

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.656 OF 2002

New Delhi, this the 4th day of March, 2004

HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

1. Vijay Kumar aged about 31 years S/o Shri Kallu Ram working as casual labour on daily wages conferred with Temporary status in the office of C.D.A. (PD) Meerut R/o Kaseru Khera Gandhi Mohalla Meerut Cantt.
2. Jitendra Kumar aged about 31 years S/o Shri Mishri Lal working as Casual Labour on daily wages conferred with Temporary status in the office of C.D.A. (PD) Meerut R/o B-522, Sainik Vihar, Kanker Khera, Meerut Cantt.
3. Mohd. Yunus aged about 34 years S/o Shri Gafoor Khan working as casual labour on daily wages conferred with Temporary status in the office of C.D.A. (PD) Meerut R/o Shyam Nagar Pilokhri Road, Meerut.
4. Mukesh Kumar Sharma aged about 30 years S/o Shri Satya Prakash Sharma working as casual labour on daily wages conferred with Temporary status in the office of C.D.A. (PD) Meerut R/o 351, Subhash Puri Kanker Khera Meerut Cantt.

.....Applicants

(By Advocate : Shri V.P.S. Tyagi)

Versus

1. Union of India (Through Secretary)
Ministry of Defence, New Delhi.
2. The Financial Advisor,
Ministry of Defence (Finance Division)
New Delhi.
3. The Controller General of Defence Accounts,
West Block-V, R.K. Puram,
New Delhi.
4. The Controller of Defence Accounts (PD),
Meerut Cantt.

.....Respondents

(By Advocate : Shri Y.S. Chauhan for Shri M.M. Sudan)

O R D E R

Four applicants, who are working as casual labourers with temporary status in the office of respondent no.3, have filed this Original Application

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under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"(a) that this Hon'ble Tribunal may graciously be pleased to direct the Respondents to consider the case of the applicants for regularization of their services and permanent, absorption in Group 'D' post on the identical basis as those of the other similarly situated employees but are juniors to the applicants whose case have been allowed by order dated 11.10.2000 passed in O.A. No.2488/99 pursuant which it have been granted relief through impugned order dated 23.01.2002.

(b) that the applicants be also granted similar and consequential relief as per the impugned order by way of regularization of the services of those mentioned therein, some of them happen to be the Juniors to the applicants by granting seniority and pay fixation to the applicants accordingly.

(c) That any other relief deemed necessary in the facts and circumstances of the matter be awarded in favour of the applicants against the Respondents.

(d) Cost of the O.A. may be awarded in favour of the applicants against the Respondents."

2. The applicants state that they were appointed as casual labourers on daily wages on different dates in the year 1991 in the office of respondent NO.3 under the administrative control of Controller General of Defence Accounts (CGDA), New Delhi. The grievance of the applicants is that some employees similarly placed have been regularised in group 'D' posts, but the applicants have not been appointed in group 'D' posts in spite of having rendered more than 8 to 10 years of continuous service. It is further stated by the learned counsel that process of regularisation in respect of applicants was started on 31.5.2001, necessary performa were filled and got completed for police

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verification of antecedents and medical examination, but suddenly the process of permanent absorption to the posts was dropped. Learned counsel of the applicants has filed a Written Submission on 3.2.2004 wherein it has been stated that some of similarly placed casual labourers serving in the unit of CDA (Army)) have been regularised on the advise of CGDA. In the Written Submissions, it is further pointed out that the cadre controlling authority, which is CGDA, on the one hand released nine vacancies to be filled up vide approval dated 27.2.2001 on the basis of which DPC is said to have been held on 12.3.2001, but suddenly in the month of May, 2001 absorption of the applicants as group 'D' employees was stopped on the advice of the CGDA allegedly on the basis of letter dated 23.10.2000. Attention also has been drawn to the orders of this Tribunal dated 7.2.2003 in OA 1272/2002 in the case of Om Prakash Maurya Vs. Union of India and Others wherein this Tribunal has observed as follows:-

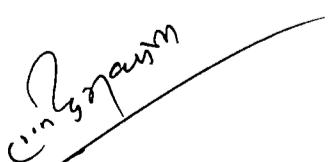
"6.... I may further mention that the so called ban will not come in the way of the applicant and in case vacancies are available, the applicant should be regularised as per rules."

3. It is in this context, the learned counsel stated that the reliefs claimed by the applicants should be allowed.

4. The respondents have opposed the prayer of the applicants and filed the reply. They have also submitted Written Submission on behalf of the respondents countering the claims made by the

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applicants. In the Written Submission, it has been stated on behalf of the respondents that CGDA, New Delhi is the head of the Defence Account Department. Different organisation like CDA (Army), CDA (PD) and CDA (Training), which are located in the same station at Meerut are functional and administratively independent of each other. The orders of regularisation/absorption in group 'D' category of temporary status, casual labourers referred to and relied upon by the applicants relate to other organisation and, therefore, has no relevance so far as respondent no.4 is concerned. It has been pointed out by the respondents that DPC proceedings of the nine casual labourers including the applicants in this OA were conducted by respondent no.4 for regularisation in group 'D' posts. The recommendations of the DPC were considered by the competent authority on 2.3.2001 and the applicants were recommended for regularisation in group 'D' posts. Accordingly, the regularisation was confined to the applicants and complete attestation forms were submitted by the applicants but in the meanwhile Govt. of India, Ministry of Finance, Department of Expenditure under their OM dated 23.10.2000 issued the orders not to fill up the vacant posts. In view of the ban orders, the matter was referred to CGDA who vide his order dated 14.2.2002 had directed not to take any action for regularisation of the service of the casual labourers. The respondents further state that any action in other organisation cannot be cited as basis for respondent no.4. According to the

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respondents, the case for regularisation of the applicants is simply being kept pending on account of ban and on its being lifted and release of vacancies, they will be regularised. The respondents have reiterated in their Written Submissions that "they are willing to regularise the services of the applicant."

5. Arguments of the learned counsel of the parties have been heard and the material available on record has been examined carefully.

6. On facts of this case, it is admitted position that nobody junior to the applicants has been regularised on group 'D' posts. In case any other organisation under the CGDA regularised similarly situated persons that will not be a sound basis for giving any directions to fill the same so far as respondent no.4 is concerned. In view of the fact that the CGDA has directed the respondent no.4 not to fill up the vacancies, the reliance by learned counsel of the applicants on several decisions of this Tribunal is of no help, as those employees were not in the employment of respondent no.4. Learned counsel stated that the ban orders does not apply in the case of the applicants as has been observed in the case of Om Prakash Maurya (supra) by this Tribunal in order dated 7.2.2003 in OA OA No.1272/2002 where this Tribunal has observed as follows:-

"6. So far as the ban is concerned, since the juniors to the applicant had been regularised after the ban, I think that the applicant has also a right to be considered in accordance with the rules. I may further

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mention that the so called ban will not come in the way of the applicant and in case vacancies are available, the applicant should be regularised as per rules."

As can be seen from the order of the Tribunal extracted above, the main argument regarding junior having been regularised before the senior was considered and decided. In the present case, it is an admitted position that no employee junior to the applicants in the employment of respondent no.4 has been regularised. In any case, the respondents have categorically stated that they will regularise the applicants as soon as the ban is lifted. The applicants have been cleared by the DPC. Therefore, there is hardly any scope of doubt so far regularisation of the applicants is concerned. It may not be out of place to mention that Hon'ble Supreme Court in the case of State of Orissa and Ors. Vs. B.K. Khutia and others etc. (22.9.2003) JT 2003 Supplementary I SC 596 have held that even after a candidate's name is empanelled, no right is conferred on him the claim of right of appointment. In view of this proposition of law settled by the Apex Court, the present Original Application is dismissed without any order as to costs.


(R.K. UPADHYAYA)

ADMINISTRATIVE MEMBER

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