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**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

O.A. No. 350/00645/2011

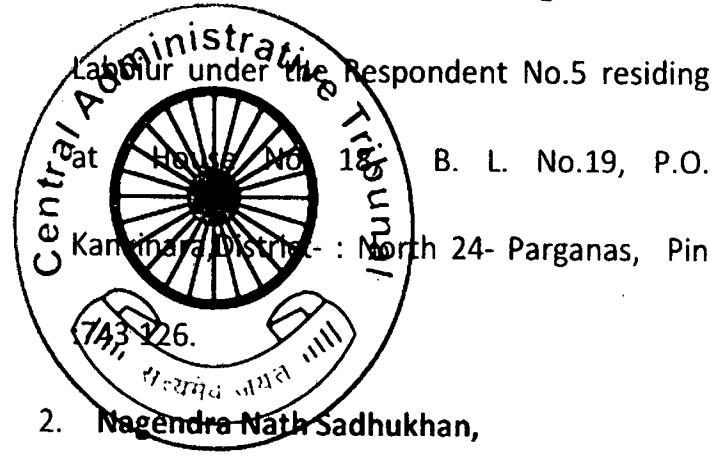
Date of Order: 28.09.2018

Present: **Hon'ble Ms. Bidisha Banerjee, Judicial Member**
Hon'ble Dr Nandita Chatterjee, Administrative Member

1. Vijay Kumar Das

Son of Sri Raghunath Das, aged about 38

years, by occupation – working as Casual



2. Narendra Nath Sadhukhan,

Son of Late Gopal Chandra Sadhukhan, aged

about 42 years, by occupation – working as

Casual labour under the Respondent

No.5, residing at Monirampur, Siddhewar Tola

Road, P. O. Barrackpur, District ; North 24

Parganas, Calcutta-700 120.

3. Sambhu Nath Pramanik,

Son of Late Kali Charan Pramanik, aged

about 45 years, by occupation – working as

Casual labour under the Respondent

No.5, residing at Monirampur, Dasapara

Majumdar Nath, P. O. Barrackpur, District :

North 24 Parganas, Calcutta-700 112.

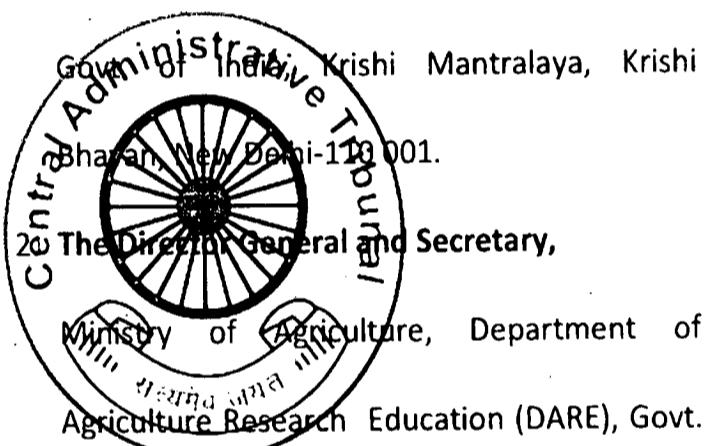
....APPLICANTS

V e r s u s -

1. Union of India,

Through the Secretary, Indian Council of

Agricultural Research, Ministry of Agriculture,



of India, Krishi Mantralaya, Krishi Bhavan, New

Delhi-110 001.

3. The Director,

Central Institute of Fishery Education (CIFE),

(Deemed University), Indian Council for

Agricultural Research Fisheries University

Road, Seven Bungalows, Andheri (West),

Mumbai -400 061.

4. The Sr. Administrative Officer,

Central Institute of Fishery Education(CIFE),

(Deemed University), Indian Council

Agricultural Research Fisheries University

Road, Seven Bunglows, Andheri (West),

Mumbai-400 061.

5. The Officer-in-charge,

Central Institute of Fisheries Education,

(Deemed University),Kolkata Centre, Indian



6. The Chief Administrative Officer,

Central Institute of Fisheries Education,

(Deemed University),Indian Council of

Agricultural Research, Panch Marg, OFF Yari

Road, Mumbai- 400 061.

..... **RESPONDENTS**

For the Applicant : Mr. K Chakraborty. Counsel

For the Respondents : Mr B Kumar, Counsel

ORDER

Per Ms. Bidisha Banerjee, Judicial Member:

1. This O A was preferred in 2011, jointly by three applicants in order to seek the following relief:

- A) *To file and prosecute this application jointly under Rule 4(5)(a) of the A.T.(P) Rules, 1987 since all of them have prayed for the same and similar relief arising out of same cause of action.*
- B) *Issue mandate upon the respondents, their men and agents and each of them to forthwith rescind, recall and/or withdraw the purported order dt. 4.6.2011 in respect of these applicants, being Annexure A-16 hereto and not give any or further effect or effects to the same;*
- c) *Do issue further mandate upon the respondents, their men and agents and each of them to forthwith absorb the applicants permanently in the office of the respondents by way of granting temporary status to the applicants for the present;*
- d) *To certify and transmit all the papers and documents in connection with the instant list for kind perusal and on such kind perusal do conscientious justice to the applicants;*
- e) *To grant cost of this proceeding in favour of the applicants.*
- f) *Pass such other or further order or orders, mandate or mandates, direction or directions as may appear to be fit and proper.*

2. The following facts have been highlighted by way of pleadings:

- 1) On 5.8.11 the O A was dismissed as withdrawn due to lack of jurisdiction.
- 2) Writ petition being W.P. No.12143(W) of 2011 was preferred before the Hon'ble High Court, Calcutta assailing the order.

3) On 12.8.2011 the said writ petition was admitted and exchange of Affidavits was directed by the Hon'ble High Court.

4) An application with C.A.N. No. 644 of 2012, for early hearing of the said writ petition was preferred by the applicants before the Hon'ble High Court, Calcutta.

5) On 30.1.2013 Hon'ble High Court at Calcutta allowed the applicants to withdraw the said writ petition for lacking jurisdiction, with liberty to file the same before this Tribunal.

6) Emboldened thereby on 25.2.2013, M. A. No.103 of 2013 was filed seeking recalling of the order dt. 5.8.2011.

7) On 23.4.2013 the order dt 5.8.2011 was recalled in terms of the order dt 30.1.2013 passed by the Hon'ble High Court, Calcutta in W.P. No. 12043/W of 2011.

8) On 7.8.2013 an order was granted by this Tribunal directing the respondents to continue to give engagement to applicant on casual basis.

9) M. A. No.180 of 2013 has been preferred by the applicants for appropriate order

10) On 16.3.2016 the O. A. with M.A. No 180 of 2013 were taken up for hearing.

3) On 12.8.11 the Hon'ble High Court had issued the following order:

"Upon prima facie consideration of the statements made by the Learned Counsel appearing on behalf of the respondents nos.2 to 7 with regard to framing of a scheme for granting of temporary status and regularization of casual workers as also upon consideration of the

office memo no.49014/2/93 Estt. (C) dated July 12, d1990, I find that the balance of convenience and/or inconvenience is in favour of rejecting the prayer for an interim order with regard to discontinuation of the petitioners in the services under the respondent no.2. However, it is further made clear that the respondent authority may continue to offer job to the petitioners on casual basis as and when required by them in accordance with law during the pendency of this writ application".

4. On the basis of such directions the respondent No.6 1 CAR(CIFE) issued an order on 30.11.2011, as extracted verbatim hereunder for clarity:

F. No.9-5/Gen. Admn/Casual Lab./CIFE/(Kol)/2011 /1435 Dated the 30th Nov.2011.



On the basis of Hon'ble High Court Calcutta order dated 12th August,2011 passed in W.P. No. 113 W of 2011 stating that the respondent authority may continue to offer job to the petitioners (3nos) on casual basis as and when required by them in accordance with law during the pendency of this writ application and as per the requirements of Scientists Project work Mr. Nagendra Nath Sadhukhan, Mr. Sambhu Nath Paramanick and Mr. Bijay Kumar Das are required to attend duties for 26 days during the office hours from 01st December,2011 to 31st December,2011. (except holidays).

(B. K. Mahapatra)
Officer-in-Charge

5. On 2.1.12 an order of similar nature,, as Supra came to be issued directing that Mr. Nagendra Nath Sadhukhan, Mr. Sambhu Nath Paramanick and Mr. Bijay Kumar Das were required to attend duties for 23 days during the office hours from 03rd January,2012 to 31st January ,2012. (except holidays).

6. The order dated 4.6.2011, impugned in the present OA reads as under :

To
 The Officer-In-Charge,
 CIFF Kolkata Centre
 32,GN Block, Sector-V,Salt Lake City,
 Kolkata -700 091 (W. B.).

Sub : Casual workers - reg.

Sir,

With reference to your letter No. Casual Labour/CIFE/(Kol)/2011/280 dated 27th May,2011 on the subject cited above, I am directed to inform you that the three(3) casual labours/workers engaged at CIFE Kolkata Centre are not meeting the requirements of DOPT guideline circulated vide No.19014/2/93-Estt. (C) dated 12th July,1994 and they were not on roll on 10.09.1993 as cut of date decided by DOPT, hence their services may be discontinued with immediate effect and may engage as & when required on job basis.

Yours faithfully,

(SURESH KUMAR)
 Chief Administrative Officer

The said three persons admittedly were (1) Shri Bijay Kumar Das,(2) Sri Sambhu Nath Paramahank and (3) Sri Nagendra Nath Sadhukhan, the applicants herein.

7. The respondents have contested their claim for regularization and averred as under

By the Office Order bearing No.2-9/87-88/Estb/1504 dated 4th January,1988 issued by the Inland Fisheries Training Centre of the CIFE(ICAR) ,BARRACKPORE, West Bengal, the applicant No.1 was for the first time appointed as the watchman at the Inland Fisheries Training Centre, Barrackpore on casual basis for 14(Fourteen) days in the month of January,1988, as casual labourer at the Inland Fisheries Training Centre for 11(eleven) days from 1st February,1988 to 6th

February,1988 and thereafter from 8th February,1988 to 12th February,1988. The applicant No.2 was given appointment on casual basis as watchman at the Inland Fisheries Training Centre, for the first time for 15(fifteen) days in the month of December,1988 by the Office Order being No. F. 2-9/S8/Estb/1963, dated 25th November,1988. It is categorically mentioned in the office orders that the appointment of applicant is purely temporary and on causal basis which can be discontinued at any time without assigning any notice or reasons and that such appointment shall not entitle them for regular appointment.

Subsequently, as and when there was requirement for casual labourers in the Inland Fisheries Training Centre, Barrackpore, the applicants were given appointment on temporary and casual basis by way of respective Office Orders issued for the purpose.

8. While the applicants have claimed that they were sponsored by Employment Exchange, the respondents have dispelled the claim as it stood disproved in absence of official records to substantiate the fact.

9. The respondents have contended that in the year 1993, since the petitioners were not required for any work of casual nature at the Inland Fisheries Training Centre of the CIFE(ICAR), Barrackpore, West Bengal, their engagement were discontinued by the authorities.

The applicants challenged such decision of termination in OA 259 of 1993 before this Hon'ble Tribunal which, by its Order dated 3rd

August,1993 directed the ICAR authority to continue to engage the applicants on casual basis as and when required and with preference to others. Subsequently, in C.P.C. No. 78 of 1998 filed by the applicants herein, this Hon'ble Tribunal directed the ICAR authority, to engage the applicants on casual basis as and when vacancies may arise would and further to engage the applicants directly and not through the Contractors(s). The authorities have followed the Order of this Hon'ble Tribunal though engagement of casual labourers was restricted vide ICAR Circular No.21(8)/86-Cdn.1 dated 22nd January,1987.

10. The respondents have further averred that the applications were not similarly placed with other employees who were granted temporary status as *prima facie* they have failed to meet the DOPT Guidelines circulated vide No 1904/2798-Estt. (c) dated 12th July,1994 (actually No 1904) and, therefore they have no cause of action.

11. We heard the Learned Counsels for the parties, considered the rival contentions and perused the materials on record.

12. What we deciphered from the records are as under :

(i) On 20.10.03, the Officer-In-Charge CIFE (I CAR) issued the following order : (emphasis added)

*To
The Director,
Central Institute of Fisheries Education,
Versova,
MUMBAI-400 061
Sub. Providing Temporary status to 3 casual Labourers-regarding.*

Sir,

In continuation to this office letter No.F. No. P-90/RCD/CIFE/2002/1004, Dated 19th August, 2002 regarding grant of Temporary status to 3 casual labourers. They were working as casual labourers before 1993 and are continuing to work till date. Further they (3 persons) have completed more than 240 days in one year during 1989 and one of them in 1988. The details are mentioned below :

1. Shri Nagendra Nath Sadhukhan (working since 1987)-Completed 256 Days in 1989.
2. Shri Sambhu Nath Pramanick(working since 1987)-Completed 257 days in 1989
3. Shri Bijoy Kumar Das(working since 1987) - Completed 283 days in 1988

The Xerox copies of the office orders for allotting them were submitted to you along with the above mentioned letter of 19th August, 2002. Xerox copies of the muster roll are enclosed herewith for taking necessary action at your end in granting them Temporary status in the Supporting Grade.

Yours faithfully,
(R.C.DAS)
OFFICER IN CHARGE

The order substantiates the stand of the applicant that they were engaged before 1993 and have been continued long thereafter.

ii). Way back, on 11.8.04 the respondents had also acknowledged their engagements in the following manner (extracted with emphasis for clarity)

F. No. Casual Labour/CIFE/2004/660

Dated the 11.08.2004

To

The Director,
CIEF Mumbai-61.

(Attention :Mr Suresh Kumar. Sr. Administrative Officer)
Sub. Providing temporary status of 4 Casual Labourers-reg.

Sir,

With reference to your letter F No.37(3)/92/IFTC/Admn.(Vol.III)/0448 dated the 12th November, 2003 in you wanted some information in connection with providing temporary status to Shri Nagendra Nath Sadhukhan, Sambhu Nath Pramanick, Bijoy Kumar Das and Mantu Nayak. In this connection I am to inform you that all the 4 casual labourers were engaged in the

X

Barrackpore who showed his inability to provide any document of evidence about their sponsorship by the Employment Exchange is not possible. However, as verified by me from the old employees of the Centre. They reported that they were engaged initially through Employment Exchange since during the year 1988. It was trend to engage Casual labourer only through the names sponsored by the Employment Exchange.

As regards their age and educational qualification at the time of their engagement as casual labourers are as follows :

Sl. No.	Name	Age	Educational Qualification
01	Shri Nagendra Nath Sadhukhan	21	Passed Class VIII.
02	Shri Sambhu Nath Pramanick	24	-do-
03	Shri Bijoy Kumar Das	18	Passed School Final
04	Shri Mantu Nayak	19	Passed Class VIII

The copies of the original appointment letters are not available in the office records since during the shifting of office from Barrackpore to Salt Lake many old records are missing not traceable. However, the Xerox copies of appointment letters from time to time submitted by the casual labourers have already been forwarded to your previously.

As regards the original ~~Master Roll~~ for the period from 1st Sept., 1992 to 30th Sept., 1993, the same are not available in the office. Since many official records have been lost during shifting of the office from Barrackpore to Salt Lake many are destroyed due to darkness and fungal attack of the records it is not possible to provide such documents.

To my opinion and on verification am convinced that they are working as casual labourers intermittently since 1988. At present also they are working in this office on casual basis.

This is for your kind information and necessary action at your end.

Thanking you,

Yours faithfully,
(R.C.DAS)
Officer- In- Charge

(ii) Be that as it may, we noticed much to our astonishment that in the earlier round, while deciding OA 259 of 1993 on 3.9.93, this Tribunal in its order had recorded as under:

" Mr S. P. Bhattacharya appearing for the applicants does not, however, dispute the fact that none of the applicants worked in a year for 240 days or 206 days and that they worked in broken periods. We also find from the Xerox copies of the appointment letters annexed to the application that the applicants were appointed on casual basis during the leave vacancies or during off duties of the regular watch and ward staff of the organization. Therefore, their engagements were not for doing

some perennial job but for doing some casual job against leave vacancies. Mr. Bhattacharyain also does not dispute that in any particular year the applicants did not complete the requisite number of days of work even in broken periods to come within the purview of the relevant Central Govt. circular issued for the purpose of absorption of casual employees.

13. However, Mr. Bhattacharya has referred to the following three judgments of our Principal Bench, viz.

- (I) Vasudev & Ors -vs- UOI1991(17)ATC 678
- (II) Rameshwar & Ors -vs- UOI1991(17)ATC 760
- (III) Rajkamal & Ors. -vs. - UOI2990(13)ATC 478

Mr. Bhattacharya has urged before us that in view of these clear pronouncements of the Principal Bench of the Tribunal regarding absorption of casual employees, the case of the applicants being identical, necessary directions be issued to the respondents to prepare an appropriate scheme for their absorption.

14.. We have carefully considered the above three decisions referred to by Mr. Bhattacharya. In Rajkamal & Ors. vs- UOI (supra) it was found by the Principal Bench that the four applicants therein had worked for more than 240 days in more than two years. Therefore, the case of those applicants clearly came within the purview of the relevant Central Govt. circular and accordingly direction was issued by the Principal Bench to regularize their services even if they were not sponsored by the employment exchange. But in the case before us none of the applicants completed 240 days of casual work in any year.

15. In the case of Vasudev Ors. -vs- UOI, the applicants were casual Artists and Artists booked on Assignment basis in Door Darshan. Their services were not regularized though they worked for more than 10 years. In view of the above position, the Principal Bench directed the Govt. to prepare a panel of employees for the purpose of their absorption and further directed that no fresh recruitment should be made till the empanelled persons were absorbed.

16. The facts of that case appear to be clearly distinguishable from the facts of the case in hand. Therefore, the principle laid down therein cannot be made applicable to the present case.

17. We are of the view that the case of the applicants does not come within the purview of the relevant Central Govt. circulars regarding absorption of casual employees. Therefore, we are unable to allow this application by giving directions to the respondents to regularize their services.

18. However, considering the facts and circumstances of the case, we dispose of this application with this order that the respondents shall continue to give the present applicants job on casual basis as and when required by them in preference to outsiders and in presence to other casual workers who are junior to the present applicants so far as their respective initial appointments are concerned."

Therefore, the rights of the applicants to claim regularization
 as on the basis of their service rendered prior to 3.9.93 stands settled.

(iv) However, both the extracted orders dated 20.10.03 and 11.8.04 would exemplify and demonstrate that even after the order in OA 259 of 1993 (supra) the respondents engaged the applicants continuously. In view of the order in O A No. 259 of 1993(supra) although the applicants are estopped from claiming benefit of service rendered as on 3.9.93 for regularization or to allege that the respondents have sought to discriminate them and deprive them of their

rightful claim to temporary status and regularization vis a vis other employees in 1993, they are entitled to seek and reap the benefits of service rendered post 3.9.93 (after the order).

(v) In addition to the orders supra the order dated 4.6.11, impugned herein, implies that the applicant were found not meeting the DOPT guidelines of 10.9.93, despite having served so long.

(vi) Whether they were actually on roll as on 10.9.93 is, however, shrouded in mystery since none of the parties substantiated their stand.

(vii) Nevertheless their engagement was assumed to be through Employment Exchange (as enumerated supra) and therefore, their engagement could not be termed as illegal or invalid.

(viii) An extract of Swamy's handbook(2007 edition), relied upon by the applicant, provides as under :

6. Appointment in Group 'D' posts :- Casual Labourers not registered with Employment Exchange should not be appointed in regular posts. Those appointed through Employment Exchange are possessing minimum 2 years continuous service as casual labour in the

office/establishment are eligible for appointment to regular post without further reference to Employment Exchange should register and then put in 2 years' service for becoming eligible for regular appointment if nominated by Employment Exchange.

7. **Two years' continuous service** : The benefit referred in previous Para, will be available if the casual labourer has put in at least 240 days of service (206 days in the case offices observing 5- days week) including broken periods of service during each of the two years' service.

13. We would further notice that while deciding OA 259 of 1953 this Tribunal on 3.8.93 had ordered as follows :

" We are of the view that the case of the applicants does not come within the purview of the relevant Central Govt. circular regarding absorption of casual employees. Therefore, we are unable to allow this application by giving directions to the respondents to regularize their service.

However, considering the facts and circumstances of the case, we dispose of this application with this order: that the respondents shall continue to give the present applicants job on casual basis as and when required by them in preference to outsiders and in preference to other casual workers who are turned to the present applicants so far as their respective initial appointments are concerned".

The order made it imperative for the respondents to engage the applicants forthwith, but they did not.

14.. If the applicants were not engaged in 1993 and were not serving on the date the 1993 scheme was floated, it was solely because of the respondents had not engaged them despite such clear mandate. The respondents had clearly flouted the order of this Tribunal and, therefore, the applicants were constrained to prefer CPC alleging violation of directions of this Tribunal by the respondents in engaging outsiders.

This Tribunal on 21.07.2000 ordered as under :

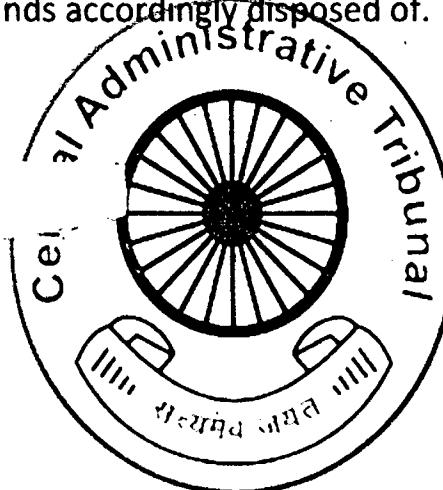
"We direct the respondents to engage these three applicants as and when vacancies will arise directly or on casual basis only. The respondents must see to it at while engaging them the contractor may not stand in the way. Respondents will be directly responsible for engagement. Accordingly, the CPC is disposed of".

It was only thereafter that these applicants came to be engaged.

15. Therefore, denying them benefits of service rendered after the order in the earlier ^{c/o} would be too harsh and highly iniquitous.
16. Accordingly, we quash the impugned order and direct the authorities to consider the case suitably for grant of temporary status in accordance with law and issue appropriate order within three(3) months.
17. OA stands accordingly disposed of. No costs.

Nandita Chatterjee
Member (A)

Bidisha Banerjee
Member (J)



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