

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 112/98

Date of Decision: 17.8.98

Shri Atmaram Shankar Kamble and others Applicant.

Shri M.S. Ramamurthy Advocate for
Applicant.

Versus

Union of India and others Respondent(s)

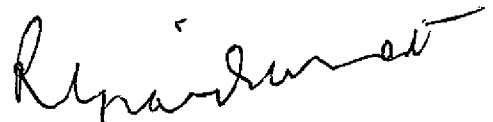
Shri Vadhavkar for Shri M.I.Sethna Advocate for
Respondent(s)

CORAM:

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

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

- (1) To be referred to the Reporter or not? *no*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *no*


(R.G. Vaidyanatha)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, BOMBAY:1.

Original Application No. 112/98

Monday the 17th day of August 1998.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S. Baweja, Member (A)

Atmaram Shankar Kamble
Residing at
Room No.191/4/7 Hatibhau
Chawl, Siddhivinayak Society
Vikhroli Park Site, Vikhroli,
Mumbai.

Dayavant Shankar Kante
Residing at A-1,
87/a, Sector 21, Turbhe
New Bombay.

Sudhakar Atmaram Mane
Residing at Room No.15,
BDD Chawl No.80,
Worli Naka,
Mumbai.

... Applicants!

By Advocate Shri M.S. Ramamurthy.

V/s.

Union of India
Through the Secretary,
Ministry of Finance
Department of Revenue
North Block
New Delhi.

The Commissioner of Customs
(General) New Customs House,
Ballard Estate,
Mumbai.

Assistant Commissioner of
Customs, Personnel &
Establishment Department
New Customs House,
Ballard Estate,
Mumbai.

... Respondents!

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

ORDER (ORAL)

{ Per Shri Justice R.G.Vaidyanatha, Vice Chairman }

This is an application filed by the
applicants challenging the respondents' action in
filling up of the post of Scaleman by direct
recruitment without giving an opportunity to the

applicants. The respondents have filed their reply opposing admission. We have heard the learned counsel for both the sides. Since the point involved is short, by consent of both the counsel, we dispose of this application finally.

2. Admittedly the applicants are working as Casual workers in the Customs Department since many years. The applicants have also attained temporary status as could be seen from the notification dated 14.8.95 which is at page 15 of the paper book and the applicants are at serial No.11, 23 and 35. Now the respondents have started the process of filling up of vacancy of Scaleman, by getting the candidates from Employment Exchange. Being aggrieved by this action the applicants have approached this Tribunal. The applicants state that they are entitled to be considered for 2/3rd vacancies in Group D cadre.

3. The respondent's stand is, that by virtue of letter dated 3.4.92 issued by Central Board of Excise and Customs, the post of Scaleman should be filled up through the Employment Exchange only. Therefore the case of the applicants cannot be considered. The other stand of the respondents is that the applicants were screened for the post of Sepoy but they could not be selected.

4. It is true that the letter dated 3.4.92 clearly shows that Scaleman post to be filled only through Employment Exchange. Even agreeing for a moment that the said circular gives a direction that only candidates sponsored through Employment

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Exchange to be selected for the post of Scaleman, in our view, the position has changed after 1993 Scheme. There is no doubt that the Department of Personnel & Training has prepared a scheme on 10.9.93 which is at page 18, 19, 20 and 21 of the paper book, in which it is stated that filling up of Group 'D' Post, two out of every three vacancies to be filled up by Casual Labourers those who have attained temporary status. The remaining 1/3rd to be filled by direct recruit.

In our view 1992 directions get corrected or modified in view of 1993 Scheme. In view of 1993 Scheme the Casual Labourers who have attained temporary status are entitled to be considered for 2/3 rd vacancies in Group 'D'.


5. We are not impressed with the argument of the learned counsel for the respondents that the applicants got a chance of being considered for the post of Sepoy and they were screened and were not found suitable. It is pointed out by the learned counsel for the applicants that they could not get through the medical examination because of certain restrictions prescribed in the Rules for appointment to the cadre of Sepoy. In our view that will not come in the way of the applicants being considered for other Group 'D' posts.


The learned counsel for the respondents contended that in view of 1993 Scheme the Casual workers who have attained temporary status to be considered for 2/3 rd posts in Group 'D' cadre generally and not 2/3 rd posts in each category of Group 'D' cadre.

In our view the department has to follow the 1993 Scheme which clearly provides that two out of every three vacancies in Group 'D' cadre be filled up by Casual Workers who have attained temporary status. Therefore, we feel that the department should be given a direction to follow the 1993 Scheme in filling up the post of Scaleman.

6. In the result, the application is allowed as follows:

The respondents are directed to fill up the vacancies of Scalemen as per procedure provided in 1993 Scheme. Interim relief already granted is vacated. In the circumstances of the case no order as to costs.


(D.S. Baweja)
Member (A)


(R.G. Vaidyanatha)
Vice Chairman

NS

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

C.P.No.4/99 in OA.NO.112/98

Dated this the 1st day of November 2000.

CORAM : Hon^{ble} Shri B.N.Bahadur, Member (A)

Hon^{ble} Shri S.L.Jain, Member (J)

Atmaram Shankar Kamble & Ors.

... Applicants

By Advocate Shri M.S.Ramamurthy

V/S.

Union of India & Ors.

... Respondents

AND

1. Mr.Biswas
Commissioner of Customs,
New Customs House,
Ballard Estate, Mumbai.
2. Mr.D.R.Singh,
Asstt. Commissioner of
Customs, New Customs House,
Ballard Estate, Mumbai.

... Contemners

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

O R D E R

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

The applicants in OA.NO.112/98 have filed this petition seeking the relief to initiate proceedings against the Contemners for non complying with the directions/order in the order dated 17.8.1998, A further direction is sought to give effect to the directions/orders in the said order dated 17.8.1998 for calling the applicants in the selection for the post of Scaleman.

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2. In OA.NO.112/98 this Tribunal on 17.8.1998 has passed the order to the following effect :-

"The respondents are directed to fill up the vacancies of Scaleman as per procedure provided in 1993 Scheme. Interim Relief already granted is vacated. In the circumstances of the case no order as to costs."

3. The grievance of the applicant is that pursuant to the order dated 17.8.1998, a letter was sent on 2.9.1998 by their counsel along with the copy of the said order calling upon them to consider the applicants against 2/3 of the vacancies, i.e. to say in the cadre of Scaleman. In spite of the said letter, the respondents/contemners have not bothered to comply with the order dated 17.8.1998 and have not called the applicants in the said selection. The respondents/contemners are deliberately not taking any action to give effect to the directions/orders dated 17.8.1998. The applicants have also ^{met} ~~made~~ the Chairman, Central Board of Excise & Customs and requested for implementing the order, but no action is taken till date. Hence, this application.

4. The respondents have resisted the claim of the applicants and stated that the matter was referred to the Ministry of Finance on 15.9.1998 and the Ministry vide letter dated 16.2.1999 has directed the Office to implement the order passed by this Tribunal within the stipulated time. Accordingly, a Circular was issued amongst the casual workers of the Customs House on 15.3.1999 calling their willingness from the eligible casual workers for the post of Scaleman. Accordingly, a date for

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selection, i.e. to say for personal interview of the willing eligible candidates was fixed on 15.4.1999.

5. In OA.NO.76/98 filed by Shri A.K.Yadav, Casual Workers, an interim order on 16.1.1999 was passed to the effect "the applicant should be permitted to appear in the examination/interview as a measure of interim relief but the result of DPC held on 16.1.1999 (for outsiders) and on 15.4.1999 (for casual workers) cannot be published and was kept under sealed cover. OA.NO.76/98 came up for hearing on 29.4.1999 and order is passed on 13.5.1999 to the effect that "to consider the case of the applicant (i.e. Shri A.K.Yadav) for regularisation as scaleman as per deemed date the temporary status is allowed to him according to seniority and existing rules."

6. Since there are no existing Recruitment Rules available in this Customs House for the post of Scaleman, the selection was done as per the prevailing practice of selection in the cadre of scaleman i.e. on the basis of the marks obtained in the personal interview and as per the reservations in various categories. Since the findings of the DPC held on 15.4.1999 were kept in sealed cover, at that stage, it was not feasible to appoint the candidates exclusively on the basis of the seniority. In the past, one year experience in similar type of job was a condition to selection which is necessary one. The casual workers with

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temporary status in this office do not have any experience for the post of scaleman. An Establishment Order No. 243/99 dated 12.8.1999 publishing therewith list of selected candidates for the post of Scaleman (copy Exh.'1'), while issuing the said order, this office has complied with the order of this Tribunal in OA.No.112/98 and also in OA.NO.76/98 by selecting four casual labourers out of six vacancies. hence prayed for dismissal of the application.

7. The applicants have filed a rejoinder pleading ignorance about the interim and final order passed in OA.No.76/98 filed by A.K.Yadav along with the steps taken by the respondents pursuant to the said order. The orders in their case is passed on 17.8.1998 and there were no impediment for the respondents to implement the said order at the earliest. In the absence of any Recruitment Rules, the selection conducted by the respondents for regularisation of the casual labour based on merits, the manner of selection should be as in the case of non selection post, i.e. to say seniority-cum-fitness. Any other method of filling up the post of Scaleman is irregular and illegal and cannot be resorted to by the respondents. The explanation given amounts to gross contempt which is acted to cover up the deliberate and wilful circumvention of the order of the Tribunal. In fact, the finding of DPC was not kept in sealed cover as Applicant No. 1 A.S.Kamble has been regularised and was appointed as such under order dated 29.9.1999, i.e. to say two days prior to the filing

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of the said affidavit which clearly indicates that no sealed cover was adopted in respect of the findings of the DPC. It is further clear by the fact that six persons including 4 casual workers are included. Applicant No. 3 was appointed on regularisation/appointed as Scaleman pursuant to the said DPC under order dated 12.8.1999. There is no impediment to appoint Applicant No. 2 to the said post of Scaleman. Criteria of one year's experience cannot be acted upon in view of 1993 Scheme of DOPT. If no Recruitment Rules are available for the post of Scaleman, there was no basis to issue Exh.'R-1'. At present, there are two posts of Scaleman which are lying vacant due to superannuation of the holders of the said posts. The Applicant No. 2 can therefore be appointed in the said post in view of the order dated 17.8.1998. The act of the respondents is uncalled for, interpretation given by them is unwarranted. Hence prayed for the relief with cost.

8. The scope of the Contempt application is limited one, i.e. to examine whether the order passed by the Tribunal has been complied with. If no manner of compliance is stated, there are no Recruitment Rules, the respondent/contemner is free to adopt any procedure of selection. In a case where the matter in OA. was not that what procedure is to be followed for consideration of the applicants for regularisation and if the respondents have followed the procedure - selection on merit, in absence of Recruitment Rules, While the applicant contends that fit or unfit method is to be followed, this point cannot be decided in the contempt petition.

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9. Further, if the contention of the applicant is accepted, then the persons affected by the said order, may be the person who are not before the Tribunal.

10. The respondents have not wilfully disobeyed the orders of the Tribunal. Hence, no contempt is made out. However, if the applicants have any grievance in respect of the procedure to be followed in regularisation of the applicants, they are at liberty to challenge the same, as per law. Notices issued to the respondent/contemners stands discharged. No order as to costs.

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

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

mrj.

dt 29/11/00
order/Judgement despatched
to Applicant/Respondent (s)
on 29/11/00
4/12/00