

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET

Applicant(s) S. L. Sheshwam Application No.: 238/03

Respondent(s) U.O.G.

Advocate for Applicant(s) S. De. Gupta.

Advocate for Respondent(s) T. P. Shrivastava

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

24/10/2007

order pronounced today in
the open court by the aforesaid
Bench.


24/10/2007.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 24th day of October, 2007

ORIGINAL APPLICATION NO.238/2003

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.J.P.SHUKLA, ADMINISTRATIVE MEMBER

1. Shyam Lal Sharma s/o Shri Tirath Ram Sharma, aged 37 years,
2. Bhavesh Gope s/o Sh. Nando Gope, aged 36 years,
3. Lugu Besra s/o Sh. Boya Besra, aged 36 years
4. Brijlal s/o Sh. Sewak Ram, aged 36 years,
R/o 82/200 Pratap Nagar, Sanganer, all at present posted as Security Guard under the Regional Director (WR), Department of Atomic Energy, Atomic Minerals Division, Paratap Nagar, Sanganer, Jaipur

.. Applicants

(By Advocate: Shri D.C.Gupta)

Versus

1. Union of India through the Secretary, Department of Atomic Energy, Atomic Minerals Division, Room No.145-A, South Block, New Delhi.
2. The Chief Administrator and Accounts Officer, Department of Atomic Energy, A.M.D. Complex, Begumpit, Hyderabad (A.P.)
3. The Director, Department of Atomic Energy,

b/

A.M.D. Complex,
Begumpit,
Hydrabad (A.P.)

4. The Regional Director (WR),
Department of Atomic Energy,
Atomic Minerals Division,
Q.No.52/496, Sector 5,
Pratap Nagar, Sanganer,
Jaipur

.. Respondents

(By Advocate: Ms. Kavita Khinchi, proxy counsel to Mr. Tej Prakash Sharma)

O R D E R

Per M.L.Chauhan, Member (J)

Applicants four in number have filed this OA thereby praying for the following reliefs:-

"i) to issue an appropriate order or direction by which direct the respondents to give work charge status to the applicants from the date on which their junior were so given the work charge status and pay all consequential benefits like seniority, fixation of pay, all types of allowances leave arrears of salary and other benefits as admissible to the juniors alongwith interest and also protected salary of the applicants which has been reduced.

ii) Any other appropriate order or direction which this Hon'ble Tribunal deem fit and proper may kindly be passed in favour of the applicants.

The Original application may kindly be allowed with costs."

2. Briefly stated, facts of the case are that the applicants were engaged as Casual Labourer in the Atomic Minerals Directorate for Exploration and Research (earlier known as Atomic Minerals Division),

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Department of Department of Atomic Energy, Government of India in the year 1981 to 1985. They were also conferred temporary status w.e.f. 1.9.1993 vide order dated 13.10.1993 in accordance with the scheme known as Grant of Temporary Status and Regularisation of Casual Workers as issued by the Department of Personnel and Training pursuant to the decision rendered by the Principal Bench, copy of which has been placed on record as Ann.R1 with the reply. Subsequently, these applicants have also been regularized by giving appointment to them against Group-D post. Copy of appointment letters have been placed on record vide which the applicants were regularized on different dates in the year 2000 and 2001.

The grievance of the applicants in this case is very limited to the extent that certain Casual Labourers who were junior to them were granted work charged status whereas no such status has been conferred to the applicants. The second grievance of the applicants is that when their services were regularized in the year 2000 and 2001 their basic pay has been reduced and they were fixed on the initial pay of Rs. 2550/- per month, but before regularization they were getting more basic pay.

3. Notice of this application was given to the respondents. The respondents have filed reply stating

that the respondent department is engaged in survey, exploration, prospecting, drilling, investigations, research and development in respect of substances (minerals) notified as prescribed substance under the Atomic Energy Act, 1962. The headquarters of the Directorate is located at Hyderabad, Nagpur, Jaipur, Khasmahal (Jamshedpur), Bangalore, Hyderabad and New Delhi with several investigation/drilling groups positioned at various far flung locations in each region. It is further stated that the mandate of AMD is to locate and quantify the resources of prescribed substance, particularly with reference to Uranium which is a critical raw material for nuclear power programme of the country. The Administrative Ministry of this Directorate is the Department of Atomic Energy (DAE) which is located at Mumbai, and is a prestigious department directly under the charge of the Prime Minister of India. DAE is headed by Secretary, who is ex-officio, Chairman Atomic Energy Commission (AEC) and who is responsible for the smooth and efficient functioning of various constituent units of the Department engaged in different spheres of work. Also, the policy decisions pertaining to the Department are usually taken at the DAE Secretariat at Mumbai in consultation with nodal Ministries except those that fall within the purview of the AEC. The respondents have stated that keeping in view the nature of work i.e. survey, exploration, drilling etc. of the

Directorate, though intermittent, has necessitated engagement of Casual Labourers for rendering assistance in field establishments in initial days which included watch and ward. Thus, according to the respondents, in the remote localities, local persons were being engaged as Casual Labourers, as the usual procedure of recruitment through sponsorship by the respective Employment Exchange was not feasible during those days. It is further stated that Casual Labourers being utilized in other field establishments also within the region depending upon the requirement, on cessation of work in a particular field. The respondents have further stated that almost all the Casual Labourers have been conferred temporary status w.e.f. 1.9.1993. It is further stated that such casual labourers who have acquired temporary status will not, however, be brought on the permanent establishment unless they are selected through regular selection process for Group-D posts. It is further stated that over a decade about 255 Casual Labourers with temporary status have been selected for regular posts in satisfaction of 100% appointments in Group-D posts, even though para 8 of the DOPTs OM contemplates that only two out of every three vacancies in Group-D category should be filled up through Casual Labourers granted with temporary status.

The respondents have further stated that work is charged status on some of the senior Casual Labourers

(temporary status) was conferred based on the directions of certain Benches of the Central Administrative Tribunal. It is further stated that the judgment so rendered by the Central Administrative Tribunal is the judgments in personam and not judgments in rem. The respondents have also relied upon the judgment rendered by the Guwahati Bench of the CAT in OA No.17/96 dated 5.1.1999 whereby after noticing that all the applicants have been granted temporary status in terms of the scheme dated 1.10.93 however did not give positive direction for regularization of their services. It was however directed that respondents can expedite regularization of the services of Casual Labourers within a reasonable time and can also consider creation of relevant posts accommodating the casual workers. The respondents have stated that subsequently about 475 Group-D posts in the grade of Helper-A and Security Guard were created and almost all the posts were utilized for regularization of workcharged establishment and Casual Labourers.

Regarding the contention of the applicants that before regularization they were drawing more wages, the respondents have stated vide DOPT OM dated 29.01.98, the Ministry have clarified that in terms of Government of India Decision No.21 under FR 22, pay protection is not permissible to Casual Labourers u (Temporary Status) in Group-D post. Thus, according to

the respondents pay of Casual Labourers (Temporary Status) cannot be protected on their regularization. The respondents have also raised objection regarding limitation.

4. The applicants have filed rejoinder thereby reiterating the submissions made in the OA.

5. We have heard the learned counsel for the parties and gone through material placed on record. We are of the view that the applicants are not entitled to any relief for more than one reason.

At the outset, it may be stated that the applicants have based their claim for conferring workcharged status to them in terms of order dated 7.9.2000 (Ann.A3) whereby 5 persons named therein were conferred temporary status w.e.f. 21.12.90 (Sl.No. 1 to 3) and 1.8.91 (Sl.No. 4 and 5). Perusal of this letter reveals that all the 5 persons named therein who have been granted work charged status belong to regional headquarter located at New Delhi. It is not the case of the applicants that at the relevant time they were working at regional headquarter, New Delhi. A workcharged establishment means an establishment of which the expenses including the wages and allowances of the staff, are chargeable to works. The work charged establishment employees are engaged on a temporary basis and their appointments are made for

u/s

execution of a specified work. From the very nature of their employment, their services automatically come to an end on the completion of the works for the sole purpose of which they are employed. Cadre means the unit of strength of a service or a part of it as determined by the employer and it is too well settled that services rendered by an employee in one cadre cannot be taken into account for determining the seniority in another cadre unless by any rules of seniority this privilege is conferred. This being the position, ordinarily the services rendered by the Casual Labourers in other regional headquarter cannot be taken into account for the purpose of conferring workcharged status to the Casual Labourer working in another region. In this situation and that the applicants have not pleaded that at the relevant time in the year 2000 when Ann.A3 was issued thereby conferring workcharged status to certain casual workers, they were also working in New Delhi region, As such, it is not a case of discrimination. Rather the material placed on record i.e. Ann.A12 with the rejoinder, reveals that the present posting of the applicants as on April 27, 2000 were in other region. Thus, according to us, it is not a case of discrimination and the applicants who ~~were~~ at the relevant time were not working in New Delhi region could have been granted workcharged status.

That apart, this all happened in the year 2000 and the present application has been filed in the year 2003, as such, the same is time barred in terms of provisions contained under Section 21 of the Administrative Tribunals Act, 1985 and even if it is presumed that the present application is within limitation, the applicants have not challenged the validity of the order dated 7.9.2000 (Ann.A3) whereby 5 persons were granted workcharged status w.e.f. 21.12.90 and 1.8.91, as such validity of this order cannot be gone into and even on this ground, the present application is liable to be dismissed.

Further, vide order dated 7.9.2000, 5 persons were conferred workcharged status as already stated above, and all these persons belong to Northern Region, New Delhi. Monthly wages/salary on account of conferring workcharged status has to be drawn against the work and keeping in view the availability of work it appears that 5 posts of work charged Watchmen were created. In case relief is granted to the applicants it will adversely affect the 5 persons who have been conferred such status. That apart, there are 7 regions in which there may be persons who might be senior to the applicants and who have been deprived the benefit of conferment of workcharged status. Granting relief to the applicants will unsettle the settled position. The respondents in their reply have stated that work-charged status has been granted only

to limited persons who have obtained orders from the Tribunal but copy of judgment has not been placed on record and in the absence of any such judgment having been placed on record and also that the applicants have failed to establish their legal right as on what basis the mandamus can be issued to the respondents to grant work-charged status to the applicants, no such direction can be legally given. Thus, the applicants have failed to substantiate the plea that they may be conferred workcharged status as was granted to certain persons as mentioned in Ann.A3.

The Apex Court in the case of State of Karnataka vs. S.M.Kotrayya, 1996 SCC (L&S) 1488 has held that simply because the Tribunal has allowed a similar claim and subsequently certain persons have also filed belated applications when the judgment came to their notice, an application for condonation of delay cannot be held to be a proper explanation for condonation of delay. The explanation must relate to failure to avail the remedy within the limitation period. In the instant case also, the applicants have stated that notice for demand of justice through their counsel was sent on 25.10.2002 and reply to this notice was sent by the department on 31.12.2002 thereby stating that work charged status has been given on the direction of the Central Administrative Tribunal. It is further stated that revised notice dated 27.1.2003 was also sent by the applicants which was replied vide letter

dated 21.3.2003, as such the present application is within limitation. According to us, such explanation cannot be said to be satisfactory explanation for the purpose of condonation of delay in terms of the law laid down by the Apex Court in the Case of S.M.Kotrayya (supra) wherein in para 9, the Apex Court has held as under:-

"9. Thus considered, we hold that it is not necessary that the respondents should give an explanation for the delay which occasioned for the period mentioned in sub-sections (1) or (2) of Section 21, but they should give explanation for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should be required to satisfy itself whether the explanation offered was proper explanation. In this case, the explanation offered was that they came to know of the relief granted by the Tribunal in August, 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). That is not the explanation given. Therefore, the Tribunal is wholly unjustified in condoning the delay."

So far as second contention of the applicant is concerned that they should be granted pay protection as while working as Casual Labourers, they were drawing more emoluments than the pay fixed when they were regularized against Group-D post, it may be stated that the applicants have made a vague averment

without laying proper foundation as to what was their wages when they were working as Casual Labourer (Temporary Status) and how they have been fixed at lower pay scale. It was for the applicants to establish their cases and legally they cannot base their claim on the basis of admission having made by the respondents in the pleadings. However, in the instant case, the respondents have relied on OM dated 29th January, 98 which has been issued by the DOPT thereby stating that Casual Labourers with temporary status on their regularization against Group-D posts has to be fixed at the minimum of the scale of Group-D post. The applicants have not challenged validity of this OM and they have also failed to establish how they are entitled to pay protection. It may be stated that pay of a person has to be fixed in terms of FR 22. FR-22 stipulates that when a person is appointed against a post for the first time, his pay has to be fixed at the minimum of the scale of the post against which he has been appointed. The concept of pay protection is attracted when a person seeks re-employment after seeking retirement from previous service or promoted to higher post or where the person has on previous occasion (s) officiated in an identical or same time scale applicable to new post before his appointment to new post etc. It is in that contingency question has to be considered as to how the pay has to be protected and also whether on ^{yo}

promotion such person is drawing a pay at par with his junior who may in given case be drawing more pay than the so called senior person. The applicants have failed to show any legal right or statutory rules on the basis of which a Casual Labourer with temporary status (who admittedly is not appointed against a post and is only given certain privileges like minimum of pay scale and is not a Government servant), his pay has to be protected. Thus, the pay of the applicants has to be fixed at the minimum of time scale of the post when their services were subsequently regularized against a post(s).

6. For the foregoing reasons, the present OA is bereft of merit. Accordingly, the same is dismissed with no order as to costs.

7. In view of dismissal of the OA, no order is required to be passed in MA No.236/03, which shall also stand disposed of.



Admv. Member



Judl. Member

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