

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 1140/98

Date of Decision : 20th September 2002

T.U.Gharat

Applicant

Shri S.S.Karkera

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 B.N.Bahadur, Member (A)

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

- (i) To be referred to the reporter or not ? yes
- (ii) Whether it needs to be circulated to other ~~also~~
Benches of the Tribunal ?
- (iii) Library yes

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

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1140/98

Dated this the 20th day of September 2002.

CORAM : Hon'ble Shri B.N.Bahadur, Member (A)

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

1. T.U.Gharat
2. M.J.Patil
3. R.T.Karanje
4. V.M.Makhwana
5. A.B.Patil
6. B.J.Patil
7. P.M.Kadu

All are working as Casual
Labourers in the O/O Commissioner
of Customs, Jawahar Custom House,
At Seva, Taluka-Uran, Dist.Raigad.

...Applicants

By Advocate Shri S.S.Karkera

vs.

1. Union of India
through The Secretary, .
Central & Excise Board,
Ministry of Finance,
North Block, New Delhi.
2. The Chief Commissioner of Customs,
New Customs House, Ballard Estate,
Mumbai.
3. The Commissioner of Customs,
Jawahar Customs House,
At-Sheva, Taluka-Uran,
District-Raigad.
4. The Deputy Commissioner of Customs,
Personnel & Establishment Department,
Jawahar Customs House,
At-Sheva, Tal.Uran, Dist.Raigad.
5. The Assistant Commissioner of Customs,
Jawahar Customs House,
At Sheva, Tal.Uran, Dist.Raigad.

...Respondents

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

Sign

..2/-

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 to quash and set aside the order dated 9.9.1998 (EX.A) with the declaration that the applicants are entitled for grant of temporary status w.e.f. 1.9.1993 with consequential benefits, regularisation in 23, Group 'D' posts of Sepoy with the direction to the respondents for consideration of their cases for regularisation in the said posts. A further declaration is sought that filling of 23 Group 'D' posts of Sepoy by respondents from open market/outside is illegal and bad in law.

2. The applicants have filed this OA. on 31.12.1998. An interim order was passed on the said date to the effect that "it is provided that respondents may go ahead with the selection process but the final result shall not be declared till the next date of hearing, i.e. 11.1.1999". The said interim relief continued till 12.3.1999. On said date liberty was given to the administration to dispose of the applicants' representation as per rules by a speaking order and if the applicants are aggrieved by any such order of the administration, they may challenge the said order in accordance with law. Any selection or appointment made in pursuance of the impugned order shall be subject to further or final orders to be passed in the OA.

Per

..3/-

3. Thereafter, by way of an amendment the applicants have added the relief to quash and set aside the impugned order dated 21.10.1999 (Ex.AA) deciding their representation dated 21.12.1998.

4. There is no dispute between the parties that Applicant No.1 Shri T.U.Gharat, Applicant No.2 M.J.Patil, Applicant No.3 R.T. Karanje, Applicant No.5 A.B.Patil, Applicant No.6 B.J.Patil and Applicant NO.7 P.M.Kadu were working as casual labourers w.e.f. 5.5.1989, 5.5.1989, 1.10.1989, 1.1.1990, 15.8.1990 and 3.8.1992.

5. Applicant No.4 V.M.Makwana claims to be working as Casual Labour w.e.f.12.12.1989 but as per averment of respondents, he was working as such w.e.f.1.1.1990.

6. Vide Estt.Office Order No.64 dated 9.9.1998 all the applicants as they have rendered minimum 240 days continuous service and were in service as on 1.1.1993 were conferred temporary status w.e.f.9.9.1998.

7. The grievance of the applicants is that they are entitled to temporary status w.e.f.1.9.1993 and entitled to regularisation in view of the scheme known as "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme,1993". The respondents are filling the post of Sepoy ignoring them. They have submitted the representation dated 21.12.1998 which was not decided by the respondents till the filing of the OA. After the directions from the Tribunal, their representation was decided vide order dated 21.10.1999 (Ex.AA).

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8. On perusal of Order dated 21.10.1999 (Ex.AA) Office Order No.87/99, we find that the defence is clarification to O.M. dated 10.9.1993 regarding grant of temporary status and regularisation of casual workers issued by D.P.& Training O.M. dated 12.7.1994 by which it is mandatory to engage casual employees through Employment Exchange, the appointment of casual employees without Employment Exchange is irregular. Hence, such casual employees cannot be bestowed with temporary status. None of the applicants were sponsored by Employment Exchange and only Applicant No.1 was registered in Employment Exchange on 28.6.1982.

9. A clarification was issued by Ministry of Finance dated 10.1.1997 to the effect that temporary status can be conferred only upon such casual labour who had rendered one year of service with 206 days on the date of issue of DOPT's instructions dated 10.9.1993. The said clarification is neither of any assistance to the applicants nor to the respondents.

10. The learned counsel for the applicants relied on O.M. dated 7.6.1988 which was further clarified by O.M. dated 8.4.1991.

11. Ministry of Finance vide letter dated 24.9.1999 has clarified that as per the DOPT's advice it is hereby stated that casual workers recruited prior to 7.6.1988 and were in service as on 8.4.1991 who are entitled to regularisation even though not employed through Employment Exchange, can be given temporary status if such workers were not so far regularised for lack of vacancies. This is a clarification and confirmation in respect of O.M. dated 12.7.,1994. Admittedly, none of the applicants were recruited prior to 7.6.1988.

Sign

12. The learned counsel for the applicants relied on 1990 (13) ATC 478 - Raj Kamal & Ors. vs. Union of India & Ors. decided on 16.2.1990. Suffice to state that after the said pronouncement the above referred scheme of 1993 came into existence as such the said authority is of no assistance to the applicants.

13. The learned counsel for the applicants relied on 1997 (36) ATC 450 decided by CAT, Calcutta Bench (a Full Bench judgement decided on 30.6.1997) prior to the instructions issued by Memo dated 24.9.1999. On perusal of para 17, 18 and 19 of the said authority, we find that O.M. dated 7.5.1985 was subject of consideration but subsequent O.Ms. were not subject of consideration. It was held that the cut-off date for regularisation of casual labourers vide O.M. dated 7.5.1985 has not been treated by the Ministry itself as sacrosanct. The other O.Ms. referred above were not subject matter of consideration before the Full Bench.

14. The learned counsel for the applicants relied on 1997 (1) SC SLJ 3 - The Excise Superintendent Malkapatnam, Krishna District, Andhra Pradesh vs. K.B.N.Visweshwara Rao & Ors. and 2002 (1) ATJ 487 - The State of Haryana & Anr. vs. Bikram Singh Mazdoor & Ors. He argued that Employment Exchange should sponsore the names for selection strictly according to seniority and reservation as per requisition. In addition, the appropriate department or Undertaking or Establishment, should call for the names by publication in the Newspaper having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins and then consider

the cases of all the candidates who have applied. If this procedure is adopted then equality in the matter of employment cannot said to be denied to all eligible candidates. In our considered opinion, it is no one's case that while the applicants were recruited as casual labourers, vacancies were widely circulated and therefore equality in the matter of employment was available to all eligible candidates. In case of the State of Haryana & Anr. vs. Bikram Singh Mazdoor & Ors., the only point decided that if a person is not registered with Employment Exchange or his name was not sponsored by the Employment Exchange, a person cannot be denied his consideration for appointment only on the ground that he is not registered with the Employment Exchange or his name was not sponsored by the Employment Exchange. The said question becomes relevant only when the vacancies arises, vacancies are notified to the Employment Exchange and the candidates apply for the same vacancies as outsiders.

15. Vide O.M. dated 7.6.1988 policy regarding further recruitment of casual workers and persons on daily wages was reviewed and guidelines were issued. Even vide letter dated 28.6.2000 Govt. of India, Ministry of Finance, Department of Revenue, Central Board of Customs have clarified the subject of regularisation in respect of casual workers who were recruited after 7.6.1988 and regarding conferring of temporary status.

Dep't

..7/-

16. Case of the Excise Superintendent Malkapatnam, Krishna District, Andhra Pradesh vs. K.B.N.Visweshwara Rao & Ors. and State of Haryana & Anr. vs. Bikram Singh Mazdoor & Ors. are applicable when the applicants are treated as outsiders and apply for the same in view of direct recruitment with all eligibility conditions. In the present case, the applicants are claiming their regularisation based on scheme of 1993 as such, the said authorities do not help the applicants.

17. The learned counsel for the respondents relied on Passport Officer, Trivandrum & Ors. vs. Venugopal C. & Ors. decided by the Apex Court on 27.1.1997 wherein it has been held that a decision to the effect that if recruitment was not through the Employment Exchange, and also granted temporary status, an O.M. which clarifies that under the scheme only those employees who have been recruited through Employment Exchange will be given temporary status was held to be not acting in arbitrary manner and no fault can be found with the department as the said decision was not inconsistent with Article 14 of the Constitution.

18. The learned counsel for the applicant based his claim with respect to a decision in OA.No.239/97 which is being explained by the respondents in the impugned order dated 21.10.1999 (Ex.AA) and the distinction made out is that in the said case there was no dispute that all the casual workers were drawn from Employment Exchange i.e. all the applicants were sponsored by the Employment Exchange. Equality before law can be claimed but when the facts are entirely different one, Article 14 of the Constitution of India is not applicable.

P.S.

19. In the result, we do not find any merit in the OA. It is liable to be dismissed and is dismissed accordingly with no order as to costs.

S.L. Jain

(S.L. JAIN)

MEMBER (J)

B.N. Bahadur

(B.N. BAHADUR)

MEMBER (A)

mrj.