

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2360/98

199

T.A.No.

12

DATE OF DECISION: 11.1.2000.

Sh.Devender Kumar & Ors

....Petitioner

Sh.R.R.Rai

....Advocate for the
Petitioner(s)

VERSUS

Lt Governor through the Chief
Secretary and Ors.

....Respondent

Sh.Rajinder pandita.

....Advocate for the
Respondents.

CORAM

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

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other
Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Member(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA 2360/1998

New Delhi this the 11th day of January, 2000

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

1. Shri Devender Kumar, aged 24 years
S/o Shri Suraj Bhan,
R/o B-3, Kewal Park, Azadpur,
Delhi-110033.
(Previously employed as casual daily
wage Driver in the Office of the
Commissioner of Excise, Entertainment
and Luxury Tax,
Govt. of N.C.T. of Delhi,
Vikas Bhawan,
New Delhi-110002.

2. Shri Kirti Azad, aged 23 years
S/o Shri Kalu Ram,
R/o D-3/10, Amit Nivas, Dayalpur,
Delhi.
Previously employed as casual
daily wage Driver in the Office of
the Commissioner of Excise, Entertain-
ment and Luxury Tax,
Govt. of N.C.T. of Delhi,
Vikas Bhawan, I.P. Estate,
New Delhi-110002.

.... Applicants

(By Advocate Sh. R. R. Rai.)

VERSUS

1. Lt. Governor,
Thro' The Chief Secretary,
Govt. of N.C.T. of Delhi,
5 - Sham Nath Marg,
Delhi-54.

2. The Commissioner of Excise,
Entertainment and Luxury Tax,
L-Block, Vikas Bhawan,
I.P. Estate, New Delhi-2.

3. The District Excise Officer (Admn.)
Office of the Commissioner of Excise,
Entertainment and Luxury Tax,
L-Block, Vikas Bhawan,
I.P. Estate, New Delhi-2.

.... Respondents

(By Advocate Sh. Rajinder Pandita)

O R D E R (Oral)

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

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The applicants, who were admittedly engaged as daily wage Drivers with the respondents are aggrieved by the order terminating their services w.e.f. 28.7.1998 although, according to them, they have continued to work upto 16/17.9.1998 respectively in the same capacity.

2. The applicants have sought the following main reliefs:

(a) allow the application and quash the oral termination of the applicants;

(b) command/direct the respondents, their officials and agents to reinstate/re-engage the applicants in their posts as daily wage Drivers with all consequences;

(c) direct the Respondent No. 2 to grant temporary status to them in their employment with all the consequential benefits;

(d) direct the Respondent No. 2 to take steps to regularise their services;

(e) direct the respondents to make payment of remaining wages to the applicants for the period from 29.7.98 to 17.9.98 during which they worked but not paid.

3. I have heard Shri R.R. Rai, learned counsel for the applicants and Shri Rajinder Pandita, learned counsel for the parties and perused the records.

4. Shri Rajinder Pandita, learned counsel has taken a preliminary objection that the O.A. is not maintainable, firstly on the ground that there was no final order which has been passed against which the applicants could approach this Tribunal. Secondly, they have not filed an appeal or even a representation against the final order after which alone they can file the O.A. as provided in Sections 19, 20 and 21 of the

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Administrative Tribunals Act, 1985 (hereinafter referred to as 'the Act'). He has very vehemently contended relying on the Full Bench judgement of the Tribunal in **B. Parmeshwara Rao Vs. The Divisional Engineer, Telecommunications, Euru and Anr.** (Full Bench Judgements of CAT(1989-1991)-Vol.II 250) that the applicants have not exhausted the alternate remedy, that is by way of making even a representation to the respondents before filing this O.A. on 26.11.1998. Shri R.R. Rai, learned counsel, on the other hand, has drawn my attention to Annexure A-5 collectively which are copies of representations made by the applicants on 30.9.1998 and 5.10.1998 to the respondents which have been referred to in paragraph 4.8. The reply given by the respondents to this paragraph is not only vague but evasive and they have not categorically accepted or denied the applicants' averments in the corresponding paragraphs that they had made representations to the respondents to consider their cases favourably for re-engagement as daily wage drivers and to grant them temporary status. It is also relevant to note that the Tribunal by order dated 15.2.1999 has admitted the application. Much reliance has been placed by the learned counsel for the respondents on the provision of Section 20(1) of the Act. This sub-section provides that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. Taking into account the fact that the applicants were lowly paid employees, the preliminary objection that the O.A. is not maintainable at this stage, is rejected.

5. Coming to the merits of the case, the applicants were admittedly daily wage drivers employed by the respondents initially by their order dated 12.11.1997 w.e.f. 28.10.1997.

Y.S.

Thereafter, the applicants have placed on record copies of the subsequent orders which have been passed by the respondents granting them extension of tenure as Drivers on daily wages for 89 days with some breaks. In the order dated 25.6.1998 (Page 17 of the paper book), the applicants were appointed as Drivers on daily wages for another period of 89 days w.e.f. 1.5.1998. In this order, it is clearly mentioned that the appointees will not have any claim for regular appointment as Drivers. Shri R.R. Rai, learned counsel, has submitted that although under the orders, the second extension of the applicants expired on 28.7.1998, but in actual fact they have worked further upto 16.9.1998 and 17.9.1998, respectively for which he has placed on record attendance sheets/rolls (Annexure A-3). He has also submitted that for the period from 29.7.1998 till 16/17.9.1998, the respondents have not paid the daily wages due to them as previously paid to them. This averment has been made in paragraph 4.3 of the O.A. In the reply of the respondents, they have submitted that the daily wages of the applicants have been paid for the work performed by them but it is relevant to note that the date upto 28.7.1998 has alone been referred to in the reply and nothing has been stated for the period thereafter as claimed by the applicants. The Department's reply is again unsatisfactory and incomplete as they ought to have clearly stated whether the applicants did or did not work during the relevant period especially when copies of the attendance sheets/rolls have been enclosed with the O.A.

6. Shri R.R. Rai, learned counsel, has relied on the judgement of the Tribunal in **Raghvender Singh Vs. Govt. of NCT & Ors.** (OA 654/98), decided on 10.9.1998, copy placed at Annexure A-6 and the judgement in **M. Seeni & A. Pandian Vs. Union of India and Ors.** (OA 797/92) CAT-Madras Bench, decided

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on 3.6.1993 which is reported in Swamy's Case Law Digest, 1993 of Government Servants Cases of Muthuswamy (Vol.VI) P-971. Shri Rajinder Pandita, learned counsel, on the other hand, has submitted that these cases are not relevant as admittedly the post of drivers is a Group 'C' post and the Government Scheme dated 10.9.1993 has been formulated for Group 'D' post and it has, therefore, no relevance. He has also relied on the judgement of the Supreme Court in **Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar & Ors.** (1997(2) SCSLJ 24) and **State of Haryana & Ors. Vs. Jasmer Singh & Ors.** (JT 1996(10) 876). His contention is that the Supreme Court has clearly laid down that the daily wage employee has no right to a post. He has further submitted that the respondents have taken the applicants as a stop gap arrangement till regular incumbents could be appointed and as per the relevant rules Group 'D' employees in the Department were eligible for consideration for promotion to Group 'C' posts, failing which they could take them by direct recruitment. He, therefore, submits that if the applicants apply against any post that might be advertised and fulfil the necessary conditions as laid down in the Rules, they could be appointed in Group 'C' post and not otherwise. In the circumstances, the learned counsel for the respondents has submitted that the O.A. may be dismissed. Shri R.R. Rai, learned counsel, has, however, submitted that as the applicants have put in more than 240 days as required under the DOP&T O.M. dated 10.9.1993, the respondents may at least be directed to grant them temporary status and give them preference to juniors and outsiders when considering them for any regular appointment in Group 'C' posts as Drivers.

7. From the documents placed on record by the applicants themselves regarding their appointment as daily wage drivers, it is noticed that they had been clearly

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informed that such appointment cannot give rise to a claim for regular appointment as drivers. During the course of arguments, Shri R.R. Rai, learned counsel, has also agreed that the DOP&T O.M. of 10.9.1993 relied upon by him for grant of temporary status and other claims as provided in that Office Memorandum is a Scheme which relates to Group 'D' employees. The Supreme Court in Himanshu Kumar's case (supra) has held that daily wage employees have no right to the post and the termination was not held arbitrary in that case. In the present case also, admittedly, the applicants have been appointed as daily wage drivers. In the light of the ruling of the Hon'ble Supreme Court which is binding on me, the judgements relied upon by the learned counsel will not assist them in the facts of this case as admittedly the applicants were only daily wage employees. In the circumstances, as the DOP&T O.M. dated 10.9.1993 is a Scheme prepared in respect of Group 'D' employees the claims of the applicants for grant of temporary status and other consequential benefits in terms of the DOP&T O.M. are unsustainable and accordingly rejected.

8. The applicants had filed an MA 740/99 in which they have submitted that the respondents have violated the provisions of the Act and have initiated action to fill up the post of drivers on regular basis by calling the candidates from the Employment Exchange for interview on 15.3.1999. In this connection, I agree with the contentions of Shri Rajinder Pandita, learned counsel for the respondents that as there was no stay obtained by the applicants restraining the respondents from going ahead with any further action, they cannot be faulted at this stage. The learned counsel for the applicants has also contended that as the applicants had worked as daily wage drivers with the respondents, they ought to have called these people also for interview. This again is an untenable

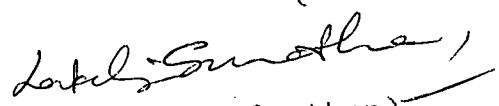
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claim as the applicants admittedly did not even make an application to the respondents to consider their cases. They cannot, therefore, raise a grievance on this point as they have also not acted in accordance with the rules and instructions on the subject. Therefore, the contention of Shri R.R. Rai, learned counsel that the applicants have been ignored by the respondents, when admittedly they themselves have not applied for the post is untenable and, therefore, deserves to be dismissed. The M.A. is accordingly dismissed.

9. In view of what has been stated in paragraph 5 above, the respondents are directed to verify their records and in case the applicants have worked as daily wage drivers from 29.7.1998 upto 16/17.9.1998 respectively with them, they shall make payments to the applicants, if found due, on the same terms and conditions. This action shall be taken by the respondents within two months from the date of receipt of a copy of this order and in case the claim is rejected, they shall do so by a detailed and reasoned order enclosing the relevant documents with intimation to the applicants.

10. In the facts and circumstances of the case, in case in future ~~the~~ vacancies of drivers arise with the respondents and the applicants apply for the same, they shall take into account the previous service of the applicants and consider their cases in preference to outsiders and juniors, subject to their fulfilment of eligibility conditions and the other provisions in accordance with law and rules. O.A. is accordingly disposed of. No order as to costs.


(Smt. Lakshmi Swaminathan)
Member (J)