

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 2601/2002
MA 2223/2002

(3)

New Delhi this the 26th day of May, 2004

Hon'ble Shri Sarweshwar Jha, Member (A)

In the matter of

1. Shri Dilip Kumar Shukla
S/O Shri Rama Nand Shukla
E-68, Ganesh Nagar Complex,
Pandav Nagar, Delhi.
2. Sh. Rajinder Kumar,
S/O Shri Rama Ashish Paswan,
5/86, DMS Colony, Hari Nagar,
Delhi.
3. Bikhari Shah,
S/O Shri Dev Sunder Shah,
RZ 52/333, Madan Puri,
Gali No.10, West Sagarpur,
New Delhi.
4. Bhule Ram
S/O Shri Balbir Singh
Village Thana Kalan,
Distt. Sonepat (Haryana)
5. Uday Sharma,
S/O Shri Ram Pavitra Sharma,
F-11, DMS Colony, Shadipur Depot,
New Delhi-8
6. Sushil Kumar
S/O Sh. Chandeshwar Mahto,
28/386, DMS Colony,
Hari Nagar, Delhi.
7. Anil Kumar
S/O Shri Ranjeet Singh
G-17, DMS Colony,
West Patel Nagar, New Delhi.
8. Sunil Kumar
S/O Shri Rajinder Prasad Singh,
25/352, Satyaver Colony, Hari Nagar,
Delhi.
9. Ajay Singh
S/O Shri Satyaver Singh,
33/463, DMS Colony,
Hari Nagar, Delhi.

...Applicants

(By Advocate Shri S.M. Garg)

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1. Union of India through
Secretary,

Sarweshwar Jha

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Ministry of Agriculture,
Department of Agriculture and
Animal Husbandry and Dairy),
Krishi Bhawan, New Delhi.

2. The Chairman,
Delhi Milk Scheme,
West Patel Nagar,
New Delhi.

U. Barera
Respondents

(By Advocate Shri U. K. Barera)

O R D E R (ORAL)

Heard.

2. This OA has been filed against the identically worded Memo. dated 27.4.2002 issued by the respondents in the case of the applicants (Annexure 'A' colly) denying regularisation of service to them even though they have completed 240 days of employment in a year.

3. The facts of the matter, briefly, are that the applicants were employed as daily rated mates by respondent No.2 (The Chairman, DMS), New Delhi) who have claimed that they have rendered 240 days of service during the year 1998-1999 in the respondents-organisation. The details in respect of the applicants including those relating to the number of working days during the said year have been given in Annexure 1. The controversy which has prompted this case relates to computation of the number of days which have been allowed in the case of applicants for the purpose of considering their cases for regularisation. While the applicants have claimed that the benefit of Sundays and other paid holidays has also to be given to them while computing the number of working days for them, the respondents, while showing the number

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of working days in each case of the applicants, have maintained the benefit of Sundays and other paid holidays has already been included while computing the number of working days in respect of the applicants. This has led to difference of working days as computed by the two parties.

4. According to the Scheme followed by the DMS, all Badli workers apart from casual workers as well as apprentices, shall be transferred to regular establishment after they have worked for not less than 240 days in any period of 12 months. In this connection, reference has been made in Para 4.4. of the OA to the judgement/order dated 2.8.1991 as passed by this Tribunal in OA 948/1988 and also to the order as passed by the Tribunal in OA 37/1988 on 10.8.1999 and further confirmed vide the Hon'ble Supreme Court's order dated 2.5.1990 in SLP (Civil) 1085/1990. It has been contended that all daily rated/badli workers who had completed more than 240 days of service in DMS are deemed to have been transferred to regular establishments as per the decisions of the Tribunal given on 2.8.1991 and further decisions as referred to above.

5. The grievance of the applicants is that despite the orders of the Tribunal in the case referred to hereinabove, the respondents have gone ahead with employing juniors and freshers and discontinuing the services of the applicants. To buttress their point that they deserve to be appointed on regular basis, they have referred to the

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decision of the Tribunal in OA 37/1988 as mentioned above to drive the home point in compliance with the order of the Tribunal in the said O.A. The applicants in the said OA were appointed on supernumerary posts of mates in the establishment of DMS from the dates they have completed 240 days of service. Subsequently, they were transferred on regular basis as mates on 1.6.1996 (Annexure VII). Similarly, following the earlier judgements of the Tribunal the Tribunal had allowed OA 2958/1997 (Annexure X). It has been submitted that 3 more similar matters were allowed by the Tribunal and in one of such cases the CWP filed by the respondents against the order of the Tribunal was also dismissed by the Hon'ble High Court of Delhi (Annexure XI). In all these judgements a common point has been held that after the applicants have rendered 240 days of service they have deserved to be transferred on regular establishment of the respondents. In this connection, reference has also been made to the decisions of the Tribunal in CCP 359/2000 on 6.2.2002.

6. During the course of arguments, learned counsel for the applicants has submitted that while one extra day is allowed when Badli worker works for six days, normal analogy would be that one extra day would be allowed to a Badli worker if he has worked for 7 days in a week. This aspect of the matter was argued by the learned counsel for the applicants on a number of base. In this connection, first he has referred to the statement having been prepared in respect of each of the applicants and which have been placed on record. It is observed from the said

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statements that separate column (col.5) has been provided for counting the benefit of weekly off/public national holidays/gazetted holidays entitled during the month and which benefit seems to have been taken off by the respondents while computing the total number of days in Col.7 thereof. Specific reference has been made to the details of number of days claimed by the respondents as well as by the applicants towards sick leave and Sundays and day off/ night duty as given in Paragraph 14 of the order of this Tribunal in OA 37/1988 decided on 10.8.1989. To drive home the point that the benefit of Sundays and holidays has to be given additionally to them, but the same has not been included in the number of days which the applicants have claimed to have worked for. In Para 17 of the said decision of the Tribunal there is a reference that the respondents have not taken into account the Sundays and other holidays in computing the number of days.

7. The respondents in their reply have, however, asserted that they have gone strictly by the directions of the Tribunal whereby Sundays and holidays have been included while computing the number of working days. Referring to the judgement of the Tribunal in CP 399/2000 arising out of OA 147/2000 in which it had been claimed that the benefit of Sundays and holidays shall be given to the applicants while computing the total number of working days, the respondents have submitted that the order of the Tribunal has been complied with and the applicants who have worked for more than 240 days after including Sundays

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and holidays have been appointed on regular basis in DMS. Learned counsel for the respondents have submitted that after having carried out the exercise and having included Sundays and holidays, the respondents have found that none of the applicants has completed 240 days of service and, hence according to them, they are not entitled for regularisation in DMS in accordance with the certified Standing Order.

8. Referring to the provisions of the Industrial Disputes Act, 1947, the respondents have claimed that the same does not provide for weightage beyond total number of days in a month. In other words, learned counsel for the respondents says that in no case the applicant can claim to have worked for 30/31 days in a month. When reference was made to the provisions of Section 13(b)(c) in which there is provision for payment of double wages if a Badli worker/casual labourer is made to work on Sundays and ^{the} Holidays, learned counsel for the respondents had, however, no specific answer to the fact that payment of double wages for having worked on holidays would amount to payment for two days having been made to such workers, thereby allowing one extra day in 7 days of work.

9. I have gone through the repeated decision of the Hon'ble High Court of Delhi in CWP (C) 2156, 1323, 6102 and 6211/2002 decided on 30.9.2002 in which reference to the decision of the Hon'ble Apex Court in H.D.Singh Vs. Reserve Bank of India and Ors (1985(4) SCC 201) has been made more than once. In the said case a very clear view

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has been taken on adding Sundays/weekly offs and 17 holidays to the number of working days for the purpose of completing 240 days. Referring to para 8 of the said decision of the Hon'ble High Court it has been submitted that the Badli workers in Delhi Milk Scheme continue to work on all weekly off days and sundays. The weekly off days and holidays are required to be treated as working days in the establishment of the petitioners. The learned counsel for the applicants has categorically submitted that the benefits of Sundays and holidays has not been given in the case of the applicants, though they have worked on Sundays, by giving one day extra for the said days. Learned counsel for the respondents has, however, maintained that the benefit of Sundays and holidys has been given to the applicants if they have worked on Sundays and holidays. He was, however, not very clear that additional day had been given for having worked on Sundays and holidays. In H.D.Singh's case (supra) the number of working days as submitted by the respondents had not initially incorporated 52 Sundays and 17 holidays and hence the request that Sundays and holidays be included in the total number of working days for the purpose of completing of 240 days.

10. On careful and closer perusal of the case it is thus observed that while the applicants have made their submissions in different ways, the fact that they have not been given the benefit of Sundays and holidays on which they have worked as enclosed at Annexure 1 has been uniformly emphasized by them. The respondents have,

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however, not come out categorically whether one extra day has been given to the applicants whenever they have worked on Sundays and holidays. They have also not clarified as to how they have included Sundays and holidays while computing the number of working days. If there is a provision under the Minimum Wages Act as submitted by the learned counsel for the respondents for payment of double wages for work having been done on Sundays and holidays, natural conclusion would be that they are being allowed one extra day for having worked on holidays and Sundays. If one extra day is allowed to the casual workers/ Badli workers for 7 days working, it would amount to their having worked for more than 30/31 days. This argument of the respondents appears to have been haphazard as in the case of the applicant the number of working days has been shown as not more than 25 days. That being the case, even after allowing them the benefit of extra one day if they have worked for seven days will not exceed 30/31 days. In my opinion, even if holidays and Sundays were shown as working days and exceed 30/31 days, in such cases the number of working days would be restricted to 30/31 days while computing the working days of such workers.

11. In consideration of facts and circumstances of the case and also keeping in view the decisions of the Tribunal as also of the Hon'ble High Court as well as of the Apex Court, I am of the considered opinion that, though the respondents have appreciated the spirit as contained in various decisions of this Tribunal and the Hon'ble High Court and the Apex Court in similar cases,

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they have not granted the benefit of Sundays and holidays in computing the total number of working days and also as per the provisions of the Minimum Wages Act including the fact that casual labourers have to be paid double the amount of wage for having worked for holidays and Sundays, thereby leading to the interpretation that this would amount to allow any one day as extra day to such workers. I am also of the considered view that the matter needs to be reconsidered by the respondents in order to see that the benefit of Sundays and holidays is given to the applicants in the light of the decisions of the Tribunal as well as of the Hon'ble High Court and the Supreme Court as referred to hereinabove and consequential benefit including transfer of these applicants to a regular establishment of the respondents. This OA is accordingly disposed of with a direction to the respondents to compute the working days in respect of the applicants afresh keeping in view the above. Respondents are also directed to reengage the applicants if on verification it is found that freshers have been employed by them in preference to the applicants as alleged by them. The respondents shall ensure that the entire exercise, as directed above, is completed within three months from the date of receipt of a copy of this order.

12. With this, the OA stands disposed of.



(Sarweshwer Jha)
Member (A)