

14

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

OA 770/2001

New Delhi, this the 12th day of March, 2002

Shri Govindan S. Tampli, Member(A)

1. Smt. Daya w/o Sh. Inder Singh,
r/o E-II, 242, Madan Giri,
New Delhi.
2. Smt. Daya Devi w/o Sh. Ram Prasad,
r/o 226, J block, Sangam Vihar, New Delhi.
3. Smt. Sarita w/o Sh. Subhash Chand,
r/o A-301, J.J. Colony, Khanpur, New Delhi.
4. Smt. Dropadi wd/o Late Sh. Bhopal,
w/o SSC, Lajpat Nagar, New Delhi.Applicants.
(By Advocate: Shri Yogesh Sharma)

Versus

1. Govt. of NCT through The Chief Secretary,
Old Sectt., Delhi.
2. The Director, Directorate of Social Welfare,
I, Canning Lane, K.G.Marg,
New Delhi-1.
3. Deputy Director(Admn),
Directorate of Social Welfare,
G.L.N.S. Building, Delhi Gate,
New Delhi.Respondents.
(By Advocate: Ms. Sumedha Sharma)

o R D E R (ORAL)

By Hon'ble Govindan S. Tampli, Member(A)

Applicants are challenging the inaction of the respondents in not granting them temporary status and regularisation, inspite of their having been qualified and eligible.

2. MA 646/2001 for joining allowed.
3. During the oral submissions, Shri Yogesh Sharma appeared for the applicants and Smt. Sumedha Sharma for the respondents.
4. All the four applicants are working as Safai Karamcharis in Women's work Centres in the Social Welfare Department of NCT since 1984-90 without any break. Though these persons have been working for more than eight hours a

day, they are being treated as part-time workers with wages @ Rs.788/- p.m. In terms of retirement, Rules revised on 9.8.85, 50% of the Group 'D' vacancies are to be filled by selection for part-time employees still the applicants have not been so considered. They are in fact entitled to be treated as full-time workers and granted temporary status in terms of DoPT's Scheme dated 10.9.93. Though the work was available with the respondents, they have not ~~concerned~~ ^{consider} the applicants for regularisation and were planning to disengage their services, after 89 days w.e.f. 1.12.2000, forcing them to file this OA.

5. The grounds raised by the applicants are that

- 1) the applicants being appointed ^{regular} posts and continuing since then are entitled for benefit of regularisation, vide Tribunal's order dated 30.6.2000 in OA 2722/99.
- 2) in a similar case (OA No.1673/96 filed by Versa Rani, decided on 1.7.97 benefit of regularisation was granted to the applicants.
- 3) respondents have not prepared the seniority list of part-time workers, for their regularisation,
- 4) the applicants were working ^{full time} treated as part-time workers,
- 5) engaging the applicants as contract basis by the order dated 8.12.2000 was irregular in terms of Government of India Notification dated 8.12.76 which was reiterated on 8.12.76.

6. Reliefs sought therefore are as follows:-

- a) that the OA of the applicant may be allowed with the costs of litigation.
- b) that the Hon'ble Tribunal may graciously be pleased to pass an order quashing the order dated 8.12.2000 and pass an order directing the respondent to consider the case of the applicants for their regularization on the basis of amending recruitment's rules for Group D employees after preparing the seniority list of daily wagers like applicants.

c) that the Hon'ble Tribunal may further graciously be pleased to pass an order directing the respondents to consider the case of the applicant for grant of temporary status as per C/L Scheme after treating the applicants as full time workers. d) That the Hon'ble further may graciously be pleased directing the respondents considering the case of the applicant for his regularization and temporary status as per the casual labour scheme after treating applicant as a full time workers and after granting the age relaxation as per Government of India instruction with all consequential benefits.

e) Any other relief which the Hon'ble Tribunal deem fit and proper made also granted to the applicant.

7. In the reply filed on behalf of the respondents, it is alleged that the OA is not maintainable in terms of Sections 19, 20, 21 of the Administrative Tribunals Act, 1985. Following the assignment of sanitation work to private agencies, Safai Karamcharis like the applicants became surplus and it was decided to employ persons purely on contract basis on 8.12.2000. The same was correct and proper. They were only working for four to five hours a day and their claim for being treated as full-time daily wages was without any merit. As the High Powered Committee, recommended for adopting contractual ~~contract~~ services for sanitation work, applicants could not be considered for regularisation as per the Recruitment Rules. Nothing further remained to be done by the respondents. There was no ground at all for considering the regularisation of the applicants as they are not entitled for it. OA therefore has to be dismissed, according to the respondents.

8. During the oral submissions, Shri Yogesh Sharma, appearing for the applicants' relief upon the

17

(4)

decision of the Tribunal dated 6.3.2002 in OA No.1064/2001 while Smt. Sumedha Sharma for the respondents, placed reliance on another decision of the Tribunal pronounced on 1.2.2002 in OA 1556/2001 filed by Smt.Chandrawati. Both the counsel reiterated their pleas ^{and} _l have prayed for decision in favour of their respective clients.

9. I have carefully considered the matter. The applicants in this case have been working with the respondents since 16 years, working for our eight to nine hours a day though on terms described as part-time and are seeking ^{grant} _{in} of temporary status and regularisation in turn. On the other hand, the respondents argue that as the applicants were only working on part time basis their plea for grant of temporary status and regularisation in turn in terms of DoPT's Scheme dated 10.9.93 cannot be permitted. I recall in this context that an identical matter had come before me, in OA No.1064/2001 filed by Shanti Devi & Others which I decided on 6.3.2002. I had while deciding the said OA, examined the previous decisions on the point. On account of the identical situation, I am adopting the said decision, after citing the relevant portion in that order :

"In this context I note that the Principal Bench of the Tribunal had in Vidya's case (OA No.2722/99 decided on 30.6.2000) held that a Laboratory Attendant who was working in a School and drawing salary from the Pta and not even from the School was also entitled for regularisation as the individual has been working for long. The case of these applicants is much higher than the applicant in the said case. I also note that the Principal Bench had in Shakuntala's case (538/2001 decided on 12.9.2001) in a similar matter declined to intervene , relying upon the Apex Court decision in Delhi development Horticulture Employees Association [1992 (1) SLR 689].

However, the said decision of the Apex Court can be distinguished as the same related to the case of individuals employed under a time bound scheme or project while in the present case applicants have been working continuously for other 17 years and performed duties and were not on any time bound project. I also recall that a similar issue had come up for decision before me in OA No. 1587/2000 filed by Tulsi Ram and Others and disposed of on 8.1.2002 wherein persons who had been working for a very long time on duties described as part time were given the benefit. The relevant portion of said judgement is reproduced below:..

"I have carefully considered the matter and find that the applicants had been working from 1997(1) and 1998 (2&3) almost continuously though with few days break which can be termed only as technical/artificial breaks. It is also seen that though they have been termed as part time workers, work was extracted from them for full time and therefore they should be considered as full time casual employees. That being the case they were correctly be entitled for grant of temporary status once they complete 240 days and for regularisation thereafter in terms of the rules in turn. The decision of the Tribunal in the case of Vidya (OA No.2722/99) would also come to their help. However, their request that they should be given full salary for the period from 1997 onwards cannot be accepted as they had acquiesced in the payment of part time salary and it cannot be re-opened at this stage."

7. In the above view of the matter, application succeeds to a substantial extent and is accordingly disposed of. The respondents are directed to consider the case of the applicant for grant of temporary status once from the date they have completed 240 days in a year for continuous 12 months and payment at the minimum of the scale of that particular post within 3 months from date of receipt of this order. They shall however, not be entitled for any back wages. No costs."

10. In the above view of the matter, the applicants succeed to a substantial extent and is accordingly allowed. The respondents are directed to consider the case of the applicants for grant of temporary status, from the date on which they have completed 240 days(or 206 days as the case may be) in a year (continuous period of 12 months) in terms of DoPT's Scheme for grant of temporary status and regularisation of 10.9.93. After the grant of temporary status, the applicants would be entitled for payment of pay

(6)

at the daily rates, worked out at the basis pay minimum of the pay scale for the appropriate Group 'D' from the date of filing this OA, i.e. 22.3.2001 within a period of three months from the date of receipt of a communication of this order. They are not, however, entitled for any backwages or arrears. No costs.

(Govindan S. Tampi)
Member (A)

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