

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.O.A.350/00569/2014

Date of order : 5.8.2016

Present : Hon'ble Mrs. Chameli Majumdar, Judicial Member

Hon'ble Mr. P.K. Pradhan, Administrative Member

1. Manas Dey
2. Sri Sambhu Nath Chakraborty
3. Sri Manik Lal
4. Sri Sunil Kumar Rakshit
5. Sri Jagannath Ganguly
6. Sri Jhantu Kumar Shit

.....Applicants

Vs.

1. Union of India
Service through the Secretary
Ministry of Information and Broadcasting
Shastri Bhawan, New Delhi-110001

2. The Director General, Doordarshan,
Mandi House, New Delhi – 110001

3. The Director, Doordarshan Kendra,
Golf Green, Kolkata – 700095

.....Respondents

For the applicants : Mr. A.K. Bairagi, counsel

For the respondents : Mr. M.S. Banerjee, counsel

O R D E R

Per Mrs. Chameli Majumdar, J.M.

The applicants are the casual workers working under the Director, Doordarshan Kendra Kolkata. The applicants have filed this O.A. challenging the action of the respondents in granting temporary status to 20 employees who according to the applicants, were not entitled for the same.

engagement in the year 1988 and onwards they have been performing their job with satisfaction to all concerned till date. It is stated by the applicants that by virtue of the Office Memorandum dated 11.10.1993 a number of casual workers were granted temporary status and regularization whereas the applicants were left out. The applicant No.1 submitted several representations during the period from 2011 to 2013 praying for regularization, but no step was taken by the respondents.

2. The applicants have contended that Director, Doordarshan Kendra, Kolkata sent a letter dated 06.08.2013 to the Director General, Doordarshan Kendra, New Delhi for regularization of casual labourers along with a list of candidates. However, due to non-consideration of the case of the applicants, they(the applicants) sent a notice through their advocate on 23.09.2013 addressed to the Director General, Doordarshan Kendra, New Delhi. From the reply to the said notice the applicants came to learn that temporary status was to be granted to those casual employees who were in employment on the date of commencement of the Scheme and those who had been engaged for a period of at least 240 days in a year or 206 in offices observing 5 days in a week. The applicants came to learn that regularization of casual workers with temporary status in the posts of MTS(erstwhile Group 'D' posts) were awaiting till furnishing of number of vacancies in those posts. From the Office letter dated 19.02.2014 issued by the Dy. Director (Admn.), the applicants came to learn that the post of MTS(erstwhile Group 'D' Post) were shifted to Doordarshan Kendra, Kolkata and vacancies occurred in those posts.

3. In the O.A. the applicants have given a list which was prepared on

according to the applicants, those candidates did not satisfy the requirements for the same under the Scheme of 1993. The applicants have annexed the order dated 09.07.2001 with the O.A. as Annexure A-11.

4. The respondents have filed reply to the O.A.. They have taken a preliminary objection with regard to maintainability of the O.A. on the ground that these applicants had earlier filed O.A.992 of 1998(Manas Dey and Others vs. Union of India & Others) before this Tribunal praying for the similar relief. The respondents have further submitted that this O.A. is liable to be dismissed on the ground of suppression of material facts and the applicants are not entitled to get any relief at all.

5. Heard Mr. A.K. Bairagi, Id. counsel for the applicants and Mr. M.S. Banerjee, Id. counsel for the respondents.

6. After hearing the submissions of both sides and on going through the records we find that truly the present applicants had filed O.A.992 of 1998 (Manas Dey and Others vs. Union of India & Others) before C.A.T., Calcutta Bench and the said O.A. was allowed by this Tribunal directing the respondents to grant temporary status to the applicants. Being aggrieved by the said order the respondents had filed a Writ Petition before the Hon'ble High Court at Calcutta being WPCT.No.1341/2001which was dismissed. Thereafter the respondents filed a Civil Appeal No.6857 of 2005(Arising out of SLP(C) No.6666 of 2005) before the Hon'ble Supreme Court which was allowed on 17.11.2005(Annexure R-1 to the reply). Relevant portion of the said judgment dated 17.11.2005 runs as follows:-

"Clause 4 of the Scheme is very clear that the conferment of "temporary" status is to be given to the casual labourers who were in employment as on the date of commencement of the Scheme.

206 days (in case of offices observing 5 days a week), they are entitled to get "temporary" status. We do not think that clause 4 of the Scheme envisages it as an ongoing scheme. In order to acquire "temporary" status, the casual labourer should have been in employment as on the date of commencement of the Scheme and he should have also rendered a continuous service of at least one year which means that he should have been engaged for a period of at least 240 days in a year or 206 days in case of officers observing 5 days a week. From clause 4 of the Scheme, it does not appear to be a general guideline to be applied for the purpose of giving "temporary" status to all the casual workers, as and when they complete one year's continuous service. Of course, it is up to the Union Government to formulate any scheme as and when it is found necessary that the casual labourers are to be given "temporary" status and later they are to be absorbed in Group "D" posts.

This position was highlighted in Union of India v Gagan Kumar(JT 2005 (6)410).

Above being the position the Tribunal's order is clearly untenable and the High Court was in error in proceeding under the assumption that the protection given to some of the parties in Mohan Lal's case(supra) applied to the facts of the preset case.

As was observed in Gagan Kumar's case(supra) the observations in paragraph 11 of Mohan Lal's case (supra) were rendered in a different factual background and context and have no application to the facts of the present case. Appeal is allowed with no order as to costs."

In the above order, the Hon'ble Supreme Court relied on their decision in the case of **Union of India v. Mohan Pal and Others [2002(4)SCC 573]**. Number of appeals were disposed of by a common judgment. The Hon'ble Supreme Court observed that in some cases the temporary status was given to some of the casual workers although they did not specifically fulfill the conditions of Clause 4 of the Scheme and some of them were engaged by the Department even after the commencement of the Scheme. But the casual labourers in the said cases rendered service for more than one year and they were not given "temporary" status pursuant to the directions issued by the Court. However, the Hon'ble Apex Court did not interfere with such conferment of temporary status. It was made clear that those who had already been given temporary status on the assumption that it was an ongoing Scheme should not be stripped off the 'temporary' status pursuant

to the decision of the Hon'ble Supreme Court in **Mohan Pal's case**.

Relevant portion of the said order dated 29.04.2002 is set out below:-

".....the respondents have been given 'temporary' status even though, they did not specifically fulfill the condition in clause 4 of the Scheme. Some of them were engaged by the Department even after the commencement of the Scheme. But these casual labourers had also rendered service for more than one year and they were not given 'temporary' status pursuant to the directions issued by the Court. We do not propose to interfere with the same at this distance of time. However, we make it clear that the Scheme of 1.9.1993 is not an ongoing Scheme and the 'temporary' status can be conferred on the casual labourers under that Scheme only on fulfilling the conditions incorporated in Clause 4 of the Scheme, namely, they should have been casual labourers in employment as on the date of the commencement of the Scheme and they should have rendered continuous service of at least one year, i.e. at least 240 days in a year or 206 days (in case of offices having 5 days a week). We also make it clear that those who have already been given 'temporary' status on the assumption that it is an ongoing Scheme shall not be stripped of the 'temporary' status pursuant to our decision.

The appeals are disposed of accordingly."

7. The respondents have annexed an order dated 09/25.03.2010 (Annexure R-3) which was with reference to the petition of the present applicants dated 14.12.2009. In para 4 of the said order it is stated that :-

"4. According to the judgment dated 17.11.2005 of Hon'ble Supreme Court, the cases of Shri Manas Dey and others were considered under the Scheme and are not eligible for granting temporary status and subsequent regularization under the DOP&T Scheme, 1993. The judgment of Hon'ble Supreme Court dated 17.11.2005 suffix other judgments mentioned in the petition."

8. We have also gone through an order passed by this Tribunal in O.A.362 of 2012 dated 05.07.2012. 8 applicants filed the said O.A. In the order dated 05.07.2012 it is mentioned that 31 applicants including the 8 applicants therein filed an O.A. before this Tribunal in O.A.792 of 1998 praying for grant of temporary status to them. Said O.A. was allowed vide order dated 07.09.2001. Being aggrieved, the respondents filed WPCT.No.1341/2001 before the Hon'ble High Court, Calcutta, which was

dismissed and against the said order the respondents filed a Civil Appeal No.6857 of 2005 before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide judgment dated 17.11.2005 allowed the appeal. As such, the findings of the Hon'ble Tribunal which was upheld by the Hon'ble High Court, was set aside and quashed in toto. The O.A.No.362/2012 was accordingly dismissed.

9. We find merit in the submissions made by Id. counsel for the respondents that the applicants herein suppressed the material fact by not mentioning at all about the earlier Original Application filed by them on the same issue and the order passed by the Hon'ble Supreme Court whereby the issue was finally decided to the effect that the present applicants were not entitled to grant of temporary status. On that ground only this O.A. is liable to be dismissed.

10. We have gone into the merit of this case. We find that an amendment application was filed by the applicants pursuant to the liberty granted by the Tribunal to make amendment in Para 8(a) of the O.A. to the extent that the applicants sought to quash and set aside the office order dated 09.07.2001 issued by the Administrative Officer for Director as the appointments of the listed casual workers were illegal and irregular because they did not at all fulfill the eligibility criteria as per DOP&T's O.M. dated 11.10.1993.

11. Although no order has been passed in the M.A. for amendment, we are hereby allowing the amendment application and deciding the amended relief claimed by the applicants in this O.A. The said order dated 09.07.2001 has been annexed to this O.A. as Annexure A-11. By virtue of the order dated 09.07.2001, 20 casual workers were granted temporary

status as back as on 09.07.2001. The Hon'ble Supreme Court in its order dated 29.04.2002 made it very clear that who have already been given 'temporary' status on the assumption that it is an ongoing Scheme should not be stripped of the 'temporary' status pursuant to their decision dated 29.04.2002. It appears that the order of grant of temporary status to the 20 casual workers was passed on 09.07.2001 i.e. prior to the judgment of the Hon'ble Supreme Court dated 29.04.2002.

12. In the instant original application we find that the applicants in 2014 sought to challenge order dated 09.07.2001 whereby 20 casual labourers were granted temporary status without making them parties in the original application and throwing challenge to the order which was passed a decade back. It has been alleged that those who were given temporary status did not fulfill the Clause 4 of the 1993 Scheme. The Hon'ble Supreme Court overruled all these contentions and held that those who had been given temporary status before the judgment was passed by the Hon'ble Supreme Court i.e. before 29.04.2002, their services would not be disturbed and they would not be stripped of their temporary status.

13. In view of the decision of the Hon'ble Supreme Court not to interfere with the order whereby temporary status was granted to certain casual employees although they might not be qualified in terms of the 1993 Scheme, we do not find any merit in the amended prayer of the applicants to set aside and quash the order dated 09.07.2001. We agree with the findings of this Tribunal in the order dated 05.07.2012 passed in O.A.362 of 2012. We have already set out the relevant extracts of the orders of the Hon'ble Supreme Court(supra).

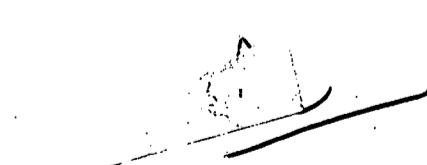
14. The grievance of the applicants against the order dated 01.12.2014 issued by the Additional Director General does not merit consideration

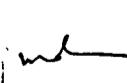
because the same is related to conferment of status of Central Government employees to the casual labourers with temporary status working in Doordarshan Kendra, Kolkata. The applicants do not belong to the said class of casual labourers with temporary status. Therefore, they cannot have any grievance against the order dated 01.12.2014.

15. At the time of hearing, Id. counsel for the applicants has handed over some documents in connection with Audit Query regarding irregular payment of Rs.78.46 Lakhs due to irregular grant of temporary status to the casual workers of Doordarshan Kendra, Kolkata raised by the Executive Engineer(Vigilance). In our considered view, the said Audit query does not give rise to any fresh cause of action to the applicants to approach the Tribunal, that too suppressing the material facts as stated hereinabove. However, it is for the respondents to reply to the Audit query. The same cannot be the subject matter of challenge in the present O.A.

16. In view of the pronouncement of law by the Hon'ble Supreme Court, we are of the view that the challenge of the applicants towards grant of temporary status on 20 temporary employees of the Doordarshan Kendra, Kolkata or prayer to set aside the order dated 09.07.2001 granting temporary status to certain employees prior to pronouncement of the judgment of the Hon'ble Supreme Court cannot be sustained. Therefore, the O.A. is liable to be dismissed.

17. Accordingly the O.A is dismissed. There will be no order as to cost.


(P.K. PRADHAN)
Administrative Member
s.b


(C. MAJUMDER)
Judicial Member