

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.2566/99

MA No.2610/99

New Delhi this the 17th day of August, 2001.

Hon'ble Mr. Shanker Raju, Member (Judicial)

1. Prem
2. Premwati
3. Kartar Singh,
4. Hira Lal
5. Thakur Deen
6. Rameshwar
7. Raj Kumar
8. Roshan Lal
9. Ram Bharose
10. Srikishan
11. Ram Bahadur
12. Shiv Ram
13. Om Prakash-1
14. Kailash
15. Kaleedeen

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16. Ram Sanehi
17. Umma
18. Ram Naresh
19. Bharat Singh
20. Sri Ram
21. Sarjo
22. Kishan Dai
23. Prahlado
24. Ram Kali
25. Sri Ram
26. Kashmiri
27. Hari Singh
28. Ram Shakal
29. Anokhe Lal.
30. Vindhyachal.
31. Vijay Singh
32. Udham Singh
33. Lokesh
34. Chotoo Ram
35. Satyavir Singh
36. Keshri Chand
37. Muthu
38. Jasbir Singh
39. Raj Kumar
40. Ayodhaya Prasad
41. Manikam
42. Kishal Lal
43. Ragotman

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44. Harbir
45. Om Prakash-II s/o Babu Ram
46. Sri Pati.
47. Raj Bir
48. Sushila
49. Tej Ram Singh
50. Ramesh Bala
51. Ram Adhar
52. Bir Pal
53. Ajay Pal.
54. Rama Kant Pandey
55. Satya Pal Singh
56. Mahipal
57. Satvir
58. Gauri Shankar
59. Bindu Sahni
60. Kamlesh Kumar
61. Shobha Kumar
62. Chander Pal
63. Mahinder Yadav.
64. Charan Singh
65. Rajender Prasad
66. Kartar
67. Subhash
68. Amil Lal

All C/o Prem,
Shahpurjat, New Delhi.

Applicants

(By Senior Counsel Mrs. Shyamala Pappu)

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Versus

1. Government of N.C.T. Delhi.
Through its Chief Secretary,
Old Secretariat, Delhi.

2. Deputy Director (Horticulture)
11th Floor, MSO Building,
I.P.Estate, New Delhi.

Respondents

(By Advocate Shri Harvir Singh)

O R D E R

By Mr. Shanker Raju, Member (J):

MA for joining together is allowed. The applicants, 68 in number, have assailed the unequal treatment meted out to them regarding grant of consequential benefits, such like pension, uniform, accommodation, medical facilities as accorded to Grade II subordinate staff and has also assailed the action of the respondents, whereby despite being regularised and performing the regular duties of Mali, they have not been bestowed with the status and designation as such.

2. Briefly stated the applicants were initially appointed as casual labours on daily wage basis between 1984-1990. On approaching the Apex Court by way of Writ Petition No.98 and connected cases of 1998 the following directions have been issued:

"We direct the Delhi Administration to absorb the petitioners in accordance with the

prepared scheme for absorbing casual labours, which scheme has been made effective from 1.10.1988. In terms of the scheme, any casual labours who has worked for one year or more in the Horticulture Department shall be regularised within six months with effect from 1.10.1988 if such casual labourer is otherwise fit to be regularised under the scheme as regular employee. On that footing such casual labourer working in the Department shall get salary or wages at the rate equivalent to the minimum salary paid to a regular employee in comparable post in the Horticulture Department."

3. Subsequently in compliance of the ratio of the Apex Court and being subjected to selection by the Staff Selection Committee/Board the applicants have been regularised as Class IV labourers (casual) with usual allowances admissible under the rules. As per the recruitment rules of subordinate staff Group 'D', which, inter alia, include Mali they are entitled for all the benefits as admissible to regular employee, including pension, uniform, medical facilities etc. However, it is also laid down in the recruitment rules that for identification or function the post may be referred to by their existing designation as considered appropriate by the concerned appointing authority. It is also stated that the applicants have not been deputed for any other work except the work of Mali for which they had been subjected to three months training by the respondents. The applicants have also filed representation, inter alia, contending that as they had been placed in the category of Subordinate Staff. II but are not accorded the designation of Mali as admissible to other staff.

4. It is contended by the learned senior counsel of the applicants that the action of the respondents despite regularising them and including them as subordinate staff grade II to make them available the consequential

benefits as admissible to them under the rules is highly discriminatory and amountingⁱⁿ to meeting out unequal treatment among the equals. It is also stated that the respondents have created two classes, i.e., among the category of subordinate staff grade II the persons who had been performing the work of Mali are designated as such but the applicants who are performing the same functions and duties are not made entitled for the same benefits as admissible to them. The applicants have also filed MA-2788/2000 to direct the respondents to produce a letter written by the Director (Horticulture) whereby the Development Commissioner has assured the applicants to change their designation and their admissibility to all benefits as admissible to Mali. This letter has been produced by the applicants written on 6.4.2000.

5. On the other hand strongly rebutting the contentions of the applicants the learned counsel of the respondents Shri Harvir Singh contended that as regards the prayer of re-designation of the applicants as Mali is concerned, this court has no jurisdiction to accord the same benefit as the same involves a policy decision which cannot be interfered by the Tribunal and in the matter of equality of pay etc. the task is left to the expert bodies and it is not within the domain of this Court to interfere with the same. It is also stated that complying with the directions of the Apex Court the applicants have been regularised and accorded the regular pay scale. The question of pensionary benefits would not arise at this stage as it is at the time of superannuation of an employee that the question of pension arises. It is also stated that the applicants are casual labours and designated as such. The contentions of the applicants made in the OA are

not specifically controverted by the respondents. As regards the training given to the applicants it is stated that it is not for the purpose of selection of the applicants to the posts of Mali^v and as they were casual labours on daily wages and regularised as such they are to be put on any work and cannot be designated as Malis.

6. I have carefully considered the rival contentions of the parties and perused the material on record. The learned counsel of the respondents has miserably failed to produce any record which clearly shows that the applicants have been entrusted with the work other than the work of Malis by them. I also find that the applicants have been imparted specialised training for Mali and in no^v event it can be construed that the same was not for the purpose of taking work of Mali from the applicants. There is nothing on record to suggest that the applicants had performed any other work except that of Mali since their regularisation. Admittedly the applicants have been designated as Grade II subordinate staff, which, inter alia, includes Mali. However, they have been identified as casual labour but in fact performing the work of Mali. As such I find that the respondents have created a class within the class which is not legally permissible. Mali of Grade II subordinate staff are getting the benefits like pension, promotional avenues, medical facilities, uniform and other ancillary benefits as admissible under the rules. I also find from the record that while being regularised after a selection the applicants have been allowed usual allowances admissible under the rules. As regular employees the applicants are also entitled for all the benefits as admissible to a regularly appointed Government employee. The action of the respondents to deny the same

to the applicants under the guise of treating them as casual labours, whereas^h they are performing the job of a regular Mali is not legally sustainable. Although it does not lie within the jurisdiction of this Tribunal to designate the applicants as Malis it has been left over as the domain of the respondents but yet there cannot an inequality between the class which affects the concept of equality Paid down under Articles 14 and 16 of the Constitution of India. The person who has been performing the work of Mali is legally entitled to get the allowances and benefits attached to that post and more particularly when he is treated as a regular employee. The contention of the respondents that the pension would be disbursed at the time of superannuation is concerned, I find that some of the Malis have retired, as contended by the applicants without having given the pensionary benefits. In fact on regularisation the provisions of CCS (Pension) Rules, 1972 would be applicable to the applicants. As regards the medical facilities and uniforms as well as promotional avenues are concerned, other Government servant, who is regularly appointed is entitled for the same. As such denial of the same to the applicants would be^{an} abuse of the constitutional provisions. Being a welfare State it was incumbent upon the respondents to have taken care of their employees and not to deny them any benefit which flows from the performance of their duties and to which they are legally entitled to under the relevant rules and particularly when they had been treated as subordinate staff in grade II. I also find that Director (Horticulture) vide his letter dated 6.4.2000 has forwarded the applications of applicants wherein it has been observed that the Development Commissioner has assured the applicants for change of their designation, which has not

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been denied by the respondents, as it pertains to their official work for which an MA ^h was already filed by the applicants.

7. In the result and having regard to the reasons recorded above, I partly allow this OA. As far as the request for designation is concerned, the same is not within my domain and as such it is rejected.

8. As regards the claim of the applicants for benefits at par^h with Malis and being grade II subordinate staff, I direct the respondents to consider the claim of the applicants for accord of benefits as admissible to regular Malis, with effect from the date of their regularisation within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

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