

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA



OA. 519 of 2012

Date of Order: 22.02.2016.

Present : Hon'ble Justice Shri Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

Fatik Layek & Anr.
Vs.
Finance

For the Applicant : Mr. S. Banerjee, Counsel

For the Respondents : Mr. LK Chatterjee, Counsel
Mr. BP Manna, Counsel

O R D E R (Oral)

Per Justice Shri Vishnu Chandra Gupta, JM:

This application has been filed seeking the following reliefs:

"8(a) Regularising the service of the applicants from 01.09.1993 as per the scheme of 1993 along with all benefits arising there from as on that date including back wages.

(b) Upon granting such status all the monetary benefits by way of arrears and leave so accrued be calculated and given to the applicants along with a copy of the calculation sheet within a reasonable period.

(c) The applicants shall be given the benefits of seniority for the purpose of regularization.

(d) Damages and costs be granted to the applicants because of the indifferent conduct and attitude of the respondent authorities in granting the service benefits to the applicants to which they were pre-eminently entitled to.

(e) Leave may be granted to file a single application, since the applicants are having common cause of action and common nature of relief and they have common interest in the matter as per Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987.

(f) Pass any other such order/orders in the facts and circumstances of the case as deemed fit and proper."

2. Heard learned counsel for applicant and respondents both.

3. A very short question for consideration before this Tribunal is, whether an employee of the central government if gets the temporary status under the scheme known as Casual Labourers (Grant of Temporary status & Regularization), Scheme of Govt. of India, 1993 from the date mentioned therein by a subsequent order passed in pursuance of the scheme, could be deprived of benefits under the scheme from 01.09.1993 till the date of passing of the order?

4. The brief facts of the case are that the applicant no. 1, Fatik Layek and applicant no. 2, Goutam Ghosh were inducted in the Office of the Directorate of Revenue Intelligence, Kolkata Zonal Unit as casual worker as for farash and for doing office cleaning and miscellaneous works respectively from 01.01.1991. This fact is not denied from the side of the respondents. Thereafter, the said scheme came into force with effect from 01.09.1993 and according to this scheme if a casual labourer/daily wager is working in the department concerned on the date of commencement of the scheme and has completed continuous service 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 a week), the temporary status would be conferred to such an employee and thereafter he shall be regularized when a post will be made available in the department in terms of para 8 of the said scheme subject to qualifying the selection process.

5. When the department did not take notice of the scheme, so far as the applicants are concerned, they moved representations to the authorities concerned. When they failed to redress the grievance of the applicants the applicants were compelled to approach this Tribunal by filing OA. No.148 of 2005 which was decided on 16.01.2007 with the following direction :

"9. In view of the facts mentioned above, the respondents are directed to examine their eligibility as mentioned above and if found eligible confer temporary status and regularize them as per the extant scheme within a period of 6 months from the date of issue of this order. No order as to costs."



6. It is strange that after enforcement of the scheme and when the Tribunal has given direction to adhere the scheme in respect of the applicants, the department against the order of the Tribunal, filed petition before the Hon'ble High Court by way of Writ Petition No. 316 of 2008 which was not only dismissed but a direction was also issued by the Hon'ble High Court to implement the order of the CAT by an order dated 16.01.2009, which has been reproduced hereinbelow:

"Considering the materials on record and also considering the judgment passed by the Tribunal, we are of the opinion that the instant Application has no merit and there is no need to interfere with the findings of the learned Tribunal. Accordingly, we dismiss this application, but there will be no order as to costs.

There will be further direction upon the present petitioners to comply with the order of the Tribunal within a period of three months from the date of communication of this order as the stipulated period of six months as mentioned in the order of the learned Tribunal is over."

7. After passing the order by the Hon'ble High Court a letter was issued by the Competent Authority on 04.06.2009 conferring the temporary status to the applicants wherein it has been categorically mentioned at the bottom of this letter that "the grant of temporary status would be applicable from the date when he became eligible as per the extant scheme of DOPT i.e. w.e.f. 01.09.1993."

8. When the benefits under the said scheme was not extended to the applicants after conferring the temporary status from the date i.e. from 01.09.1993, the applicants again approached this Tribunal.

9. Learned counsel appearing on behalf of the respondents submits that all the benefits of the scheme has already been extended to the applicant which ought to have been extended to the applicants under the scheme after getting temporary status.

10. The learned counsel appearing on behalf of the applicants submits that the benefits have been extended from the date of letter dated 04.06.2009. Probably, it appears that there is something missing in between the counsel for the respondents and the respondent himself. Probably, correct instruction has not been issued by the department to his Counsel.

(S. B.)

11. A judgment of Patna Bench of this Tribunal in OA. No. 933/2003, **Vimal Kumar & Ors. vs. Union of India & ors.** decided on 06.08.2004 has been placed before us wherein it is stated that the petitioners are not entitled to any arrears of pay on the basis of "no work no pay". The said judgment is not applicable at all because it is not a case that the applicants are not continuously working since 01.09.1993 till date. Therefore, no assistance could be extended to the learned counsel for respondents. Accordingly, the petition is allowed with the following direction.

12. Therefore, this petition is finally disposed of with a direction to the authorities concerned to give all the benefits to the applicants under the said scheme which they are entitled to after getting the temporary status as mentioned in para 5(i), (ii), (iii), (iv), (v), (vi) and (vii) of the scheme, within a period of 3 months from the date of communication of this order, if yet not paid by the department.

13. In this case there is willful disobedient of the earlier order passed by this Tribunal and the authorities knowing it well that the applicants ought to have given the benefits of the scheme of 10.09.1993 but they withheld the benefits to the applicants and they granted the benefits from 04.06.2009. It is a fit case in which exemplary cost should be imposed upon the authorities for willful non action and disobedience of the order passed by this Tribunal.

14. We quantify the cost of Rs. 50,000/- which will be shared by the petitioners equally. The Government of India will be free to recover the cost, if so desired from those employee/officer who is/are responsible for non-action.

15. However, if all the benefits including arrears of pay were already given to the petitioner before this order, the order regarding payment of exemplary cost shall not be enforced.

(Jaya Das Gupta)

Member (A)

(Vishnu Chandra Gupta)

Member (J)