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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
HYDERABAD

O.A.No. 458 of 1997 OF

DATE OF DECISION: 11-3-1999

T. Sudesh Kumar and another PETITIONER(S)

Shri N. Ram Mohan Rao ADVOCATE FOR THE
PETITIONER(S)

VERSUS

The Government of India, rep.
by its Secretary, External Affairs RESPONDENT(S)
and another.


Shri B. Narasimha Sarma, SrCGSC ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE MR. JUSTICE D.H. NASIR, VICE CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

1. Whether Reporters of local papers may be allowed to see the Judgement? y/n
2. To be referred to the Reporter or not? y/n
3. Whether their Lordships wish to see the fair copy of the Judgement? /
4. Whether the Judgement is to be circulated to the other Benches /

JUDGEMENT DELIVERED BY HON'BLE Mr. Justice D.H. Nasir, VC


Vice-Chairman.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.458/97

DATE OF ORDER : 11-3-1999.

Between :-

- 1.T.Sudesh Kumar
2. Smt.Vanitha Kumari

... Applicants

And

1. The Government of India, rep. by its Secretary,
M/o External Affairs, Patiala House,
New Delhi.
2. The Regional Passport Officer, A.P.,
M.J.Road, Hyderabad.

... Respondents

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Counsel for the Applicants : Shri N.Ram Mohan Rao

Counsel for the Respondents : Shri B.Narasimha Sarma, Sr.CGSC

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CORAM:

THE HON'BLE JUSTICE SHRI D.H.NASIR : VICE-CHAIRMAN

THE HON'BLE SHRI H.RAJENDRA PRASAD : MEMBER (A)

(Per Hon'ble Justice Shri D.H.Nasir, Vice-Chairman).

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... 2.

O R D E R

(Per Hon'ble Justice Shri D.H.Nasir, Vice-Chairman).

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The applicants seek a declaration from the Tribunal that they are fully qualified, eligible and entitled for regularisation in Group-C post in the office of the Regional Passport Office, Hyderabad from the dates of their respective initial appointment with all consequential benefits.

2. The applicants were initially appointed as Casual Workers in April, 1989 in the Regional Passport Office, Hyderabad. Temporary status was also conferred upon them by an order dated 24.5.1994. However, according to the applicants, the respondents were not regularising the services of the applicants in spite of the fact that they were fully qualified and eligible for regularisation in Group C posts. The first applicant belongs to Scheduled Caste. His representation for regularisation was forwarded by the Passport Officer, Hyderabad to the Deputy Secretary on 9.2.1995. However, except stating that as and when vacancies arose, the cases of the applicants would be considered for regularisation, no further action was taken and the services of the applicants were not regularised. It is emphatically stated by the applicants that since they were in the employment of respondent No.2 for more than eight years, and also having regard to the fact that they were eligible to be appointed in Group-C post on regular basis, they were unlawfully and arbitrarily denied the opportunity of being appointed to Group C post. According to them, there were vacancies

in the Group C posts where the applicants could be posted on regular basis.

3. The respondents do not dispute the fact that the applicants were appointed as Casual Workers in the year 1989 and that they were sponsored by the employment exchange. It is also not in dispute that temporary status was conferred upon them, but the rule position according to Respondents did not allow the casual workers to be engaged in regular posts. It is further contended by the respondents that temporary status was conferred upon those casual workers who were found eligible for the same as per the scheme laid down by the Department of Personnel vide Office Memo which is referred to ^{LM} para 6(iii) of the O.A. Further according to the respondents, the casual workers were engaged to perform the duties of Group D staff due to increase in the work load and to assist the staff in clearing the work. They always worked under Lower Division Clerks and Upper Division Clerks. The regularisation of Group D staff was dependant on the availability of vacant posts and fulfilment of eligibility condition and that the casual workers could be regularised only in Group D posts but not in Group C posts. The method of recruitment for Group D posts was also different.

4. Further according to the respondents, the mere fact that the applicants possess the minimum educational qualification prescribed for Group 'C' posts did not make them eligible for appointment against Group 'C' posts, which is ordinarily done through Staff Selection Commission. However, the respondents

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concede that certain percentage of posts were also earmarked for filling up ^(e) ~~the posts~~ from amongst Group D staff through departmental examination as per the requirement of the rules.

5. Further according to the respondents whenever the applicants were called to do the work on Sundays and other holidays, they were paid on the basis of daily wages fixed for them and therefore, they could not be paid the wages according to the pay scale of Group 'C' post. For all the above grounds, therefore, according to the respondents, the O.A. deserved to be dismissed.

6. The casual labourers who acquire temporary status could not be brought on to the permanent establishment unless they were selected through ~~the~~ regular selection process for Group D posts, as stated in the Office order relating to grant of temporary status and regularisation of casual workers dated 4.5.1994. Their wages are fixed according to the minimum of pay scale corresponding to regular Group D official including D.A., H.R.A. and CCA. Further according to clause 5 of the said office order dated 4.5.1994 the benefits of increments at the same rate as applicable to Group D employees were required to be taken into account for calculating pro-rata wages for every one year of service subject to performance of duties for atleast 240 days in a year from the date of conferment of temporary status. In clause 9 of the said office order it is provided that on completion of three years of continuous service after conferment of temporary status, the casual labourers were to be treated on par with temporary Group D employees for the purpose of contribution

to General Provident Fund and would also be eligible for grant of Festival advance/Flood Advances on the same conditions if they furnish two sureties from permanent Government servants of their department. In clause 10 of the said order it is provided that until they are regularised they would be entitled to productivity linked Bonus/Ad hoc Bonus only at the rates as applicable to Casual Labourers.

7. The applicants have produced along with O.A. a list of 66 casual employees who were granted temporary status vide office order dated 4.5.1994. Smt.Vnitha Kumar's (second applicant) name appears at Sl.No.28 of the said list of 66 casual employees and that of T.Sudesh Kumar (1st applicant) at Sl.No.31 of the same list and according to office order No.F.16(1)AD/85 dated 5.7.1994 regarding granting of temporary status to casual employees, temporary status granted to the casual employees vide office order dated 4.5.1994 which was to be effective from 1.1.1993, was cancelled. It is clarified in the said order dated 5.7.1994 ^{(dated 4-5-94) to} that the said order was applicable only to two casual employees namely T.Sudesh Kumar and Smt.Vnitha Kumari who had been appointed through Employment Exchange.

8. The applicants made a representation dated 9.12.1994 to the Ministry of External Affairs, New Delhi in which the 1st applicant highlighted that during his association with the Regional Passport Office, Hyderabad, he had rendered hard and sincere work which was all along appreciated by his superiors in whichever section he happened to work from time to time. Keeping in view the said fact, he had been granted temporary status by office order

dated 4.5.1994 with retrospective effect from 1.9.1993 during which period the first applicant gained rich experience ^{at} apart from conversance with the rules and regulations concerning various sections. The first applicant further points out in his representation dated 9.12.1994 that he was hailing from a poor backward Class (Scheduled Caste) family struggling to make both ends meet. The applicant further urged the respondents by his representation that besides his own family consisting of his wife and his two children, he had to support an unmarried sister and aged mother who in the absence of his late father were totally dependent on him and that considering all the grounds urged by him, the first applicant requested the respondent-Passport office to regularise his services at the earliest possible convenience either in the very same office or in any other office under the control of the respondents. By letter dated 31st January, 1995 on the representation dated 9.12.1994 made by the 1st applicant he was informed that his services would be regularised against Group D post as and when vacancy arises subject to his eligibility with the approval of the General Secretary (CPV) and the Chief Passport Officer. The 1st applicant's representation dated 25.1.1995 for regular appointment in Group D post in accordance with MEA's letter dated 3.1.1995 was forwarded to the Deputy Secretary (PVA) Ministry of External Affairs, New Delhi.

9. From the above discussion nothing comes to surface which

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could enable the Tribunal to come to a conclusion that the casual workers could be regularised in Group C posts. The contention raised by the respondents in their reply statement that the casual workers could be regularised only in Group D posts and not in Group C posts and that the method of recruitment to Group C post was different is not effectively dealt with by the applicants either by filing a rejoinder affidavit or during the course of oral submissions made by the learned counsel. Another contention raised by the respondents that the recruitment to Group C posts of L.D.C. was done only through Staff Selection Commission has also not been controverted or challenged by the applicants. It also becomes evident from the scheme of Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993 that one of the conditions for making the scheme applicable to casual workers is, ^{as} clearly stated in sub-item (ii) of Clause 4 of the Scheme, that the conferment of temporary status would be without reference to the creation or availability of regular Group D posts; and that as provided in sub-clause (iii) thereof conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. It is provided in sub-clause (iv) that the casual labourers who acquire temporary status would not, however, be brought on to the permanent establishment unless they were selected through regular selection process for Group D posts. (Emphasis supplied). In clause 5 of the scheme the casual labourers on acquiring temporary status would be entitled to wages at daily rates with reference to minimum of the pay scales for a corresponding regular Group D official

including DA, HRA and CCA; and that the benefits of increments at the same rate as applicable to Group 'D' employee would be taken into account for calculating pro-rata wages for every one year of service subject to performance of duty for atleast 240 days.

10. The applicants in this O.A. pray for regularisation in the second respondent's office in Group 'C' posts. However, at no stage earlier to the O.A. such a demand was raised before the respondents. In the representation dated 9.12.1994 addressed to the Ministry of External Affairs, the applicants did not say anything with regard to their entitlement to be regularised in Group 'C' posts. On the other hand, we cannot lose sight of the fact that mere possession of minimum educational qualification prescribed for Group 'C' posts does not make any one eligible for appointment against Group 'C' post and that recruitment to Group 'C' post of Lower Division Clerk is done only through the Staff Selection Commission. There is, therefore, no question of regularising the applicant against Group 'C' posts.

11. From the scrutiny of the documentary evidence produced by the applicants along with O.A. as well as from the arguments advanced by rival parties, nothing emerges which could enable the applicants to claim entitlement for regularisation in the office of the second respondent in Group 'C' posts. In the absence of any such provision, we are unable to lay our hands on any proposition which could be lawfully kept in view to issue the direction to the respondents as prayed for in the O.A.

12. The learned counsel Mr. Shiva for the applicants pressed into service the decision of the Central Administrative Tribunal Ernakulam Bench in Aravindakshan and others Vs. Regional Passport Officer, Kōchi and others (1) in which the Bench held that there was no right to automatic regularisation with passage of time and that a person could be treated as entitled to be regularised on the post which is commensurate with the work done by him and that a person doing clerical work was entitled to be regularised as Lower Division Clerk though on record he was shown as casual labourer. The Ernakulam Bench of the Tribunal was confronted with the fact-situation as follows :-

The applicants who belong^{ed} to SC, were engaged on daily wages with effect from 29.9.1989. They were fully qualified to be appointed as Lower Division Clerks also, and they were in fact required to do the clerical work which according to the respondents had increased due to heavy rush of passport applications. The applicants were initially engaged for a limited period but they were continued from time to time. Their services were however sought to be terminated vide an OM dated 21.8.1990 on the ground that vacancies were to be filled up through Staff Selection Commission. An interim order was passed and the applicants' services were continued. With intermittent breaks, they put in 325 days as on 17.6.1991. The respondents were sought to be directed to hold a departmental test for regularising them, as was done in 1985 to regularise similarly situated persons. The respondents on the other hand, offered to regularise the services of the applicants in relaxation of age and educational

qualifications, if the applicants qualified in the examination to be conducted by the Staff Selection Commission.


13. Before us in the instant case, the situation is different. The applicants before us claim to have worked in various sections as stated ⁱⁿ ~~under~~ para-3 of Annexure VII to the OA. But the applicants do not come out with any specific averment regarding the nature of duties carried out by them. They claim to have worked in different sections of the Regional Passport Office, such as, Linking Section, Passport writing, Section at the counter, Record Section, Despatch Section, Dairy Section, T.A. Counter, Numbering, Posting Section Reception Counter and Public dealing and Routine Security Duty day and night. But they do not specify whether they were discharging clerical functions in the aforesaid sections. Moreover, in the case before us, the question of conferment of temporary status is the main bone of contention between the parties. Vide office order dated 4.5.1994 temporary status was conferred on the casual workers who had rendered one year of continuous service as on 1.9.1993. One of the main conditions stated in the said office order is that the casual labourers who acquired temporary status will not however, be brought on to the permanent establishment unless they are selected through regular selection process for Group D posts. Many other conditions as contained in the said order have been discussed earlier which do not give us any reason to believe that the applicants were doing clerical work. In the above case before the Ernakulam Bench of the Tribunal the services of casual labourers were sought to be terminated on the ground that the vacancies were to be filled up through Staff Selection Commission. But in the case.....11.

before us, no such termination of service is contemplated.

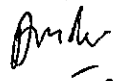
The main question before us is whether there is any ground for the applicants to claim a right to be regularised as Group 'C' employees and in that view of the matter, the ratio emerging from Aravindakshan's case (1-supra) could not be applied to the facts of the present case.

14. For all the above reasons, we do not find any merit in the present O.A. Hence the O.A. is dismissed; however, with no order as to costs.


(H. RAJENDRA PRASAD)
MEMBER (ADMN.)


(D.H. NASIR)
VICE-CHAIRMAN.

Dated: 11th March, 1999.


11-3-99

DJ/AVL