

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:478/98,
479/98, 480/98, 481/98, 482/98,
483/98, 484/98 and 585/98
DATED THE 9th DAY OF NOV. 2000**

CORAM:HON'BLE SMT.SHANTA SHASTRY, MEMBER(A)

1. Shri Arjun T. Baraskar
Dharavi Mukund Nagar,
A Ward, Opp. Laxmi Mandir,
Room No.518, Bombay-400 017. ... Applicant in OA No.478/98
2. Shri Ravindra K Mane
Bhair Nagar, Zopadpatti,
opp. Anand Bldg. Govanpada Mulund,
(East) Bombay - 400 081. ... Applicant in OA.No.479/98
3. Shri Nagsen M Shirke,
Naigaun, B.D.D. Chawl,
No.7 A/14 S.S.Wagh Marg,
Bombay - 400 014. ... Applicant in OA No.480/98
4. Shri Arjun.K.Dhadke,
Palkar Chawl, Room No.23,
Opp.Bawadi, Dharavi Cross Road,
Mumbai - 400 017. ... Applicant in OA No.481/98
5. Shri Deepak U Padaya,
B.M.C.Chawl,
A. /2/21, M.R.Road,
Mumbai - 400 009. ... Applicant in OA No.482/98
6. Shri Ganesh G Khopkar
Sidharth Colony,
Behind Chawl No.3A/1,
Chembur, Mumbai - 400 071. ... Applicant in OA No.483/98
7. Shri Vijay B.Sonewane,
Near House No.9 Room No.5,
Y.M.C. Road, Bombay Central
Bombay - 400 008. ... Applicant in OA No.484/98
8. Shri Nilesh Ghag,
Irani Chawl, Room No. 71,
Datta Ram Marg, Kala Chowki,
Mumbai - 400 033 ... Applicant in OA No.585/98

By Advocate Shri Suresh Kumar

V/s.

1. Union of India, through
Secretary, Ministry of Finance,
Department of Revenue,
South Block New Delhi-110 001.

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2. Chief Commissioner of Central Excise,
Central Excise Building,
Maharshi Karve Road,
Opp. Churchgate Station,
Bombay - 400 020.

3. The Dy. Commissioner (P&V),
Central Excise,
Central Excise Mumbai-IV,
M.K. Road,
Opp. Churchgate Station,
Mumbai - 400 020.

... Respondents in all
the 80As.

By Advocate Shri M.I. Sethna

(O R D E R)

Per Smt. Shanta Shastri, Member(A)

The issue involved, the reliefs sought in these OAs are identical. Also the facts are similar. Therefore, I proceed to dispose of these OAs by a common order. For convenience purposes, I am taking up OA 478/98 first.

2. OA.478/98: In this OA, the applicant has been working as a Casual labourer (Hamal) in the office of Deputy Commissioner of Central Excise, Mumbai-4 opposite Churchgate station. He has been working as such since 1/9/94, he was sponsored by the Employment Exchange. He was called for recruitment to the post of Hamal vide letter dated 18/5/94. It has been stated by the applicant that he has completed 206 days in a calendar year. Though his appointment was made through proper procedure, he was given appointment for a period of three months on contract on daily wage basis. The kind of work that the applicant is doing is same and similar to what is being performed by regular class-IV employees of respondents. He is being paid Rs.45/- per day. He is not getting any of the benefits such as payment for holidays, and sundays or increments, House rent allowance, etc as per the regular employees. The applicant urges that as per the

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Government of India circular dated 7/6/88, the applicant is entitled for 1/30th of the pay at the minimum of the relevant payscale + DA for 8 hours a day. However, no such payment is being made to him. Further, the Government of India have framed a scheme "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme which came into effect from 1/9/93 (Exhibit A-2). This scheme is applicable to all the Ministries including the Respondents Department. The Learned Counsel for the applicant has relied on the judgement of the Hon. Supreme Court in the case of Surinder Singh V/s. C.P.W.D., reported at 1986-SCC-639 wherein the Hon'ble Apex Court had directed to regularise the services of the petitioner who had completed six months as casual labourers. The Learned counsel also referred to the judgement of the Principal Bench in the case of Raj Kamal V/s. Union of India reported at 1990(13)ATC - 478 (ND) whereby the DOP&T was directed to frame a scheme applicable to casual workers in all the Ministries/Departments of the Government of India.

3. The applicant has claimed that he has worked for more than 206 days as follows:-

September 94 to August 95

September 95 to August 96

September 96 to August 97

He also states that some of the employees working under the Respondent Nos. 1 and 2 as Hamal are given payment as per the Office Memorandum dated 7/6/88. He has therefore prayed that he should be granted all the benefits as per Office Memorandum dated 7/7/88 and Office Memorandum dated 10/9/93 with effect from the date he has completed 206 days and from the date he is entitled for temporary status including pay, payscale, one day leave for

every 10days work and counting of 50% of service for Pension with interest thereon @ 18%. He has further sought direction to the respondents to regularise him in Group 'D' post in the existing and future vacancies and not to induct fresh Group 'D' persons till his services are regularised.

4. The respondents have contested the OA. They have taken the stand that applicant is not entitled to any relief as sought by him. The Applicant cannot be posted in the Cadre of a "Regular Hamal" since he has not been given the status of temporary Hamal so far. It is admitted that the applicant's name was sponsored by the Employment Exchange. The Sub Regional Officer, Employment Exchange, Mumbai was informed that the Department proposes to recruit Safaiwala and Hamal on contract basis for 3 month with pay @ Rs.45/- per working day. Accordingly the Employment Exchange has sponsored the name of the applicant and the applicant was appointed as Hamal on contract basis vide office letter dated 18/8/94. He was posted to Division F-1. It was made known to the applicant that his employment was purely on a contract basis. He would be paid @ Rs.45/- per working day and he will not be entitled to any service benefits and he is liable for termination at any time without assigning any reasons. There is therefore no question of his being considered for grant of temporary status after completion of 206 days. Respondents have submitted the following details of the days on which the applicant has worked under the different orders:-

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Period from	To	No. of days.
01.09.94	30.10.94	46
14.12.94	13.03.95	69
29.03.95	28.06.95	77
17.07.95	16.10.95	66
30.10.95	29.01.96	71
19.02.96	17.05.96	63
30.05.96	29.08.96	75
11.09.96	10.12.96	59

5. Later on he was transferred to Division G-II. There again he worked for a total of 240 days from 26/12/96 to 24/10/97. The learned counsel for respondents reiterated that the applicant is working purely on contract basis for specific work of non regular nature. The work done by the applicant or rather Hamal is of a temporary nature such as stacking of records, movement of furniture and other logistics. These are not jobs which are regularly performed. Therefore, the respondents deny that the applicant can be granted temporary status under the DOP&T scheme of 10/9/93. He cannot be compared with the casual labour.

6. The Learned counsel further asserted that the Contract Labour cannot be regularised. Such regularisation will amount to back door entry in service. The Learned Counsel is relying on the judgement of the Delhi High Court in the case of Shri Amit Yadav and Ors V/s. Delhi Vidyut ^{Board} through its Chairman in Civil Writ No, 5930 of 1999 decided on 28/1/2000 reported in 2000(2)AISLJ 412. The Hon.High Court held that the petitioners cannot claim right to remain on the post beyond the contract period and the right to remain on the post comes to an end at the expiry of the contract period. The Hon.High Court relied on several Supreme Court judgements namely State of UP and Ors. V/s Ajay Kumar reported in JT-1997(3) SC-219. It was held therein that the daily wage appointment will obviously be in relation

to contingent establishment in which there cannot exist any post and it can continue only as long as work exists. In these circumstances, the Division Bench was clear that the Division Bench was in error in directing the appellant to regularise the service of the respondents to the post as and when the vacancy arises and to continue him until then. The learned counsel made a further distinction. He said that the applicant was not engaged against any regular post and therefore there is no question of regularising him. The Learned Counsel cited the judgement in the case of State of Himachal Pradesh V/s. Suresh Kumar Verma & Anr. reported at JT-1996(2)SC-455 in support of this. The Bench comprising of three judges of the Supreme Court held that the appointment on dailay wage basis is not an appointment to a post according to rules. The vacancies are required to be filled up in accordance with the rules and all the candidates who would otherwise be eligible are entitled to apply for when recruitment is made. The appointment on daily wage cannot be a conduit pipe for regular appointments which would be a back door entry.

7. The Learned counsel for the respondents has also relied on the decision in the case of Director Institute of Management Development, Uttar Pradesh V/s. Smt. Pushpa reported at JT-1992(4) SC-489.

8. The Learned Counsel for the respondents thus rests his case on two important points namely the applicant is not a casual worker but only engaged on contract basis for a specific period and secondly the applicant has not been engaged against any regular post.

9. The Learned counsel for the applicant has also placed reliance on several judgements of the Hon. Supreme Court as well as the Tribunal.

At the outset, the learned counsel urged that there is no distinction between casual labourers or a contract labourer. According to him the persons employed on contract basis are also entitled to regularisation. Further, the learned counsel is harping on the fact that the applicant has been recruited properly through Employment Exchange fulfilling all the requirements for the post of Hamal. He has put in 240 days as such he is very much entitled to the grant of temporary status. It is also not necessary that there should be vacancies available. It has been clearly stated in the Scheme of 1993 in para 4(2) that such conferment of temporary status would be without reference to the creation/availability of regular Group 'D' posts.

10. The Learned Counsel for the applicant is relying on a few judgements namely OA-1744/98 decided on 27/6/99 in Shri Ashok Kumar Gupta V/s. Union of India and Ors. It was held that casual labour cannot be denied temporary status on the ground that they were employed on projects. Similarly, it was held that the scheme for grant of temporary status is a continuing one and all those persons who are engaged even after the scheme came into existence are also eligible for its benefits.

In CP-354/94 in OA-346/94 in Ramkishan V/s. Union of India & Ors. judgement of Jodhpur Bench of this Tribunal dated 11/8/99 in OA-219/96, the case of Chaturbhuj Sharma V/s. Union of India & Ors., it was held that part time casual labour are also entitled to be considered for grant of temporary status and

regularisation. The respondents themselves have employed the applicant for more than 7 years and cannot now raise the plea. The respondents were directed to consider the part time casual labour for regularisation in Group 'D' posts. Reliance has also been placed on the judgement of the Principal Bench of this Tribunal dated 1/12/98 in the case of Rampal & Ors. in OA No.1446/98. The Tribunal held that scheme of 10/9/93 being a welfare measure has to be interpreted vide enough to include even those who have the required number of days of service in a year to their credit even after 9/9/93. Also technical breaks should be ignored.

11. The Learned Counsel for the respondents however reiterated the stand and also drew attention to the Supreme Court judgements in a group of seven Civil appeals decided on 12/8/92 reported in 1992(21)ATC - 403. This judgement is by three judges of the Supreme Court in the case of State of Haryana & Ors V/s. Piara Singh & Ors. In this judgement, the Supreme Court struck down the directions given by the High Court of Punjab and Haryana for mass regularisation of the employees on completion of one year service without taking into account the availability of vacancies, record of service and other factors and striking down the prescribed eligibility conditions for regularisation. The Learned Counsel has further relied on another judgement of the Supreme Court 1997(3)SCC-633 in State of Haryana V/s. Surinder Kumar and Ors. In this judgement the Hon'ble Court did not accept the contention of the respondents that those appointed on contract basis on daily wages were entitled to regularisation stating they cannot have any right to a post as such until they are duly selected and appointed. Illegal actions taken by the

officers after recruitment, would be a grave matter of indiscipline by the officers and the higher authorities are directed to look into the matter and see that such actions are rectified. The learned counsel therefore argues that the applicant in the present case who was appointed purely on contract basis for temporary period cannot claim regularisation merely because he has continued to work as Hamal.

12. I have heard both the learned counsel for the applicants as well as respondents and have given careful consideration to the pleadings. The short question to be considered is whether the applicant who has been engaged on contract basis can be regularised under the scheme of 10/9/93 i.e. Casual Labours (Grant of Temporary Status and regularisation) Scheme. According to me even though the applicant has been appointed on contract basis, he has worked for almost 4 years with breaks in between. Although, the initial order of engagement mentioned that the appointment was purely on contract basis, the respondents have not produced any later orders issued every time the applicant was appointed on contract basis after the break it implied that the applicant continued in service even beyond the initial contract period of three months. In JT 1998(3) SC 540, Union of India & Ors. V/s. Subir Mukherji & Ors. in Civil Appeal No.1057 of 1998, the Hon'ble Supreme Court upheld the directions contained in the order dated 13/3/97, passed by the Calcutta Bench of the Tribunal as being quite fair in directing to consider and absorb the workers who were members of the Cooperative society as regular Group 'D' employees if found fit. These labourers were engaged through a contractor. Similarly, in another judgement 1991(17)ATC 679 of the Delhi Bench of the Tribunal in the case of

Vasudev V/s. Union of India, it has been held that persons who were appointed on contract basis are also entitled to regularisation. In that case the applicants employed with Doordarshan as Casual Artists and Artists booked on assignment basis had not been regularised even though they had worked for more than 10 years. The Government was directed to prepare a panel of employees with 120 days service in single or broken spells. The panel was to include even those who were not then in service. Therefore, the ground that the applicant was employed only on a contract basis cannot be accepted for denying the applicant the grant of temporary status and regularisation. It is no doubt true that the contract appointment ceases when the period of contract ends. But in the present case the contract seems to have been extended from time to time or perhaps even without actually extending the contract the applicant has been allowed to continue beyond 206 days in a year. It cannot therefore be said to be strictly a contract appointment. The appointment is also on daily wage basis. It is not on a consolidated amount basis. Therefore the judgement of the Hon'ble High Court in the case of Amit Yadav cannot be made applicable in this case. Moreover the Hon'ble Supreme Court has upheld the order of the Principal Bench of the Tribunal dated 18/12/87 in the case of Sangita Narang and others V/s. Delhi Administration (1988) 6 ATC 405. In this the applicants who were all qualified doctors were appointed as Junior Medical Officers (ad hoc on short term contract month wage basis) for a period of 90 days in the first instance renewable after a break for another 90 days. They were paid consolidated monthly wage besides some allowances. Their appointment order made it clear that the

appointment could be terminated at any time without assigning any reason or notice and it would not entitle them for absorption in regular capacity nor would they be entitled to any leave, casual or otherwise. They were also appointed upon being sponsored through the Employment Exchange. The Principal Bench of the Tribunal held in this case that the terms and conditions laid down in the appointment letters issued to the petitioner were unfair, arbitrary and harsh. The petitioners obviously accepted the same because they had no choice but to accept the post or decline them and remain unemployed. The Tribunal quashed the impugned orders terminating the services of the petitioners and held that the petitioners were entitled to regular payscale and allowances as also same benefits of leave etc on completion of one year and other benefits of service conditions as are admissible to those appointed on regular basis. They shall also deem to have continued in service ever since the day of first appointment. Even the breaks were directed to be counted as duty for continuity of service. Thus, it was ruled that automatic termination of service of ad hoc employees on expiry of fixed period is not permissible so long as there is need for manning of posts. Further, acceptance of an offer stipulating fixed period of ad hoc appointment does not validate such termination, as such condition itself is invalid.

13. In the instant case also the applicants in the different OAs were appointed on a short term contract but have been continued with breaks in between. In my considered view, the cases of the applicants in these OAs are covered by the judgements in the case of Sangita Narang supra. I therefore hold that the

applicants in all these OAs are entitled to the grant of temporary status and the consequential benefits thereof and regularisation in due course depending upon the availability of vacancies as per rules.

14. In regard to the objection that applicant has not been engaged against regular post, as already pointed out by the learned counsel for the applicant, for the grant of temporary status does not require a post as per the scheme. Therefore, there is no question that the applicant was not appointed against a regular post. According to the respondents, the applicant has not put in 240 days of service in a calender year. I have gone through the details of working days mentioned in the reply of the respondents in these OAs and I find that the applicants have put in the requisite number of days of work i.e. 240 days in one year. It does not have to be a calender year. The scheme does not specify that 240 days of service should be put in one calender year or in one financial year. It only says it should be 240 days in a year. Even the Supreme Court in the case of State of Haryana V/s Piara Sing directed regularising the service of casual labourers or work charged employees if they have put in more than 2 to 3 years of service.

15. The respondents are accordingly directed to continue the services of the applicants subject to availability of work and to consider granting temporary status to the applicants from the day they have completed 240 days (206½ days in case of five day week) in a year with all consequential benefits as laid down in the OMs dated 7/6/88 and 10/9/93

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thereafter, they may be considered for regularisation depending upon the availability of vacancies.

16. In the result all the 8 OAs are allowed. I do not order any costs.

(SHANTA SHASTRY)
MEMBER(A)

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