

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.
OA/050/00461/2016

Date of order reserved : 27.08.2019

Dated of order : 13th Sept., 2019

C O R A M

Hon'ble Shri Jayesh V. Bhairavia, Member [Judicial]
Hon'ble Shri Dinesh Sharma, Member [Administrative]

1. Rajesh Kumar, S/o Radheshyam, resident of B.N.R. Training College Road, Nanmuhima, Gulzarbagh, District – Patna.
2. Amit Kumar, S/o Rabindra Kumar Sinha, resident of West Lohanipur, P.S. – Kadamkua, District – Patna.
3. Sanjay Kumar Singh, S/o Late Baleshwar Prasad Singh, resident of Yadav Niwas Boudh Vihar Colony, Post – B.H. Colony P.S. Agamkua, District – Patna.

Applicants.

By Advocate : Shri S.K. Bariar.

Vs.

1. The Union of India through the Secretary, Ministry of External Affairs, New Delhi.
2. The Chief Passport Officer, Government of India, Ministry of External Affairs [CPV Division], Patiala House Annexes, Tilak Marg, New Delhi.
3. The Regional Passport Officer, Government of India, Ministry of External Affairs [CPV Division], Patiala House Annexes, Tilak Marg, New Delhi.
4. The Passport Officer, Government of India, Ministry of External Affairs, Maurya Lok Complex, D-Block, 2nd & 3rd Floor, Patna – 800001.

Respondents.

By Advocate : Shri G.K. Agarwal

ORDER

Per Jayesh V. Bhairavia , Member [J] : The applicant has filed the instant OA seeking a direction upon the respondent authorities to confirm them against the Group-‘D’ post and grant its consequential benefits.

2. The applicants submitted that they were initially appointed on casual basis as per law after facing the recruitment process as their

names were sponsored by Sub Regional Employment Exchange, Patna. The applicants along with others appeared in the interview on 06.10.1997 and thereafter, their documents, such as educational qualification, date of birth etc. were also verified on 15.10.1997, vide letter dated 09.10.1997 [Annexure-A/2]. The applicants, offered appointment in the department, vide letter dated 13.10.1997 [Annexure-A/3 series], wherein it was mentioned that the applicants should join the office in the forenoon of October, 15, 1997, failing which this officer will be treated as cancelled and the job will be offered to the next candidate in the merit list. Accordingly, the applicants joined on 14.10.1997 itself at the Passport Office, Patna.

3. The applicants submitted that a panel of 23 casual labourers was prepared as per seniority, wherein the applicants were shown at Sl. No.18, 20 and 22 [Annexure-A/4].

4. The applicants further submitted that there were three vacancies of Group-'D' post at Passport Office, Patna and as per the circular of DOPT with regard to regularization of Casual Labourers/Daily Rated Mazdoors, the vacant posts of Group-'D' should have been filled up by the casual labourers of the same office, therefore, names of three senior casual labourers were recommended for absorption. Smt. Amita Kumari, who was placed at Sl. No.1 had been absorbed, vide letter dated 26.06.2000, but immediately thereafter vide letter dated 26.06.2000, the process of regularization was stopped because of the instructions received from New Delhi.

5. The applicants claims that three posts of Group-‘D’ were filled up amongst the casual labourers of Regional Office, New Delhi, vide letter dated 01.06.2000, about which the casual labourers posted at Patna Office have no knowledge. The applicants submitted that even the local officials did not know the fact that casual labourers of Regional Office, New Delhi were to be regularized against the three Group-‘D’ posts of Patna, Passport Office. Thereafter, the regularization of Amit Kumari against the vacant post as on 26.06.2000 was also cancelled in the light of letter dated 31.07.2000 and the process of regularization of others were also stopped.

6. The applicants along with others posted at Passport Office, Patna filed representation to the authority for their regularization against the three vacant posts of Group-‘D’. The applicants further submitted that the applicants along with two other casual labourers, namely Neelam Dutta and Manoj Kuamr filed OA No.899/2002 for their regularization against the Group-‘D’ post, which was disposed of on 14.11.2002 [Annexure-A/5] with the following directions :-

“4. Taking that in view this OA thus stands disposed of at this stage itself while hearing on the point of admission with a direction that the applicant will make available a copy of this OA along with Annexures to the concerned respondents within fifteen days from today and after receipt of the same, the Respondents No.3 and 4 as to examine and consider the case of the applicants and dispose of the representation within a period of three months by passing speaking and reasoned order in accordance with law. The matter stands, accordingly, disposed of.”

7. When the respondents did not comply with the orders passed by this Tribunal in the aforesaid OA, the applicants filed CCPA No.12 of

2004. The respondents, thereafter complied with the order dated 05.01.2005 [Annexure-A/6], which reads as under : -

“ xxx

xxx

xxxx

It has been found that there is no requirement of any more casual labourers in this office or in Passport Office, Ranchi at present. However, since your date of engagement was prior to that of Md. Obaid, casual labourer then engaged at Passport Application Collection Centre, Darbhanga [on the strength of Passport Office, Patna], your willingness as to whether you wanted to work at PACC, Darbhanga [if required] was asked for. All the four applicant casual labourers [including you] expressed their willingness to work at PACC, Darbhanga and only the senior most among you, i.e. Neelam Dutta Srivastava has been engaged as casual labourer at PACC, Darbhanga.

None of the casual labourers presently working at this office or Passport Office, Ranchi is junior to you.

Your petition in OA No.899/2002, thus stands disposed of with the approval of the Competent Authority in the Ministry of External Affairs.”

8. The applicants submitted that panel out of 23 casual labourers, 17 casual labourers have already been regularized against the Group-‘D’ post. Now only the applicants have been left out to be absorbed. The applicants also submitted that the persons at Sl. No.21 and 23 were already appointed as Teacher and Librarian in the State of Bihar. They have further submitted that the respondents in reply to an application under RTI dated 08.06.2016, it is intimated that out of 23 casual labourers, 19 casuals were regularized, vide Annexure-A/8. Now the respondents are taking work through outsourcing the employees, which is illegal and arbitrary and against the law of natural justice, hence this OA.

9. The respondents filed their written statement and contested the case. According to them, the casual workers/labourers were engaged in Passport Office in the past on temporary basis for a very specific period

of time in view of availability of work. The period of their engagement was extended further on the basis of workload in the office. They were assigned non-sensitive work to assist the regular employees and officers in the office. They were not assigned the responsibilities of a permanent employee.

10. The respondents submitted that the applicants were paid admissible wages as per norms on daily basis. Their engagement in the office was discontinued as per terms and conditions of their engagement after a spell of every 89 days. If the office had backlog of work, they were re-engaged with the approval of the Ministry under the same terms and conditions without any assurance or right of permanency on any regular post.

11. The respondents further submitted that the engagement of casual workers were finally terminated when there was no pending work/serious backlog in the office and the office was in a position to be run smoothly with the sanctioned staff strength fixed by the Ministry. The respondents again reiterated that the engagement was on daily wages basis purely on need basis which did not give rise to any claim of either permanency or confirmation of any cadre.

12. The respondents submitted that total staff strength in the office was determined by the Ministry. Powers of appointment of a new official to any post and to regularize any casual worker as Group-'D' in the office are completely vested in the competent authority of the Ministry. Conferment of temporary status is also based on a selection process

and in accordance with the relevant rules, and the office has no such provision under the extant rules to regularize any daily wager.

13. The respondents submitted that in due course of time and with the increase in workload, some of the Data Entry Operators [DEOs] were outsourced from a company by the Ministry against the vacancies of non-gazetted employees in order to render passport services to Indian citizens and with filling up the vacant posts by newly recruited employees, these DEOs have been disengaged also proportionately. DEOs have also been outsourced in view of the availability of work.

The respondents relied upon a judgement passed by Hon'ble Supreme Court in Civil Appeal No.200 of 2007 with No.1197/2007 in which the Hon'ble Supreme Court held that regularization is purely an executive function and such a direction cannot vividly be given by the judiciary.

14. Further, the respondents submitted that vide letters dated 17.06.2016 [Annexure-R/1, R/2/ and R/3] and 05.05.2016 [Annexure-/4], the applicants have already been apprised categorically in response to their representations dated 16.05.2016 and 07.04.2016 that their engagement in the office was purely on temporary basis as per availability of work and while citing cogent reasons the representations were disposed of.

15. The applicants, in reply to the written statement, filed their rejoinder dated 17.04.2017, whereby they have contended that it is admitted position that out of 23 casual who were appointed in 1997, 17 casual workers were regularized against Group-'D' posts except these

four applicants for want of vacancies. The applicants submitted that the respondents have always given assurance to them that whenever vacancy will occur, their case for regularization will be considered.

The applicants further submitted that Amita Kumari, Pawan, Sujit Kumar, Suresh Barick, Neelam Dutta etc. who had filed OAs No.899/2002, 324/2003 and 335/2003 for their regularization and after appropriate directions by the Tribunal, their services have been regularized against Group-‘D’ post in the department. In view of the above submissions, the applicants pray that a direction be given to the respondents to consider their case as the respondents have considered the case of the applicants in aforesaid OAs.

16. Heard the learned counsel for the parties and perused the materials on record.

17. Considering the aforesaid submissions of the applicants, that the respondents have considered the case of the applicants of the aforesaid OAs for their regularization against the Group-‘D’ post as and when the vacancy occurred, if it is so, the instant OA is also disposed of with directions to the concerned respondents to consider the case of the applicants for their regularization against Group-‘D’ post in the department as and when the vacancy occurs, since they have been initially appointed after following the due recruitment process. No costs.

[Dinesh Sharma]M[A]

[Jayesh V. Bhairavia]M[J]

mps.