

Central Administrative Tribunal, Principal Bench

C.P. No. 408/2004 In
O.A. No. 2118 of 2002

New Delhi this the 27th day of August, 2006

(19)

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. V.K. Agnihotri, Member(A)

1. Smt. Santra W/o Shri Suraj Bhan
2. Smt. Shilpa Devi W/o Shri Asid Ram

working as Temporary Status Casual Labourers
in Delhi Sorting Division Delhi-110 006.

Address for service of notices C/o Shri Sant Lal
Advocate,
CAT Bar Room,
New Delhi-110 001.

....Applicants

By Advocate: Shri Sant Lal.

Versus

1. Shri Vijay Bhushan,
Secretary,
Ministry of Communications and I.T.,
Department of Posts,
Dak Bhawan,
New Delhi-110 0001.
2. Ms. Jyotsana Diesh,
Principal Chief Postmaster General,
Delhi Circle,
Meghdoot Bhawan,
New Delhi-110 001.

....Respondents

By Advocate: Shri R.P. Aggarwal and Shri H.K. Gangwani, Counsel.

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

1. The applicants have filed this application for initiating proceedings under Contempt of Courts Act against the respondents.
2. The facts leading to the present application, briefly stated, are as follows. The petitioners, who are casual workers and were conferred temporary status, filed an OA 2118/2002 challenging the proposal of the respondents to withdraw their temporary status and sought a direction that they would be treated at par with other Group 'D' employees on completion of 2 years continuous service besides regularization of their service on Group 'D' posts. The Tribunal on 11.2.2003, disposed of this OA with the following direction:-

“16. Having regard to the reasons recorded above, as the show cause notices issued to the applicants per se are illegal, void ab initio the same are not legally sustainable and are accordingly quashed and set aside. The respondents are directed to treat applicants having conferred temporary status as per the Scheme and to further grant them other benefits at par with Group ‘D’ employees on completion of three years continuous service on temporary status and also to consider their cases for regular appointments in Group ‘D’ posts on availability of vacancies and as per the provisions of the Scheme of 1991. Applicants shall be entitled to all consequential benefits. Respondents are further directed to carry out these directions within a period of three months from the date of receipt of a copy of this order”.

3. This order was in two parts. The first part required the respondent to treat the applicants, casual workers with temporary status and they were to be given benefit at par with other Group ‘D’ employees of the respondents on completion of three years continuous service with temporary status. The second part required the respondent to consider the applicant for regularization of their appointment in Group ‘D’ post “on availability of vacancies and as per the provisions of the Scheme of 1991”.

4. So far as the first part of the relief is concerned, the same has been implemented and no quarrel has been raised by the applicants. However, the grievance of the petitioners is inspite of availability of the vacancies in Group ‘D’ post of Non-Test category, against which the applicants were to be regularized, the second part of the order of the Tribunal about regularization on those posts has not been implemented deliberately and willfully so the respondents are in contempt.

5. Contesting the OA, the respondents, in reply to the show cause notice have stated that the first part of the order has been complied with and the applicants have been conferred temporary status with all the benefits as admissible to the temporary regular Group ‘D’ employees of the respondents and order in this regard has already been issued on 24.12.2003. So far as the second part is concerned it is submitted that there were 53 temporary status causal labourers who were senior to these applicants and who have still not been regularized and the case of the applicants will be considered as per rules on its own merit in accordance with the directions of the Tribunal and the order of the Hon’ble Supreme Court. It was further stated that conferment of temporary status does not imply that the causal labourers would automatically be appointed as regular Group ‘D’ employee in the time frame as per the instructions of the DG, Posts. It was stated that the appointment to Group ‘D’ vacancies would be as per the extant Recruitment Rules which stipulated preference to be given eligible ED employees. It is also submitted that 24

Group 'D' employees in Test Category (Mailman) were surplus in the Division. As regards appointment of the applicants in Non-Test category of Group 'D' employees, it is alleged that they have been informed that the case would be considered on merit as per the Recruitment Rules as there were 53 temporary status casual labourers and out of them 32 have been conferred with temporary status with effect from 29.11.1989 and they were senior to the applicants and remaining persons are still waiting for regularization of their service. The applicants were conferred temporary status with effect from 1.6.1998 and their seniors are yet to be regularised.

6. At the time of hearing on 11.11.2005, the Tribunal noticed that in earlier Contempt Petition No.408/2004 in OA 2118/2002 the Tribunal on 13.1.2004 had passed the following order:-

"6. As per the statement of the respondents' counsel, we direct that the department should pass necessary clarification/orders bringing applicants in Grade 'D' (non-test category) and copies be issued to the applicants. With these directions, the CP stands disposed off".

7. It was complained by the applicants that the order has not been complied with.

The Tribunal, therefore, passed the following order:-

"However, learned counsel for applicant has submitted that the respondents have still not considered the case of the applicant for regularization, although the vacancies are available in Group 'D' (non-test category). Learned counsel for respondents has submitted that this part of the order has been complied with and has drawn our attention to the order dated 6.2.2004, which is Annexure A-4 to the CP. However, we notice that in the said letter, it has not been stated that no vacancies are available for regularization of the non-test category on which the applicant was to be considered. Learned counsel for respondents wants time to file a specific affidavit to the said fact".

8. Thereafter the respondents have filed an additional affidavit on 4.2.2005 in which it was stated that the Tribunal by the order, non compliance of which is complained against, had directed regularization of the applicants in Group 'D' post, Non-Test category post, on availability of vacancies and as per the provision of the Scheme of 1991. It was submitted that there were 53 temporary status causal labourers including the applicants, the list of which was submitted at Annexure A-2, and they were eligible for appointment on regular basis on fulfilment of the conditions of seniority and the Department of Posts (Group 'D' Posts) Recruitment Rules, 2002 etc. They were to be considered against direct recruitment vacancies as per clarifications received through letter dated 21.7.2003. The applicant No.1 Smt. Santra is at Sl. No.44 and the applicant

No.2 Smt. Shilpa Devi is at Sl. No.52 of the seniority list. The department had in the year 2003 and 2004 had 2 and 4 vacancies, respectively. The vacancies in Group 'D' posts are to be filled up in accordance with the OM dated 16.5.2001 and the instructions issued by the Department dated 4.7.2001 regarding optimization of the direct recruitment to the civilian posts, no vacancy in Group 'D' posts shall be filled up unless approval is accorded by the Screening Committee constituted by the Department for the purpose and that the remaining vacancies which were not cleared by the Screening Committee will not be filled up by promotion or otherwise and these posts would stand abolished. The vacancies, which occurred in 2003 and 2004, were furnished to the competent authority for taking up the matter with the Screening Committee and the decision of the Screening Committee is awaited. The applicants can be considered only after considering all the casual labourers senior to the applicants.

9. List of the casual labourers, who are waiting regularisation, was furnished along with the said affidavit.

10. We have heard the learned counsel for the parties and have perused the record.

11. The learned counsel for the applicant does not dispute that the applicants were to be regularized in Group 'D' posts (in Non-Test category) in accordance with the order of the Tribunal dated 11.2.2003 which directed the respondents to consider the case of the applicants for regular appointment in Group 'D' posts on availability of the vacancies and as per the provision of the Scheme of 1991. The learned counsel has himself referred to the Recruitment Rules that the applicants were to be considered against Non-Test category. He also does not dispute that there are other casual labourers with temporary status, i.e., persons similarly situated, who are senior to the applicants and are waiting for their regularization in service. Though it has been contended with vehemence that there are vacancies available in Non-Test category but it is not submitted that after the exhausting of all the persons, who are senior to the applicants, the turn of the applicants would also come for consideration. The direction to the Tribunal was only to consider the applicants for regularization. Accordingly, there are 52 casual labourers with temporary status, who are in the waiting list and they are to be regularised in Group 'D' posts as per the Scheme of 1991 and the Recruitment Rules. It is not the case of the applicants that any person, who is junior to them and who was also eligible for

consideration for regularisation against Non-Test Group 'D' category post has been considered and regularized ignoring the claim of the applicants. An affidavit has been filed on behalf of the respondents that vacancies are not available in Non-Test category for regularization of the applicants and even the turn of some of the seniors to the applicants has not come for this regularization. The learned counsel for the applicants during the course of the argument has tried to raise contentious issues about the availability of the vacancies, which to our view, has been made clear by the clarificatory affidavit of the respondents. In the contempt proceedings we cannot sift the evidence and give fresh directions to the respondent. We have only to examine whether the respondent are in contempt, i.e., they have willfully and deliberately disobeyed the orders of the court. We should reach the clear cut finding that the order of the Tribunal has been disobeyed intentionally.

12. In the present proceedings what transpired is that there are some seniors who are eligible for being regularized in Group 'D' posts in Non-Test category and who are also waiting for their turn. The applicants cannot be given preference over and above the claim of those persons by virtue of the order of this Tribunal dated 11.2.2003 or any of the orders passed in the subsequent contempt proceedings. The Tribunal's order has only directed the respondents to consider the case of the applicants. That has to be considered keeping in view the Recruitment Rules and other instructions, the seniority of the employees and the Scheme of 1991, which was considered in the judgment.

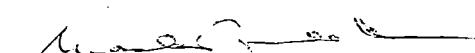
13. In the facts and circumstances we do not find that the applicants have been able to make out a case that the respondents are in contempt and they have intentionally or willfully disobeyed the order of the court so as to invoke the power of this court under Contempt of Court to proceed against them and punish them.

14. The contempt petition is accordingly dismissed. Notices are discharged.



(V.K. Agnihotri)
Member (A)

Rakesh



(M.A. Khan)
Vice Chairman (J)