

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-974/99

New Delhi this the 28th day of September, 1999.

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

1. Smt. Kaushalya Devi,
W/o late Sh. Ram Lakhan,
R/o B-109, Prem Nagar-I,
70 ft. Road, Near Nangloi,
Delhi.
2. Sh. Chander Singh,
S/o late Sh. Durga Singh,
R/o C-1/198, Gali No.22-23,
Khajuri Colony,
Yamuna Vihar,
Delhi-4.
3. Sh. Amit Kumar Saini,
S/o Sh. Ramesh Kumar Saini,
R/o 8415-16, Arya Nagar,
Paharganj, New Delhi.
4. Sh. Deepak Kumar,
S/o Sh. Ram Prasad,
R/o 451, Kashmiri Bagh,
Keshavganj, Delhi.
5. Sh. Shiv Kishore,
S/o Sh. Brahm Singh,
R/o Gali No. 2B, Swatant Nagar,
376/1155, Narela,
Delhi-40. Applicants

(through Sh. K.N.R. Pillay, Advocate)

versus

1. Union of India through
the Director General Posts
& Chairman Postal Services
Board, Sanchar Bhawan,
New Delhi-1.
2. The Sr. Superintendent,
Delhi Sorting Division,
RMS Bhawan,
Kashmere Gate,
Delhi-6. Respondents

(through Sh. D.S. Mahendru, Advocate)

ORDER

Applicants, five of them, are aggrieved by
the refusal of Respondents No.2 to re-engage them in

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the current year for working as seasonal watermen though they had performed similar duties in earlier years. They are also aggrieved by the actions of the respondents in calling fresh candidates from Employment Exchange in an attempt to appoint them as per Annexure A-1 following the government orders in this respect.

2. The background facts of the case are as hereunder:-

Applicants have been working as seasonal watermen in the R.M.S. Office/Delhi during the past four years. The periods during which they had worked in this capacity related to middle of April to October in the past years. The first applicant belongs to S.C. community, whereas those at Serial Nos. 3 & 4 are O.B.C. by caste and the rest belong to the general category. As in previous years the applicants had put in applications in the first week of April praying for being engaged because the vacancies of seasonal watermen were expected to a rise in the later part of April. They were all surprised to see when a Group-C official under the respondents who is not competent to make such appointments, as at Annexure A-1, but had really issued orders posting several such persons as seasonal watermen. Out of these seven, as many as six of them are freshers and only one (Smt. Krishna Devi) is one who has been working earlier.

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3. It is the case of the applicant that as per practice hitherto being followed by the respondents and as per directions of this Tribunal in such cases, those who have been working in earlier years are to be given preference in re-engaging when vacancies arise or jobs are available in preference to outsiders and those with lesser services than the applicants. In an attempt to add strength to their claims, the learned counsel for the applicant cited the decisions of the Apex Court in the case of Central Welfare Board & Ors. Vs. Ms. Anjali Bepari & Ors. (JT 1996(8) SC 1). The learned counsel also drew our attention to the orders of this Tribunal in OA-131/96 decided on 08.05.96 wherein the Tribunal gave the following directions:-

"respondents consider engaging the contingent seasonal employees in the future, the applicant's case should be considered in preference to outsiders and those with overall lesser length of service."

4. The respondents have controverted the claims. It has been submitted that no seasonal watermen have been engaged by the respondents since 1995 and the work of the watermen is being done by H.R.O./Delhi, Sorting Office on daily voucher basis. As regards the case of Smt. Krishna Devi, it has been submitted that the judgement in a case depends upon the merits of that case only and the same has no relevance on the facts of the present case especially

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when none of the applicants had been sponsored by the Employment Exchange. If such applicants are allowed to work in the present circumstances, it would amount to back door entry which has been banned by the Hon'ble Supreme Court. To add strength to his contentions, the learned counsel for the respondents cited the orders of this Tribunal in OA-2340/96 decided on 28.08.97. That was the case of those who were appointed as casual labourers on daily wage basis for performing anti malaria duties under the respondents Ministry of Defence. That was seasonal job and the services of the applicants therein were terminated on 31.10.96. The grievances of the applicants therein were that the respondents intended to make fresh appointment of casual labourers for performing anti malaria duties in preference to the applicants therein. After having heard the learned counsel of both the parties the Tribunal in that OA (2340/96) held that "If the applicants were engaged in one malaria season as daily wage labourers it is not incumbent on the employer to employ them in the next malaria season. Otherwise, the Courts would be creating and perpetuating a new right when neither law nor reason would confer any such right binding the hands of the employer to call from the market the same casual labourer. The exception is in the case of departments where on judicial direction a scheme is prepared for safeguarding the rights of persons who have put in the requisite number of days of service. It is to prevent workers from being thrown out even

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after long years of service. Each department has framed some sort of a scheme to confer temporary status on casual labourers who have put in a minimum number of days of service. In the Railways, it is a matter of policy that casual labourers once employed will be enrolled in a live casual labour register maintained for the particular zone and if work arises only such casual labourers figuring in the register will be called for and no fresh persons are recruited. Barring the above exceptions, the right of an employer to choose from the market any casual labourer for any specific item of work or work of a seasonal nature or to perform work on a contractual basis cannot be barred. In fact there is no authority for the same."

5. While deciding the aforesaid O.A, this Tribunal noted two decisions of the Hon'ble Supreme Court in the cases of State of Himachal Pradesh Vs. Suresh Kumar Verma & Anr. (AIR 1996 SC 1565); M/s Shabi Construction Co. Vs. City & International Development Corporation & Anr. (JT 1995(4) SC 618) as brought out by the learned counsel for the respondents therein.

6. In a hotly contested rival contentions of the learned counsel for both the parties, we are required to adjudicate the following:-

(a) The legality of the applicant's claim in respect of re-engagement as casual labourers in preference to outsiders and freshers.

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(b) The legality of the respondents action in denying the opportunities of re-engagement of the applicants as casual labourers on the plea of the applicants not having been sponsored by the Employment Exchange.

7. We find that the applicants have been working earlier as watermen. The applicants have annexed details of their working experiences as seasonal watermen on daily wage basis for different years as annexed at A-2(Colly.) at pages 9 to 13 of the paperbook. It is a situation identical to that in OA-131/96 (supra) wherein this Tribunal had directed that such applicants shall be considered for re-engagement in preference to outsiders and freshers. I find that the same orders have been given in several other OAs decided earlier. The O.A. cited by the learned counsel for the respondents (i.e. the order in OA-2340/96 decided on 28.08.97) do not have identical facts and circumstances as in the present case. The applicant therein continued performing intermittently from year to year anti malaria duties against a project and hence when the project came to an end, the casual labourers on daily wage basis had to be dispensed with. That apart, we find when the case was decided on 28.08.97, the decision of this Tribunal in OA-131/96 decided on 08.05.96 or the orders of the Apex Court in the case of Central Welfare Board & Ors. (supra) were not brought to the notice of the

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Tribunal. While dealing with the problem of re-engagement of casual employees in an identical situation, the Apex Court in the case of Central Welfare Board & Ors.(supra) held as under:-

"In view of the above stand, we direct the petitioners to continue the respondent in any other temporary scheme but keeping in mind the overall seniority of all the persons; the dispensing with the services should be on last-come-first-go basis, i.e., the juniormost incumbent has to go out first. As and when vacancies would arise, such persons whose services have been dispensed with will be taken back without following the practice of requisitioning the name of candidates from the employment exchange. They would be regularised only when regular posts are available and in accordance with the order of seniority."

8. That apart, we find that the principle that needs to be followed for engagement of casual labourers stand well settled by the Apex Court in the case of Inder Pal Yadav & Ors. Vs. U.O.I. & Ors. (1985(2) SCC 648). That was the case where their Lordships held that engagement of casual labourers have to be based on the principle of "first to come last to go". Because of the detailed reasons aforementioned I could not be persuaded to accept the respondents stand that the ratio laid down in OA-2340/96 would be applicable in this case.

9. And in the context of the legal position as aforesaid, we are left with no alternative but to reiterate the stand of this Tribunal in OA-131/96.

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10. Determination of the second issue need not detain us any longer in the light of the judicial pronouncement of the Hon'ble Supreme Court in the case of Excise Superintendent Malkapatnam Krishna District, Andhra Pradesh Vs. K.B.N.V. Rao (JT 1996(9) SC 638). It was held therein that it is common knowledge that many candidates are unable to have their names sponsored, though their names are either registered or are waiting to be registered in the Employment Exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the Employment Exchange. Under these circumstances, many a deserving candidate are deprived of the right to be considered for appointment. Better view appears to be that it should be mandatory for the requisitioning authorities/establishments to intimate the Employment Exchange, and the latter should sponsor the names of the candidates to be requisitioning Departments for selection strictly according to seniority and reservation as per requisition. In addition, the appropriate Department should call for the names by publication in the newspapers having wide circulation and also display on their office notice boards or announce on Radio, Television and employment news-bulletins. If this procedure is adopted, the principle of fair play would get subserved. In other words, while sponsoring by the Employment Exchange may be taken as the primary source, yet it could not shut out the eligible candidates for being considered from

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any other source. If this practice is followed, the equality of opportunity in the matter of employment would be ensured to all the eligible candidates.

11. In the background of the detailed position as aforesaid, the O.A. is allowed with the following directions:-

The respondents shall consider re-engaging the applicants in preference to freshers and those with lesser service than the applicants provided they have jobs available.

No costs.


(S.P. Biswas)
Member(A)

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