

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2276/99
MA No.2288/99

New Delhi this the 14th day of July, 2001.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

1. Doordarshan (Bharat) Group
"D" Employees Union (Regd.),
All India Delhi Doordarshan
Kendra, Akashvani Bhavan,
Parliament Street,
New Delhi through Shri Shyam Lal,
Member.
2. Sh. Balwan Singh,
S/o Shri Jogi Ram,
R/o A-6, 94-A, DDA Flats (Janta),
Paschim Vihar, N.D. 63 -Applicants

(By Advocate Shri T.C. Aggarwal)

-Versus-

Union of India through:

1. The Secretary,
Department of Personnel & Training,
North Block, Central Sectt.,
New Delhi.
2. The Secretray,
Ministry of Finance,
Deptt. of Expenditure,
North Block, Central Sectt.,
New Delhi.
3. The Secretary,
Ministry of Information & Broadcasting,
Shastri Bhavan,
New Delhi.,
4. The Director General,
Dordarshan, Mandi House,
New Delhi.
5. The Deputy Director (General),
Delhi Doordarshan Kendra, Akashvani,
Parliament Street, New Delhi. -Respondents

(By Advocate Shri S.M. Arif)

O R D E R

By Mr. Shanker Raju, Member (J):

MA-2288/99 for joining together is allowed. The present OA is filed by the Doordarshan (Bharat) Group "D" Employees Union and another, assailing the scheme of Temporary Status of the Government introduced by OM dated

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10.9.93. The applicant association has sought modification of the scheme to the effect that on completion of three years of temporary status casual workers they may be accorded benefits similar to Group 'D' employees. The applicant has also sought reckoning of seniority of casual workers from the date of their initial appointment.

2. Briefly stated the applicant union consist of casual labours who have been accorded temporary status. Giving history of the regularisation of the casual labours and framing of the scheme by the Government it is contended that the grant of temporary status is arbitrary as the casual workers perform arduous duties than the Group 'D' employees but they are not accorded the equal status. It is also contended that the matter be re-examined and study should be made, as in absence of the vacancies the temporary casual workers are deprived of regularisation and accord of equal pay for equal work, in comparison to Group 'D' employees. It is the contention of the applicants that despite the ban on engaging casual workers by the DOPT the respondents cannot turn around to deny them their regularisation. It is also contended that the direct payments have been made against Group 'D' posts, ignoring the claims of the applicants. The applicants seek creation of supernumerary posts. The applicants also allege discrimination as the casual workers after attaining temporary status are accorded the benefit as per the scheme prevalent in the postal department. The grievance of the applicants that despite working for more than 10 years they had no security of service and the temporary casual workers have been meted out a differential treatment vis-a-vis

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workers in Telecommunication who have been accorded the pay scale, increment etc. of the Group 'D' employees. Placing reliance on Jagrit Mazdoor Union (Regd.) v. Mahanagar Telephone Nigam Ltd., 1990 (13) ATC SC 768 it is contended that the Apex Court has directed accord of benefit to the employees as admissible to the temporary group 'D' employees. Whereas the DOPT scheme does not have any provision for absorption. Placing reliance on the latest decision of the Apex Court in Gujarat Agricultural University v. Rathod Labhu Bechar & Ors., JT 2001 (2) SC 16, contended that the respondents be directed to formulate a scheme for absorption of casual labours who have completed 10 years by creating additional posts.

3. Rebutting the contentions of the applicants it is stated that the OA is barred and is not maintainable as there has been a multiplicity of the reliefs which is against Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987. The respondents have defended the scheme dated 10.9.93 and contended that the casual employees are not regular employees and are recruited to perform casual work as such they cannot be accorded the benefit as admissible to Group 'D' employees. Regularisation takes place only when the vacancies in group 'D' are available. It is also contended that the DOPT scheme has been framed in view of the directions in Raj Kamal's case. Placing reliance on the order passed by this Court in CCP 285/91 dated 13.12.93 in OA-2306/89 it is contended that this Court has after meticulously evaluating the provisions of the scheme has upheld the vires of the scheme and observed that there is an ample provision for regularisation of the services of the casual labour. It is

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also stated that in absence of the availability of posts there cannot be an occasion for prescribing time limit and casual labours with temporary status are regularised to the extent of availability of vacancies. If these guidelines are not followed that would result in back door entry into Government service which has been deprecated by the Apex Court in D.D.A. Horticulture Employees Union v. Delhi Admn. & Ors. JT 1992 (1) SC 394. It is also contended that the respondents have adopted the scheme framed by the nodal Ministry, i.e., DOPT, i.e., OM dated 10.9.93. As the Schemes of P&T and Railways are separate Schemes the benefits cannot be accorded to casual workers in Central Government offices. It is denied that the applicants have been performing the duties of Group 'C' posts. It is contended that there has not been any discrimination as keeping in view the various aspects of work of a particular Government Department and nature of duties performed by the casual labours the schemes are separately framed. The provision for regularisation has already been incorporated in the scheme of DOPT. It is also stated in OA-2556/91 that the applicants have sought the same relief on SIU study on establishment four posts of Group 'D' were created and the casual workers with temporary status have been regularised. According to the respondents out of casual workers having temporary status 16 have already been regularised against Group 'D' post available with the respondents. It is also stated that the applicants would be considered as per DOPT Scheme for regularisation against Group 'D' posts in future in accordance with their seniority and as per the extant rules. As regards the benefit of Group 'D' employees and the bonus equivalent to Government servants the same cannot be granted to the

casual workers as there has been a different formula for calculation of their salaries. As the casual workers are engaged and accorded the temporary status without reference to availability of Group 'D' posts they are not the holders of regular posts and definite pay scales, as such cannot be accorded the benefit of seniority from the date of their initial engagement.

4. The applicants in their rejoinder re-iterated the contentions taken by them in the OA and has also placed on record their written submissions by way of highlighting the salient points.

5. We have carefully considered the rival contentions of the parties and perused the material on record. The contention of the applicants that the services of the temporary casual workers were to be reckoned for the purpose of seniority from the date of their initial appointment is not legally tenable. The casual employees are not regular employees and have not been appointed against a particular post with definite scales of pay. They have been recruited to perform casual/seasonal nature of work. Their regularisation arises only on the availability of the vacancies. The regularisation of casual labour with temporary status is occasioned when a vacancy arises in Group 'D' as per the extant recruitment rules and instructions as contained in DOPT OM dated 10.9.93. The temporary status also bestows them the benefit of counting of 50% of the continuous service rendered under casual basis for regularisation, but as far as seniority is concerned, that is to be determined on the basis of regular service rendered by an incumbent to the

post on which he has been regularly appointed as the casual workers are not holders of a regular post and would not attain the status of a regular employee unless they are regularised against available vacancies in Group 'D' after attainment of temporary status they would have not valid claim for the seniority from the initial date of their engagement as casual workers. We see no justification to accord the same benefit to the applicant of seniority.

6. As regards the claim of the applicant of transferring them to regular establishment on the lines of OM dated 17.9.69 the applicants have at Bar made a statement not to press the same.

7. The contention of the applicants that on accord of temporary status on completion of three years' service they are entitled for accord of all the benefits similar to Group 'D' employees and there cannot be a question of direct recruitment till the casual employees are regularised is concerned, we do not find the same tenable in the eye of law. Regarding the regularisation of casual workers having temporary status our attention has been drawn to an order passed by this Court in CCP-285/91 wherein after taking into consideration the provisions of regularisation of the casual labour with temporary status it had been held that ample provision has been made in the scheme of DOPT regarding regularising the services of the casual labours and the scheme has been found to be perfectly in consonance with the decision of the Tribunal in Raj Kamal's case. As no infirmity was found in the scheme the question of any modification in the scheme would not arise. The scheme, in our considered view, takes care

of regularisation of casual workers having temporary status on availability of vacancies in Group 'D'. The resort of the applicants to the decision of the Apex Court in Gujarat Agriculture University's case (supra) we find that therein the Scheme which has been framed, inter alia, contained a provision for absorption of the incumbent after completion of 10 years wherein there is no time limit laid down in DOPT OM of 1993 but yet a provision has been made for regularisation of temporary casual labours in accordance with the recruitment rules and in accordance with the instructions and availability of vacancies to the ratio of two out of three vacancies in Group 'D' cadre. The directions of the Court in OA-2556/96 have been complied with and after SIU study on the establishment four posts of Group 'D' were created and on which the casual workers with temporary status have been regularised. Apart from it, we also find from the reply of the respondents that 16 more temporary status casual labours have been regularised against group 'D' post as such it cannot be observed that the respondents are not considering regularisation of the casual workers with temporary status. The resort of the applicants to claim parity with the scheme of P&T to accord them the same benefit would of no avail to them as the scheme of 1993 has been framed in the light of the decision in Raj Kamal's case for casual workers in Central Government. For casual workers in P&T and Railways the schemes are different keeping in view the working conditions therein. Formulation of different Schemes in different Departments were considered by the DOPT keeping in view the paramount importance of nature of duties and working of the particular department which cannot be found fault with. As such prescribing the exterior time limit

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for regularisation of the casual workers with temporary status which is not dependent on the availability of the vacancies would not be either in the interest of administration or public policy. This is not the case of the applicants that they have been denied regularisation and accorded the benefits. In this view of ours we are of the considered view that the claim of the applicants for prescribing a time limit for regularisation of casual workers with temporary status would not be legally sustainable and as the scheme of DOPT has take care of, the regularisation by providing a specific provision to that effect the scheme cannot be found fault with. The contention of the applicants that they are entitled for grant of all the benefits which are admissible to regular Group 'D' employees is concerned, the same is also not legally tenable, as the casual worker is engaged for a seasonal work and not against a regular vacancy. As the grant of temporary status to the casual employees is with reference to the availability of regular Group 'D' posts they cannot be brought at par with the regular Group 'D' employees who are appointed against regular posts. From the perusal of the Scheme of the DOPT we find that on conferment of temporary status the casual workers are accorded wages with reference to the minimum of pay scales for regular Group 'D' employees including DA, HRA and CCA. They are also entitled for leave encashment and the service rendered by them to the extent of 50% is to be accorded for the purpose of retirement benefits. The scheme thus takes care of a casual worker who has attained the temporary status. As such the scheme does not suffer from any infirmity by not providing the same financial benefits to

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the casual workers which has been accorded to the regular Government servant. The bonus equivalent to regular Government servant cannot also be granted to the casual workers as the calculation of their salaries is different. By according the same pay scale to a casual worker as that of regular incumbent would amount to giving a regular status which is not possible in absence of a vacancy as per the scheme. As the temporary status is accorded to casual workers without reference to availability of regular Group 'D' posts they are also not entitled for seniority from the date of initial engagement.

8 Having regard to the discussion made above and the reasons recorded, we are of the confirmed view that the challenge to the DOPT's Scheme of 1993 is unfounded and is not legally sustainable. The scheme which has already been upheld by the Court in contempt proceedings (supra) and is neither discriminatory nor deprives in any manner the claim and interest of a casual worker and having been formulated by the Government after a detailed study and keeping in view the decision in Raj Kamal's case the same cannot be found fault with. The present OA fails and is dismissed, but without any order as to costs.

S. Raju

(Shanker Raju)
Member(J)

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V.K. Majotra

(V.K. Majotra)
Member(A)