

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

Original Application No. 99/2005

RESERVED ON : 27.05.2019

PRONOUNCED ON : 31.05.2019

CORAM:

HON'BLE MRS. HINA P.SHAH, MEMBER (J)

HON'BLE MS. ARCHANA NIGAM, MEMBER (A)

Smt. Parvati w/o Chran Das Gujrati, by caste Harijan, R/o Ratnada, Harijan Basti, Jodhpur
[Presently serving as Sweeper (Class-IV employee) in the office of Joint Commissioner, Customs, Pach Batti Choraya, Jodhpur]

...Applicant

(By Advocate: Shri Vijay Mehta)

Versus

1. Union of India through Finance Secretary, Ministry of Finance, Government of India, New Delhi.
2. The Commissioner of Custom, Commissionerate, Jaipur, New Central Revenue Building, C-Scheme, Jaipur
3. The Additional Commissioner, Customs, Jodhpur
4. The Joint Commissioner, Customs, Pach Batti, Jodhpur.

...Respondents

(By Advocate: Shri K.S.Yadav)

ORDER

Per Mrs. Hina P.Shah

The applicant filed the present OA u/s 19 of the Administrative Tribunals Act, 1985 praying for

regularisation of her services on the post of Sweeper with all consequential benefits and alternatively to grant at least regular pay scale of Sweeper from the date when she has completed 10 years of service.

2. This matter was finally decided by this Tribunal vide order dated 22.02.2006 observing in Para-5 as under:-

"5. In my considered view, this submission of the learned counsel for the applicant has no merit since the cut off date mentioned in the circular i.e. 07.06.88, is based on policy decision of the Government of India and it covers only those casual workers cases who were recruited prior to 07.06.88 and had continued even on 08.04.91, were entitled to be regularized. This cut off date had been prescribed in order to put an end to back door recruitment. Further, if particular length of service had been criteria for regularisation, it would have been simply stated that casual workers who have put in the particular length of service are eligible for regularisation. But there is no such proposition in the said circular Annexure A/2 dated 24.09.99. Hence this contention of the learned counsel for the applicant has no merits. Further this Tribunal cannot direct the authorities to regularize the service of the applicant without following proper procedure as per rules and instructions on the subject, which would tantamount to encouraging back door entries in Government service. Thus, I find no merit in this application and accordingly it is dismissed. No costs."

3. Thereafter, aggrieved of the order of this Tribunal, the applicant approached the Hon'ble Rajasthan High Court at Jodhpur by way of filing D.B.Civil Writ Petition No.3066/2006. Vide order dated 3.1.2018, the Hon'ble High Court restored the present OA before this Tribunal with the following observations:-

1. D.B. Civil Writ Petition No.1268/2006 Sumer Lal Chauhan & Ors. vs. U.O.I. & Ors. was disposed of by a consent order dated 05.10.2017, which reads as under:-

"1. Case of the petitioner before the Central Administrative Tribunal was premised essentially on a policy decision notified vide OM dated 10.09.1993. We find that Tribunal has not decided the issue in light of the said OM dated 10.09.1993. As per petitioners, they were eligible for being considered for regularization in terms of the OM dated 10.09.1993.

2. With consent of parties we dispose of the writ petition setting aside the impugned order dated 22.02.2006. We restored OA No.144/2005 before the Tribunal.

3. Needless to state that while deciding the issue the Tribunal shall also decide the controversy whether petitioners were part time daily wager or temporary status was acquired by them."

2. Learned counsel for the parties state that instant petition be also disposed of by consent recording that OA No.99/2005 filed by the petitioner be restored before the Central Administrative Tribunal for re-decision and while deciding the controversy, the Tribunal would return a definite finding whether the petition was appointed as a part-time daily wager or not; whether she had acquired a temporary status and whether she would be entitled to be considered for regularisation in terms of OM dated 10.09.1993.

3. Ordered accordingly.

4. OA No.99/2005 is restored before the Central Administrative Tribunal. Since both counsel agree, the parties shall appear before the Registrar of the Tribunal on 19.02.2018 on which date the Original Application 99/2005 would be shown in the Cause List before the Registrar of the Tribunal who will then place it before the Bench of the Tribunal for adjudication in accordance with law."

4. In view of the order passed by the Hon'ble High Court, now this Tribunal is required to deal with the matter only with regard to the question whether the applicant was appointed as a part-time daily wager or not; whether she had acquired a temporary status and whether she would be

entitled to be considered for regularisation in terms of OM dated 10.09.1993.

5. We have heard the learned counsel for the parties and have gone through the material on record.

6. So far as the working of the applicant on part-time or full time is concerned, it is clear from the internal noting of the respondents Ann.A/9 that the applicant was working for 7-8 hours a day, even though she was treated as part-time casual worker. The said noting was made in response to the letter from the Additional Commissioner, Jaipur (Ann.A/9) whereby case of the applicant for regularisation of the services was processed. The letter dated 26.3.1997 (Ann.A/8) also mention that she was working from 1990 and her case was not considered for regularisation as she was not working prior to 7.6.88. This letter does not reveal that regularisation of the applicant was rejected on the ground that she was working as part-time casual labour. The above facts go to show that the respondents have taken full time job from the applicant by treating her as part-time worker, which in our view, was not justified. The noting Ann.A/9 further show that she is regularly paid the wages. From the pleadings in the OA, we also find that the respondents are taking different stand in different

documents. In reply, they have stated that the applicant was working for 2-3 hours a day, in additional affidavit, they have stated that the applicant was called in the office for 4-6 hours average and in Ann.A/9, it is evident that the applicant worked for about 7-8 hours a day. In these circumstances, it can be inferred that though the applicant was working on full-day basis, but the respondents had treated the applicant as part-time, which action of the respondents cannot be said to be justified. The applicant stated that she is doing full time job of Sweeper, which is being done by the regularly appointed Sweeper and even made to work on holidays. Since the applicant has been working since 1990/1992, which infers that regular nature of work is available in the respondent department as is available in other offices of the Government of India. Therefore, the contention of the respondents that the applicant was appointed as part-time casual labour on need basis has no force. It appears that being a low paid casual labour in the hope of regularisation, she was not in a position to object but to work for long hours than the prescribed hours and even on holidays. In such circumstances, we hold that the applicant was working as full-time casual labour.

7. Pertaining to the issue of temporary status, the internal correspondence of the respondents department show that her case was processed for regularisation, but the documents available do not show whether order of temporary status has been passed or not. The Ann.A/8 dated 26.3.1997 show that the applicant was working from 1990 whereas the departmental noting mention that the applicant was working from September, 1992. If that is so, in both the cases, the matter could have been considered for temporary status in view of the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993, if she was otherwise eligible for the same.

8. Therefore, after considering the respective contentions of the parties, in the facts and circumstances of the case, we are of the view that the respondents should re-examine the matter of the applicant with regard to the date of appointment of the applicant on the basis of the record available with them, and consider her case treating her full time casual labour, as per the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993, for temporary status and thereafter for regularisation as per rules. Ordered

accordingly. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

9. The OA stands disposed of in above terms with no order as to costs.

(ARCHANA NIGAM)
ADMV. MEMBER

(HINA P.SHAH)
JUDL. MEMBER

R/