

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO 1013 OF 1998

1. Smt. Sheela Juman
Ex-Safaiwali in the
National Defence Academy
Khadkawasla
Pune

2. Smt. Lajwanti Baljeevan
Valmiki
Ex- Sweeper
National Defence Academy
Khadkawasla
Pune

3. Shri Maruti Dadu Adgale
Ex. Groundsman
National Defence Academy
Khadkawasla
Pune

4. Smt Shanti Mashicharan
Ex-Safaiwali
National Defence Academy
Khadkawasla
Pune

All the Applicants residing
At & Po : Uttam Nagar
Tal : Haveli
Dist : Pune

... APPLICANTS

VERSUS

1. Union of India, through
The Secretary
Ministry of Defence
South Block
New Delhi

2. The Commandant
National defence Academy
Khadakwasla
Pune

.. RESPONDENTS

O R D E R

(Per: Shri D.S.Baweja, Member (A))

All the 5 OAs. referred to above have been heard together and are being disposed of by a common order as the facts, reliefs prayed for and the question of law are common in all the OAs.

2. Shri D.V.Gangal is the learned counsel for the applicants in the cases of OA.NOs.208/98, 458/98 & 1013/98 while Dr.A.V.Shivade is the learned counsel for the applicants in the cases of OA.NOs. 594/98 and 595/98. Shri R.K.Shetty is the learned counsel for the respondents in all the OAs.

3. Brief facts of the OAs. are as under :-

OA.NO. 594/98

This OA. has been filed jointly by the 103 applicants who claim to have been engaged by the National Defence Academy, Khadakvasla, Pune in various spells in the various categories of Group 'D' against the vacancies during the period from 1975 to 1992. The details of the engagement of the applicants have been furnished in the OA. and in respect of some, experience certificates with regard to engagement and working issued by the department have also been brought on record. The applicants submit that they were sponsored by the Employment Exchange and were within the age limit at the time of initial engagement.

The contention of the applicants is that there are vacancies existing and inspite of the same, the respondents are not regularising them against the existing vacancies. The applicants had also filed a joint representation dated 2.1.1997 but did not get any response. The applicants have also brought out that the issue with regard to regularisation of the casual labourers engaged by the National Defence Academy had been earlier agitated in Writ Petition before the High Court/and this Bench of the Tribunal through several OAs. and the relief had been granted with the direction to the respondents to regularise the applicants against Group 'D' vacancies in order of seniority. The applicants claim that they are similarly situated and therefore are also entitled for the benefit of various orders of the Tribunal. Denying regularisation to the applicants by the respondents is violation of Articles 14 & 16 of the Constitution of India. Feeling aggrieved, the applicants have filed the present OA. on 30.6.1998 seeking the relief of directing

the respondents to appoint the applicants against the Group 'D' posts with effect from their dates of first appointment disregarding the breaks in service and to give them all the benefits such as seniority, increments etc. from the said date.

The applicants have relied upon the following judgements/orders :-

- (a) Writ Petition No. 1230/84 decided on 29.9.1984, Shri Ananda Tanaji Kamble vs. National Defence Academy. (Mumbai High Court)

- (b) OA.NO.196/88 decided on 27.6.1988, Shri Vilas Vitthal Dhile vs. Union of India & Anr.
- (c) OA.No. 1314/92 and connected OAs. decided on 23.8.1995, S.N.Mokashi & Ors. vs. Union of India & Ors.
- (d) OA.NOe. 714/88 to 718/88 decided on 1.5.1991, S.D.Salunke & Ors. vs. Union of India & Anr.
- (e) OA.NO. 1313/92 decided on 26.9.1995, R.S.More & Ors. vs. Union of India & Anr.
- (f) OA.NO. 1164/93 decided on 11.2.1994, A.S.Dhumal & Ors. vs. Union of India & Ors.
- (g) OA.NO.s.1247/93 & 1258/93 decided on 28.1.1998, R.J.Chandaliya & Ors. vs. Union of India & Anr.

OA.NO. 595/98

This OA. has been jointly filed by 20 applicants. Pleadings made in this OA. and the relief prayed for is the same as in respect of OA.NO. 594/98 detailed earlier.

OA.NO. 208/98

This OA. has been filed jointly by 5 applicants. Here also the main pleadings seeking for regularisation of the services against Group 'D' vacancies are more or less the same as in the case of OA.NO. 594/98. The applicants in addition have also contended that their claim for regularisation is as per the scheme laid down as per the extant rules

brought on record at Annexure-'A-15'. It is also further contended that the respondents are required to prepare a seniority list of casual labourers and then undertake the engagement as per the seniority list. The applicants are mainly relying on the order in the case of OA.NO. 1314/92 claiming that the applicants are similarly situated.

OA.NO. 458/98

This OA. has been filed jointly by 6 applicants, out of which 5 claim that they have been engaged in Group 'D' while one as a Clerk. The applicants have been engaged for various periods starting from 1974 till May 1995 for various spells and experience certificates with regard to engagement issued by the department have been brought on record. The averments advanced are more or less ^{the} same as in respect of OA.NO. 594/98. However, apart from the relief of regularisation of the applicants, the applicants have also made a prayer that respondents be directed to prepare the seniority list of all the casual labourers who had worked or are working with them and regularise their services in order of their seniority. Here also the applicants claim the benefit of the orders of the Tribunal as referred to earlier on the plea that they are similarly situated.

OA.NO. 1013/98

This application has been filed jointly by 4 applicants. The pleadings made are more or less the same as detailed in respect of OA.NO.594/98.

The relief claimed is also the same, i.e. regularisation of the services. Apart from relying upon the orders as detailed earlier, the applicants also claim that they are entitled to the benefit of regularisation in terms of the judgement of the Hon'ble Supreme Court in the case of State of Haryana vs. Piara Singh & Ors.

4. The respondents have filed written statements in all the OAs. and submissions made in all the OAs. are more or less same except in OA.NO.595/98 as brought out subsequently. Brief details are as under :-

OA.NO.594/98

The respondents at the outset have opposed the application stating that it is barred by limitation. As regards the merits, the respondents submit that out of 103 applicants only 64 applicants have served in purely temporary capacity against the leave vacancies as per the available record. The respondents contend that the applicants do not have any vested right to claim regular appointments since their engagement was purely as a stop gap arrangement against the leave vacancies and there are no provisions of the rules to regularise such staff against the Group 'D' posts. As regards the various judgements/orders cited by the applicants, the respondents contend that those judgements/orders have been implemented in respect of petitioners/applicants and there is no such direction in these judgements/orders to consider all those who are similarly situated. The respondents therefore plead

that the OA. deserves to be dismissed. The respondents have also relied upon the order dated 23.12.1996 in OA.NO. 1205/96 in the case of P.David vs. Union of India & Anr.

OA.NO. 595/98

The respondents here have also opposed the application on being barred by limitation. As regards the admission with regard to engagement of the applicants, the respondents have brought out that out of the 20 applicants, only applicants No. 7,8,12,13 and 20 had been engaged purely as a temporary arrangement as casual labourers on daily wages against the leave vacancy. As regards the 14 balance applicants, the respondents submit that they had not been engaged in the Government service as per the available record. The respondents have taken additional plea that the engagement as casual labourer is governed by the detailed instructions laid down by the Department of Personnel & Training as per O.M. dated 7.6.1938. As regards the regularisation of casual labourers, the guidelines have been laid down as per O.M. dated 26.7.1979, according to which, the casual labourer is eligible for regularisation only if he has put in 240 days of service in each of the proceeding period of two years. The respondents further submit that none of the applicants in the present OA. meet with the requirements laid down for regularisation and therefore they are not eligible for regularisation. The respondents have further added that judgements relied upon by the applicants were in per-sonam and not in-rem and therefore the applicants cannot claim any relief based on the cited judgement/orders.

OA.NO. 208/98

The respondents have in the written statement more or less made the same averments opposing the application as in respect of OA. NO. 594/98. As regards the claim of engagement of the applicants, the respondents have brought out that only applicants No. 1, 2 and 4 had been engaged as casual labourers as temporary arrangement in Group 'D' against vacancies. Applicant No. 5 was initially engaged as casual labourer but was subsequently engaged as regimental employee and paid out of regimental funds. Applicant No. 3 was engaged as a regimental employee and therefore the Tribunal has no jurisdiction as he is not a civilian employee. The respondents have also opposed the joint application stating that the same is not maintainable as the applicants are not similarly situated as Applicant No. 3 was never engaged in Government service.

OA.NO.458/98

In the written statement filed by the respondents, the pleadings are more or less the same as filed in the case of OA.NO. 594/98. In this case, the respondents have not taken any plea with regard to the extant rules laid down with regard to regularisation of the casual labourers. As regards the working details of the applicants, the respondents have brought out that Applicants No. 1, 2, 4 and 5 had been engaged against leave vacancy on temporary basis. As per the records,

Applicant No. 3 had never been engaged while Applicants Nos. 6 and 7 were engaged as regimental employees and paid out of regimental funds.

OA.NO. 1013/98

The respondents in the written statement have taken more or less the same grounds as detailed earlier in OA.NO. 595/98. The respondents have not disputed the engagement of the applicants as casual labourers as brought out in the OA.

5. The applicants have not filed rejoinder affidavit in all the OAs. except in OA.NO. 208/98 where the rejoinder reply has been filed. The applicants in this OA. while reiterating their grounds have contested the contention of the respondents with regard to Applicants No. 3 & 5 being regimental employees. The applicants have maintained their stand that they were employed by the respondents against the leave vacancies like the other applicants. The respondents have filed supplementary written statement for the rejoinder filed in OA.NO. 208/98 maintaining their stand with regard to Applicant No. 3^{and 5}/having been engaged as regimental employees.

6. Heard the counsel for the parties and carefully gone through the material brought on record.

7. Before going into merits of the reliefs prayed for, the technical objections raised by the respondents will be considered. The respondents have opposed all the applications on the plea that they are barred by limitation. The respondents have submitted that the applicants in the various O.As. had been engaged during the various years, seventies, eighties and nineties and the O.As. filed in 1998 for claiming regularisation are barred by limitation. The respondents have also further contended that the plea of the applicants explaining the delay in filing the present O.As. seeking the benefits of the orders in the other O.As. where similar claim had been allowed by the Tribunal is not tenable taking into view what is held by the Hon'ble Supreme Court in the case of State of Karnataka & Others V/s. S. M. Kotrayya & Others [1996 SCC (L&S) 1488]. The applicants, on the other hand, have maintained that the applicants are entitled for the benefits of regularisation as allowed in the various cited judgement/orders. The applicants have also contended that they were hoping that the respondents would be framing the seniority list of the casual labourers as directed in the various decided O.As. and will undertake the regularisation including the applicants as per the seniority. The applicants also plead that since the similarly situated casual labourers have been already regularised in compliance of the directions issued in several cited O.As., the claim of the applicants seeking the same benefits as being similarly situated could not be defeated merely on the technical ground of being barred by limitation.

also
 The applicants have/relies on the judgement
 of the Hon'ble Supreme Court in the case of
 Rajpal vs. State of Haryana & Ors. (1996) 33
 ATC 292 to support their contention that persons
 similarly situated are entitled to be given
 the same reliefs as allowed to the similarly
 placed petitioners in the decided cases. The
 applicants have also pleaded that the regulari-
 sation is a continuing cause of action and have
 cited the order of the Tribunal in the case of
 Hukam Singh vs. Union of India & Ors. (1993) 24
 ATC 747. The applicants, however, have filed
 applications for condonation of delay in all the
 OAs. After careful consideration of the rival
 contentions and the cited judgements/orders by
 both the parties, I am not inclined to endorse
 the contention of the respondents with regard to
 the applications being barred by limitation. The
 applicants in all the OAs. are claiming regularisation
 against the existing or future vacancies as and when
 they arise in order of seniority by virtue of having
 worked as casual labourers for a number of years
 in several spells. Such a claim in my opinion
 constitutes a continuing cause of action as the
 question of regularisation would arise only when
 the vacancies ^{are}/available and the respondents decide
 to fill up the vacancies. From the averments made
 in the OAs., it is noted that the respondents have
 stated that there was a ban on the recruitment and
 no regularisation could be done. If there is a laid down
 scheme for regularisation of casual labourers
 against Group 'D', then the question of ^{claim of} regularisation
 by casual labourer would arise ^{only} when the vacancies
 occur and his turn as per seniority comes. In

the present case, the respondents have stated that no regularisation of casual labourers except those who have been regularised on the direction of the Tribunal in the various O.As. has been done. In view of this, casual labourers who are applicants in the present O.As. are eligible to be considered for regularisation as per the extant rules and scheme for regularisation, if any, laid down by the Department as deliberated subsequently. It is further noted that similarly placed applicants had filed several O.As. and the same have been decided in favour of the applicants with the direction to the respondents to formulate seniority list and consider the applicants for regularisation against the vacancies as and when arise. It is noted that no plea of limitation in any of the O.As. had been taken by the respondents except in one O.A. No. 1205/96 which has been relied upon by the respondents to support their claim of O.As. being barred by limitation. I have carefully gone through the order dated 23.12.1996 in O.A. No. 1205/96. In this case the applicant was a Carpenter/Joiner and not similarly situated as the applicants in the present O.As. who were engaged against the Group 'D' leave vacancies. Further, in this O.A., the plea of the applicant had been dismissed on two other counts, firstly being that he was not sponsored through Employment Exchange and secondly he was over-aged and relaxation is not within the competence of the respondents apart from the claim being hopelessly barred by time. In the present O.As., the applicants claim that they were engaged after being sponsored by Employment Exchange and they were within the required age limit. This is not denied by the respondents. A number of O.As. filed by the casual labourers of National Defence Academy before this O.A. as detailed in para 3 above, had been decided earlier to the date of decision in the O.A. 1205/96.

It is noted that none of these decisions have been brought to the notice of the Bench who decided O.A. No. 1205/96. In the earlier O.As. and in the judgement of the High Court as brought out in Para 2 earlier, the plea of limitation either had been not taken up by the respondents or the same had ^{not} been upheld by the Bench. In view of this, in my opinion, the order in O.A. No. 1205/96 which has been passed without noticing the decisions in the earlier O.As. on the similar issue is an order per incuriam and cannot be cited as a precedent to support the contention that the present O.As. under consideration are barred by limitation. As regards the judgement cited by the respondents in the case of State of Karnataka & Others by the Hon'ble Supreme Court, keeping in view the observations made earlier, I am of the opinion that the ratio of what is held in this judgement is not applicable to the issue under challenge in the present O.As. Keeping in view the facts and circumstances of the present O.As. and the observations made above, I am not inclined to dismiss the claim of the applicants on the plea of being barred by limitation as raised by the respondents.

8. The respondents have also brought out that some of the applicants were not engaged against the leave vacancies of Group 'D' staff but were engaged as regimental staff and paid out of the regimental funds. Such casual labourers as pleaded by the respondents are not civil servants as held by the Hon'ble Supreme Court in the case of Union Of India & Others V/s. Chotelal & Others [1999 SCC (L&S) 332]. From the averments made, it is noted that the respondents have denied the engagement of some of the applicants, particularly in O.A. No. 208/98. The applicants have, however, contested the stand of the respondents and have

maintained that they were engaged against the leave vacancies. Since both the parties have contested each others claim with regard to nature of engagement, the plea of the respondents that the present O.A. is not maintainable in respect of those applicants who were engaged as regimental employees is, therefore, not sustainable. With regard to this dispute, the matter has been discussed subsequently and necessary directions given. Till such time the dispute is settled, the plea of applications being not maintainable in respect of some of the applicants cannot be upheld.

9. Now coming to the merits of the claim of regularisation made by the applicants, it is noted that the applicants have placed reliance on the decision in the judgement of the Hon'ble High Court in the Writ Petition No. 1230/84 followed by orders in various O.As. before this Bench as detailed in para 3 above. It is noted that the applicants are similarly situated as in all the cited O.As. and benefits as claimed in the present O.As. have been granted to the applicants. It is noted that the decision in the subsequent O.As. have been based on the decisions in the earlier O.As. and the last decision being in respect of O.A. No. 1258/93 and O.A. No. 1247/93 decided on 28.01.1998.

10. ^{above} It is noted that several O.As. had been earlier filed by the similarly placed casual labourers who had been engaged from time to time over several years by the National Defence Academy. Subsequent to this, the present five O.As. have been filed by a large number of applicants. The issue of regularisation of casual labourers against Group 'D' vacancies has to be seen in the light of the fact that whether there is any scheme for regularisation

laid down by the department so as to avoid multiplicity of litigation. Once the department had got the similar orders of the Tribunal in several O.As. it was expected of the department to take action to prepare the seniority list of all casual labourers and consider the regularisation of casual labourers against the vacancies by formulating the scheme ^{if not already} laid down by Government of India or following the scheme laid down by the Department of Personnel & Training. However, the respondent has not adopted such a course of action.

11. The issue of regularisation of casual labourers has been the subject before the Hon'ble Supreme Court in several cases. The Hon'ble Supreme Court has been directing the departments concerned to formulate a scheme for considering the regularisation of the casual labourers against the vacancies. In this connection, it may be pertinent to refer to some of the judgement of the Hon'ble Supreme Court - (a) Inder Paul Yadav V/s. Union Of India [1985 SCC (L&S) 138] in respect of Project Casual Labourers of Railways, (b) Daily Rated Casual Labourers V/s. Union Of India [1988 SCC (L&S) 138], in respect of casual labourers of the Ministry of Telecommunications, Department of Posts, (c) State of Haryana & Others V/s. Piara Singh & Others 1992 (21) ATC 403 (also cited by the applicants). In para 48 of this judgement, the Hon'ble Supreme Court has observed that the proper course of action would be to prepare a scheme for regularisation, if not already in vogue. (d) Neadar V/s. Delhi Administration, 1992 SCC (L&S) 89 - the Hon'ble Supreme Court has directed the concerned

department to regularise the applicants by formulating the scheme for regularisation of casual labourers. Keeping in view what is held by the Hon'ble Supreme Court in the recent judgements, it is settled law that regularisation of the daily wage employees required to be done in accordance with the rules in vogue (para 5 of the judgement in the case of Union Of India & Others V/s. Dharam Paul & Others - 1996 SCC (L&S) 918. Therefore, the issue of claiming regularisation of casual labourers as pressed in the present O.As. has to be examined keeping in view what has been directed in several cited O.As. and law laid down by the Hon'ble Supreme Court.

12. From the averments made by the respondents, as brought out earlier, the respondents have not taken consistent stand with regard to regularisation in reply to the various O.As. In all the O.As. except O.A. No. 595/98, the respondents have denied that the applicants have any claim for regularisation stating that they had been engaged as a stop gap arrangement against the leave vacancies. However, in O.A. No. 595/98 the respondents have taken a stand that there is a scheme for regularisation of the casual labourers as laid down by the Department of Personnel & Training as per O.M. dated 07.06.1988. The respondents have further stated that as per O.M. dated 27.07.1979 of Department of Personnel & Training, the casual labourer is entitled for regularisation if he has put in 240 days in service in each of the two preceding years. Referring to these O.Ms., the respondents have contended that the applicants do not meet with the criterion laid down for regularisation and therefore the applicants

are not entitled for regularisation. I am surprised at the different stand taken by the respondents in the reply in each of the O.As. under reference. However, from the pleadings in O.A. No. 595/98, it is quite clear that the scheme for regularisation of casual labourers is already existing as laid down by the Department of Personnel & Training. Infact, the applicants in O.A. Nos. 208/98, 458/98 and 1013/98 have also brought out that the applicants are entitled for regularisation as per the scheme laid down by the Department of Personnel & Training besides placing reliance on the various decided O.As. The applicants in these O.As. have also brought on record the extracts from chapter 21 'General Terms and Conditions for employment of casual labour' from Swamy's complete Manual on Establishment and Administration, which includes the O.M. dated 07.08.1988 of Department of Personnel & Training. Keeping in view these observations, the claim of the applicants for regularisation has to be gone into based on the scheme laid down by the Department of Personnel & Training. From the material brought on record it is noted that the O.M. dated 07.06.1988 had been issued in compliance with the direction of the Hon'ble Supreme Court in the Writ Petition filed by Surinder Singh & Others V/s. Union Of India. This O.M. lays down the general conditions for employment of casual labourers. In para 1(x) of this O.M., it is laid down that the regularisation of the services of the casual workers will continue to be governed by the instructions issued by the Department. It is also laid down that while considering such

regularisation, age relaxation may be allowed if at the time of initial recruitment as a casual worker, he had not crossed the upper age-limit for the relevant post. The respondents, as indicated earlier, have relied upon the O.M. dated 26.07.1979 which lays down the criteria for regularisation. However, on referring to the latest compilation of Swamy's Manual on Establishment and Administration, it is noted that the Department of Personnel has laid down the scheme for "grant of temporary status and regularisation" as per the O.M. dated 10.09.1993 wherein the criteria to be followed for regularisation of casual labourers had been laid down. It is my considered view that the present O.As. deserve to be disposed of with a direction to the respondents to consider the regularisation of the applicants alongwith other casual labourers who are similarly situated by following the scheme of regularisation laid down by Department of Personnel & Training by preparing the seniority list so that not only the relief be granted to the applicants in the present O.As. but to avoid any further litigation by the similarly placed casual labourers. It is noted that the practice of engaging casual labourers on daily wages against leave vacancies is still being continued.

13. As brought out earlier, the respondents have contested the claim of the working of the several applicants. The respondents have indicated that since a number of applicants have been engaged in the years of seventies, eighties and nineties, there is no record available in respect of several employees. They contest that they were engaged as regimental staff. Keeping the rival contentions in focus, it is considered necessary to lay down the following direction to resolve this dispute.

- (a) In respect of the applicants where the respondents have not accepted their claim of working, the applicants would submit a representation within a period of one month from the date of receipt of the order giving the details of the engagement with documentary evidence as available with them. The respondents will then verify the claim of the applicants by associating the applicants. In case the claim of the applicants is found acceptable based on the details furnished by the applicants, such of the applicants would be included in the seniority list to be prepared as directed subsequently. In case the claim is not established, the concerned applicants will be replied through a speaking order within four months after the receipt of the representation
- (b) In respect of applicants, the respondents contend that they were engaged as regimental staff, such of the applicants will also make a representation within one month of the receipt of the order giving details alongwith documentary evidence. Here also the joint inspection of the record will be done to establish their claim. In case it is established that they were paid out of regimental funds, such of the applicants will not have any claim for regularisation keeping in view what is held by the Hon'ble Supreme Court in the case of Union Of India

and Others V/s. Chotelal & Others - 1999 SCC (L&S) 332. In respect of such applicants, the respondents will reply to the representations through a speaking order within four months after the receipt of the representation.

14. In the result of the above discussion, all the O.As. are allowed with the following directions :

- (a) The respondents will prepare the seniority list of the applicants alongwith the other casual labourers who had been engaged earlier or at present being engaged for consideration for regularisation against the Group 'D' vacancies based on the date of engagement and length of service.
- (b) The regularisation of the applicants alongwith others as per the seniority list to be prepared as indicated in (a) above will be done if found eligible in terms of the scheme as laid down as per O.Ms. dated 10.09.1993 and 07.06.1998 by the Department of Personnel & Training XX
xx xx xx against the existing and future vacancies when the respondents decide to fill up the vacancies keeping in view the ban imposed. The applicants alongwith other casual labourers will be regularised against vacancies as per the quota laid down in the O.M. dated 10.09.1993 before going to open market for recruitment to fill up the vacancies.

- (c) The applicants shall be allowed relaxation of age as provided in the O:M. dated 06.06.1988 in case the applicants were engaged within the age limit at the initial engagement.
- (d) The seniority list as indicated in (a) shall be prepared by the respondents within a period of six months from the date of receipt of the order and the same will be notified.
- (e) In respect of the applicants where the respondents have not accepted the claim of being engaged against leave vacancies or had been engaged as Regiment employee, directions as detailed in para 13 will be followed.
- (f) In the circumstances of the case, there will be no order as to costs.

MEMBER (A) ✓

mrj/os*