

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. No. 210/2001

New Delhi this the 9<sup>th</sup> day of August, 2001.

Hon'ble Shri Shanker Raju, Member (J)

1. Iqbal Singh  
S/o Shri Malkhan Singh  
C/o Departmental Canteen  
Ministry of Consumer Affairs & Public Distribution  
Krishi Bhavan, New Delhi.
2. Narender Kumar  
S/o Jeevan Singh  
C/o Departmental Canteen  
Ministry of Consumer Affairs & Public Distribution  
Krishi Bhavan, New Delhi

....Applicants

( By Advocate Shri S.L. Hans )

Versus

1. Union of India through Secretary,  
Ministry of Consumer Affairs & Public Distribution  
Krishi Bhavan, New Delhi
2. Director (Canteens)  
Department of Personnel & Training  
Ministry of Personnel, Public Grievance & Pension  
Lok Nayak Bhavan, Khan Market, New Delhi.

....Respondents

( By Advocate Smt. P.K. Gupta )

MA for joining together in a single application is allowed. The applicants in this case have sought regularisation of their services as per the scheme of Govt. of India, DOP&T dated 10.09.1993.

2. Applicants No.1 and 2 have been registered their names in the Employment Exchange and were recruited as Casual Bearers w.e.f. 28.05.1990 and 05.09.1989 respectively. The applicants have been accorded temporary status by the respondents on 22.06.1994 and have been accorded all the benefits as provided in the Scheme. As per Scheme two out of every three vacancies in Group 'D' is to be filled

among the casual workers with temporary status. As there have been a general ban on creation of the regular Group "D" posts which was lifted on 22.06.1998, the applicants accepted their regularisation as Group "D" employees but were shocked to know that they have been shown as Daily Paid Labour on their pay-slip issued in the month of December, 2000. The applicants further stated that they have been subjected to medical examination for being considered for appointment of Group "D" post. It is stated that by letter dated 30.07.2001, the applicants have been offered the appointment to the post of Wash Boy which is a lower rung and carries a lesser pay which had been enjoyed by the applicants on revision of their pay scales by the respondents. By order dated 09.10.1997, they have been treated as Bearer. In this conspectus, the learned counsel for the applicants have also brought to my notice the Office Memo dated 01.01.2001 where there have been 5 vacant posts of Group "D" Bearers. The learned counsel for the applicants stated that consequent upon the decision of Apex Court in C.K. Jha and Others and P.N. Sharma & Others Vs. Union of India and Others and O.M. dated 29.01.1992, the Casual Workers employed in the Departmental Canteens located in Central Govt. Offices have been declared Govt. employees as such any sub-classification would be violation of article 14 of the Constitution of India. It is also contended that the juniors to the applicants have already been regularised and the applicants have been discriminated in the matter of their regularisation in violation of Articles 14 and 16 of the Constitution of India.

3. Strongly rebutting the contentions of the applicants, the learned counsel for respondents stated that applicants have been inadvertently conferred the temporary status. They also state that the Scheme of DOP&T dated 10.09.1993 is not applicable to Canteens run by various Departments because the Casual Workers engaged in the Departmental Canteens were being paid from Canteen Funds and not from Govt. of India's funds. As the Scheme of DOPT applies only on casual workers engaged by Ministries/Departments and their attached and Subordinate Offices in areas other than canteens, they were accorded wrongly the temporary status. It is stated that the respondents have advertised two vacancies of Group 'D' posts in 1999 but for want of selection due to Administrative reasons, the same could not be filled up. The applicants also applied in response to the advertisement and they have also considered as labourers in the canteen. They have been offered appointment as Wash Boy by letter dated 03.07.2001 and in case they did not respond within a stipulated period of 15 days, the same would be treated as cancelled. Drawing my attention to OM dated 21.09.1998, it is stated that as per the provisions of DOP&T Scheme of conferment of temporary status to casual workers, they are entitled for fixation of pay at the minimum of the pay scale of relevant Group 'D' post as such the grievance of the applicants that they have been offered a job of lower pay scale on which they had been working is absolutely unjustified and illogical. It is stated that the Department has decided to abolish four posts which are pointed out by the applicants. It is stated that scale of the

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✓ applicants was similar in the year 1990 as a Group 'D' post but by virtue of provision, the same has been revised as the Recruitment Rules have been notified. There is only one vacancy in the grade of Safaiwala and three vacancies of Wash Boy and as such the same have been advertised, the applicants after having applied for the same have been offered appointment but till now they are yet to accept the same. (11)

4. The applicants have also filed a rejoinder reiterating their pleas in the OA.

5. I have carefully, considered the rival contentions of the parties and perused the documents brought on record. As regards the applicability of the Scheme of DOP&T dated 10.09.1993 is concerned, I find that consequent upon the decision of Apex Court in C.K. Jha's case supra the casual workers of Departmental Canteens located in Central Govt. offices have been declared Govt. employees vide order dated 29.01.1992 as such the contention of the respondents that they are not entitled for temporary status and the same has been wrongly conferred upon them in 1994 is not legal and sustainable as the applicants are Govt. employees. The Scheme of DOP&T of 1993 is very much applicable to them and they have been rightly conferred the temporary status by the respondents. This view of mine is fortified by the ratio of decision dated 06.08.1998 in OA No. 2818/1997 pertaining to canteen employees.

6. I also find from the record that before being deprived of the benefits of temporary status, the respondents have neither issued any showcause notice to the applicants nor passed any order of cancellation of their temporary status. It also violates the principles of natural justice. As an aftermath the applicants have faced civil consequences for which a reasonable opportunity to showcause was necessary. The aforesaid view, is fortified by the decision of Apex Court in D.K. Yadav Vs. J.M.A. Industries AIR 1993 SC 2444. Admittedly neither any cancellation order was passed nor showcause notice was issued to the applicants.

7. I also find that there had been ban for filling up of Group "D" posts which had been lifted on 22.06.1998 and as such after being accorded temporary status in the year 1994, it was incumbent upon the respondents who have considered the applicants for regularisation against Group "D" posts in accordance with the scheme as per availability of the vacancies. I am also conscious of my jurisdiction as the Court can not interfere in the matter of creation of posts as I find from the additional documents that there are five vacant posts of Bearer as per O.M. dated 01.01.2001, the respondents have contended that there have been a move to identify additional posts which are to be abolished. Whatsoever may be the fact remains that the applicants are entitled for consideration for regularising their services as Group "D" under the DOP&T scheme.

8. Having regard to the discussion made above, I dispose of the present OA with the directions to the respondents to restore to the applicants the temporary status accorded to them by an order dated 26.06.1994. The respondents are further directed to consider the applicants for regularisation against Group "D" posts from the date the ban was lifted subject to the conditions laid-down under the DOP&T scheme and as well as on availability of the vacancies. In case the applicants are accorded and regularised they would be entitled to all the consequential benefits admissible to them under the rules. The above stated directions should be complied with by the respondents within a period of three months from the date of receipt of the copy of this order. No costs.

S. Raju

( SHANKER RAJU )  
MEMBER (J)

"rachna"