

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A. No. 1292 / 1999 Date of Decision: 17- 11- 1999

Shri Mahender Singh Negi & Ors. APPLICANT
(By Advocate Shri B.S. Mainee)

versus

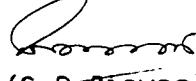
Union of India & Ors. .. RESPONDENTS
(By Advocate Shri Manoj Chatterjee)

CORAM:

THE HON BLE SHRI

THE HON BLE SHRI S.P. BISWAS, MEMBER(A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES
2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER BENCHES OF THE TRIBUNAL?


(S.P. Biswas)
Member (A)

Cases referred:

1. Kamlesh Kapoor & Ors. Vs. UOI & Ors. Dt. 5.12.88
2. Girdhari Lal Vs. UOI (SLF(C) No. 14005/92).
3. Amrit Lal Beri Vs. UOI (SLR 1975(1)SC 152).
4. Smt. Veena Anand & Ors. Vs. UOI (OA-673/99 & other connected OAs)
5. International Airport Authority Employees Union Vs. Airport Authority of India (JT 1997(4)SC 757).
6. Air India Statutory Corporations Vs. United Labour Union & Ors. (1997 SCC (L&S) 1344).
7. K. Ram Krishnan & Ors. Vs. Bharat Petroleum Corporation, Madras & Ors. (1997 LAB 1.C.3078).

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1292/99

(10)

New Delhi this the 17th day of November, 1999.

Hon'ble Shri S.P. Biswas, Member(A)

1. Sh. Mahender Singh Negi,
S/o Sh. J.R. Negi.
2. Sh. Rajendra Kumar,
S/o Sh. Khushi Ram.
3. Sh. Abbal Singh Rawat,
S/o Sh. Daulat S. Rawat.
4. Sh. Mahesh Kumar,
S/o Sh. Balmukand Singh.
5. Sh. Herold Gladwin,
S/o late Sh. Gladwin.
6. Sh. Khem Singh,
S/o Sh. Ranjeet Singh.
7. Sh. Ashok Thakur,
S/o Sh. Mohan Singh Thakur.
8. Sh. Binod Kumar.
9. Sh. Daniel Shah,
S/o Sh. Ignashiv Shah.
10. Sh. Sunil Kumar,
S/o Jagdish Singh.
11. Sh. Amarjeet Singh Dutt,
S/o Sh. Gurbachan Dutt.
12. Sh. Ashok Jugran,
S/o Sh. B.P. Jugran.
13. Sh. Ramesh Chand Semwal,
S/o Sh. R.R. Semwal.
14. Sh. Chander Singh,
S/o Sh. Jabu Singh.
15. Sh. Vikram Singh Kanchan,
S/o Sh. Kundan Singh Kanchan.
16. Sh. Kailash Nath Yadav,
S/o Sh. S.D. Yadav.
17. Sh. Naseem Ahmad,
S/o Sh. Mohammad Ali. Applicants

C/o Sh. B.S. Maine, Advocate, CAT Bar Association
(through Sh. B.S. Maine, Advocate)

versus

1. Union of India through the Secretary, Ministry of Science & Technology, 1, Rafi Marg, New Delhi.
2. The Director General Council of Scientific & Industrial Research 1, Rafi Marg, New Delhi.
3. The Director, Indian Institute of Petroleum, Dehradun. Respondents

(through Sh. Manoj Chatterjee with Ms. K. Iyer & Ms. A. Gupta, Advocate)

ORDER(ORAL)

Applicants, 17 in number, are aggrieved by the respondents inaction in not offering to them temporary status as well as failure to regularise their services as casual labourers though they have been working in that capacity from 1992 onwards. The respondents continue to utilise the services, on the basis of fixed salary per month, though in the shape of casual labourer. The nature of working being done by them are of the type of Computer Operators, Mechanics, Drivers, Technicians, Project Assistants and Helpers etc. It is not in dispute that the applicants herein are in Group-C category being utilised as casual labourers but being paid consolidated amount on contract basis. Having continued working with the respondents for over a period of 7 years, the applicants are facing almost termination of their jobs because of the alleged stand taken by the respondents that the tenure of the applicants is over or the project is coming to an end.

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2. Shri B.S. Maine, learned counsel for the applicants drew our attention to the nature of the work being done by the applicants so long and also the long line of judicial pronouncements by the Hon'ble Supreme Court as well as decisions of this Tribunal which favour their continuation in service. The action of the respondents in trying to disengage the services of the applicants is fraught with patent mala fide in the face of fresh advertisement taken out by the respondents on 26.04.99. It is also the case of the applicants that the Hon'ble Supreme Court while examining (Civil Appeal No. 631/88 decided on 05.12.88) the cases of similarly placed employees, and that too under the same respondents, had given instructions to prepare an appropriate Scheme that would facilitate their absorption in terms of instructions issued by the Government of India. The judicial pronouncements of the Apex Court in the case of Kamlesh Kapoor & Ors. Vs. U.O.I. & Ors. dated 05.12.88 as well as orders of the Tribunal in group of OAs, leading case being OA-1941/89 decided on 22.11.91 were brought to my notice in particular. The learned counsel for the applicants would also took ^{me} ~~to~~ through the ^{me} ~~and~~ orders of the Apex Court in the case of Girdhari Lal Vs. U.O.I. Civil Appeal of 1996 arising out of SLP (C) No. 14005/92 decided on 03.01.96 to add strength to his contention that the respondents are bound to offer the benefits to similarly placed people once the judicial pronouncement of the competent court is available.

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He also cited the decision of the Hon'ble Supreme Court in the case of Amrit Lal Beri Vs. U.O.I. (SLR 1975(1)SC 152).

3. In counter, Shri Manoj Chatterjee, learned counsel for the respondents would contend that this is a project work and once the project is over, the applicants cannot claim continuation of their work with the respondents. The project having been completed or likely to get completed is the basis on which the respondents have to take action and that with the completion of projects which had workers on co-terminus basis, the applicants will have no legal right to continue. In any case, a casual labourer working on casual basis do not have vested right to get regularised, de hors the rules. Regularisation can only take place provided there is a Scheme and that too against availability of regular vacancies. Shri Chatterjee, would also contend that there are no regular vacancies available with the respondents against which the applicants herein could be adjusted. The counsel would also submit the applicants are not the employees of CSIR, having been appointed through a contractor, M/s Digitek Services, "Casual Workers Absorbtion Scheme 1990" is not applicable to persons engaged on contract basis.

4. Heard rival contentions of learned counsel for both the parties and perused the

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records. I also have gone through the citations quoted by both sides.

5. The issue that falls for determination is the legality of the respondents stand in threatening to disengage the services of the applicants on the basis of aforesaid pleas in the OA.

6. It is mentioned that the respondents have no other alternative but to discontinue the services of the applicants because their tenures have come to an end. There is no mention whatsoever that there are no other projects on hand where the applicants could be adjusted against any other parallel projects. I also find that the respondents have gone in for an advertisement to directly recruit people for jobs exactly the applicants are doing. Obviously this an attempt to get the people appointed on regular basis by following the due process of selection. This would mean that the respondents do have the work available with them. In such a situation, the respondents could atleast continue with the applicants till the regularly ~~available~~ selected hands are made ^{available}. This is the law laid down recently by the Hon'ble Supreme Court in ^{some} Delhi Teachers case in the case of Smt. Veena Anand & Ors. vs. U.O.I. (OA-673/99 & other connected OAs). Those teachers were engaged on short term contract basis and the services were disengaged when

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the respondent Delhi Administration had the requirement of the services of the teachers. 38 OAs filed by several hundred aggrieved teachers were allowed by this Tribunal. Initially, the Hon'ble High Court of Delhi stayed our orders on 14.5.99. On further hearing the case, the High Court vacated the stay on 26.05.99. Government of NCT/Delhi took up the matter by filing an SLP(C) No.8402/99 but it was dismissed on 14.06.99. I find the same situation prevails herein.

7. It is well settled in law that when the work is available and if the certain persons are already working they are to be continued till they are replaced by regularly selected people. It is also seen that the Apex Court in the case No. WP(C) 631/88 had given very clear cut instructions that when officials have worked in certain posts for a very long time, the respondents are required to prepare a Scheme with certain time frame and take actions to absorb them instead of bringing freshers and new comers. A Scheme called "Casual Worker Absorption Scheme/1990" was thus formulated by the respondents vide Circular dated 10.10.90. I also find that the said Scheme was modified by respondents in December 1995 pursuant to directions given by the Hon'ble Apex Court in one of the cases filed by some of the casual workers of National Laboratory. Provisions in this latest Scheme envisages regularisation of even contract labourers

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provided they are engaged by CSIR. The applicants are thus being forced to face hostile discrimination. This is against the principle of natural justice. That apart, the jobs applicants herein are doing are of permanent nature when different projects are taken together. In such a situation, denial of regularisation or temporary status would be in violation of the principles/ratio laid down by Hon'ble Supreme Court and Madras High Court in the case of International Airport Authority Employees Union Vs. Airport Authority of India (JT 1997(4)SC 757, Air India Statutory Corporations Vs. United Labour Union & Ors. (1997 SCC (L&S) 1344), and K. Ram Krishnan and Ors. Vs. Bharat Petroleum Corporation, Madras and Ors. (1997 LAB 1.C. 3078).

8. In the light of detailed discussion herein above, the O.A. deserves to be allowed and I do so with the following directions:-

(i) Respondents shall prepare a Scheme on the pattern directed by the Apex Court and shall consider absorption of the applicants in terms of law against regular vacancies as and when they arise.

(ii) If the respondents have vacancies/jobs to offer of the nature the applicants are doing,

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the latter shall be given preference to over freshers and new comers. Depending upon the requirements, services of the applicants shall be utilised in other projects.

(iii) Respondents shall consider offering opportunities alongwith others to those of the applicants who are eligible and have requisite qualifications for the jobs advertised.

(iv) No costs.


(S.P. Biswas)
Member(A)

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