

Central Administrative Tribunal
Principal Bench

O.A. No. 74/99

New Delhi this the 11th day of October, 1999

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

1. Hukam Singh,
S/o Shri K.C. Ram,
H.No. 143A, Sagar Vihar Colony,
Kakrola Road, Dharampura,
Najafgarh,
New Delhi.
 2. Net Ram,
S/o Shri Ram Harak,
R/o C/o Shop No. 97, Sadar Bazar,
Delhi.
 3. Satyabhan,
S/o Shri Ram Pakash,
H.No. 68, Sahdulla, Near Saket,
New Delhi.
 4. Rajesh Balmiki,
S/o Shri Murari Lal,
Gaur Bhan Earli No. 40,
Sadh Nagar-II,
New Delhi-45.
- ... Applicants.

By Advocate Shri Yogesh Sharma:

Versus

1. Union of India through
The Secretary,
Ministry of Defence,
Govt. of India,
New Delhi.
 2. The Deputy Director
General of Military Farms,
Army Headquarters, West Block-III,
R.K. Puram, New Delhi.
 3. The Officer Incharge/Manager,
Military Farms, Govt. of India,
Ranikhet (UP).
- ... Respondents.

By Advocate Shri Gajender Giri.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicants who are four in number have filed this application against the order passed by the respondents terminating their services w.e.f. 12.12.1998. They claim

that this order is illegal and against the Rules and they have prayed that the respondents may be directed to re-engage them and declare the action of the respondents engaging labour on job basis (contract basis) in their place as illegal.

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2. The applicants were engaged as Casual Labour in the Military Farm at Ranikhet which is under the respondents, from December, 1993. They have submitted that they have been granted temporary status in the year 1996 w.e.f. 1.2.1996. Shri Yogesh Sharma, learned counsel for the applicants, submits that the applicants were engaged against the regular posts and since they have worked for a number of years, their services cannot be replaced by others. He has submitted that six outsiders have taken the place of the applicants which is a reason for the impugned termination order dated 12.12.1998. The learned counsel relies on the judgement of the Tribunal in **Surendra Prasad and Ors. Vs. Union of India & Ors. (1996(33) ATC 815 (CAT-Patna Bench)** and the judgement of the Delhi High Court in **Vijay Pal Singh and Ors. Vs. Delhi Administration and Ors. (1983(4) Delhi Reporter Judgement 337)**. He has submitted that in **Surendra Prasad's case (supra)**, the Tribunal had held that people like the applicants who have completed 240 days service have legitimate expectancy that in due course their services shall be regularised and the respondents were directed to absorb the applicants and regularise their services. He also relies on the Ministry of Home Affairs DOP&T O.M. dated 26.10.1984 (copy placed on record) regarding regularisation of service of casual workers in Group 'D' posts, in organisations observing five day week. Learned counsel has also very vehemently submitted that the respondents are violating the instructions by engaging a lot

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of contract labour by first terminating the services of the applicants and thereafter offering them employment on contract basis as given in their letter dated 14.8.1998. In this letter, he has pointed out that the seasonal work and temporary employment will be done on job basis without marking attendance as no casual labour is to be employed against regular jobs. He relies on the case of **Air India Statutory Corporation & Ors. Vs. United Labour Union and Ors.** (1997(9) SCC 377).

3. The respondents in their reply have submitted that the O.A. is without any merit and is not maintainable. They have taken a preliminary objection on jurisdiction that the applicants were working in Military Farm, Ratighat under Military Farm, Ranikhet (UP), and, therefore, the subject matter comes under the territorial jurisdiction of the Lucknow Bench of the Tribunal. In reply, the applicants have submitted that the entire action of the respondents in terminating the services of the applicants is based on the Army Headquarters' order dated 14.8.1998. Shri Yogesh Sharma, learned counsel, has, therefore, submitted that as the impugned order has been passed from New Delhi, dated 14.8.1998, and the applicants who are aggrieved by the termination order are presently residing in New Delhi, the application is maintainable in the Principal Bench. Considering these facts, and the provisions of Rule 6(2) of the Central Administrative Tribunal (Procedure) Rules, 1987, the preliminary objection of jurisdiction is rejected.

4. The respondents have stated that they had issued retrenchment orders in respect of the applicants because of the posting of Group 'D' permanent staff from Military Farm, Jhansi and Military Farm, Kanpur by order dated 12.11.1998.

They have submitted that Group 'D' staff had been declared surplus and they had to be adjusted in other places and they have relied on Paragraph 8 of the DOP&T O.M. dated 10.9.1993. This O.M. provides that regular Group 'D' staff rendered surplus for any reason will have prior claim for absorption against the existing future vacancies. Shri G. Giri, learned counsel, has submitted that accordingly the respondents have issued the order dated 12.11.1998 posting three Group 'D' staff from Military Farm, Kanpur to Military Farm, Ratighat and two from Military Farm, Jhansi, to Ratighat. The respondents have not denied that they have granted temporary status ^{to the applicants} w.e.f. 1.2.1996, but as permanent staff were posted to the Military Farm at Ratighat, they had no other alternative but to retrench the applicants after paying them one month's salary in lieu of notice and compensation amounts as provided under the Rules.

5. The applicants in their reply have reiterated that the whole action of the respondents in terminating the services of the applicants is based on the order passed by the Army Headquarters dated 14.8.1998. They have also reiterated the averments in the application. Shri Yogesh Sharma, learned counsel, has also very vehemently submitted that as the work done by the applicants is of a ~~very~~ perennial nature and the same work is still available, ~~after~~ the respondents are engaging and resorting to labour on job basis, which is not in accordance with law.

6. I have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

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7. Para 8 of the DOP&T O.M. dated 10.9.1993 provides, inter alia, that regular Group 'D' staff rendered surplus for any reason will have prior claim for absorption against the existing/ future vacancies. The DOP&T O.M. dated 26.10.1984 will not apply to the facts of this case as that O.M. deals with the implementation of the instructions relating to regularisation of services of casual workers in Group 'D' posts, in the Organisation\$ observing five days week. Besides, the later O.M. issued by the DOP&T dated 10.9.1993 which refers to the guidelines on the subject of grant of temporary status and regularisation of casual workers would be applicable to the facts of this case. The applicants have not disputed the fact that the persons who have been posted in Military Farm, Ratighat in their place are permanent Group 'D' staff. Therefore, in the facts and circumstances of the case, I find that the order passed by the respondents dated 12.11.1998 posting the Group 'D' staff to other Military Farms, including the Military Farm at Ratighat, is in order, as it cannot be stated that it is against the Scheme laid down by the DOP&T O.M. dated 10.9.1993. The contention of the learned counsel for the applicants that these Group 'D' staff are "outsiders" who have been posted in place of the applicants is not tenable as they are Group 'D' staff who are permanently working under the respondents in different places earlier and have a prior claim. In the facts and circumstances, the cases relied upon by the applicants' counsel will not assist them as the facts in those cases are distinguishable. Apart from that, Para 8 of DOP&T O.M. dated 10.9.1993 is applicable to the present facts which provides, inter alia, that regular Group 'D' staff rendered surplus for any reason will have prior claim for absorption. Therefore, the surplus Group

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10 staff from other Military Farms cannot be regarded as "Outsiders" and this ground taken by the applicants' counsel fails and is rejected.

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8. Regarding the second issue raised by the learned counsel for the applicants, he had drawn attention to the letter dated 14.12.1998 filed by the respondents as Annexure R-IX to the counter affidavit. In the second paragraph, they have stated that seven persons mentioned in that letter, including the four applicants in the present O.A., are not ready to do on "job basis" and it has also been stated that no attendance will be marked. This action of the respondents appears to be in violation of the provisions of the DOP&T O.M. dated 10.9.1993 with regard to engagement of casual labourers, as the respondents are required to keep the record for the period of engagement of these persons so that when they have put in the required number of days, i.e. 240 days or 206 days, as the case may be, they would be entitled to temporary status and other benefits as mentioned therein. In the facts and circumstances of the case, I find merit in the contention of the learned counsel for the applicants that the respondents cannot take work from casual labourers on temporary basis without marking attendance of their service as mentioned in the impugned letter dated 14.8.1998. To this extent, the impugned letter dated 14.8.1998 is contrary to the Govt. of India, DOP&T Scheme dated 10.9.1993 and is, therefore, quashed and set aside. The respondents shall re-engage the applicants in accordance with the relevant Rules and instructions, subject to availability of work and give the applicants' preference over juniors and outsiders as the respondents have

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themselves stated that the applicants have already been granted temporary status w.e.f. 1.2.1996. They would also be entitled to the other benefits as provided under the O.M. dated 10.9.1993, subject to their fulfilment of the conditions.

9. O.A. is partly allowed as in Paragraph 8 above.

No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)

SRD