

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 18.10.2001

OA No.5/2001

Gajendra Singh s/o Shri Bhanwar Singh r/o Village Pali, Tehsil Khandar, Distt. Sawai Madhopur, last posted at Pali, Sawai Madhopur.

OA No. 6/2001

Mahaveer Singh s/o Shri Tej Singh r/o Village Pali, Tehsil Khandar, Distt. Sawai Madhopur, last posted at Pali, Distt. Sawai Madhopur.

OA No.19/2001

Nand Behari Pareta s/o Shri Gopal Lal Village and post Mandawara, Tehsil Digoḍ, Distt. Kota, last posted at Sangḍ, Distt. Kota.

OA No.20/2001

Mathura Lal s/o Shri Bhanwar Lal r/o Gram Post Mandawara, Tehsil Digoḍ, Kota, last posted at Mandawara, Distt. Kota.

OA No.21/2001

Prabhu Lal s/o Shri Bala Ram r/o Village and Post Baroḍ Teh. Digoḍ, Distt. Kota, last posted at Sangḍ, Distt. Kota.

OA No.22/2001

Devishanker Pareta s/o Shri Ghasi Lal r/o Village and Post, Mandawara, Teh. Digoḍ, Distt. Kota, last posted at Mandawara, Distt. Kota.

OA No.36/2001

Shamsuddin s/o Shri Jumma r/o village post Baroḍ, Tehsil Digoḍ, Distt. Kota, last posted at Baroḍ, Distt. Kota.

OA No.37/2001

Ramswaroop Meghawal s/o Shri Bishan Lal r/o Village and Post Baroḍ, Tehsil Digoḍ, Distt. Sawai Madhopur, last

posted at Barod, Distt. Kota.

OA No.58/2001

Radhey Shyam Keer s/o Shri Jagannath r/o of Gram and Post Dheepari, Teh. Pipalda, Distt. Kota, last posted at Sanjanpur, Distt. Rajgarh (M.P.)

OA No.59/2001

Kamruddin s/o Shri Gul Mohammad r/o Village and Post Baroad, Tehsil Digod, Distt. Sawai Madhopur, last posted at Pali Distt. Sawai Madhopur (Raj.)

OA No. 60/2001

Mohammed Salim s/o Shri Ali Mohammed r/o Village and Post Mandawara, Teh. Digod, Distt. Kota, last posted at Khatoli, Distt. Kota.

OA No.62/2001

Nizamuddin s/o Shri Gafur Shah r/o Village and Post Baroad, Teh. Digod, District Kota, last posted at Chambal Sub Division, Jaipur

..Applicants

Versus

1. Union of India through its Secretary, Ministry of Water Resources, Department of Central Water Commission, Shram Shakti Bhawan, Rafi Marg, New Delhi.
2. Executive Engineer, Central Water Commission, Chambal Zone, 84/93 to 96, Ajay Marg, Pratep Nagar, Sanganer, Jaipur

.. Respondents

Mr. Rajveer Sharma, counsel for the applicants

Mr. P.C.Sharma, proxy counsel to Mr. Sanjay Pareek, counsel for the respondents

CORAM:

Hon'ble Mr. S.K. Agarwal, Judicial Member

Hon'ble Mr. A.P. Nagrah, Administrative Member

ORDER

Per Hon'ble Mr. A.P. Nagrah, Administrative Member

The controversy involved in all these OAs is on the common point and all the applicants being similarly placed, these OAs are being disposed of by this common order.

2. The applicants are being engaged as Boatmen or Additional Khalasis from year to year starting from the year 1977 in case of some applicants and later years in the case of other applicants. Every year they are engaged for a period of 89 days only as the nature of work is admittedly seasonal and the occasion arises to engage them in every monsoon season for round the clock observation of the river gauge for the purpose of flood forecasting etc. The department needs additional unskilled persons through the month of June/July to September/October when the monsoon is active. The department maintains a list of such persons engaged from year to year and every year before the onset of the Monsoon, the staff engaged in the previous years is intimated so that their names are considered every time when the need arises. Having worked with the department, they have been aspiring to be regularised against the vacancies of regular nature in the department. In compliance of the directions of the Calcutta and Guwahati Benches of the Central Administrative Tribunal, the Government of India, Ministry of Water Resources evolved a scheme for grant of temporary status and regularisation to seasonal khalasis in the work-charged establishments of Central Water Commission.

This scheme was notified vide Ministry's letter dated 20th June, 1997 (Ann.R/2). The scheme provides, inter alia, grant of temporary status which also entails specified benefits and privileges consequent to grant of such status and also mechanism for regularisation of such seasonal khalasis. The basic essential condition for grant of temporary status is that such seasonal khalasis, during the preceding one year, should have rendered a minimum of 120 days of continuous service. Applicants of all these OAs are aggrieved with the structure of the scheme primarily on the ground that they would be eternally deprived of the benefit of the scheme as there would be no occasion to work for 120 days or more in a year as they are being engaged for the last so many years only for 89 days in a year. By filing these applications the applicants seek directions to the respondents to regularise their services against permanent post of Boatman/Khalasi or equivalent from the date of their initial engagement and to grant all consequential benefits. Their further prayer is that letter dated 16.4.1999 (Ann.A/12) be declared illegal, ultra vires and inoperative and to direct the respondents to frame such a scheme so that the applicants can be regularised on the permanent post w.e.f. the date of their initial engagement.

3. The learned counsel for the applicants, Shri Rajveer Sharma submitted that while the scheme has been evolved, but such a scheme is discriminatory against the applicants, who are being engaged every year only for 89 days and they can never have an opportunity to fulfil the

basis criterion of acquiring temporary status that a seasonal khalasi must put in atleast 120 days' service in the preceding year. Contention of the learned counsel was that if the scheme has been framed keeping in view the Welfare of the employees, a segment of such employees cannot be permanently deprived of the benefit of such a scheme merely on the ground that they are being engaged for a period less than 120 days. The thrust of the arguments of the learned counsel was that this scheme is required to be amended suitably so that the applicants who are at par in all respects with such of the seasonal khalasis, who are engaged in other areas of the Central Water Commission for 120 or more, get a just and fair treatment. The learned counsel referred to the decision of Hon'ble the Supreme Court in the case of Gujarat Agricultural University v. Rathod Labhu Bechar and ors., 2001 (1) ATJ 651 to support his contention.

4. The learned counsel for the respondents, Shri P.C.Sharma, appearing as proxy counsel to Mr. Sanjay Pareek, stated that the same controversy had come up for consideration before this Bench of the Tribunal in OAs No.405/2000 and 406/2000 which were decided on 2.2.2001 and the applicants in those OAs were not granted any relief of regularisation by this Tribunal and the OAs were dismissed.

5. In the light of the facts of this case, the only question which comes up for our consideration is whether the applicants and those similarly placed who are

being engaged year after year but only for 89 days in a year are entitled to the benefit of the scheme notified vide letter dated 20th June, 1997. We have perused the order of this Tribunal dated 2.2.2001 (mentioned supra) and we find that the learned Bench had taken due note of the fact that the eligibility criteria for grant of temporary status was that the seasonal labour should have worked for minimum of 120 days in the year preceding and had observed that the department had not been giving appointment to the applicants for a period exceeding 90 days. While concluding that under the existing scheme no relief can be granted to the applicants, it was specifically observed as under:-

"However, we are of the view that the department should review the scheme and consider the feasibility of incorporating such provisions which may enable the applicants and similarly situated employees to find place in the eligibility list as per their appointment of 89 days given in the previous years by the department."

It appears that the department has not appreciated the suggestion made by the Tribunal in the said order and it seems no steps have been taken to modify the rules to the extent that those engaged for 89 days in the preceding year could also be covered under this scheme. The department had apparently prepared a provisional list of the seasonal khelasis and the same is available in the OA as Ann.R/5, but the purpose of preparing such a seniority list, to our mind, becomes meaningless, if no action has to be taken to grant benefit of temporary status or

regularisation to those in this provisional seniority list. The scheme admittedly had been evolved so that seasonal khalasis who have been engaged by the department from year to year get a fair consideration for grant of temporary status and regularisation in the work-charged establishments of the Central Water Commission. The scheme as is presently framed will permanently keep out such of the seasonal khalasis, who are engaged for only 89 days. The respondents in their reply have stated that in the Yamuna Basin there are four divisions i.e. (i) Upper Yamuna Division, New Delhi, (ii) Lower Yamuna Division, Agra, (iii) Chambal Division, Jaipur and (iv) Hydrological Observation Circle, NOIDA. The need to engage seasonal labour arises for only 89 days in a year and since the applicants have never worked continuously for 120 days in any year, they are not eligible for grant of temporary status. To our mind, this is a glaring instance of discrimination against a segment of employees on not a very rational basis. If the scheme has been developed for the welfare of the employees, its objective and purpose would be meaningless in so far as such a segment is concerned, who are permanently deprived of these benefits of the scheme. It cannot be the intention of the framers of the scheme that benefit of the scheme shall be enjoyed only by the seasonal khalasis deployed in the certain areas of the country, while seasonal khalasis employed on a similar nature of work, but for a shorter duration, in other areas of the country, shall be permanently deprived from the scope of the scheme. This is a clear violation of Articles 14 and 16 of the Constitution because, in our considered view, such a classification has no nexus with

the objective required to be achieved. There is a need for the scheme to be modified suitably so that break from one year to another is not considered as a break for the purpose of this scheme and if a person is engaged in a year for 89 days and in the next year when he is re-engaged, as soon as he completes 120 days i.e. 89 days in the previous year and 31 days in the present year, he should become entitled to the grant of temporary status. The respondents department may make a similar provision of rules as existing in the railways where there has been a system in vogue for engaging Hot Weather Waterman and that work is also seasonal in nature and the persons are engaged for short duration every year during the hot weather. The railway department has provided for absorption of casual labour in regular vacancies which also include such Casual Waterman engaged for summer season. Para 2006 of the Indian Railway Establishment Manual, Vol. II makes a provision for absorption of casual labour in regular vacancies. The content of Para 2006 is reproduced below:-

"2006. Absorption of Casual Labour in regular vacancies- Absorption of casual labour in regular Group D employment may be considered in accordance with the instructions issued by the Railway Board from time to time. Such absorption is, however, not automatic but is subject, inter-alia, to availability of vacancies and suitability and eligibility of individual casual labour and rules regarding seniority unit method of absorption etc. decided by the Railway Administration.



(ii) (a) Casual Watermen for summer season shall be eligible for temporary status on completion of 120 days of continuous employment.

(b) For this purpose, various spells of engagement as casual waterman may be aggregated provided the gap between two spells of employment has been caused due to season being over and/or there being no work for them in such establishment provided further that if a person engaged in the previous year is given an opportunity to work in the same hot weather establishment in the subsequent year but he fails to avail of that opportunity, he will have to start afresh in the event of his being so engaged again in future seasons. These provisions are effect<sup>ing</sup> from the summer season of 1985.

(iii) As long as it is established that a casual labour has been enrolled within the prescribed age limit, relaxation in upper age limit at the time of actual absorption should be automatic and guided by this factor. In old cases where the age limit was not observed, relaxation of age should be considered sympathetically. The DRMs may exercise such powers to grant relaxation in age limit."

6. To avoid discrimination against such seasonal Khalasis like the applicants, we consider it appropriate for the respondents to modify the scheme to incorporate

that the period of 120 days should be reckoned taking into account various spells of engagements as seasonal khalasi provided the gap between two spells of employees has been caused due to the season being over and the department itself directing them not to come to work in that season after particular specified date. This minor modification in the scheme would take away the cause of grievance of the applicants and all those similarly placed. There can, of course, be no question of regularising such of the seasonal khalasis even after giving of temporary status unless regular vacancies become available in the department. The regularisation also cannot take retrospective effect and it can only be from the date on which a particular person is considered suitable for being absorbed, after due process. In brief, our conclusion is that the applicants cannot be deprived of the benefit of the scheme on the ground that they have not put in 120 days of service in the preceding year. The deployment in the preceding year should be considered to have continued, if a person presents himself in the subsequent year and renders service so as to make the total of 120 days including the number of days of the previous year. To that extent the present scheme will stand modified and the modified provisions also shall take effect from the Monsoon season of the year 2001.

7. In the light of discussions aforesaid, we direct the respondents to consider the applicants as eligible for grant of temporary status if, after the date of introduction of the scheme, they have completed 120 days of continuous service in the Central Water

Commission. For this purpose, various spells of engagements as seasonal khalasi shall be aggregated provided the gap between two spells of employments has been caused due to the season being over and/or there being no work for them in the establishment. Needless to say that, if a person engaged in the previous year is given an opportunity to work in the same department in the subsequent year, but he fails to avail of this opportunity, he shall have to start afresh in the event of his being so engaged again in any future season. The respondents shall modify the scheme dated 20.6.1997 suitably and extend all the benefits of that scheme to the applicants of these OAs and all those similarly placed within a period of six months from the date of receipt of certified copy of this order. In the facts and circumstances of this case, no order as to costs.

(A.P.NAGRATH)

Adm. Member

(S.K.AGARWAL)

Judl.Member

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