ble Supreme Court was whether the canteens of L.I.C. run and managed by Contractors under the supervision of LIC were departmental canteens and the question was decided in the affirmative by the Hon'ble Supreme Court. The ratio of that decision, therefore, does not apply to the present case. The applicant next relies on the decision of the Durga Prasad Tewari & Ors. V/s. Union of India & Anr. A.T.R. 1990(1)C.AT..2331.

In that case the Tribunal had held that "In view of the fact that the applicants have worked for more than 2 to 4 years as casual labourers and have already become overage by now for seeking employment in Government service elsewhere, it will be fair and just to consider their regularisation in the available vacancies not only in the office of the Controller of Accounts where they are working presently but also in the main ministry of

External Affairs and its various other units whether at the Headquarters at Delhi or in their offices located elsewhere."

11. In my view, the above Judgment does help the applicants in their case that their case for appointment should be considered not only in the departmental canteen, but also in other offices under the Ministry of Labour in Mumbai.

12. The counsel for the applicant next relies on Raj Kamal and Ors. v/s. Union of India & Ors. (1990) 13 ATC 478. In this case the Tribunal directed the Government to regularise the casual labours completing prescribed number of days even if they were not sponsored by the Employment Exchange. Further, it was held that if the applicants were within the age limit at the time of initial recruitment they should be regularised.

13. The counsel for the applicant has also invited my attention to para 8.11 of the Swamy's Compilation of Central Government Departmental Canteens, which shows that employees of the departmental canteens will be permitted to appear as Departmental candidates to take the interviews/examinations for recruitment to the posts advertised by any of the Government Departments/Offices, if they otherwise fulfil the qualifications and other conditions specified for such posts.

14. Considering the facts of the case and the and rules case law/cited by the counsel for the applicant, I am of the view that the O.A. can be disposed of by directing the respondents to consider the case of the applicants for appointment against available group 'D' posts in any of the Institutions under the Ministry of Labour functioning ~~at~~ the premises of A.T.I. by relaxation of age subject to their fulfilment of the minimum essential qualifications laid down for the post and subject to terms and conditions of the scheme, if any, issued by the Ministry of Labour for regularisation of Casual Labour in their offices. Action in this regard should be taken within six months from the date of communication of the order. For the purpose of convenience, the Director, A.T.I. is designated as Nodal Authority for ensuring the implementation of the order. There would be no orders as to costs.

M.R.Kolhatkar

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

B.