

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

R.A. No. 9/97 (C.A. 141/95)

Union of India & Ors. Appellant(s)
vs. Respondent(s)

Shri Shyamal K. Das

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

..... Advocate for the Respondent(s)

Opposing Counsel

1. Counsel

Court Counsel

This Review application
is filed by Mr. S. Ali, S. C. 10.11.97
C. S. C. on behalf of
The Respondents, against
The Judgement and Order
dated 1-4-97 passed
in C.A. 141/95 in the
Court of the Hon'ble
Vice Chairman and
Hon'ble member Admin.

To be listed for admission along
with M.P. 290/97 on 9.12.97.

6/1
Member


Vice-Chairman

The final order was
communicated on 9-6-97 ~~to~~
date of receipt of the
order by the Respondents
on 18-6-97. The R.A. is
filed on 3-9-97.

To be listed alongwith M.P. No.
on 19.2.98 for orders.

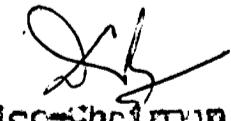
Member

Vice-Chairman

Hence this application
is met in time and in this
regard an application 15-12-97
M.P. 290/97 for condonation
of delay has been filed.

Case is adjourned till 19-1-98
for admission.

6/1
Member


Vice-Chairman

Done by Registry (A)
Central Administrative Tribunal
16/12/97

Denied for favour of
consideration at
admission.

19-1-98

To be listed alongwith

M.P. 290/97 on 19-2-98 for orders.

6/1
Member


Vice-Chairman

on leave
Registered
1m

②

R 4 9/97

13.11.97

19.2.98 To be listed alongwith M.P.
290/97 on 25.2.98 for order.

6
Member


Vice-Chairman

Notice has been
received and issued
to the Coaccused
parties vide despatched
No. 3403 dt. 18.11.97.

pg


Member

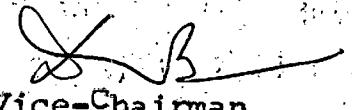
25.3.98 There is no representation
Addendum to 2-3-98

By order

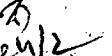
2-3-98

To be listed alongwith M.P.
290/97 on 3-3-98 for orders.

6
Member


Vice-Chairman

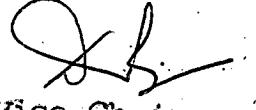
1m


Service reports are still
awaited.

3.3.98 In view of the order passed today
in M.P.No. 290 /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.

6
Member


Vice-Chairman

pg

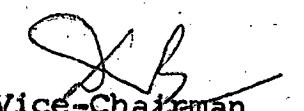
6
5/3

24.3.98

Application is admitted.

List on 27.4.98 for orders.

6
Member


Vice-Chairman

pg

6
26/3

27.4.98

The case is ready for hearing.
List it on 2.6.98 for hearing.

6
Member

nkm

26/3


Vice-Chairman

116

(3)

R.A. 9/97 (ca. 16/95)

3

Notes of the Registry	Date	Order of the Tribunal
1) Service of process are still awaited. 2) No objection has been filed. 3) To 16/6/98	2.6.98	Counsel for the parties pray for two weeks adjournment. Prayer allowed. List on 16.6.98 for hearing. 62 Member Vice-Chairman
1) NO objection has been filed. 2) NK 19/6 Objection not yet filed. 17/7	16.6.98	On the prayer of Mr S.Ali, learned Sr.C.G.S.C the case is adjourned till 16.6.98. 62 Member Vice-Chairman
14.8.98 Written statement is not filed by the respondent. B2	22.6.98	The learned counsel for the parties pray for an adjournment. Let the case be listed on 20.7.98. 62 Member Vice-Chairman
	20.7.98	On the prayer of the counsel for the parties the case is adjourned to 17.8.98. 62 Member Vice-Chairman
	pg 23/8	

(4)

Notes of the Registry

Date

Order of the Tribunal

<p><u>20.8.98</u> <u>Copy of order</u> <u>affd 17.8.98</u> <u>issued to Mr. S. Ali</u> <u>Sr. C.G.S.C.</u> <u>Boo</u> <u>Records as not been</u> <u>filed in the Section.</u> <u>8/9</u> <u>w/s as not been filed</u> <u>8/9</u> </p>	17.8.98	<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 weeks 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 the Review Petitioners.</p>
	trd	<p><i>6</i> Member</p> <p><i>8/9/8</i></p>
<p><u>w/s as not been filed</u> <u>8/9</u></p>	2.9.98	<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 present. For the ends of justice case is adjourned till 10.9.98.</p> <p>List it on 10.9.98.</p>
	trd	<p><i>6</i> Member</p> <p><i>8/9/9</i></p>
<p><u>w/s as not been filed</u> <u>8/9</u></p>	10.9.98	<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>
	trd	<p><i>6</i> Member</p> <p><i>8/11/9</i></p>

Notes of the Registry	Date	Order of the Tribunal
22-12-98 There was a C/Bench at Agartala on 15-12-98. Hence placed for adj.	5.11.98 pg	Division Bench is not available. The case is adjourned to 15.12.98  Vice-Chairman
12. 17-2-99 Written statement has not been filed. 17/2/99	31.12.98 nkm	Present: Hon'ble Mr G.L. Sanglyine, Administrative Member The case is otherwise ready for hearing. List for hearing on 18.2.1999.  Member
19.3.99. 1) Written statement has not been filed. 2) Service reports are still awaited. 19/3/99.	18.2.99 nkm 19/3/99	On the prayer made on behalf of Mr D.K. Mishra, learned counsel for the respondents, the case is adjourned till 22.3.99.  Vice-Chairman
26-3-99 1) Written statement not seen filed. 2) Service reports are still awaited 26/3/99	22.3.99 pg 23/3/99	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.  Vice-Chairman

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. 6 Member
	5.4.99	11A.M. Pronounced on the day. By order 6 Member
	6.4.99	Heard the learned counsel for the parties. Hearing concluded. Judgment reserved. 6 Member
	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. 6 Member
16.6.99 Copies of the Judgment have been sent to the D/See. for issuing the same to the parties. B/S. Wde Dispatch No. 2095 to 3000 dated 22-6-99.	pg	6 Vice-Chairman

X

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.
S.C.C.

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 cancell 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.

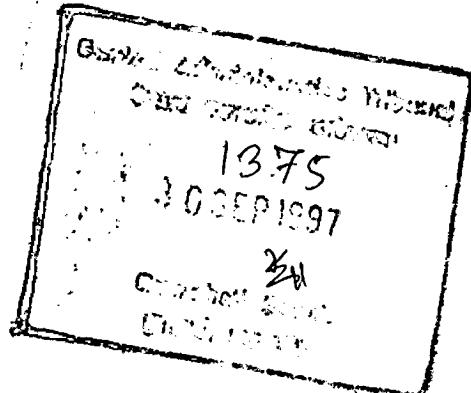
5. Para 12 is modified and will read as below :

"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.

Sd/- VICE CHAIRMAN
Sd/- MEMBER (ADMN)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
GUWAHATI BENCH:GUWAHATI.



R. A. NO. 9 OF 1997.

O.A. NO. 141 /95

11
1997-09-30

M. Khanal

W.D. SHAUKAT ALI, 26/9/97
D. Central Govt. Standard Counter
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 ~~in~~ by the Hon'ble Tribunal
in O.A. No. 141/95 .

- AND -

IN THE MATTER OF:

1) The 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) The Regional Passport Officer,
Basistha Road, Guwahati.

... Petitioners.
Respondents.

-Versus-

- 1) Shri Shyamal Kumar 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.

... Opposite parties
Applicants.

The humble petition of the
above named Petitioners:

MOST RESPECTFULLY SHEWETH:

- 1) That the opposite parties as applicants filed the O.A. No. 141/95 praying for regularisation of their services having worked for more than 240 days continuously in the office of the Regional Passport Officer, at Guwahati .
- 2) That the petitioner-Respondents contested the case 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 parties vide judgment and order dated 01-04-97 recommending the Respondents-petitioners to regularise the services of the two of four applicants after taking into consideration of all aspects. The other two shall continue to have rights of tempo-

(Contd.)

rary 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 ^{l were} stated that as the applicants ~~were~~ not sponsored by the Employment Exchange, so they are 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 26-07-96 passed in O.A. No. 434/95 , copy of the Hon'ble Supreme Court's judgment has been annexed here with as Annexure- X . Hence , this review petition has been filed on the ~~folk~~ following grounds :

In view 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 labourers as per annexure-X and inview of this the impugned judgment is liable to be reviewed.
- iii) For that, at the time of hearing of the O.A. ~~Max~~ the petitioners could not place the Supreme

Court's judgment on thi point narrated as they were unaware of the judgment of the Supreme Cogrt.

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 this ~~mtti~~ Review petition/ application call for the records, issue notices to the opposite parties and after hearing the parties review the judgment and order dated 01-04-97 in O.A. No. 141/95 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. 141/95 may ~~be~~ kindly be stayed.

.. Verification

AFFIDAVIT

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

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

And I sign this ~~xxxxxxxxxx~~ affidavit today on 26/9 day of September, 1997 at Guwahati.

Identified by me :

C. Shaukat Ali
Advocate
26/9/97

(D. K. Bhakayasha)
दी. के. भूकायस्य
Regional Passport Officer,
Solemnly affirmed and ~~मेरी वाक्यात्मक~~ affirmed by the
deponent, who is identified by Mr. Shaukat
Ali, Advocate, Guwahati before the Deputy
Registrar, Central Administrative Tribunal,
Guwahati Bench, Guwahati on this 26/9 day
of September, 1997.

Solemnly affirmed before
me on 26th day
of September 1997

.....
Deputy Registrar
Central Administrative Tribunal
Guwahati Bench.

7

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

.....Applicant

-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.(P.V.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.

THE HON'BLE CHIEF JUDGE

SECRETARY

Sd/-VICE CHAIRMAN

Sd/-MEMBER (A)

21/1/78
Supreme Court of India
Temporary Tribunal
Full Bench

✓ 9/6