

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH:

R.A No. 7 197 (CA 138/95)

Union of India & Ors Applicant(s)

- VS -

MS. Angali Thakuria Respondant(s)

Mr. S. Ali, Sr. C.S.C. Advocate for the Applicant(s)

..... Advocate for the Respondant(s)

Office Note	Date	Court Orders
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This Review application is filed by Mr. S. Ali, Sr. C.S.C. on behalf of the respondents, against the Judgement and order dated - 1-4-97. passed in

10.11.97

To be listed for ~~order along~~ admission alongwith M.P. 288/97. on 9.12.97.


Member


Vice-Chairman

C.A 138/95 in The Court of the Hon'ble Vice chairman & Hon'ble Member (Admin)

The final order was communicated on 9-6-97. Date of receipt of order by the respondents on 18-6-97. The R.A. is filed on 30-9-97.

9.12.97

There is no representation. Adjourned to 15.12.97. By Mr.

Hence This application is not in time and in this regard an application Mp. 288/97 for condonation of delay has been filed.

15-12-97

Case is adjourned till

19-1-98.


Member


Vice-Chairman

and for favour of consideration of admission.

19-1-98

To be listed alongwith M.R. 289/97 on 19-2-98.


Member


Vice-Chairman

Deputy Registrar (A)
Central Administrative Tribunal

Request has been filed

(2)

R.A. 7/97

19.2.98

To be listed alongwith M.P. 288/97 on 25.2.98 for order.

5.12.97

Notice duly served to the respondent No. 1.

Member

Vice-Chairman

pg

Boo

25.2.98 There is no representation Admitted to 2.3.98. By order

18-2-98

Yakulatanama filed by Mr. D.K. Mishra Adv. & Mr. C.T. Jamin Adv. on behalf of The opposite party/applicant.

2-3-98

To be listed alongwith M.P. 288/97 on 3-3-98 for orders.

Member

Vice-Chairman

lm

Notice duly served on R No. 1.

3.3.98

In view of the order passed today in M.P.No. 288/97 the delay in filing the review application is condoned.

List on 24.3.98 for admission. Meanwhile the opposite party may file objection against the review application if so advised.

23-3-98

Written statement filed on behalf of The opposite party/ applicant at page

pg 573

12 to 13

24.3.98

Heard Mr S.Ali, learned Sr.C.G.S.C for the petitioner and Mr D.K.Mishra, learned counsel for the opposite party.

Application is admitted.

List on 27.4.98 for orders.

Member

Vice-Chairman

24/23-3




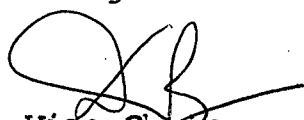



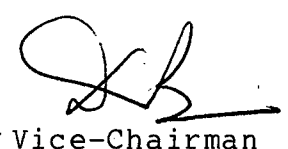


W/S has been filed

Member

Vice-Chairman

pg 26/3

24/24-4

Notes of the Registry	Date	Order of the Tribunal
w/s is being filed 1/6	27.4.98 nkm 5/8 28/4	The case is otherwise ready for hearing. List it on 2.6.98 for hearing. <div>  Member <div>  Vice-Chairman </div> </div>
w/s is being filed 15/6	2.6.98 pg 5/8 A/b	Counsel for the parties pray for two weeks adjournment, Prayer allowed. List on 16.6.98 for hearing. <div>  Member <div>  Vice-Chairman </div> </div>
The case is ready for hearing. NS 19/6	16.6.98 pg 5/8 17/6	On the prayer of Mr S.Ali, learned Sr.C.G.S.C the case is adjourned till 22.6.98. <div>  Member <div>  Vice-Chairman </div> </div>
14.8.98 Case is ready for hearing. Bor	22.6.98 pg 5/8 23/6 nkm 5/8 23/6	The learned counsel for the parties pray for an adjournment. Let the case be listed on 20.7.98. <div>  Member <div>  Vice-Chairman </div> </div>
	20.7.98 pg 5/8 24/7	On the prayer of the counsel for the parties the case is adjourned to 17.8.98. <div>  Member <div>  Vice-Chairman </div> </div>

Notes of the Registry	Date	Order of the Tribunal
<p>20.8.98</p> <p>Copy of order dated 17.8.98 issued to the Mr. S. Ali, Sr. C.G.S.C.</p> <p>1300</p> <p>Records has not been filed in the Section. w/s has been filed.</p> <p>SP 9/9</p> <p>w/s has been filed.</p> <p>SP 9/9</p> <p>w/s has been filed.</p> <p>SP 9/9</p>	<p>17.8.98</p> <p>trd</p> <p>28/8/98</p> <p>2.9.98</p> <p>trd</p> <p>10.9.98</p> <p>trd</p>	<p>In spite of our repeated orders records have not been produced by the respondents. Mr. S.Ali, learned Sr. C.G.S.C. also assured us for production of records. Mr. Ali submits today that he has not yet received the records. Several adjournments have already been granted in this matter. Most reluctantly we are granting two week adjournment for production of records.</p> <p>Let this case be listed for hearing on 2.9.98. On that day if the records are not produced, Tribunal will proceed with the case without records at the risk of Review Petitioners.</p> <p>Member</p> <p>Vice-Chairman</p> <p>Mr. S.Ali, learned Sr. C.G.S.C. is not present today. He has filed letter of absence. Mr. D.K.Mishra, learned counsel appearing on behalf of the opposite party is present. For the ends of justice case is adjourned till 10.9.98.</p> <p>List it on 10.9.98.</p> <p>Member</p> <p>Vice-Chairman</p> <p>Mr S. Ali, learned Sr. C.G.S.C. prays for an adjournment. Mr D.K. Mishra, learned counsel for the opposite party has no objection. Accordingly the case is adjourned till 5.11.98.</p> <p>Member</p> <p>Vice-Chairman</p>

R-A. 7/97

(5)

Notes of the Registry

Date

Order of the Tribunal

5.11.98

Division Bench is not available. The case is adjourned 15.12.98

22.12.98

There was a Bench at Agartala on 15.12.98. It was placed on hold.


pg

31.12.98

Present: Hon'ble Mr G.L. Sanglyine, Administrative Member

The case is otherwise ready for hearing. List it on 18.2.1999 for hearing.


Vice-Chairman

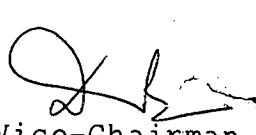

Member

nkm

18.2.99

On the prayer made on behalf of Mr D.K. Mishra, learned counsel for the respondents, the case is adjourned till 22.3.99.


Member


Vice-Chairman

nkm

22.3.99

On the prayer of Mr A. Deb Roy, learned Sr.C.G.S.C for the petitioner the case is adjourned to 30.3.99.


Member


Vice-Chairman

pg







ns
23/3/99

26-3-99

The case is ready for hearing.

ns
26/3

6
R.A 7/97

Notes of the Registry	Date	Order of the Tribunal
	30-3-99	On the prayer of Mr.D.K.Misra, learned counsel for the respondents case is adjourned to 5-4-99 for hearing. List on 5-4-99 for hearing.
	lm	 Member
		 Vice-Chairman
6.4-99	5.4.99	<i>prayer in the order.</i> <i>by order.</i>
Records have been produced by Mr. A. Sub Roy, Sr. CGSC. in Court.	6.4.99	Heard the learned counsel for the parties. Hearing concluded. Judgment reserved.
lm.	nkm	 Member
		 Vice-Chairman
	14.5.99	Judgment pronounced in open Court, kept in separate sheets. The application is disposed of in the manner indicated in the order. No order as to costs.
16.6.99	pg	 Member
Copies of the Judgment have been sent to the parties & Sec. for issue. The same to the parties.		 Vice-Chairman

X

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Review Application Nos. 7/97, 8/97, 9/97 and 10/97.
O.A.P. (In O.A.138/95, 144/95, 141/95 and 145/95
respectively).

14-5-1999.
DATE OF DECISION.....

Union of India & Ors. (PETITIONER(S))

Sri A. Deb Roy, Sr.C.G.S.C. ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

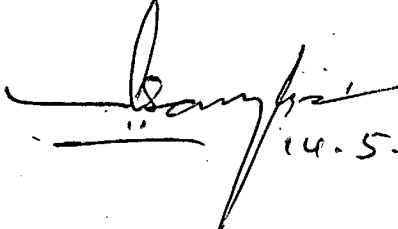
Ms Anjali Thakuria, Ms Manju Barman, Shyamal RESPONDENT(S)
Kr. Das and Sri Ratan Talukdar respectively.

Shri D.K. Mishra. ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE JUSTICE SHRI D.N.BARUAH, VICE CHAIRMAN.
THE HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

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

Judgment delivered by Hon'ble Administrative Member.


14.5.95

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Date of Order : This the 14th Day of May, 1999.

Justice Shri D.N.Baruah, Vice-Chairman,

Shri G.L.Sanglyine, Administrative Member.

Review Application No. 7 of 1997 (O.A.No.138/95)

Union of India & Ors. . . . Petitioners.

- Versus -

Ms Anjali Thakuria . . . Opposite party.

Review Application No. 8 of 1997 (O.A.No.144/95)

Union of India & Ors. . . . Petitioners.

- Versus -

Ms Manju Barman . . . Opposite party.

Review Application No. 9 of 1997 (O.A.No.141/95)

Union of India & Ors. . . . Petitioners.

- Versus -

Sri Shyamal Kr. Das . . . Opposite party.

Review Application No. 10 of 1997 (O.A.No.145/95)

Union of India & Ors. . . . Petitioners

- Versus -

Shri Ratan Talukdar . . . Opposite party.

Advocate for the petitioners : Sri A.Deb Roy, Sr.C.G.S.C
in all the four cases.

Advocate for the opposite
parties in all the four cases : Sri D.K.Mishra.
except D.2.No.

O R D E R

G.L.SANGLYINE, ADMN.MEMBER.

These 4 (four) Review Applications are disposed of
by this common order as they relate to the same matters.

2. Smt. Anjali Thakuria, Smt. Manju Barman, Shri Ratan
Talukdar and Shri Shyamal Kumar Das were casual employees
in the office of the Regional Passport Officer, Guwahati.

On 10.5.1994 they were granted temporary status with effect from 1.9.1993. However, on 9.3.1995 their temporary status was cancelled on the ground that granting of temporary status to the applicants was found to be in contravention of the rules. Subsequently, on 30.6.1995 their services were sought to be terminated by giving them one month notice on the ground that the specific work for which they were engaged had since been completed. Thereafter the applicants submitted Original Application Nos. 138 of 1995, 144 of 1995, 141 of 1995 and 145 of 1995. These Original Applications were disposed of by a common order dated 1.4.1997. It was held therein that the order dated 9.3.1995 cancelling the order dated 10.5.1994 granting temporary status to the applicants was not sustainable because it was issued without any reasonable ground and it was unfair and violative of the principles of natural justice. Besides the notices of termination of services were issued without any valid ground. Consequently, the cancellation of temporary status and the termination notices were quashed.

3. In para 10 of the order dealing with the contention of the respondents that the cancellation of the temporary status granted to the applicants was because they were not recruited through Employment Exchange by relying on the clarification note issued by the Under Secretary, the Tribunal held that the clarification cannot take the place of the scheme and that it cannot be considered as part of the scheme. It is against this portion of the order dated 1.4.1997 of the Tribunal that the Review petitioners have sought review of the order dated 1.4.1997 in O.A.Nos 138, 144, 141 and 145 of 1995. They now placed reliance on the judgment of the Hon'ble Supreme Court dated 27.1.1997 in

S.L.P. in re Passport Officer, Trivandrum and others Vs. Venugopal C. and others which, according to them, had come to their knowledge after the hearing of the O.As. In this judgment the Hon'ble Supreme Court had set aside the order of the Tribunal allowing temporary status to the casual workers who were not recruited through Employment Exchange.

4. We have heard counsel of both sides. In the order dated 26.7.1996 in O.A.No.434 of 1995 the Central Administrative Tribunal, Ernakulam Bench had occasion to deal with the clarification issued by the Government to the effect that casual employees who were not appointed through Employment Exchange cannot be granted temporary status. The Tribunal came to the following conclusion in the order dated 26.7.1996.

"5. This is a case where applicants deserve to be freed "from the unlimited discretion of a ruler" namely the one who issued R-2 clarification, out of context, without occasion and in effect changing the face of the scheme in A-1. Arbitrary exercise like this, taking away rights that have accrued to applicants, cannot be assented to."

"6. A-3 and R-2 orders imposing a new requirement into the scheme, that too retrospectively, militates against Article 14. We allow the Original Application and quash A-3. Respondents will pay Rs.500 (Rupees five hundred) as costs to each of the applicants."

The order of the Tribunal was contested before the Hon'ble Supreme Court. The Supreme Court in the judgment dated 27.1.1997 had held that the decision of the authorities cannot be said to be unreasonable or arbitrary. The order of the Tribunal was accordingly set aside and the order of the Government passed on the basis of the clarificatory order was restored. In the light of the aforesaid judgment.

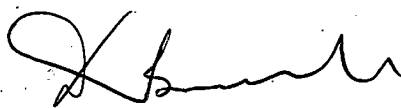
of the Hon'ble Supreme Court we have reviewed the order dated 1.4.1997 and, as a result, para 10 and 11 thereof are hereby deleted. The cancellation of the Temporary Status granted to the applicants was not done on the ground that they were not appointed through the Employment Exchange. At least, no records were produced at the time of hearing of the O.As that the impugned orders of cancellation were issued on the ground that the applicants were not appointed through Employment Exchange. In our order dated 1.4.1997 we had quashed the impugned orders cancelling the grant of temporary status to the applicants and the notices of termination of their services on the grounds mentioned in para 8 and 9 of the order as briefly indicated hereinabove. If the respondents decide to take action afresh to cancel the orders granting of temporary status to the applicants on the ground that the applicants were not recruited through Employment Exchange, the respondents shall allow the applicants reasonable opportunity of being heard before any action is taken.

5. Para 12 is modified and will read as below :

"12. The applications are disposed of as above."

Thus, except para 10, 11 and 12 of the judgment and order dated 1.4.1997 the remaining part of the order stands.

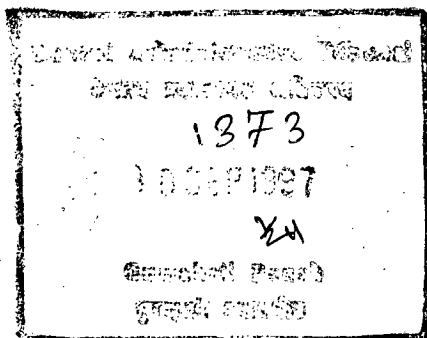
6. The Review Applications are disposed of. They are allowed to the extent indicated above. No order as to costs.


(D.N. BARUAH)
VICE CHAIRMAN


(G.L. SANGLYNE)
ADMINISTRATIVE MEMBER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:

GUWAHATI BENCH:GUWAHATI.



R. A. NO. 7 OF 1997 .

O. A. No. 138/95

Filed by:

Shankar
(MD. SHAUKAT ALI) 26/9/97
Sr. Central Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench, Guwahati

IN THE MATTER OF:

A Review Petition under Section 22(3)(f)
of the Central Administrative Tribunal
Act, 1985 .

- AND -

IN THE MATTER OF:

Judgment & order dated 01-04-97
passed by the Hon'ble Tribunal in
O.A. No. 138/95.

- AND -

IN THE MATTER OF:

- 1) Union of India ,
represented by the Secretary to the
Government of India, Ministry of
External Affairs, New Delhi.
- 2) Chief Passport officer,
Ministry of External Affairs ,
Government of India, New Delhi.

(Contd.)

3) Regional Passport Officer,
Basistha Road, Guwahati .

.. Petitioners.
Respondents.

- Versus-

Miss Anjali Thakuria,
Casual Worker, Regional Passport Office,
Ministry of External Affairs, Govern-
ment of India, Basistha Road,
Guwahati .

... Opposite party
~~Respondent~~
Applicant.

The humble petition of the
above named petitioner :

MOST RESPECTFULLY SHEWETH:

- 1) That the opposite party as applicant filed the O.A. No. 138/95 praying for regularisation of her service having worked for more than 240 days continuously in the Office of the Regional Passport Officer, at Guwahati.
- 2) That the petitioners-respondents contested the case by filing Written Statements and advancing oral arguments and the Hon'ble Tribunal after hearing both sides in details allowed the original application of the opposite party vide judgment and order dated 01-04-97 recommending the Respondents-Petitioners to regularise the service of the two of four applicants after taking into consideration

(Contd.)

of all aspects . The other two shall continue to have right of temporary status unlike they are absorbed on a regular basis as per the Scheme.

3) That it may be stated that the Respondents in their Written Statements clearly and categorically stated that as the applicant was not sponsored by the Employment Exchange, so ~~he~~ she is not entitled to be regularised and to have temporary status.

4) That the Supreme court , vide judgment and order dated 27-01-97 in a similar case of Central Administrative Tribunal , Ernakulam Bench, set aside the judgment & order dated 26-07-1996 passed in O.A. No. 434/95 copy of the Hon'ble Supreme Court's judgment has been annexed herewith as Annexure- X . Hence, this review petition has been filed on the following grounds :

In view ~~of the facts and circumstances~~ of the facts and circumstances narrated above , the petitioners- Respondents preferred this Review application on the following amongst other grounds:

G R O U N D S

i) For that, there has been error apparent on the face of the records resulting mis-carriage of justice.

ii) For that, the Hon'ble Supreme Court / held that temporary status could not be given to part time casual labourer as per Annexure- X and in view

of this , the impugned judgment is liable to be reviewed.

iii) For that, at the time of hearing of the O.A. the petitioners could not place the Supreme Court's Judgment on the point narrated as they were unaware of the judgment of the Supreme Court.

iv) For that, on the basis of Supreme Court's judgment , the impugned judgment is liable to be reviewed .

v) For that, at any rate , the impugned judgment is liable to be reviewed .

It is, therefore, respectfully prayed that, the Hon'ble Tribunal may be pleased to admit the review application , call for the records , issue notices to the opposite party and after hearing the parties review the judgment and order dated 01-04-97 in O.A. No. 138/95 passed by the Hon'ble Tribunal .

Further, it is prayed that, pending final disposal of the Review application the operation of the impugned judgment and order dated 01-04-97 passed in O.A. No. 138/95 may kindly be stayed .

....Veri-

AFFIDAVIT

I, Sri Dilip K. Purkayastha the
Regional Passport Officer, Basistha Road, Guwahati,
Petitioner/Respondent No.3, aged about 58 years
do hereby solemnly state and affirm ~~that~~ as follows:

- 1) That, I am the petitioner/Respondent No.3
in the instant case and I am competent to swear
this affidavit and I am also fully acquainted with
the facts and circumstances of the case.
- 2) That, the statements made in this
affidavit and in paragraphs 1, are
true to my knowledge, those made in paragraphs
2, 3, 4, are true my information
and those made in the rest are my humble submissions
before this Hon'ble Tribunal.

And I sign this affidavit today on 26th
day of September, 1997 at Guwahati.

Identified by me:

Shaukat Ali
Advocate
26/9/97

D. K. Purkayastha
(D. K. Purkayastha)
Dependent
Regional Passport Officer,
Guwahati/গুৱাহাটী

Solemnly affirmed and declared
by the deponent, who is identified by
Mr. Shaukat Ali, Advocate, Guwahati before
the Deputy Registrar, Central Administrative
Tribunal, Guwahati Bench, Guwahati on this
26th day of September, 1997.

Solemnly affirmed before
me on 26th day
of September 1997

HL
Deputy Registrar
Central Administrative Tribunal
Guwahati Bench.

1876

Recd No 8

160/97
19/6/97

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: :::::::::::GUWAHATI
READ, WITH
A/D.

DESPATCH NO. 2026 DATED, GUWAHATI THE 9/6/97

ORIGINAL APPLICATION NO. 138/95 141/95 149/95
MISC. PETITION NO. 144/95
CONTEMPT PETITION NO.
REVIEW APPLICATION NO.
TRANSFER APPLICATION NO.

Ms. Anjali Thakuria in or.
..... APPLICANT (S)
VERSUS
U.O.I. in or.
..... RESPONDENT (S)

To
Regional Passport Officer,
Basis Road,
Guwahati
READ, WITH
A/D.

Original
Recd

DESPATCH NO.

27
20/6

Sir,
I am directed to forward herewith a copy of Judgment/
Final Order dated 14/6/97 passed by the Bench of this
Hon'ble Tribunal comprising of Hon'ble Justice Shri D.N.
Baruah Vice-Chairman and Hon'ble Shri G.L.
Sanghyine Member, Administrative in the above noted case
for information and necessary action, if any.

Please acknowledge receipt of the same.

To
Enclo : As stated above
Yours faithfully,
19/6/97
DEPUTY REGISTRAR
19/6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.138 of 1995
Original Application No.141 of 1995
Original Application No.145 of 1995
Original Application No.144 of 1995

Date of decision : This the 1st day of April 1997

The Hon'ble Justice Shri D.N. Baruah, Vice-Chairman

The Hon'ble Shri G.L. Sanglyine, Administrative Member

O.A.No.138/95 ✓

Ms Anjali Thakuria, ✓
Casual Worker, Regional Passport Office, Guwahati,
Ministry of External Affairs,
Government of India.

By Advocate Mr D.K. Mishra and Mr C.T. Jamir.

.....Applicant

-versus-

1. Union of India, represented by the
Secretary to the Government of India,
Ministry of External Affairs, New Delhi.
2. Chief Passport Officer,
Ministry of External Affairs,
Government of India,
New Delhi.
3. Regional Passport Officer,
Basistha Road, Guwahati.

By Advocate Mr S. Ali, Sr. C.G.S.C.

.....Respondents

O.A.No.141/95 ✓

1. Shri Shyamal Kr Das
2. Shri Ratan Talukdar

Both are working as Casual Workers in the
Office of the Regional Passport Officer, Guwahati,
Ministry of External Affairs, Government of India.

By Advocate Mr B.K. Sharma and Mr B. Mehta.

.....Applicants

-versus-

1. Union of India, represented by the
Secretary to the Government of India,
Ministry of External Affairs, New Delhi.
2. Chief Passport Officer,
Ministry of External Affairs,
Government of India, New Delhi.
3. Regional Passport Officer,
Basistha Road, Guwahati.

By Advocate Mr S. Ali, Sr. C.G.S.C.

.....Respondents





O.A.No.145/95 ✓

Shri Ratan Talukdar, ✓
Working as Casual Worker in the
Office of the Regional Passport Officer, Guwahati,
Ministry of External Affairs, Government of India.

.....Applicant

By Advocate Mr B.K. Sharma and Mr S. Sarma.

-versus-

1. Union of India, represented by the
Secretary to the Government of India,
Ministry of External Affairs, New Delhi.
2. The Chief Passport Officer,
Ministry of External Affairs,
Government of India, New Delhi.
3. The Regional Passport Officer,
Basistha Road, Guwahati.

!.....Respondents

By Advocate Mr S. Ali, Sr. C.G.S.C. and
Mr G. Sarma, Addl. C.G.S.C.

O.A.No.144/95

Ms Manju Barman,
Working as usual Worker in the
Regional Passport Office, Guwahati,
Ministry of External Affairs, Government of India.

.....Applicant

By Advocate Mr D.K. Mishra and Mr C.T. Jamir.

-versus-

1. Union of India, represented by the
Secretary to the Government of India,
Ministry of External Affairs, New Delhi.
2. The Chief Passport Officer,
Ministry of External Affairs,
Government of India, New Delhi.
3. The Regional Passport Officer,
Basistha Road, Guwahati.

.....Respondents

By Advocate Mr S. Ali, Sr. C.G.S.C.

O R D E R

BARUAH.J. (V.C.)

All the above original applications involve common questions of law and similar facts. Therefore, we propose to dispose of all the applications by a common judgment.

2. The applicants in the above original applications were appointed on various dates by the Department of Passport. They

were engaged casual labourers in the Regional Passport Office, Guwahati, under the Ministry of External Affairs, Government of India. Ms Anjali Thakuria, applicant in O.A.No.138/95, was engaged on and from 12.7.1991; Shri S.K. Das, applicant in O.A.No.141/95, and Shri R. Talukdar, applicant in O.A.No.145/95, were engaged on and from 22.6.1992 and 23.6.1992 respectively; and Ms Manju Barman, applicant in O.A.No.144/95, was engaged on and from 1.11.1991, and since their engagement they had been working as casual employees. They were allocated duties of lamination, verification of particulars, etc. Besides this, they were also assigned in various other duties connected to the passport. On 10.9.1993, the Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training, Government of India, issued an Office Memorandum No.51016/2/90-Estt(C) dated 10.9.1993, forwarding a Scheme for grant of temporary status and their regularisation thereafter. Accordingly all the applicants were granted temporary status by order No.Pass/Gau/37/88 dated 10.5.1994, with effect from 1.9.1993, i.e. the date on which the Scheme came into force. After the granting of temporary status, the applicants continued to work as such. Under the said Scheme the casual workers who rendered continuous service for more than 240 days in case of 6 days a week or 206 days in case of 5 days a week, were entitled to get the temporary status and the consequential benefit thereof. After awarding the temporary status the applicants were given the consequential benefits as per entitlement under the Scheme. In the said Scheme, the applicants or other employees of similar nature would continue to get the benefits until they were regularly absorbed. The applicants, thereafter, continued to hold temporary status for about two years, when, on 9.3.1995 the temporary status already granted to the applicants by order dated 10.5.1994 was cancelled as the temporary status so granted was found to be in contravention with the rules. Thereafter, by notice dated 30.6.1995 the authorities disengaged.....

disengaged the applicants with effect from 1.8.1995. This notice was issued giving one month notice to the applicants. Hence the present application.

3. All these applications had been filed on different dates.

At the time of admission this Tribunal also granted interim order protecting the applicants by staying the order of cancellation dated 9.3.1995 and also notice dated 30.6.1995. The respondents have filed written statement in all the cases.

4. The contentions of the applicants are that the applicants being entitled to get the temporary status the authorities granted temporary status on 10.5.1994 and they continued to get the benefit of the temporary status for about two years next and suddenly by order dated 9.3.1995 temporary status thus granted was cancelled without serving any notice. According to the applicants this was arbitrary and violative of the principles of natural justice. The respondents, on the other hand, in their written statement have stated that as there was no work continuation of their employment was not possible. Besides, according to the respondents, the applicants were engaged in contravention of the rules, namely, that they have not been sponsored by the Employment Exchange.

5. We have heard Mr B.K. Sharma, learned counsel for the applicants in O.A.Nos.141/95 and 145/95 and Mr D.K. Mishra assisted by Mr C.T. Jamir, on behalf of the applicants in O.A. Nos.138/95 and 144/95. We have also heard Mr S. Ali, learned Sr. C.G.S.C. and Mr G. Sarma, learned Addl. C.G.S.C. on behalf of the respondents. Learned counsel for the applicants submit before us that the action of the respondents in cancelling the grant of temporary status was arbitrary, unreasonable and in utter violation of the principles of natural justice. Learned counsel further submit that the applicants after having been granted temporary status

were.....

were entitled to continue as per the rules. The order dated 10.5.1994 was cancelled depriving valuable rights of the applicants, that too, without giving any opportunity of hearing. The learned counsel for the applicants also submit that the cancellation of the temporary status and subsequent removal by giving notice was not reasonable. This order was passed only for an oblique purpose to oust the applicants. Mr S. Ali, on the other hand, has supported the action of the respondents. He submits that a notice was given as contemplated under the Scheme. According to him notice of removal was the notice which was contemplated. Besides this, Mr Ali also submits that as stated in the written statement there was no job where the casual workers could be engaged. In view of the that, according to Mr Ali, the impugned action of the respondents was just, reasonable and passed in accordance with the rules.

6. On the rival contentions of the learned counsel for the parties, it is now to be seen whether the cancellation of the order dated 10.5.1994 by a subsequent order dated 9.3.1995 can sustain in law.

7. We have perused the pleadings and also the impugned orders. It is an admitted fact that the applicants were engaged casual labourers and they continued to serve the department for more than 240 days, and as per paragraph 4(i) of Annexure-1 to the Scheme, casual workers serving for more than 240 days are entitled to be given the temporary status. We quote para 4(i)."

"Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this O.M. and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week)."

Thus para 4(i) indicates that the casual labourers who were engaged on the date of issuance of the O.M., i.e. 10.9.1993, and continuously

served.....

served for 240 days they would be entitled to get the status of temporary workers and this conferment of temporary status would be without reference to the creation/availability of regular Group 'D' posts. Besides, conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement would be on daily rated on need basis. He may be deployed anywhere within the recruitment unit/territorial circle on the basis of availability of work, and such casual labourers who acquire temporary status will not however, be brought on to the permanent establishment unless they are selected through regular selection process for Group 'D' posts.

8. Admittedly, the applicants were engaged prior to the date of issue of the O.M. dated 10.9.1993 and they had been working for more than 240 days. Therefore, they were entitled to get the benefit of temporary status. But, the order dated 10.5.1994 granting temporary status to the applicants was cancelled vide order dated 9.3.1995 on the ground that their engagement was not in accordance with the rules. However, the order was not at all clear. What rules had been followed for disengaging the applicants have not been stated in the order itself. The records have been placed before us. Mr Ali has not been able to show us any office note indicating as to what rules had been followed so far engagement of the applicants as casual employees was concerned. The office record is absolutely silent in this regard. However, a stand has been taken in the written statement that there was paucity of work and as a result their temporary status had been cancelled and thereafter notices were issued terminating their services.

9. It is true that as per the Scheme itself the casual employees could be removed by giving one month notice, but, so far as cancellation of temporary status is concerned there must be some reason, and as the applicants were not given an opportunity

of.....

of hearing the cancellation of the order dated 10.5.1994, granting temporary status to the applicants, was illegal and violation of the principles of natural justice. Besides, the termination itself, we do not find from the records any valid ground. The ground of paucity of job is not supported by records. Mr Ali, at least has not been able to show. The written statements in all the cases were filed by the Regional Passport Officer of the department. But, it is common knowledge that an officer who is discharging his duties day to day cannot be expected to verify each and every fact. The verification part of the written statement shows that all the statements were verified as true to the knowledge, belief and information. This has been verified in a form without stating which parts are true to his knowledge, which parts are true to his belief and which parts are true to his information. Besides, paucity of work can be said only from the record. Mr Ali has very fairly submitted before us that he has gone through the records and he could not find anything regarding non-availability of the work. Mr B.K. Sharma has also drawn our attention to the fact that the officer competent to pass order did not pass the same on his own. It was at the diktat of the higher authorities. In this connection Mr Sharma has urged us to look to the record. On going through the record we find that there is a letter dated 17.4.1995 issued by S.N. Goswami, Regional Passport Officer. In paragraph 2 of the said letter he informed the Under Secretary(PVA), Ministry of External Affairs, New Delhi, as follows:

"We have been advised vide A.O.(PV.IV) letter mentioned above to serve disengagement notice to the casual labourers stated to be on the ground that work load of this office does not justify engagement of casual labourers for further period.

These casual labourers were engaged by my predecessors apparently in the interest of work of the office. However while doing so, formality was not observed. In the meantime these casual workers have completed more than 3 years of service in this office.

Though this office is having at present full strength of staff as per allotment quota indicated by the ministry, yet it is felt that if all the daily workers are disengaged immediately, it will have impacts on the work.

In view of above and taking into consideration humane aspect of the issue, it is once again requested to reconsider the decision of the ministry and as a very special case approve (Ex-post-facto) engagement of the casual workers of this office.

For sympathetic consideration please."

We find that a format was given by the Ministry of External Affairs.

According to Mr Sharma those will go to show that the authorities

having the power, to decide, had abdicated its authority and left

it to the Central Government. We find sufficient force in the

submission of Mr B.K. Sharma in this regard. All these go to show

that the applicants' temporary status had been stripped off without

any reasonable ground and without affording an opportunity of

hearing. All these have persuaded us to come to a conclusion that

the order dated 9.3.1995 cancelling the order dated 10.5.1994,

giving temporary status to the applicants, was passed without any

reasonable ground. In this respect the action of the respondents

were devoid of any reason and it was unfair, besides, this being

violative of the principles of natural justice. Considering all these

aspects we come to the conclusion, that the action of the respondents

in cancelling the order awarding temporary status and subsequent

notice terminating their engagement cannot sustain in law. Accordingly

we quash the same.

10. In their written statement the respondents have made an averment that the engagement of the applicants as casual labourer was irregular as they had not been sponsored by the Employment Exchange. We have perused the Scheme. We do not find anything to suggest that the casual employees are to be sponsored by the Employment Exchange. Mr Ali has drawn our attention to a clarification.....

clarification note issued by the Under Secretary. In our opinion the clarification cannot take the place of the Scheme and we consider that this is not a part of the Scheme. In this connection a reference can be made to a decision of the Full Bench of the Tribunal in Raj Kamal and others -vs- Union of India, reported in 1990 SLJ (Vol.2) CAT 176. In the said judgment the Full Bench observed that temporary status of casual workers cannot be taken away on the ground that they were not sponsored by the Employment Exchange. We quote the relevant portion.

"..... The fact that some of them may not have been sponsored by the Employment Exchange, should not stand in the way of their absorption. Similarly, they should not be considered ineligible for absorption if at the time of their initial engagement, they were within the prescribed age-limit."

This decision clearly indicates that sponsorship by the Employment Exchange is not a condition precedent for employment, though it is advisable.

11. Mr S. Ali has informed us that two posts are at present lying vacant and services of two out of the four applicants can be regularised. If that be so, we recommend the respondents to regularise the services of two of the four applicants after taking into consideration of all aspects. The other two shall continue to have right of temporary status until they are absorbed on a regular basis as per the Scheme.

12. The application is accordingly disposed of with the above observation.

13. Considering the entire facts and circumstances of the case we make no order as to costs.

Sd/-VICE CHAIRMAN

Sd/-MEMBER (A)

11/11/77
SECTION

11/11/77

SECRETARY, TRIBUNAL
CHANDIGARH

11/11/77

Filed by
the opp. party/applicant
through
C. T. Jamir
Advocate
23-3-98

Central Administrative Tribunal
Date received
249
10 MAR 1998
C. T. Jamir
Advocate
Gauhati Bench
(Assam) Guwahati

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :
GUWAHATI BENCH: GUWAHATI.**

IN THE MATTER OF :

R.A. No. 7 of 1997

In O.A. No. 132/95 :

Union of India & ors.

... **PETITIONERS**
RESPONDENTS

- Versus -

Miss Anjali Thakuria

... **OPP. PARTY**
APPLICANT

- A N D -

IN THE MATTER OF :

Written statement of the

Opposite Party/Applicant in the
aforesaid case.

WRITTEN STATEMENT

The humble opposite party/applicant most respectfully submit written statement as follows :

1. That the statements made in paragraphs 1 and 2 of the R.A. being matters of records are admitted to the extent born out by records.

2. That

The counsel for the petitioners/respondent Shri S. Ali was not available at the time of filing this WS. I undertake to serve a copy of the same as and when he is available.

C. T. Jamir
23-3-98
(C. T. JAMIR)

2. That with regard to the statement made in paragraph 3 and 4 of the Review Application, it is stated that the respondent in this written statement only made a bold statement that the applicants was not sponsored by Employment Exchange without stating any facts and to substantiate their claim that the ~~appointment~~ engagement of casual labourers in the instant case was required to be done through Employment Exchange under the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 (hereinafter referred to as 'the Act'). As per the written statement the applicant was engaged as casual labourer to tiedover temporary nature of work in the office.

It may be pertinent to state here that the applicant in reply to the written statement submitted by the respondent clearly averred in paragraph 6 of the reply that the Act does not apply in respect of engagement of casual workers who are employed to tied-over the workload on daily basis without any fixed duration. Since the applicant was not appointed against any post and vacancy the Act in question shall not apply.

3. That it is submitted that the Review application is not maintainable on the ground that the Hon'ble Supreme Court has earlier held that the condition of engagement through Employment Exchange must be complied with inasmuch as the facts of the two cases are clearly distinguishable and there is no apparent error on the

fact of record ...

- 3 -

face of record. It is further submitted that the opposite party/applicant have put into continuous six years of service and if she is removed from the service at this stage, the opposite party/applicant shall be rendered jobless and shall be deprived means of livelihood.

In view of the above grounds referred in the Review application are not tenable either on law or on facts and the application is liable to be rejected.

VERIFICATION

I, Miss Anjali Thakuria, daughter of Amulya Thakuria, serving as a casual worker in the Regional Passport Office, Beltola under the Ministry of External Affairs do hereby verify that the statements made in paragraphs 1, 2, 3, 4 and 5 are true to my knowledge and belief and the statements made in paragraph 6 are true to my information, derived from records which I believe to be true and the rest are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this the 23rd day of March, 1998 at Guwahati.

Anjali Thakuria
DEPONENT.

Affidavit

A F F I D A V I T

I, Miss Anjali Thakuria, daughter of Amulya Thakuria, aged about 31 years working as casual worker in the Regional Passport Office, Guwahati do hereby solemnly affirm and declare as follows :

1. That I am the respondent/applicant in the instant case and as such, I am conversant and fully acquainted with the facts and circumstances of the case.
2. That the statements made in this affidavit and in paragraphs 1 and 2 are partly true to my information derived from records and partly based on the basis of legal advice from my counsel and the rest are my humble submission before this Hon'ble Tribunal.

And I sign this affidavit on this the 23rd day of March, 1998 at Guwahati.

C. T. Jamir
Identified by me:

Anjali Thakuria
DEPONENT.

Solemnly affirmed and declared before me by the deponent who is identified by Mr. C.T. Jamir, Advocate before the Deputy Registrar, Central Administrative Tribunal, Guwahati Bench, Guwahati on this the 23rd day of March, 1998.

Manik Chanda