CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NOS. 39, 54, 58. 59, 71, 72 & 261 OF 1999

New Delhi, this the 14 day of February, 2003

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

1. OA-39/1999

Shri Rakesh s/o Shri Sheoraj
Flat No.27, Plot No.2
Naveen Apartments, Pitampura, New Delhi
..Applicant

(By Advocate: Shri S.K.Gupta)

2. OA-54/1999

Shri Vipin s/o Shri Ranbir Singh
House No.80, Manav Ashthali Apartments
Vasundhra Enclave, New Delhi
..Applicant

(By Advocate: Shri P.I. Oommen)

3. OA-58/1999

Shri Ravinder s/o Shri Harpal Singh
Flat No.27, Plot No.2
Naveen Apartments, Pitampura
New Delhi
..Applicant

(By Advocate: Shri S.K.Gupta)

4. OA-59/1999

Shri Vinod s/o Shri Balbir Singh
A-1/269, Paschimi Vihar
Rohtak Road, New Delhi
..Applicant

(By Advocate: Shri S.K.Gupta)

5. OA-71/1999

Shri Satish s/o Shri Ikram Pal Singh
House No.80, Manav Ashthali Apartments
Vasundhra Enclave, New Delhi
..Applicant

(By Advocate: Shri S.K.Gupta)

6. OA-72/1999

Shri Saranjeet s/o Shri Sukhbir Singh
A-1/269, Paschimi Vihar
Rohtak Road, New Delhi
..Applicant

(By Advocate: Shri P.I. Oommen)

7. OA-261/1999

Shri Gorakh Nath s/o Shri Shiv Karan Yadav
House No.80, Manav Ashthali Apartments
Vasundhra Enclave, New Delhi
..Applicant

(By Advocate: Shri S.K.Gupta)

Versus

Union of India through

1. Secretary
Ministry of Defence, South Block
New Delhi-11

2. Dy. Director General Mil. Farms
Quartermaster General's Branch
Army Headquarters
West Block III
R.K.Puram, New Delhi

3. Director
Military Farm & Frieswal Project
Grass Farm Road
Meerut Cantt. Meerut (UP)

4. Officer Incharge
Military Farm Meerut Cantt.

..Respondents

(By Advocate: Shri A.K.Bhardwaj)

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ORDER

This combined order seeks to dispose of following seven OAs filed on identical grounds by individuals similarly placed and seeking the same reliefs:-

"(a) to direct respondent No.4 to re-engage the applicant with immediate effect, as the disengagement made by the respondent No.4 w.e.f. 1.1.99 is illegal and in contravention of instructions issued by respondent No.2 and against the principles of natural justice.

(b) to direct respondent No.3 for issue appointment letter as the applicant has completed more than 240 days in previous two years as per direction of respondent No.2 vide his letter No.D/89839/MCL/Q/MF-2 dt. 15 Dec. 98 (Annex. IV); and

(c) to direct respondent No.4 to grant the applicant due seniority as there was no break in the applicant's service and to notify the latest seniority.

(d) To award the cost to the applicant as his disengagement is arbitrary and ultravires.

(e) To grant any other relief which this Hon'ble court may deem fit and proper in the interest of justice."

2. Heard S/Shri S.K. Gupta and P.I. Oommen, learned counsel for the applicants and A.K. Bhardwaj, learned counsel for the respondents.

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3. All the above seven OAs filed by the applicants, who were engaged as casual labourers in the Military Farm, Meerut Cantt., were dismissed by this Tribunal, on 30.3.2002/25.7.2000. On the applicants carrying them in Civil Writ Petitions before the Hon'ble High Court of Delhi, the matter was disposed of by their order dated 29.10.2001, which is reproduced in full as below:-

> "All these petitions involve common questions of law and fact and are being disposed of by this order.
>
> Petitioners were engaged as casual labourers through Employment Exchange in the Military Farm Meerut Cantt. They were allegedly verbally disengaged on 31.12.98 and were paid one month's salary in liue thereof. They challenged this by filing OAs No.58/99, 39/99, 59/99, 261/99, 72/99, 71/99 and 54/99 before Tribunal taking the stand that Respondents had resorted to pick and choose by retaining their juniors and by engaging outsiders while ousting them. Tribunal dismissed their OAs. by impugned orders by placing reliance on the judgment of Karnataka High Court and judgment of its own Chandigarh Bench.
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> Petitioners have filed these petitions assailing these orders and their short grievance is that Tribunal had failed to consider their plea that they were entitled to regularisation in terms of Respondents model standing orders dated 12.12.89 and their instructions dated 31.1.91 and 15.12.89.
>
> We have examined petitioners pleadings before Tribunal and found that they had not taken this plea in their OA though they had made it up on their rejoinder. We are also conscious of the position that they could not set up a new plea in position that they could not set up a new plea in their rejoinder because Respondents had no opportunity to meet

it. Even so, it would be unjust to shut the doors at them merely because of their failure to lay the proper foundation for their case, more so, when there was a likelihood of their case being covered by Respondents standing order and the communications supra. The ends of justice would demand their plea be examined from this angle also in disregard of their omission to take it in their OA, more particularly when the relevant documents were part of Tribunal/court record.

We, therefore, deem it appropriate to remand the matter to Tribunal for fresh consideration and require it to examine Petitioners plea in the light of relevant standing orders and instructions on the subject matter and to pass appropriate orders after hearing parties.

Parties to appear before Tribunal on 22nd November 2001.

Dasti."

4. Hon'ble Delhi Court have thus directed the re-examination of the cases of the applicants in the light of the Respondents' Model Standing Order dated 12.12.1989 and their instructions dated 31.1.1991 and 15.12.1989. Parties were also accordingly heard.

5. When the OAs came up for hearing on 2.7.2002 learned counsel for the applicants, sought through MA 1315/02, issuance of directions to the respondents to produce the seniority list of casual labourers for the years 1997 & 98, which would be necessary for the appreciation and proper adjudication of the matter as, according to them, the same were being held back by the respondents. According to the learned counsel S/Shri Gupta and Oommen while the applicants, in spite of their having put in 240 days in a year, as required in terms of the relevant instructions, have been disengaged, the respondents have

retained/regularised quite a few others who had served for lesser periods. The same was illegal and improper. They have also referred to what they had described as the seniority list for '96 in support of their arguments. There was no reason whatsoever as to why the applicants could not have been regularised, they urged.

6. Strongly contesting the MA, Sh. A K. Bhardwaj, learned counsel for the respondents, pointed out that the Hon'ble Delhi High Court had remanded the OAs with the limited purpose of re-examining the petitioners case, in the light of the model Standing Orders dated 12.12.89 issued by the respondents. Applicants were incorrectly trying to expand the scope of the remand order, which was not permissible. Respondents had not maintained any seniority lists for 97 & 98, which the applicants were seeking production of. For 97 and 98, they had only maintained attendance rolls which could not be considered as seniority lists. They also point out that the applicants were not entitled for the benefit of letter dated 31.1.91, as they were appointed on a later date. In view of the conflicting views, the respondents were directed to produce the seniority list of the casual workers for the years 97 & 98, if they exist or in the alternative to file an affidavit indicating as to whether the seniority lists have been replaced by attendance rolls by the respondents.

7. In compliance to the above the respondents point out in their affidavit dated 7.8.2002 that the list for 96, produced by the applicants was not a seniority list.

They had in 95, prepared a list on the basis of the records of service/attendance of the casual workers. Such a list was prepared in 98, which they had already produced before the Tribunal. Perusal of the same would show that only those who were eligible for and senior to the applicants had been regularised and the same did not give them any cause of action. He also cited certain specific instances to buttress his plea. Applicants aver that the respondents have committed misrepresentation merely to deny them their dues and have adopted the policy of pick and choose, in issuing orders of regularisation.

8. I have carefully considered the matter. I find that the applicants' plea that respondents' had not acted in terms of their own Model Standing Order dated 12.12.1989 has found favour with the Hon'ble Delhi High Court, who have, accordingly in their remand order dated 29.10.2001, directed the reconsideration of the issue in the light of the said Standing Order and instructions and passing of orders. It is evident, therefore, that the Hon'ble High Court have not circumscribed or limited the scope of Tribunal's redetermination of the issue, but have permitted a genuine exercise of reconsideration.

9. All the applicants are casual workers engaged by the respondents- Military Farm, Meerut Cantt., on being sponsored by the local Employment Exchange. Their status is, therefore, clearly covered by the directions contained in the respondents Model Standing Order letter No. B/89839/RCL/III/2/MF.I dated 12.12.1989, reiterated

by MF. 4(3)/89/D (Civ.II) dated 31.1.1991. The relevant portion of the letter dated 31.1.1991 dealing with the issue starts as below:-

"(b) Casual employees appointed through Employment Exchange and possessing experience of a minimum of two years casual service in the office/establishment to which they are so appointed will be eligible for appointment to posts on the regular establishment in that office/ establishment on availability of regular vacancies without any further reference to Employment Exchange, subject to other conditions like reservation, age, qualification being satisfied.

(c) Only a casual employee who has put in at least 240 days (206 days in case of 5 days week) of casual service (including broken period of service) during each of the two years of service referred to above will be entitled to the benefit mentioned in (b) above.

(d) For the purpose of absorption in regular establishment, such casual employees should be allowed to deduct from their actual age the period spent by them as casual employees and if after deducting this period, they are within the maximum age limit, they should be considered eligible in respect of maximum age.

(e) With regard to counting of broken periods of service, for age relaxation guidelines given in DOPT OM dated 26.7.79 (copy enclosed) shall be followed.

(f) Seniority of employees appointed to regular establishments will be reckoned with only from the date of regular appointment.

(g) Service rendered on casual basis prior to appointment in regular establishment shall not be counted for the purposes of pay fixation etc."

(emphasis supplied)

10. It would, therefore, follow that such of those of the casual workers, who fulfil the above requirements,

would be entitled for regularisation. It is on record and not disputed that the applicants concerned in these OAs have put in 240 days in each of the two years since their engagement, (in three years in respect of a few of the applicants). It would, therefore, follow that their case for regularisation would merit examination, subject to other conditions also of the Model Standing Order. The applicants rely upon a list of employees released by the respondents in 1996, in terms of which they were seniors to a few others, who have been regularised. However, according to the respondents, the list was more in the nature of an attendance roll and not a seniority list. A similar list has been issued by them is 1998 also. They also state that those whom they had regularised were in fact senior to the applicants. This view is highly suspect in the face of the averment made by the applicants pointing out the number of working days put in by some of those who have been regularised, who have put in lesser number of days than the applicants. Besides, the plea of the respondents that as the work had got reduced, the applicants had to be laid off or disengaged also would not merit acceptance, as in that scenario there was no justification for regularising those with lesser days of service. The applicants' case had more merit and they are clearly covered by the decision of the Hon'ble Supreme Court in U.P. State Mineral Development Corporation Ltd. and Anr. etc. Versus Vijay Kumar Upadhyay & Anr. etc. [1998 (1) AISLJ 165, which is reproduced in full:-

> "We have heard learned Counsel for the parties.

Admittedly, the respondents came to be appointed on ad hoc basis pursuant to writ petition filed earlier by many others. The High Court by its judgment dated 4.2.1991 in Writ Petition No.29537/90 had allowed the writ petition and set aside the order of the retrenchment and directed regularisation of their services. Some of the respondents, admittedly, are senior to those who had the benefit of the order of regularisation as confirmed by this Court as on May 10, 1991. Consequently, following the earlier judgment, the High Court in the impugned order allowed the writ petitions with similar directions. Thus, these appeals by special leave have been filed.

2. In view of the fact that the earlier orders of this Court have become final, the respondent are entitled to regularisation of their services. The learned Counsel for the appellants has brought to our notice that since subsequently there was a development after the orders passed by this Court, namely, some of the establishments have been handed to the private sector and some of them are in the process of being wound up, the orders passed earlier by the High Court as confirmed by this Court and the present order would cause hardship to the appellant-Corporation. We do not think that we can go into that aspect of the matter particularly, when the order in favour of some of the employees has attained finality. Similarly, the respondents are entitled to the same benefit.

3. However, if there is any difficulty in working out, it will be open to the Corporation to convene a tripartite meeting consisting of workers' Union. One of the officers of Labour Department and an officer of appellant-Corporation would thrash out the problems and arrive at an amicable settlement to diffuse and sort out the above difficulty."

11. Respondents' plea that the above aspect has already been examined and settled in the earlier orders of the Tribunal, dismissing the OA is of no avail to them as those dismissals have been set aside and remanded for fresh consideration, by the order of the Hon'ble Delhi

High Court. The cases of the applicants would therefore have to be considered, strictly in order of their seniority based on the dates of their original engagement and the dates when they completed 240 days in two successive years for the first time. In such a computation if any of the juniors to the applicants have been regularised the applicants also would have to be so regularised. That alone would render them justice.

12. The respondents have raised the plea that the contents of the Standing Order dated 12.12.1989, circulated on 31.1.1991 were not applicable to the applicants in these cases, as they were appointed only during 1995-96. This would appear to be so also keeping in mind the decision of the Hon'ble Supreme Court in the case of Union of India & Others Vs. Mohan Pal [2002 (4) SCALE 216] passed in the context of a similar Scheme dealing with the grant of temporary status and regularisation on casual workers, formulated by the Department of Personnel & Training on 10.9.1993 that the benefits, if any, of the Scheme would be available only to those who were in position on the day when the Scheme was introduced. The fact, however, remains in these OAs that the people who were apparently junior to the applicants and who were also engaged after 1991 were considered for regularisation. Therefore, the cases of the applicants would also merit consideration for regularisation.

13. In the above view of the matter, all the above OAs succeed substantially and are accordingly allowed. The

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respondents are directed to consider reinstatement of the applicants and the regularisation in service, in terms of the conditions as laid down in their own Model Standing Order dated 15.12.1989 and letter dated 31.1.1991, as directed by the Hon'ble High Court, ahead of those juniors who have been regularised. The respondents shall also count the previous service rendered by the applicants for the purpose of seniority, but ~~they~~ applicants would not be entitled for any back-wages for the period between the dates of their disengagement and reinstatement. The above exercise shall be completed within a period of four months from the date of receipt of a copy of this order.

14. Let a copy of this order be placed in all the connected files.

(Govindan S. Tampi)
Member (A)

/sunil/

Attested

G. L. Sharma
4.2.03

C.O. CAT