

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

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

Dated this the 10<sup>th</sup> day of November 2000.

CORAM : Hon<sup>ble</sup> Shri B.N.Bahadur, Member (A)

Hon<sup>ble</sup> 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.

*Per*

..2/-

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. Inspite 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 <sup>met</sup> ~~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

*Shy,*

..3/-

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

*Signature*

..4/-

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

*Sup* -

..5/-

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.

*P. S. M.*

..6/-

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/Judgment despatched  
to Applicant/Respondent(s)  
on 29/11/00  
4/12/00