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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O A No. 572/1998

New Delhi: Dated: this the 3rd day of September, 1998

HON^{BLE} MR. S. R. ADIGE, VICE CHAIRMAN (A).

S/Shri Tilak Raj S/o Shri Mange Ram,
Ballabgarh,
Jeevan Colony,
Distt. Faridabad,
Haryana.

2. Bal Bahadur S/o Sh. Narth Badur,
D-587, Kidwai Nagar,
New Delhi.

3. Mohan Singh, S/o Ram Prasad,
D-587, Kidwai Nagar,
New Delhi.

4. Mohan Singh Rawat,
S/o Anap Singh,
16-E/195, Tenk Road,
Bapa Nagar,
Karol Bagh,
New Delhi.

5. Suresh Thakur,
S/o M. Thakur,
C/4, M.L. Flat,
Baba Kharek Singh Marg,
New Delhi.

6. Krishna Nand Pant,
Chintamani Pant,
R/o 1-69, Sunder Nagri,
Nand Nagri,
Delhi.

7. Vinod Kumar,
S/o Dal Chand,
903, Sun Light,
Colony-2,
Hari Nagar,
Ashram,
New Delhi-12

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8. Ram Kishore Sodan Singh 1162, Chota Kela
Balmiki Nagar
Ghaziabad, UP.
9. Ram Pyre Ram Dular Vill. Arthla, P.O.
Mohan Nagar
Ghaziabad, U.P.
10. Ram Mehar Baljor Singh Vill. Bhivani, P.O.
Sonu, Dt. Meerut
Ghaziabad.
11. Devender Singh Sher Singh RZ 40A, 216/23, Block
West Sagar Pur
New Delhi-46.
12. Sudesh Kumar Prem Chand 219, Lodi Complex,
New Delhi-3.
13. Anil Kumar Bhajan Lal Vill. Sadulapur
Distt. Gautam Budh Ngr
P.O. Baidpuri
14. Mangal Sen Jeevan Singh Loni Border, Panchvat
Colony, Gali No. 3 Blo
d. No. 96.
15. Narendra Sharma K L Sharma C-122, Sector 23,
Raj Nagar
Ghaziabad, U.P.
16. Rajbir Nathi Ram H.No. F2/354, Sunder
Nagari, Nand Nagri
Delhi-93.
17. Narender Singh Jai Singh L-620, Sewa Nagar
New Delhi-3.
18. Shyam Nath Ram Singh A-1 49, Madan Gir
New Delhi-62.
19. Makan Singh Dev Singh K/2, 397 Sangam Vihar
New Delhi.
20. Ramesh Kumar Sunder Lal WZ-86, Jeevan Block
U.N., New Delhi-59.
21. Smt. Darshna W/o late
Sh. Jag Pal H.No. 1190, Mata Chowk
Near Sher Singh
Ghori Bala
Vill. Chhatar Pur
New Delhi-30.

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22. Shri Raghbir Singh,
s/o Shri Jagat Singh,
18, Dauli Gaon,
New Delhi-110062

(By Advocate: Shri S.K. Sawhney)

Versus

Union of India
through

Secretary,
Ministry of Human Resources Development,

C Wing, Shastri Bhawan,
New Delhi

2. Director (Administration)
Archaeological Survey of India,
Janpath,
New Delhi.

.... Respondents.

(By Advocate: Shri D.S. Mahendru)

ORDER

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

Applicants pray for regularisation against 16 vacancies said to be available with respondents and for the benefits of increments during pay fixation upon regularisation. They also pray for observance of five days' work and for payment of overtime for extra work done as a result of 6 days work and denial of gazetted holidays.

2. It is not denied that applicants were appointed as Casual Labourers on different dates between December, 1982 and March, 1991 and have been working continuously ever since. It is also not denied that they have been granted temporary status in terms of ASI OM dated 25.10.93 pursuant to DP&AR's OM dated 10.9.93.

3. While applicants have asserted in para 4.6 of their OA that 16 vacancies are available with respondents since 1982 against which they could be

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regularised, the availability of vacancies is specifically denied by respondents in the corresponding para of their reply to which there is no specific challenge in rejoinder. It is no doubt true that in the event regular vacancies exist and respondents purpose to fill up the same on regular basis, applicants would be entitled to be considered for the same in accordance with rules and instructions, subject to their being eligible for the same, but where vacancies themselves are not in existence, it is beyond the Tribunal's jurisdiction to direct respondents to create posts, as this is a function exclusively within executive competence.

4. In so far as the prayer for pay protection is concerned, respondents have taken DP & AR's advice, who have advised (Annexure-R) that as Casual Labourers with temporary status are not working against specific posts, and are being paid wages on the basis of the actual number of days of work performed by them in a month, there is no question for protection of pay in their scale, and upon their regularisation they have to be fixed in the minimum of the scale of the relevant post against which they have been regularised. No rule or instruction has been cited by applicants' counsel before me requiring respondents to grant pay protection upon regularisation of Casual Labourers, or
7 Contravening DP & AR's aforementioned advice.

5. In so far as applicants' grievance that they are being called for duty on Saturday and for payment of overtime for work done on that day is concerned, respondents sought DP & AR's advice who have advised

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(Annexure-R-12) that the facility of paid working off to a casual employee is admissible only if he works for six continuous days in a week. No rule or instruction has been cited by applicants' counsel to counter the aforesaid advice of DP & AR which respondents are following and in fact this advice of DP & AR is strictly in accordance with their OA dated 7.6.88.

6. During hearing applicants' counsel also asserted that applicants were being called upon to put in 8½ hrs' work per day as against the norm of 8 working hrs. per day. Support was sought from the attendance roll of July, 1998, a photocopy of which was taken on record. In this connection, respondents' counsel pointed out that the employees casual as well as regular were required to attend duty at 9-30 a.m. and disperse at 6 p.m. which included half hour for lunch and thus the duty period was 8 hrs. I have no reason to disbelieve this, and in any case, this is not one of their grievance in respect of which relief is sought in para 8 of the OA.

7. Applicants' counsel cited certain rulings including ATJ 1992(1) 217 S. Rawat Vs. UOI; ATJ 1992 (2) 65 Shri R.P. Rai & Ors. Vs. UOI and ATR 1986 page 77 Surinder Singh & another Vs. The Engineer-in-Chief, CPWD & others; In Rawat's case (supra) the Tribunal had directed respondents to reengage those applicants in National Academy of Central Excise, and if no vacancies existed there then in the Central Excise Deptt. and if no vacancies existed even there then in the Ministry of Finance and its subordinate offices

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treating them as one unit. The present case is not of reengagement but of regularisation, which is done on the basis of rules and instructions subject to eligibility and depending upon availability of regular vacancies. The ASI constitutes a distinct entity and applicants cannot claim regularisation outside it. Hence the ruling in Rawat's case (supra) is distinguishable on facts from the present case and is not applicable. Similarly R.P. Rai's case (supra) directed regularisation of casual labourers where the work performed was of perennial nature and they had been working for considerable period but the availability of posts was not raised in that case as it has been raised here, and as the Tribunal is specifically precluded from directing respondents to create posts, (that being a purely executive function) the judgment in R.P. Rai's case also does not help applicants.

8. Adverting to Surrender Singh's case (supra) applicants' counsel has invited attention to the Hon'ble Supreme Court's ruling in CUP No.4817/83 Chirendra Chameli & another Vs. State of U.P. relating to employees of Nehru Yuvak Kendras wherein the Hon'ble Supreme Court had deprecated the Central Govt. practice of employing persons on casual basis in organisation for over 12 years and directing that salaries and allowances of Class IV employees be given to the N.Y.K. employees also with effect from the date they were employed. In the same judgment

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the Hon'ble Supreme Court had observed that so long as they performed the same duties they were required to receive the same salary and conditions of service as Class IV employees. On this basis applicants' counsel has asserted that respondents' OMs dated 7.6.88 and 10.9.93 are not in accordance with the aforesaid dictum.

9. If so it was open to applicants to have specifically prayed for quashing and setting aside those two OMs. That however has not been done, and as respondents have acted in accordance with those OMs they cannot be faulted. It is also relevant to note that neither in the N.Y.K. case (supra) nor indeed in Surrender Singh's case (supra) did the Hon'ble Supreme Court specifically direct creation of new posts. In the N.Y.K. case (supra) they expressed the hope and trust that posts would be sanctioned by Central Govt. so that the casual employees could be regularised, while in Surrender Singh's case (supra) they again expressed the hope that Govt. would take appropriate action to regularise the services of those who had been in continuous employment for more than six months.

10. Keeping all that has been discussed above in view, no direction of the kind specifically prayed for by applicants would be warranted in this case. However, respondents themselves admit that applicants were recruited as casual employees ever since December, 1982 and have been continuing as such even since, although they have granted temporary status in the meantime. This is by no means a short period of time. Under the circumstances, This OA is disposed of holding that if and when vacancies

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became available in ASI against which applicants can be considered for regularisation, respondents should consider regularising them against those vacancies in their turn subject to their being found eligible and in accordance with the rules and instructions on the subject. No costs.

S. R. Adige
(S. R. ADIGE)
VICE CHAIRMAN (A).

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