

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT : HYDERABAD

O.A.No. 79 of 1990

Dt. of Order: 26-3-1991



Between:-

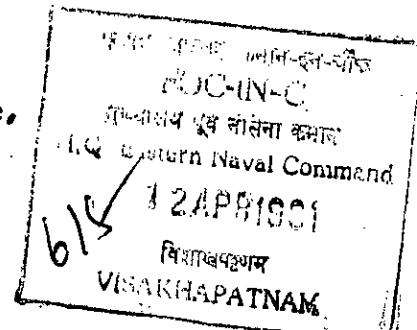
1. GVK Raju
2. J.Sivaji Rao
3. G.Ananda Rao
4. PSV Ramana Rao
5. Smt.V.Sujatha
6. L.Edward
7. B.S.Ravi Kumar
8. V.Ramesh
9. JSV Chandra Sekhara Rao
10.M.Vijaya Bhaskar
11.DVV Satyanarayana
12.P.Nageswara Rao
13.^Rama Gopala Rao
14.R.Seetharam
15.P.Appala Naidu
16.Ch.Subba Rao
17.U.V.Ramana
18.P.Appalaswamy
19.Smt.T.Sarojini
20.KVV Subramanyam
21.I.Nageswara Rao

22.R.Raja Sekhar
23.M.Suryachandra Rao
24.KSR Babji
25.N.Venkateswara Rao
26.GKR Ananda Babu
27.S.Demudu
28.A.Rahoof
29.Ch.Trinadha Rao
30.R.Satyanarayana Raju
31.Surya Mani
32.D.Venkateswara Rao
33.A.Ravindra Kumar
34.Smt.B.Lakshmi Papa
35.P.Gowri Shankar
36.KSS Sainath
37.P.Nooka Raju
38.B.Cinna Rao
39.A.Venkata Ramana
40.Smt.Y.Jayasree
41.K.Gangabhavani

APPLICANTS

AND

1. Union of India, represented by the Secretary, Ministry of Defence, New Delhi-1.
2. The Chief of Naval Staff, Naval Headquarters, New Delhi-1.
3. The Flag Officer, Commanding-in-Chief, Headquarters, Eastern Naval Command, Visakhapatnam.



RESPONDENTS

Appearance:

For the Applicants : Shri T.Jayant, Advocate.

For the Respondents : Shri E.Madan Mohan Rao, Addl.CGSC.

CORAM:

THE HONOURABLE SHRI B.N.JAYASIMHA, VICE-CHAIRMAN.

THE HONOURABLE SHRI D.SURYA RAO, MEMBER(JUDICIAL).

(ORDER OF THE BENCH DELIVERED BY HONOURABLE MEMBER (J),)
SHRI D.SURYA RAO.

nation of their previous appointment and the date of their fresh/reappointment were inevitable. It is, therefore, stated that under rules the applicants regularisation from the date of initial appointment is not permissible and their continuous service counts only if they complete one year continuous service without any break. They are converted as regular employees and given the benefits within the parameter of Ministry of Defence letter No.3(3)/65/11828/D(Civ-II), dt.26.9.1966, as amended by the Corrigendum No.11(3)/67/D(Civ-II), dated 6.3.1967 and No.83482/EC-4/Org.4(Civ) (d)/13884/D(Civ-II), dated 24.11.1967. The High Court of A.P. and this Tribunal have given the benefit of regularisation from the date of initial appointment to certain temporary (casual) employees. It is further stated that in so far as this Tribunal is concerned, it gave the judgement with directions to extend the benefits to the applicants therein provided any junior got similar benefits pursuant to the Judgement of the High Court of A.P. in W.A.No.239 of 1980 and W.P.No.7269 of 1981 or the orders of the Tribunal in a similar matter viz., TA No.511 of 86 (W.P.No.2733 of 1983). It is stated that the matter is under examination by the Ministry of Defence and that a decision when arrived at will be communicated to all concerned.

4. We have heard the learned Counsel for the applicant, Shri T.Jayant, and the learned Standing Counsel for the Department, Shri Naram Bhaskara Rao, on behalf of the respondents.

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2. The applicants state that each of them have submitted representations dated 13.1.1988 to the 3rd respondent requesting for regularisation of their services from the date of their initial appointment. They were informed on 18.2.1988 that the matter regarding date of initial appointment and consequential benefits is under examination of the Ministry of Defence and that a decision arrived at would be communicated to all concerned. The applicants state that as no decision was arrived at, all of them submitted another representation on 18-5-1989 to the 3rd respondent. However, they did not receive any orders till the date of filing of the application. The applicants, therefore, pray that a direction may be issued to the respondents to regularise their services w.e.f. the date of their initial appointment as temporary/casual LDCs with all consequential service and monetary benefits, by condoning the artificial breaks in service in the light of the verdicts of the High Court of Andhra Pradesh, and the Central Administrative Tribunal, Hyderabad Bench (in O.A.No.514 of 1986 allowed on 14.5.87).

3. On behalf of the respondents a counter has been filed. It is stated that the applicants were appointed as Temporary (Casual) L.D. Clerks against short term vacancies created for specific purpose to meet the contingencies under local financial powers. Such posts are sanctioned for specific periods and with the completion of the particular job and on expiry of the stipulated term of sanction, the vacancies cease to exist. It is, therefore, stated that the applicants have no right for regularisation. The breaks in between the date of termi-

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be treated as regular: (h) again on January 3, 1974 the Army Headquarters issued instructions in a letter and para (2) of that letter contains Technical break before 90 days should not be given as such employees case title to get regular employments: besides got even aged: (i) In NHA letter No.CP(A)-5107 dated February 22, 1974, in para 2, it is stated the condition that the services are required on long term basis should be deemed to have been fulfilled if at the time of conversion of casual employees, the commandants are satisfied that there is no prospect of the cadre being abolished in the near future. In this context M of D letter No.09776/327/S8C/3604/D(Civ-I), dated April 30, 1968 was referred to:

The Chief Staff Officer, Headquarters, Eastern Command, Visakhapatnam, in opposition to the Writ Petition averred in each case of 110 Chowkidars, whenever appointment was made, the Employment Exchange was approached on esplusal of what authority. Averting to the particulars of the 110 Chowkidars, it is averred that they are not entitled to medical facilities, educational allowances LTC, Insurance privileges and are not entitled to admission to government provident fund as they are not Regular employees of the India Navy. As a category, it is averred, the instant Chowkidars, are non-industrial labour and cannot claim the instructions contained in letters in (c), (e) and (i). Therefore, it is asserted that these 110 persons are casual labourers: they are not entitled to regular status. As to after 89th day when they were terminated, the practice is not specifically denied: in fact, the adoption as such a practice is admitted at the debate.

Thus it is seen some of the petitioners are working as Chowkidars for more than 10 years, others, for more than 8 or 6 years. In such cases, all of them were continued for even five years, when the requirement of Navy is more than six months. In the case of each Chowkidars, the Navy could easily have anticipated the period of appointment and break in service, method of divide was adopted to deprive the petitioners of reliefs specified in (a) to (i) referred to above:

The Flag Officer, commanding-In-Chief, Headquarters, Eastern Naval Command, Visakhapatnam, therefore, is directed to regularise the services of these petitioners, ignoring the break in service pursuant to the instructions issued in (a) to (i) and pass orders. The Writ Petition is allowed.

This decision was again followed in Writ Appeal No.239 of 1989. These decisions were also followed by this Tribunal

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5. The question, whether the persons employed on temporary basis initially and ^{short} are subjected to ^{short} artificial breaks then reinstated again, are entitled to regularisation from the date of initial appointment, was considered in Writ Petition No.7269 of 1981 dated 17.11.1983 and Writ Appeal No.239 of 1980 dated 20.12.1985 by the High Court of Andhra Pradesh. After referring to the various Government of India orders, it was held by the Single Judge in W.P.No.7269 of 1981 as follows:-

" To substantiate their assertions, the petitioners furnished particulars in each case as to when they were appointed and in what establishments and seek relief to treat them regular employees or accord them the reliefs, they are entitled to, in one of all among the following instructions, issued by the Govt. of India, from time to time: (a) in letter No.2(17)51/10805/D(Civ), dated Sept.10, 1953 of the Ministry of Defence, the instructions are if for any reason a person is appointed for more than six months, he is not to be discharged and reemployed and he shall be deemed to be in service without break. Such individuals are to be considered casual but regular employees: (b) In the instructions issued to all commands in Lr.No.1(67)/333/D(Lab) dated January 54, the instructions in (a) are reiterated: (c) In instructions in Lr.No.(3)/65/11828/D(Civ-II), dt.Sept.26, 1966, non-industrial personnel employed for one year without break should be converted into regular employees (d) In M of D letter VO 18636/D9, Appts. dated Dec.,29, 66 it is directed all short term posts of less than three months duration, are to be filled through the Employment Exchange, and five guidelines were issued as to how and from what source, recruitments are to be made: (e) in Lr.No.83482/EC-4/Org.4 (d)1375/D(Civ-II) of the M of D, dt.Nov.,24, 1967, in para 4 it is ordered, in cases involving break in casual services, benefits of these orders will be admissible from the commencement of only the latest spell of continuous services without break and breaks, if any, should be ignored: (f) In Lr.No.79962/EIC dt.Feb.,18, 69, instructions were, after three months, services of casual personnel should be prepared. The practice of employing personnel for periods of less than six months, when anticipated requirement is for ever a period of 6 years was deprecated: (g) The Army Headquarters on March 18, 1972 especially in para (2) directed, the duration of vacancy should be determined before recruitment is made. If during casual employment, it is known the employment will last for more than six months, such a vacancy should

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of action for the applicants therein had arisen in 1984 or earlier years but they had never agitated their claims till November 1986 and that the application was not within time. In so far as granting the benefit to such of the applicants, who were seniors to the claimants in the earlier litigation before the High Court and this Tribunal, the Tribunal was constrained to grant the relief to the said seniors despite the delay in filing the application (O.A.514 of 1986) since the Department itself had extended the benefit to certain senior Chowkidars despite the latter not being parties to the earlier litigation. Hence the relief was granted to the seniors on the principle that a junior who had litigated and got an earlier date of regularisation should not supersede the senior. Thus the question of restricting the claim of the applicants herein or making it conditional provided any juniors have been given the relief would not arise in the present case. The only question for determination is whether the applicants herein also were guilty of inordinate laches or have delayed approaching the Tribunal. If they are guilty of laches, then the present application is liable to be dismissed as was done in O.A.514 of 1986 in regard to all applicants other than those applicants, whose juniors got the benefit of the earlier litigation. In regard to delay, it is to be noted that the applicants ^{had all been} appointed in 1982 and 1983 and their claim or cause of action would normally arise on the dates from which their services were regularised as given in column 4 of

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in O.A.514 of 1986 dated 14-5-1987. In O.A.514 of 1986 the Tribunal while accepting the Judgement in W.A.239 of 1980 directed the respondents to extent the benefits only to such of the applicants, whose juniors got the benefit in W.A.239 of 1980 and W.P.7269 of 1981. In so far as the applicants herein are concerned, the contention of Shri T.Jayant is that they were all recruited in 1982 and 1983 and the question of any juniors getting the benefit does not arise. He, therefore, contends that the Judgement of the High Court in Writ Petition No.7269 of 1981 dated 17-11-1983 can be applied which relied already on the various instructions issued by the Government of India, Ministry of Defence.

6. Since this Tribunal had previously accepted the dicta laid down by the High Court in Writ Petition No.7269 of 1981 and followed in Writ Appeal No.239 of 1980 vide orders in T.A.511 of 1986 and O.A.514 of 1986, it follows that on the same analogy the applicants herein are also entitled to regularisation of services from the date of initial appointments as temporary (casual) LDCs ignoring the artificial breaks. The only objection of the respondents is that in O.A.514 of 1986 dated 14-5-1987 the Tribunal had restricted the above said benefit to ~~all of the employees~~ ^{only the employees} ~~in that case~~ whose juniors were given the benefit pursuant to the judgements of the High Court in Writ Petition No.7269 of 1981, Writ Appeal No.239 of 1980 and T.A.511 of 1986. The reason for doing so was that the applicants in O.A.514 of 1986 were guilty of inordinate laches in approaching the Tribunal. It was noticed by the Tribunal in O.A.514 of 1986 that the cause

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applicants will be paid within a period of four months from the date of receipt of this order. The parties are directed to bear their own costs.

CERTIFIED TO BE TRUE COPY

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Date.....26/3/91.....

Court Officer

Central Administrative Tribunal
Hyderabad Bench
Hyderabad.

TO

1. The Secretary, Union of India,
Ministry of Defence, New Delhi-1.
2. The Chief of Naval Staff, Naval Headquarters,
New Delhi.
3. The Flag Officer, Commanding-in-Chief,
Headquarters, Eastern Naval Command,
Visakhapatnam.
4. One copy to Mr. T. Jayant, Advocate, CAT.Hyd.Bench.
5. One copy to Mr. E. Madanmohan Rao, Addl. QUSC. CAT Hyd-
6. One spare copy.

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Central Admin. Tribunal

Annexure A-1 to the application. However, the applicants contend that they have been making representations for regularisation from the date of initial appointment. They were informed as recently as 18th February 1988 "that the matter regarding regularisation of services from the date of initial appointment of non-petitioners and the consequential benefits thereof is under examination by the Ministry of Defence". Hence the applicants were specifically told to wait for the orders of the Ministry of Defence. There is therefore no final order passed as envisaged under section 21 of the Administrative Tribunals Act by which they are aggrieved and on the other hand they were required to wait for a reasonable time before approaching the Tribunal. They have made a further representation on 18-5-1989 and since there was no further reply thereto, they have filed the application on 23-1-1990 within one year of the further representation. The application is not therefore hit by the provisions of section 21 of the Administrative Tribunals Act 1985 and the applicants cannot be non-suited on the ground of delay as has been done in O.A.514 of 1980. It is obviously for these reasons that the respondents themselves had not raised any objection as to delay.

7. For the reasons given above the application is allowed. The respondents are directed to regularise the services of the applicants herein as L.D.Cs. from the dates of their initial appointments ignoring the breaks in service. The applicants will be entitled to all consequential benefits of difference in pay, seniority and other service benefits as a result of such regularisation. These benefits will be worked out and any arrears due to the

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for the Central Administration Tribunal
Hyderabad Bench Hyderabad

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09/1990

OA No 79 09/1990

Review Application



Filed on 29-4-91

RCG

TM 29/4/91

Filed on 29-4-91
Standing Committee