

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:849/98

DATE OF DECISION: 16th March 2000

Shri Prakash Chandra Rathod Applicant.

Shri A.I.Bhatkar Advocate for
Applicant.

Versus

Union of India and others Respondents.

Shri V.S.Masurkar Advocate for
Respondents

CORAM

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

(1) To be referred to the Reporter or not? No

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

(3) Library. yes

S.L. Jain
(S.L. Jain)
Member(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 849/98

the 16th day of MARCH 2000

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

Prakash Chandra Rathod
Residing at Vadfalia.
P.O.Naroli,
Dadra and Nagar Haveli.

...Applicant

By Advocate Shri A.I.Bhatkar.

V/s

1. Administrator
Union Territory of Dadra
& Nagar Haveli,
Secretariate,
P.O.Moti Daman
2. The Development Commissioner
Administration of Dadra
& Nagar Haveli,
Union Territory Secretariate
P.O. Moti Daman.
3. Deputy Conservator of Forest
Administration of Dadra &
Nagar Haveli,
Union Territory
(Forest Department)

...Respondents

By Advocate Shri V.S.Masurkar.

O R D E R

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

This is an application under Section 19 of the Administrative Tribunals Act 1985 seeking the relief that termination of service of the applicant is bad in law, deserves to be set aside with a direction to reinstate the applicant with full backwages and consequential benefits, regularisation of service from from the date of appointment or from the date on

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which his juniors are regularised say 1.5.1998. In the alternative it is prayed that the respondents be directed to appoint the applicant in the post of Work Charged Mistry.

2. The applicant has worked with the Office of Range Officer since March 1993.

3. The applicant alleges that he was not provided weekly paid holidays and worked even on Saturdays and Sundays, no salary for the same period for which he is entitled was provided to him, not provided with the facilities for which he is entitled as temporary status employee. The respondents have denied the claim in respect of the same. It is suffice to state that the said allegations need not to be examined looking to fact that no relief is claimed in respect of the same.

4. The applicant alleged that the respondents have appointed 6 L.D.Cs vide order dated 1.5.1998. The respondents have denied this fact, but claimed that they have appointed as per recruitment Rules.

5. The applicant claims that he has worked with respondent No.3 since 1.3.1994 on Daily wages and continued as such till October 1996 without any break. He further worked with effect from 1.4.1977 to 9.2.1998 without break. He claims that he has completed the period (240) days. His services are terminated by oral orders. The claim of the applicant is denied and alleged

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that the applicant himself has not attended the office, but remained absent, his services are not terminated and he has never served continuously for 240 days or 206 days. It is further alleged that office of Range Forest Officer functions six days a week while the applicant worked only for 5 days week.

6. There is nothing on record to arrive the finding that the applicant has continuously worked 240 days/206 days in the year 1993, 1994, 1995, 1996, 1977 and 1998.

7. The applicant claims that he has submitted a representation dated 16.12.1996 Exhibit A-6 and reminder dated 1.2.1997 and further representation dated 9.2.1998 Exhibit A9. The said fact is not denied by the respondents.

8. The applicant claims that the work is of permanent nature and still the work existis. The respondents denied the said fact and alleged that the applicant was engaged when there was a load of work and the work is not of permanent nature and no work exists now.

9. The learned counsel for the applicant claims temporary status in view of Casual labourers (grant of temporary status and regularisation) Scheme of Government of India 1993. In the said Scheme word 'temporary status' has been mentioned in para 4(i), (ii), (iii), (iv) which is as under.

4(i) Temporary status would be conferred on all casual labourers who are in employment on the date of

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issue of this OM and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week)

- (ii) Such conferment of temporary status would be without reference to the creation/availability of regular Group 'D' posts.
- (iii) Conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on need basis. He may be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work.
- (iv) Such casual labourers who acquire temporary status will not however, be brought on to the permanent establishment unless they are selected through regular selection process for Group 'D' posts.

In para 5 of the said Scheme after grant of temporary status entitlement of the person concerned is mentioned.

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10. The learned counsel for the applicant relied on 1996(2) ATJ 606 K.M. Badarudeen and Ors. V/s Union of India which lays down the proposition that where there is continuing requirement and a casual labour has put in 240 days of service- He should be granted temporary status consistent with the Scheme framed pursuant to orders of Supreme Court and consistent with statutory eligibility envisioned by the I.D. Act. The Tribunal observed as under:

"There is no special sanctity about this date, except that it was the date on which the scheme came into force. The material conditions for grant of temporary status is in putting in of 240 days of service."

11. The learned counsel for the applicant relied on 1999(1) ATC 415 Rampal & Ors. V/s. Union of India and others decided by the Principal Bench, New Delhi which laid down the proposition that the Scheme being a welfare measure has to be interpreted wide enough to include even those who had the required number of days of service in a year to their credit even after 9.9.1993.

12. The learned counsel for the applicant relied on (1997) 36 ATC 450 Manas Kumar Mity abd others V/s Union of India and others dscided by Calcutta Bench which laid down the proposition that Practice of giving artifical breaks to deprive the applicants of the benefit of regularisation be ignored and they be deemed to have worked continuously under the rules. It further laid down that they are not sponsered by the Employment Exchange deserves to be rejected. This was descided in view of OM 26(a)/ 84/ by D.O.P.T. I agree to the proposition of law.

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13. The learned counsel for the applicant relied on the order passed by this Bench in OA 393/97 and 593/97 decided on 3.6.1999 which laid down that who have completed 206 days/ 240 days working in an year. (240 days where office working six days a week and 206 days where office functioning , 5 days week) is entitled for temporary status.

14. About the legal position relied on by the learned counsel for the applicant there can be no dispute that if the applicant works continuously ignoring the artificial breaks for 240/206 days in an year is entitled for temporary status, but in the present case the facts are disputed. The termination of the applicant is also in dispute.

15. In the circumstances the only order which can be passed is that the respondent No.3 should examine the matter about working as Casual Labourer and then decide about the status of the applicant whether the applicant has acquired temporary status or not?

16. In the result the OA is disposed of with the direction that Respondent No.3 should enquire about working of the applicant since 1993 to 9.2.1998, with a view to examine whether the applicant has worked 240 days /206 days (240 days where office functions 6 day week / 206 days where office functions 5 days week) and then to record the finding keeping in view the

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above proposition of law whether the applicant has acquired temporary status or not and proceed in accordance with law. The respondents are further directed to provide work to the applicant as and when available. No order as to costs.

S.L. Jain
(S.L.Jain)
Member(J)

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