

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 1116/98

DATE OF DECISION: 8/11/2000

Shri H.J.Koli & 3 Ors.

Applicant.

Shri S.S.Karkera

-----Advocate for
Applicant.

Versus

Union of India & 2 Ors.

-----Respondents.

Shri M.I.Sethna

-----Advocate for
Respondents.

CORAM:

Hon'ble Smt. Shanta Shastry, Member(A)

1. To be referred to the Reporter or not? } NO
2. Whether it needs to be circulated to other Benches of the Tribunal? }
3. Library. Yes

Shanta f
(SHANTA SHAstry)
MEMBER(A)

abp

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:1116/98
DATED THE 8th DAY OF OCT. 2000**

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

1. Shri H.J.Koli
2. Shri Y.N.Koli
3. Shri P.K.Parte
4. Shri P.C.Patil

All are working as casual labourers in
the O/o.Commission of Costum Jawahar
Custom House, At Sheva, Taluka Uran,
Dist.Raigad.

C/o.Shri H.J.Koli,
At Hanuman Koliwada,
Post N.A.D. Karanja, Tal.Uran
Dist.Raigad. Applicant

By Advocate Shri S.S.Karkera

V/s.

1. Union of India
Through:
 1. The Secretary,
Central Board of Excise
and Customs,
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
Dist. Raigad. Respondents

By Advocate Shri M.I.Sethna

Per Smt. Shanta Shastry, Member(A).

This application is filed for grant of temporary status to the applicants after completion of 206 days of work and to regularise them in Group 'D' posts with all consequential benefits and to declare their termination of service as illegal and bad in law.

2. The brief facts are that the applicants were appointed as casual labour between 17/2/94 to 1/12/95. They worked continuously till their services were terminated on 30/12/98. It is the case of the applicants that since they had worked continuously and had completed 206 days, in a year they should have been granted temporary status. According to them they were engaged against clear vacancies of Group 'D' posts and the nature of work performed by them is of a permanent nature.

3. The respondents in their reply have submitted that Nhava Sheva Custom House was established in 1989. Casual workers are working in this Custom House since 1989. Out of present 11 casual workers, 10 were appointed in between 1989 and 1994. The last appointment was made in 1995. These applicants were not appointed through the Employment exchange. According to O.M. dated 7/6/88 of the D.O.P&T, persons on daily wages should not be recruited for work of regular nature and only those casual workers who were recruited before 7/6/88 and were in continuous services for a year can be considered for regularisation and service of such casual workers appointed after 7/6/88 was to be dispensed with. However, the Customs House continued their services due to shortage of staff at lower level and because the units of the Custom House were spread over a wide area. Thus the applicants were engaged. The O.M.

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dated 10/9/93 of the DOP&T regarding grant of temporary status and regularisation of casual workers is applicable only to those casual labourers who were in employment on the date of issue of the O.M. and who had rendered continuous service of atleast one year prior to that. It was also mentioned therein that the existing guidelines contained in OM dated 7/6/88 were to be continued to be followed. The Central Board for Customs and Central Excise also issued a letter dated 10/1/97, stating that temporary status can be conferred only upon such casual workers who had rendered one year service or 240 days on the date of instructions of DOP&T dated 10/9/93. Accordingly, temporary status was conferred on seven casual workers who had been engaged prior to 1/9/93. The services of the other casual labourers were recruited after 1/9/93 cannot be regularised.

4. The respondents have not denied that they had engaged the services of casual workers due to the vast expanse of the Customs House but have averred that the job for which they were appointed was not of a permanent nature. It is admitted that these casual workers have been working continuously and no break was given to them. They were appointed on daily wages but since the department did not have cash advance, they had been given monthly wages as per the number of days worked by them. It is the stand of the respondents that since the applicants were not in continuous service as on 1/9/93, the scheme of DOP&T dated 10/9/93 is just not applicable in their case. The Learned Counsel for the respondents has relied on the judgement in the case of Shri V.Salunke V/s. Union of India in O.A.239/97 decided on 17/3/98 by this Bench of the Tribunal wherein it was held that temporary status should be conferred from the date of issue of

O.M. to those casual workers who had rendered continuous service of atleast one year prior to 1/9/93. The Learned Counsel has also drawn support from a judgement dated 27/1/97 of the Hon. Supreme Court of India in the case of Passport Officer, Trivandrum & Ors. V/s. Venugopal .C and Ors in Civil Appeal No.936 of 1997. In this judgement the Hon. Supreme Court did not find any fault with the respondents for de-recognising the temporary status granted to those casual labourers who had not come through the employment exchange. It was held that if the department decides that only those employees who are recruited in normal manner i.e. through employment exchange shall be given temporary status, no fault can be found with the department. A latest judgement of the Delhi High Court in the case of Amit Yadav V/s. Delhi Vidyut Board 2000(2)SLJ Delhi H.C. 412 has been produced by the learned counsel to show that daily rate appointments cannot be a conduit for regular appointment. Another case relied upon is that of Tarak Chowdhary V/s. State of West Bengal 2000(2) SLR (Cal) A 445 denouncing illegal backdoor entry. It is urged that in the case of ICAR V/s. Manmohan Batra the Hon'ble Supreme Court struck down the direction of the lower Court to create posts to regularise casual workers (199 SC L&S 787). Shri Vadhavkar, the learned counsel vehemently opposes the regularisation of the applicants in this case. The applicant must fit in the scheme it cannot be modified to suit the applicants. They were not in employment as on 10/9/93.

5. The Learned Counsel for the applicant pleads that the applicants cannot be denied grant of temporary status and regularisation. Not to lag behind, he too is relying on several judgements of this Tribunal in the cases of Danvir Singh V/s.

Union of India & Ors. reported in 1997(2)ATJ-364, Manas Kumar Mity and Ors. V/s. Union of India and Ors. reported in (1997)36 ATC 450, K.M.Badarudeen and Ors. V/s. Union of India & Ors. reported in 1996(2)ATJ-606 and Basant Lal V/s. Union of India reported in 1991(18)ATC-449. In these judgements, the view taken is if a casual labourer has worked for 240 days (206 days in case of five day week), the person is entitled to be granted temporary status and regularised thereafter. Besides these he has produced a set of the following relevant judgements in support of the applicants' claim.

They are

The Excise Superintendent Malkapatnam Krishna District Andhra Pradesh Versus K.B.N.Vishweshwara Rao & Ors.

1997(1) SC SLJ 33

T.B.Abdul Versus Union of India and Ors. in OA No.165/1998 decided on 18/6/99 by Ernakulam Bench of this Tribunal reported in 2000(1)III AISLJ 286.

O.A.Nos. 393/97 & 593/97 decided in June 1999 by Mumbai Bench of the Tribunal

Mr.Anup and Ors. Versus Union of India and Ors in OA-2158/99 decided on 9/2/2000 by Principal Bench of Tribunal reported at 2000(1) Administrative Total Judgements 566.

In the first case it has been held that it is not enough to restrict the recruitment to candidates sponsored through Employment Exchange alone. Much wider publicity through multi media needs to be given not to deny equality in the matter of employment. In the remaining cases it has been held that even though the names of the applicants had not been sponsored through the Employment Exchange such casual workers should be considered

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for regularisation provided the material conditions of 240 days of service in a year is fulfilled. Sponsorship through Employment Exchange is not binding.

6. I have heard the learned counsel for both the parties. The facts are not disputed. In this case the question is of the applicability of the scheme of 10/9/93 of the D.O.P&T for casual labourers (grant of Temporary Status and Regularisation) in respect of the applicants. It is the stand of the respondents that it is not applicable to the applicants because they were not in employment as on 1/9/93 and they have not been sponsored by the Employment Exchange. The respondents have relied on the judgement of the Hon'ble Supreme Court in the case of Passport Officer Supra. There are however other judgements of the Supreme Court as well as the Tribunal cited which contain pronouncements on these very issues.

It has been held in a catena of judgements of the Hon'ble Supreme Court and the Tribunal that the scheme of 10/9/93 of the D.O.P&T is not so restricted. The OM of 10/9/93 clearly states in para-2 that the scheme will come into force w.e.f. 1/9/93. Therefore it has to apply to even those recruited after 1/9/93. It is not a one time measure. Had it been so then it would have been a mere decision and not a scheme. A scheme implies continuity based on certain guidelines. It has been held in the case of Ram Pal & Ors. Versus Union of India and Ors. decided on 1/12/98 in OA No.1446/98 of the Principal Bench of the Tribunal that being a welfare measure it 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 9/9/93.

In the OA No.907/96 decided on 12/8/96 the Ernakulam Bench of the Tribunal also held that there is no special sanctity about the date of 1/9/93, relying upon the judgement of the Hon'ble Supreme Court in the case of D.R.Nim (AIR 1967 SC 1301). The Bench harped on the yardstick of putting in 240 days of service in a year as the material condition. I am in agreement with these judgements and hold that the scheme of 1/9/93 is applicable in respect of the present applicants also.

The issue of sponsorship through Employment Exchange has been dealt with in great detail in the judgement dated 18/6/99 of the Ernakulam Bench of this Tribunal in the case of T.B.Abdul in OA No.165/1998 supra. The order gives the complete genesis of the casual labourers (Grant of Temporary Status and Regularisation Scheme) 1993 in Paras 3 and 4. It has been stated therein that the scheme came to be evolved on the basis of the direction given by the Tribunal in Rajkamal & Ors. v/s. Union of India, wherein it was specifically mentioned in para 21 of the judgement that the fact that some of the casual labourers had not been sponsored by the Employment Exchange should not stand in the way of their absorption.

In Excise Superintendent Malkapatnam Krishna District A.P. v/s. K.B.N.Vishweshwara Rao & Ors 1996(6) SCC 216 the Apex Court held that limiting the field of choice for appointment only to the nominees of the Employment Exchange would not be in consonance with the equality provision enshrined in Articles 14 and 16 of the Constitution. The judgement has been relied upon by the Mumbai Bench of the Tribunal also in the order dated 2/7/1999 in OA Nos 393/97 and 593/97 produced by the applicants.

These orders apart a three Judges Bench of the Apex Court in the Civil Appeal of State of Haryana and Ors V/s. Piara Singh and Others (1992)21ATC 403 also deliberated at great length on the condition of sponsorship through Employment Exchange and gave certain directions in paras 45 to 50 of the judgement. Para 47 which is concering the issue of regularisation of adhoc/temporary employees in Government Service reads as follows:-

47. Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.

As distinct from the adhoc temporary employees the Hon'ble Supreme Court added para 51 exclusively for work charged employees and casual labour as follows:-

51. So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell-say two or three years - a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the authority concerned to examine the feasibility of his regularisation.

Here there is no condition made mandatory that the engagement should be through employment exchange also. Apparently, it was not considered mandatory. This is a judgement of three judges Bench and holds good.

In my considered view, there is ample support for the stand that not being sponsored through employment exchange cannot be a bar to the regularisation of the casual labourers who have put in long continuous service of 3 to 4 years.

It is necessary to appreciate the spirit behind the framing of the scheme. Large numbers of work force remain as casual labourers without any sense of security. Realising the hardships and uncertainties under which they lived, the Supreme Court of India directed to evolve various schemes conferring security of tenure to the extent possible on these employees. Inder Pal Yadav's case 1985(C) SCC 148, Daily Rated Casual Labourer's case AIR 1987 SC 2342 are instances in point. Taking inspiration from the approach of the Apex Court similar schemes were evolved by the Ministry of Railways, Department of Telecommunications, Department of Posts and Department of Personnel and Training. The Government of India have been repeatedly stressing that daily rated workers/casual workers should not be engaged for regular work and they should be engaged only if sponsored by the Employment Exchange. This has been reiterated time and again, even after 1993 yet casual workers are being engaged without reference to employment exchange that too for long periods. This situation cannot be ignored. Relaxation was granted in the past about sponsorship through Employment Exchange. Similar relaxation is necessary even now. The respondents should not forget that they themselves have engaged these people without following proper procedure and the guidelines of DOP&T issued from time to time. These Casual workers have been allowed to continue for 4-5 years. The

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respondents cannot adhere to one part of the instructions of the Government of India and flout the other part. The implementation has to be done properly.

7. In view of this, in my considered view, the applicants deserve to be considered for continuance in service and grant of temporary status and regularisation. The respondents are therefore directed to consider the same within a period of three months from the date of receipt of copy of this order.

8. In the result, the OA succeeds. No costs.

Shanta Shastray

(SHANTA SHASTRY)
MEMBER(A)

abp.

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI

Dated this Monday the 16th day of August, 2010

Coram: Hon'ble Shri Jog Singh - Member (J)
Hon'ble Shri Sudhakar Mishra - Member (A)

Contempt Petition No. 40 of 2001
in
O.A. 1116 of 1998

H.J.Koli & others
(None) - Applicant

Versus

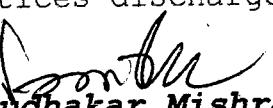
1. Union of India
through the Secretary,
Central Board of Excise
& Customs, New Delhi.
2. Shri D.K.Acharya,
the Chief Commissioner of Customs,
New Customs House,
Ballard Estate, Mumbai.
3. The Commissioner of Customs,
Jawahar Customs House,
At Sheva Taluka, Uran,
District Raigad.

(By Advocate Shri V.D.Vadhavkar) - Respondent

O R D E R (Oral)

Per: Shri Jog Singh, Member (J)

None appears on behalf of the applicant despite the second call. It appears the applicant is not interested in pursuing the Contempt Petition. The Contempt Petition is accordingly dismissed for want of prosecution. Notices discharged.


(Sudhakar Mishra)

Member (A)

mf


(Jog Singh)
Member (J)