

Central Administrative Tribunal, Principal Bench

O.A.No.310/95

Hon'ble Shri A.V.Haridasan, Vice-Chairman(J)

New Delhi, this 11th day of December, 1996

Shri Ashish Kumar
s/o Shri Nand Lal
aged about 30 Years
r/o House No.T/95, Old Nangal
Delhi Cantt. - 110 010.

Shri Mohinder Nath
s/o Shri Vishwa Nath
aged about 26 years
r/o House No.T-95
Old Nangal
Delhi Cantt. - 110 010.

... Applicants

(By Shri Surinder Singh, Advocate)

Vs.

The Union of India through,
Defence Secretary
Ministry of Defence
South Block
New Delhi - 110 011.

The Commandant
No.4. Reserve Petroleum Depot...
ASC, Delhi Cantt. - 10.

... Respondents

(By Shri Rajeev Bansal, proxy of Shri B.K.Aggarwal
Advocate)

O R D E R(Oral)

The applicants two in number, who were engaged as Casual Labourers under the respondents w.e.f. 10.11.1982, and continued in service thereafter till 29.9.1994, are aggrieved by the fact that the respondents after calling upon them to produce the necessary testimonials in proof of age, educational qualifications, etc. for consideration for appointment as regular Mazdoor have terminated them from service though the work is available and persons junior to them have been retained, granted temporary status and even regularised in service. In paragraph 4.5 of the application, the applicants have given the list of Casual Labourers who commenced service long after the applicants had commenced

their service and have stated that the action on the part of the respondents for not granting the temporary status and regularisation to the applicants is arbitrary, illegal and violation of Article 16 of the Constitution of India.

2. The respondents in their reply have admitted that the applicants have been in service of the respondents but contend that they did not acquire the eligibility for regularisation as neither of them has completed 240 days of casual service in two years consecutively, as is required in accordance with the guidelines under which labourers are being granted temporary status. Regularisation of seven casual labourers who commenced service later than the applicants is sought to be justified on the ground that it was done considering the aggregate number of working days to their credit as per rules. The allegation that the applicants' services have been terminated is denied and it is contended that the applicants absented from duty on their own. It has also been stated that once the applicants report for duty they would be readmitted to duty and would be considered for regularisation in their turn.

3. I have gone through the pleadings and have heard the counsel for the applicants, Shri Surinder Singh and proxy counsel for respondents, Shri Rameev Bansal. I find that the case needs consideration. As only a single point is involved as agreed to by the counsel I proceeded to admit and dispose of the OA at this stage. A careful scrutiny of the pleadings in this case has lead to the irresistible conclusion that the contentions raised by the respondents that the applicants themselves abandoned the work and that the respondents did not verbally terminate their services is not true. It is difficult to believe that the applicants who have been

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serving as Casual Labourers since 1982, abandoned their service on their own when they were being considered for regular appointment, and filed this application just three or months thereafter falsely alleging that their services were terminated. If really the applicants absented themselves and did not report for casual work, normally the official of the respondents who have their charge would have reported the matter to higher authorities and a notice would have been delivered to the applicants stating that if they did not report for duty their names would be struck off from the roll and that they would not be continued for further engagement and regular appointment. This has not been done. It is very difficult to believe that the applicants absenting ~~himself~~ ✓ from work resorted to litigation as, casual labour who belong ~~in~~ ✓ to the lowest strata of the society would be in a position to have the luxury of a frivingless litigation. Therefore, I reject the contension raised by the respondents that the respondents did not terminate the services of the applicants but the applicants left the services on their own. Regarding the act of arbitrainess in regularising the services of seven casual labourers mentioned in the application no material is available to establish that they did not fulfill the eligibility critaria. Therefore, it is not possible to conclude that the action on the part of the respondents is arbitrary. Regularisation is done in accordance with the guidelines which prescribed that a casual labourer should have completed 240 days of service in two consecutive years. In the case of the applicants, they have not completed 240 days in two years as contented by the respondents. However, the action on the part of the respondents to dispense with the services of the applicants and leave them totally out of consideration for regularisation is unkind, unjust, unfair and arbitrary.

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4. In the light of the what has stated above holding that the termination of the service of the applicants from 30.9.1994 is illegal and unjustified, I direct the respondents to reinstate the applicants in service as casual labourers forthwith at any date within one month and to continue them as casual labourers subject to availability of work. If their retrenchment becomes unavoidable it shall be done only in accordance with the law following the well settled principle 'Last Come First Go'. In determining the length of casual services the period from 30.9.1994 till the date of the reinstatement shall be treated as casual service in their case but they would not be entitled to any back wages for this period. The respondents shall also consider the applicants regularisation on Group 'D' posts in their turn subject to fulfilment of eligibility of conditions. No costs.


(A.V. HARIDASAN)
VICE - CHAIRMAN (J)

/rao/