

(16)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2684/2001

New Delhi this the 10th day of October, 2002.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Ajay Pathak & Others
(As per memo of parties)

-Applicants

(By Advocate Shri D.N. Sharma)

-Versus-

Union of India & Others

-Respondents

(By Advocate Shri P.P. Relan, proxy for Sh. J.B. Mudgil)

ORDER (ORAL)

Mr. Shanker Raju, Member (J):

Applicants, 60 in number, working as temporary status Civilian Mazdoors have assailed the advertisement issued by the respondents for the posts of Civilian Mazdoors in Central Ordnance Depot and have sought their regularisation against available permanent posts of Mazdoor.

2. Applicants who were engaged as casual workers on daily wages were conferred temporary status under the DOPT Scheme of 1993 on different dates, i.e., 1.9.93, 21.11.93, 28.12.93 and 3.1.94.

3. The grievance of the applicants is that in the office of respondent No.5, where the applicants are employed as temporary status casual labours, has a permanent sanctioned strength of 95 posts. Out of these only 24 regular incumbents are presently in position, whereas the remaining 71 permanent sanctioned posts are vacant, whereas applicants being temporary status mazdoors are working for long period, but have not yet been regularised.

4. Learned counsel Sh. D.N. Sharma stated that few juniors of the applicants have been picked up in an arbitrary manner, viz., Harminder Pal, Lakan Majumdar and Mehrban Singh and were absorbed as regular Mazdoors. Though, several posts are lying vacant but the cases of the applicants have not been considered for regularisation in derogation of the Scheme of 1993 which smacks of arbitrariness and hostile discrimination in violation of Articles 14 and 16 of the Constitution of India.

5. Respondents, on the other hand, controverted the contentions and stated that under the Scheme of DOP&T, 1993, out of every three vacancies two have to go to casual workers for regularisation against Group "D" posts. In so far as juniors are concerned, they have not been regularised under the Scheme and they being appointed on compassionate basis have been transferred and the third person Mehrban Singh has qualified through a direct recruitment for the post of LDC.

6. It is further stated that five vacancies were allotted to the unit out of which four casual labours with temporary status were absorbed and no junior to the applicant has been regularised. As soon as the requisite vacancies meant for casual labours are available with the respondents they shall consider the case in accordance with the rules and seniority for regularisation against Group "D" posts.

7. I have carefully considered the rival contentions of the parties and perused the material on record. Regularisation of casual labour is not automatic under the DOPT Scheme of 1993. As per the Scheme out of

every three vacancies two are to be utilised for regularising casual labours having temporary status subject to fulfilment of the eligibility criteria, as laid down under the Scheme and the recruitment rules. Applicants have no indefeasible right to be regularised de hors the Scheme or the rules.

8. The contention of the applicants that their juniors have been regularised, cannot be countenanced in view of the fact that three instances quoted do not show any regularisation out of the way of juniors of the applicants. They were transferred in the exigencies on compassionate grounds and the third candidate has qualified for the post of LDC through departmental competitive examination. As the applicants and the persons alleged to have been regularised are not identically situated and are unequal, Articles 14 and 16 of the Constitution would have no application in the present case. I do not find any hostile discrimination meted out to the applicants.

9. Moreover, in view of the stand of the respondents that no junior of the applicant has been regularised and the fact that on availability of vacancies in the quota meant for casual labours with temporary status the cases of the applicants would be considered as per the rules. However, it is noted that if any of the junior of the applicants has been regularised from the seniority list maintained the case of the applicants shall also have to be considered accordingly.

10. Moreover, the grievance of the applicants regarding advertisement issued by the respondents for direct recruitment of civil Mazdoors cannot be

(a)

countenanced, as the applicants are to be regularised in their own quota meant for them under the DOPT Scheme of 1993 and the direct recruitment has not encroached upon their rights and they are not at all affected.

11. For the foregoing observations I do not find any merit in the present OA, which is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member (J)

"San."