

Reserved on 16.3.2018

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

This the 2nd day of April, 2018

Hon'ble Mr. Justice Dinesh Gupta, Member(J)

O. A. No.330/00256/2012

Akhilesh Kumar Yadav s/o Ram Das Yadav r/o Chak Bijali, Post Kandharapur, District- Azamgarh.

..... *Applicant*

By Advocate: Sri Subhash Chandra Yadav

Versus

1. Union of India, Ministry of Finance, Department of Revenue, New Delhi through its Secretary.
2. Commissioner/Joint Commissioner, Central Excise Commission, 38 Mahatma Gandhi Marg, Civil Line, District- Allahabad.
3. Deputy Commissioner, Central Excise, Division Varanasi 9, Maqbool Road, District- Varanasi.
4. Administrative Officer, Central Excise, Division Varanasi, 9, Maqbool Road, District- Varanasi.
5. Assistant Commissioner, ICO Custom Babatpur, District- Varanasi.
6. Superintendent Custom and Central Excise, Rang, Azamgarh.

..... *Respondents*

By Advocate : Shri Vinod Mishra

O R D E R

The Applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- i) Quash the impugned oral order dated 1.9.2011 passed by respondent No. 4 by which applicant service has been dispensed.
- ii) Issue a direction to the respondents to reinstate the applicant on his post as daily wages with effect from December, 1996 with continuously service and back wages.
- iii) Issue a direction to respondent to regularize the service of applicant accordingly.
- iv) Issue a direction to the respondent to decide the representation of the applicant regarding his claim within specific short period.

2. The brief facts emerging from the O.A. are that the applicant was initially appointed by respondent in December, 1996 as Mali/ Chaukidar at Central Excise range, Amamgarh on daily wages employee.

2.1 Thereafter, applicant was transferred to new building in 1997 for security of the old building.

2.2 The respondents issued a letter regarding regularization of casual /daily wages labours on 20.7.2006 to concerned officers. Superintendent , Central Excise Range Azamgarh submitted his report in reply to letter dated 21.9.2006 issued by Administrative Officer on 27.9.2006.

2.3 The applicant was recommended for regularization of service of applicant by Deputy Secretary, Govt. of India,

Central Board of Excise and Customs dated 3.8.2006 but in spite of the recommendation, applicant's services was neither regularized nor temporary status was given.

2.4 Applicant has worked on daily wages from December, 1996 to August, 2011 continuously and services of the applicant was dispensed by respondent No. 4 from September, 2011 by oral order dated 1.9.2012 and now applicant is out of job.

2.5 Applicant moved representation on 14.11.2011 stating his grievance and with prayer to reinstate him on the aforesaid post and regularize the service of the applicant.

2.6 It is further submitted that now the applicant is over age and out of job.

3. Notices were issued to the respondents who in turn filed the counter reply through which it is stated that No such order has been issued by the respondent No.4 on 1.9.2011 either in writing or in verbal and applicant has never been appointed by the Administrative officer. In fact, the Administrative Officer is not having any authority to appoint any person as casual or daily wagers in the central Excise and Service Tax Department. Hence, no question arises to reinstate the applicant.

3.1 It is further submitted that applicant has not produced any appointment letter showing his appointment in December, 1996 as Mali/Chaukidar.

3.2 It is further submitted that Xerox copy of the documents enclosed does not show any certificate with regard to the applicant's appointment and full satisfaction of his work. Further, it is submitted that this office has paid the case amount to the Superintendent, Central Excise Range Amamgarh for payment to labour charges on account of Mali/Chaukidar/Farras but no where in the official records/bills/ vouchers, which is being maintained by the Division Office, particulars of the applicant has been shown or written found nor a single payment made either through cash or demand draft has been made in the name of applicant by the Division Office.

3.3 It is further submitted that so called letter dated 27.9.2006 of the Superintendent, Central Excise and Service Tax, Range Azamgarh does not bear any signature and appears to be fabricated and fake.

3.4 The report was submitted to the Joint Commissioner (P&V) Central Excise, Allahabad vide letter dated 22.9.2006 enclosing therewith the details of daily wagers/ casual workers in the Department on that time which clearly shows that he was never been appointed or recommended for regularization as his name does not figure/found in this letter. It is further submitted that no letter dated 21.9.2006 of the Administrative Officer has been found annexed with the O.A.

3.5 It is further submitted that there was no recommendation for appointment of applicant was ever been issued by the appointing authority i.e. Commissioner Central Excise & Service Tax, Allahabad and when there was no appointment, the question of regularization or given temporary status does not arise.

4. Rejoinder reply is filed by the applicant through which he has reiterated the facts as stated by him in the O.A. and denied the contents of counter reply.

5. Heard learned counsel for applicant Sri Subhash Chandra Yadav and learned counsel for respondents Sri Vinod Mishra.

6. Learned counsel for applicant has reiterated the facts as stated by him in the Original Application and submitted that the applicant is working in the Department since 1996 as Mali/Chowkidar as daily wages employee and thereafter, applicant was shifted to new building in 1997 for security of building. The respondents without any order stopped the payment of the applicant in the year 2011. Thereafter, applicant has left no option but to file the O.A. before this Tribunal for quashing of the oral order dated 1.9.2011 by which the respondents have directed the applicant not to come to the office. Counsel for applicant also relied upon the decision of the Hon'ble Apex Court in the case of **Durgapur Casual Workers Union and others Vs. Food Corporation of India and others (Civil Appeal**

No. 10856 of 2014 arising out of SLP(C) No. 31531 of 2009 decided on 9th December 2014 and also a judgment passed by this Tribunal in O.A. No. 905 of 2007 (Dinesh Kumar and another Vs. Union of India and others decided on 30th October, 2012). It is further submitted that applicant since worked for a long period as casual labour and higher authority of the department has asked the respondents to furnish the list of persons working as casual labour in their department so that they can consider them for regularization but the respondents have failed to furnish the desired information in time as such applicant is entitled for reinstatement and for regularization.

7. Counsel for respondents submitted that there was no such order issued by respondent No. 4 on 1.9.2011 either in writing or in verbal and the applicant has never been appointed by the Administrative Officer. In fact, the Administrative Officer has no authority to appoint any person as casual or daily wagers in the Central Excise and Service Tax Department. Counsel further submitted that applicant has not produced any appointment letter showing his appointment in December, 1996 as Mali/Chowkidar. Counsel further submitted the photo copies of the documents which is clear that no appointment was made by a proper appointing authority but only request in this regard was made and there is

nothing on record to show that any appointment of Mali/Chowkidar was made. It is only a recommendation of Superintendent, Central Excise and Service Tax, Range Azamgarh who himself does not have any authority to appoint any body in Govt. service either for recruitment on daily wage or casual workers. Counsel further submitted that Head Office has paid the cash amount to the Superintendent, Central Excise and Service Tax, Range Azamgarh for payment to labour charges on account of Mali/Chowkidar/Farras etc. No where in the official records/bills/vouchers which is being maintained by the Division Office, the particulars of the applicant has been found which proves that he was working in the Central Excise and Service Tax Department. Counsel further submitted that Joint Commissioner Central Excise, Allahabad vide letter dated 22.9.2006 enclosed therewith the details of daily wagers/casual workers working in the department on that time which clearly shows that applicant was never appointed or recommended for regularization and no letter dated 21.9.2006 of Administrative Officer was found. Counsel for respondents further submitted that applicant has filed a letter which is nothing but a proforma of requisite information sent to the Head Office by the Administrative officer of Central Excise and Service Tax, Range Azamgarh which bears no signature not it was sent by the Superintendent, Central

Excise and Service Tax, Range Azamgarh. The counsel for respondents submitted that applicant has wrongly filed this documents and mislead the court. Counsel further submitted that the case law relied upon by the applicant has no bearing in this case.

8. Court is unable to accept the contentions raised by the learned counsel for applicant.

9. As per applicant's own contention, the applicant was engaged as Casual Mali/Chowkidar in 1996. Thus judgment passed by this Tribunal in the case of Dinesh Kumar Vs. Union of India (supra) is not applicable in the present case. In that case the applicant has relied upon a circular of DOP&T dated 10.9.1993 which clearly provided for regularizing the persons who should be engaged as casual labour as on 10.9.1993 and he should have completed 240/206 days continuous service on that date. As per applicant's own admission, applicant was engaged in the year 1996. Hence this circular will not binding on the Department and will not be applicable in the case of applicant.

10. So far as judgment passed by the Hon'ble Apex Court in the case of Durgapur Casual Workers Union Vs. Food Corporation of India (supra), the fact of this case is totally different. In this case, order passed by the Central Govt. Industrial Tribunal was affirmed by the Single Bench and the same was quashed by the Division Bench. Further, the

Hon'ble Apex Court decided the said appeal filed by the workers Union and merely relying upon the stand taken by the respondents which was not taken by them earlier. Thus the fact of this case is totally different from the present case and is not applicable in the case of applicant.

11. As far as factual aspect is concerned, admittedly, there is no order regarding engagement or termination of service of the applicant on the post of Mali/Chowkidar. Merely payment made to the applicant from the amount received by Superintendent , Central Excise and Service Tax, Range Azamgarh for making payment to casual labours will not confer any right to the applicant for regularization on the post of Mali/Chowkidar. The applicant has failed to submit that there is any sanctioned post of Mali/Chowkidar in the Department at Azamgarh. Further the Apex Court in Constitution Bench decision in the case of **Secretary, State of Karnataka V. Umadevi (3) (2006) 4 SCC 1** and decisions rendered by Hon'ble Apex Court in other cases clearly observed that ***"regularization of service cannot be allowed if it violates the basic principles of Article 14 and 16 of the Constitution of India."***

12. As per the judgment of the Secretary, State of Karnataka s. Umadevi (supra), it is mandatory that applicant should satisfy the court that there is any

sanctioned post and applicant was appointed after due process of selection and he had worked for a longer period, only then the matter for regularization can be considered by the Department. But in the present case applicant has not produced any appointment letter showing his appointment in December, 1996 as Mali/Chowkidar and there is nothing on record to show that any appointment of Mali/Chowkidar was made.

13. In view of the above discussion, applicant has failed to substantiate his claim for regularization. As such, O.A. lacks merit and deserves to be dismissed.

14. Accordingly, O.A. is dismissed. No order as to costs.

(Justice Dinesh Gupta)
Member (J)

HLS/-