

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 532/2001.
T.A. No.

199

DATE OF DECISION _____

Vishwanath & Ors. _____ Petitioner

Mr. Sudesh Bansal _____ Advocate for the Petitioner (s)
Versus

Union of India & Anr. _____ Respondent

Ms. Shalini Sheran _____ Advocate for the Respondent (s)

CORAM :

☞ The Hon'ble Mr. Justice G.L.Gupta, Vice-Chairman

The Hon'ble Mr.

- 1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not ?
- 3. Whether their Lordships wish to see the fair copy of the Judgement ?
- ✓ 4. Whether it needs to be circulated to other Benches of the Tribunal ?

QW

(G.L.GUPTA)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL,

JAIPUR BENCH: JAIPUR.

DATE OF DECISION : 22/04/03

O.A. NO.532/2001.

Vishwanath S/o Sh.Sheeshpal aged 29 Yrs. R/o. Jatawaas Ward No.2, Baggar Jhunjhunu Raj.

2. Rajendra Frasad, S/o Shri Sheeshpal aged 29 Yrs. R/o Jatawaas Ward No.2, Bhaggar Jhunjhunu Raj.

3. Ramchandra S/o Sh. Bhanwari Lal aged 29 Yrs. Jatawaas Ward No2, Baggar Jhunjhunu Raj.

All applicants presently working as Casual Workers Class IV in Central Excise Department, Sikar.

... Applicants.

Versus

1. Union of India through Commissioner, Central Excise Department, Jaipur, N.C.R. Building, State Circle, Jaipur.

2. Assistant Commissioner, Central Excise Department, Sikar.

... Respondents.

Mr.Sudesh Bansal for Mr.Rajendra Vaish Counsel for Applicant.

Ms.Shalini Sheran Proxy Counsel for Mr.Bhanwar Bagri Counsel for Respondents.

CORAM

Hon'ble Mr.Justice G.L.Gupta, Vice-Chairman.



: O R D E R :

(Per Hon'ble Mr.Justice G.L.Gupta)

Through this application under Sec. 19 of the Administrative Tribunals Act, 1995, the applicants seek directions to the respondents to execute the recommendations of the respondent No.2 for regularisation of their services and pay them the regular scales of pay and further directions for not terminating the services of the applicants.

2. The case for the applicants is that they were engaged as casual contingent workers on daily wages by respondent No.2 between the period 6.2.1995 and 31.7.1996. They worked continuously till 10.10.2001 when they were stopped from working by the respondent No.2. It is stated that the applicants had to perform the duties of class IV, such as cleaning of office, water needs, attending the officer on his bell, working at the residence of the officers, distribution of dak and papers etc. It is further stated that there is no class IV temporary or permanent staff working in the office of the 2nd respondent and the applicants were performing the duties of class IV from 8 a.m. to 7 p.m.

3. In the counter, the respondents case is that there are six posts of Safaiwalas and 11 posts of Farash in Customs and Central Excise Deptt. Rajasthan and there are 331 regular sanctioned posts of Sepoys/Hawaldar Group - D for doing the working of Peon in the offices at Headquarters at Jaipur, Divisional

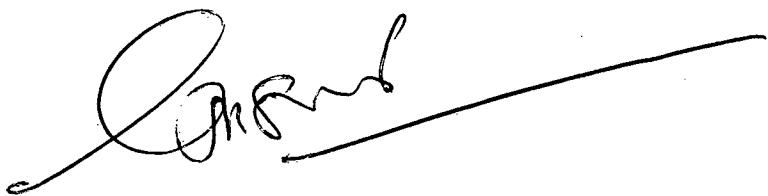


Offices and Range Offices. It is averred that the work of Farash/Safaiwala/Waterman is of intermittent nature and the same is done by part-time workers for 2 to 4 hours per day on daily wages or consolidated payment for a month. It is stated that the engagement of part-time workers is on the basis of requirement of work and without following any rules and regulations as prescribed for filling up the regular posts. It is further stated that the Sepoys and Havildars also perform the duties of Class - IV. Regarding the rate of payment it is stated that the applicants were initially paid at the rate of Rs.30/- per day and, then the amount was raised to Rs.40/- and ultimately Rs.55/-. It is averred that the posts of Farash/Waterman are not sanctioned for the Sikar Division, where the applicants were engaged as part-time workers. It is then stated that the applicants did not attend office from 10.10.2001.

4. In the rejoinder, the applicants have reiterated the facts stated in the O.A.

5. Heard the learned counsel for the parties and perused the documents placed on record.

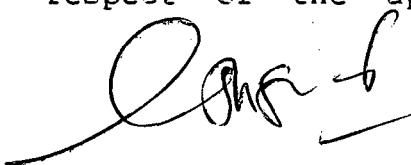
6. Mr.Bansal, learned counsel for the applicants, contended that the applicants had worked for more than six years and hence they have a right of

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regularisation. He canvassed that the job performed by the applicants was such which was to be performed by Class - IV staff and this shows that sanctioned posts were available and hence the applicants are entitled to regularisation. Relying on the Scheme of 1988 and 1993 and the decision of the Apex Court in the case of Gujarat Agricultural University Vs. Rathod Labhu Bechar and Ors. [2001 1 AD (SC) 327], it was submitted that directions be given to the respondents to regularise the services of the applicants.

7. The proxy counsel for the respondents contended that the applicants were engaged as part-time workers only and there were no sanctioned posts available for regularisation of the applicants. It was stressed that the Scheme of 1993 is not applicable and the applicants cannot claim regularisation under the Scheme of 1993 also. Pointing out that the applicants were not engaged by following the procedure prescribed under the Recruitment Rules, she contended that their regularisation cannot be ordered.

8. It is not in dispute that the applicants were paid wages from the contingency fund. It is seen that in some of the certificates and vouchers issued in respect of the applicants it was stated that the

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applicants were part-time workers. In some it was not stated that they were part-time workers. Be that as it may, the question for consideration is whether the applicants can claim regularisation on the basis of their engagement on daily wage basis for about 6 years.

9. No Rule providing for regularisation of services for contingency staff was brought to my notice. The engagement as daily wages for number of years by itself does not entitle the applicants regularisation.

10. As to the case of Gujarat Agricultural University Vs. Rathod Labhu Bechar and Ors. (supra) relied on by Mr.Bansal, it may be stated that that matter had arisen under the Industrial Disputes Act, 1947. It is seen that the Industrial Tribunal, considering the facts of the case, directed the employer to regularise the services of the applicants therein who had rendered about 10 years service as on 1.1.1993. The matter was taken before the High Court. Learned Single Judge set aside the award passed in favour of the workmen, however, a direction was given to the employer to frame a scheme for the regularisation of the daily rated labourers. The matter was taken in appeal before a Division Bench,



which dismissed the appeal. Ultimately, the matter was considered by the Supreme Court. It was noticed by their Lordships that pursuant to the directions given by the learned Single Judge, the Scheme had fully prepared. Their Lordships, directing some modifications, approved the Scheme framed by the employer. In those circumstances, it was observed that where work was taken continuously year after year, there was no justification to keep such persons hanging as daily rated workers. It is relevant to state that the employer therein had agreed for regularisation and framed the scheme. It was not the case of employer therein that sanctioned posts were not available.

10.1. That case in no way helps the applicants. As already stated, it is the case for the respondents that there were no sanctioned posts of Class - IV staff in the Sikar Division. The applicants obviously were not engaged against sanctioned posts. When the sanctioned posts were not available this Court cannot be justified in directing the respondents to regularise the services of the applicants.

10.2. In the case of Ashwani Kumar and Ors. Vs. State of Bihar and Ors. [AIR 1997 SC 1628] the Apex Court held that the question of regularisation in service including any Government service may arise only in two contingencies. Firstly, there are available sanctioned vacancies and the persons worked on such vacancies for substantially long time. The second

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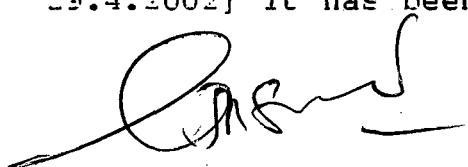
contingency stated was that the initial entry of the employee against an available vacancy is found to have suffered from some flaw in the procedural exercise though the person appointing is competent to effect such initial appointment. The ratio of the decision is that regularisation can be ordered only when the Court is satisfied that the initial engagement was made by the competent authority and that there were vacancies available at the time of initial engagement.

10.3. As already stated, the respondents case is that there were no sanctioned posts available when the applicants were engaged as daily rated workers. Therefore, the applicants cannot claim regularisation even if they had worked for about 6 years.

11. In the case of Union of India and others Vs. Bishamber Dutt [JT 1996 (10) SC 329], it was held that where the persons are not appointed on regular post after selection according to rules, the appointment is dehors the rules and it is not legal on the part of the Tribunal to direct regularisation of their services.

12. Keeping in view the above decisions of the Supreme Court, it has to be held that no direction can be given to the respondents to regularise the services of the applicants.

13. As to the scheme of 1993, it may be stated that in the case of Union of India and Anr. Vs. Mohan Pal etc. etc. [C.A. No.3168 of 2002 decided on 29.4.2002] it has been held that the Scheme of 1993 is



not an ongoing Scheme and the temporary status can be conferred on the casual labourers under that Scheme if they had rendered continuous service of at least one year on the date of commencement of the scheme. Admittedly, the applicants were not in engagement in the year 1993 and therefore no regularisation can be directed under that scheme nor a direction can be given for conferment of temporary status to the applicants.

14. As to the Scheme of 1988, promulgated vide OM dt. 7.6.1988 it may be stated that it did not provide the criteria of regularisation. Amongst other things it provided the wages to be paid to the casual workers. During the course of arguments learned counsel for the applicants did not bring to my notice that some instructions were already there providing the criteria of regularisation. Learned counsel for the Respondents submitted that no instructions providing the criteria had been issued on or before 7.6.1988. The applicants, therefore, cannot claim regularisation under the Scheme of 7.6.1988.

15. No other point was argued before me.

16. For the reasons stated above, I find no merit in this O.A. and dismiss it.

17. No Order as to costs.



(G.L.GUPTA)
VICE CHAIRMAN