

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 953/2001
MA 825/2001

New Delhi, this the 11th day of January, 2002

Hon'ble Shri Govindan S.Tampi, Member (A)

1. S/Shri Arun Kumar Mishra
S/o Shri Jagat Narayan Mishra
R/o 60/B/Nagali Rajapur Nizamuddin East.
2. Krishan Shah
S/o Shri Subelal Shah
Post Gole Post Office (GPO)
New Delhi.
3. Rakesh Kumar
S/o Shri Ram Bhai
R/o 17/131, Near Khureji Bus Stand
New Delhi.

... Applicants

(By Advocate Shri M.K. Bhardwaj)

versus

Union of India, through

1. Secretary
Ministry of Home Affairs (OL)
Lok Nayak Bhawan, New Delhi
2. Deputy Secretary (OL)
Ministry of Home Affairs
Lok Nayak Bhawan, New Delhi
3. Director
Central Hindi Training Institute, MHA
7th Floor, Paryavaran Bhawan
CGO Complex, Lodhi road
New Delhi
4. Deputy Director (Exam)
Ministry of Home Affairs
Dept of O/L, Hindi Teaching Scheme
Janpath A-Barraks, Janpath
New Delhi - 1.

.... Respondents

(By Advocate Shri B.S. Jain)

ORDER (ORAL)

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

Reliefs sought for in this OA are as below:

To direct the respondents to:

(i) continue the applicants in preference to juniors and outsiders;

- (ii) Pay the wages to the applicants equal to the regular Group D employees;
- (iii) grant temporary status to the applicants;
- (iv) regularise the services of the applicants; and
- (v) give benefit of the DoP&T scheme dated 26.10.84 and 10.9.93 to the applicants.

2. MA 825/2001 for joining allowed.

3. Heard S/Shri M.K. Bhardwaj and B.S. Jain, counsel for the applicants and the respondents respectively.

4. The three applicants i.e. A.K. Mishra, Krishan Shah and Rakesh Kumar have been working with the respondents since 13.10.95, 1.5.97 and 18.1.2000, respectively, attending to perennial type of work against regular posts. They have still not been regularised in terms of the Scheme dated 10.9.93. Applicant No.1 had filed OA 700/2001, which he had withdrawn with the permission of the Tribunal with liberty which he was doing presently with the other two applicants. According to the applicants, as they have completed the requisite period of service for being awarded temporary status and regularisation, in terms of the DoPT's Scheme, the respondents' not regularising them was improper. The applicants have produced copies of documents, showing their engagement with the respondents for quite some time.

5. Rebutting the above, respondents point out that their organisation on account of its extensive work, engage some daily wagers for types of work on casual and seasonal basis. The individuals are not engaged

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on full time basis. While applicant No.1 (Mishra) had worked for 72 days (1995), 53 days (1996), 150 days (1997), 204 days (1998), 251 days (1999) and 255 days (2000), applicant No.2 (Krishan Shah) worked for 159 days (1997), 225 days (1998), 224 days (1999), 197 days (2000) and 48 days (2001) and applicant No.3 (Rakesh Kumar) had worked for 109 days (2000) and 76 days (2001). The applicants did not work continuously for 240 days (206 days) in a year and as they were not engaged in the respondent-organisation as on 10.9.93, they were not entitled for the benefit of DoPT's Scheme under OM No.51016/2/90-Estt(C) of 10.9.93. Further, the applicants came to be selected against requisition for casual workers and not for Group D posts. As these persons had been engaged for only casual or intermittent work they had no right to claim temporary status or regularisation, more so as they had not been working continuously.

6. Pleas on behalf of the applicants and the respondents were fiercely reiterated by the learned counsel S/Shri Bhardwaj and B.S.Jain. While according to the applicants, they had completed the requisite period for grant of temporary status and regularisation, the respondents hold on to the plea that the applicants did not have continuous service of 240 days (206 days) in a year and that they were daily wagers, making an attempt at back door entry into service dehors the rules. Shri Jain has also sought to rely upon the decision of the Hon'ble Supreme Court in the case of State of Himachal Pradesh Vs. Suresh Kr. Verma & Anr. (1996(33) AIC 336) which held that

those who are engaged for a particular project cannot claim regularisation or continuation after the project is over.

7. During the course of the hearing on 14.12.2001 it appeared, from the perusal of the documents that a few documents produced by the applicant issued by the Dy. Director of the respondents ran counter to what has been indicated by the respondents in their counter. Therefore Shri B.S. Jain was directed to file an additional affidavit reconciling the discrepancy. He filed the same on 10.1.2002 and explained them during the next hearing.

8. As per the revised version A.K. Mishra had worked for 72 days in 1995, 90 days in 1996, 150 days in 1997, 204 days in 1998, 251 days in 1999 and 265 days in 2000. Krishan Shah had worked for 159 days in 1997, 225 days in 1998, 224 days in 1999 and 197 days in 2000. Rakesh Rambhai had worked for 148 days in 2000 and Rakesh Kumar for 115 days in the same year. Shri Jain also has averred that from the signatures on the acquittance roll, Rakesh Kumar and Rakesh Rambhai appeared to be different person. He has reiterated the plea that as the individuals did not have continuous period and having been daily wagers had no right for regularisation.

9. I have carefully gone through the rival contentions and the relevant papers brought on record. While the applicants plead that they should be granted temporary status as a prelude to regularisation, their having completed the required period, the respondents

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disagree and hold that they were only daily wagers, performing intermittent jobs, not working continuously. They also state that employees appointed on project basis cannot claim regularisation. I find on perusal of papers that the respondents have themselves averred in their counter affidavit that keeping in mind the exigencies of work, people are employed on casual basis. Respondents have never shown either by averment or evidence that the applicants had been employed on any specific project, which was terminable in a specified time. And therefore their reliance on the decision of Hon'ble apex court in the case of State of Himachal Pradesh Vs. Suresh Kumar Verma (supra) is totally misplaced. As far as their averment about the absence of continuous service, it is found that the breaks given are only artificial breaks which have to be overlooked in view of various pronouncements. Further as the DoPT's Scheme communicated vide their OM No.51016/2/90-Estt(C) dated 10.9.93, has been declared to be an on-going measure, the applicants case would have to be considered within the parameters of the scheme, once they complete the requisite period of 240 days (206 days in 5 day-week office) in a year. If the applicants have completed the period, they should get the benefit. Arun Kumar Mishra, applicant No.1 in terms of respondents' own version is found to have completed 255 days (much more than 206 days) in 1999. Applicant No.2 Krishan Shah has completed 225 days in 1998 and Rakesh Kumar (Rakesh Rambhai) completed 263 days in 2000. (As far as Rakesh, applicant No.3 is concerned, the signatures on the acquittance roll were not at all different and the averment of the

respondents to the contrary is not borne out by facts). It is thus clear that all the three applicants have completed the requisite period of 204 days in a year in 1999, 1998 and 2000 respectively and have become entitled for grant of temporary status and regularisation in turn. Once they are granted temporary status, they are also entitled for being paid basic pay at the minimum of the scale for regular Group D. And this cannot be postponed any longer.

10. In the result the OA succeeds and is accordingly allowed. Respondents are directed to consider grant of temporary status to the three applicants from the date they have completed 205 days in a year. According to the respondents' own version i.e. from October, 1999 in the case of Arun Kumar Mishra, applicant No.1, November 1998 in the case of Krishan Shah, applicant No.2 and Shri Rakesh Kumar (Rakesh Rambhai), applicant No.3 from December, 2000. Their case for regularisation should be considered in turn subject to availability of vacancies. This exercise shall be completed within two months from the date of receipt of a copy of this order. The applicant would also be entitled for grant of basic pay at the minimum of the pay scale of group "D" officers from the date of filing of this OA i.e. 18-4-2001. No costs.

(GOVINDAN S. TAMPI)
MEMBER (A)

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