

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 2340 of 1996

New Delhi, this the 28<sup>th</sup> day of August, 1997

Hon'ble Mr. N. Sahu, Member (A)

1. Shri Anil Kumar S/o Shri Chaman Lal,  
R/o D-II/135, Kaka Nagar, New Delhi
2. Shri Rajan Prasad, S/o Shri Moti Lal,  
R/o 34/406, Panchkuyan Road, New Delhi
3. Shri Rakesh, S/o Shri Mahinder Singh,  
R/o 23, Race Course Camp, Dhobi Ghat,  
Air Force Station, New Delhi
4. Shri Jai Singh, S/o Shri John Lal,  
R/o M-13, Ali Ganj, Lodhi Colony, New Delhi
5. Shri Surinder Kumar S/o Dasain Manjhi,  
R/o 1/8, Panchkuyan Road, New Delhi

- APPLICANTS

(By Advocate - Shri D.S. Mehandru)

Versus

Union of India, through

1. Secretary, Ministry of Defence,  
South Block, New Delhi
2. Administrative Officer, Air Force  
Station, Race Course, New Delhi
3. Area Officer Commanding, Air Force  
Station, Race Course, New Delhi

- RESPONDENTS

(By Advocate - Shri K.R. Sachdeva)

JUDGMENT

By Mr. N. Sahu, Member (A)-

The applicants have prayed in this Original Application for quashing the oral termination order passed by the respondents with a direction to reemploy them with all consequential benefits.

2. The brief facts are that the applicants were appointed as casual labourers on daily wages purely on a temporary basis for performing anti malaria duties. This was a seasonal job and the services of the applicants were

terminated on 31.10.1996. The grievance of the applicants is that the respondents intend to make fresh employment of casual labourers for performing anti malaria duties in preference to the applicants.

3. The learned counsel for the respondents stated that the applicants have no right to re-engagement. He relied on two decisions of the Hon'ble Supreme Court in the cases of State of Himachal Pradesh Vs. Suresh Kumar Verma and another, AIR 1996 SC 1565, and M/s Shabi Construction Co. Vs. City & International Development Corporation & another, JT 1995 (4) SC 618. In the case of Suresh Kumar Verma (supra) the respondents were re-engaged as Assistant Development Officers on daily wages pursuant to the directions of the High Court. The Hon'ble Supreme Court held that once recruitment rules were framed to a class of posts or to various services, the State is bound to follow the same rules. Selection can be made as per those recruitment rules but appointment on daily wage basis is not an appointment to a post according to the rules. The Hon'ble Supreme Court further held that termination of daily wage employees due to coming to end of a project employing them, does not mean that the Court can give directions to re-engage them in any other work or appointment against existing vacancies; even the Group 'D' appointments can only be done according to the rules. The Hon'ble Supreme Court in the case of M/s Shabi Construction Co. (supra) has held that "it is trite that before one can seek a writ of mandamus he has to prove that he has a legally protected and judicially enforceable right".

4. I have carefully considered the submissions of rival counsel. An employer has a right to re-engage a daily wager for a specific job or for a particular period and after the job is completed or the season passes over, the employer can terminate the services of the daily wager. Such a casual employee does not have any right to a post nor can he insist on a right to reengagement if there is no work available.

5. In this case the applicants' counsel submits that the applicants should be invited to join as casual labourers for anti malaria duties in the next season and ignoring them there should be no recruitment from the Employment Exchange. In the alternative he states that whenever any other work is available the applicants should be permitted to apply along with others and compete for the job. The learned counsel for the respondents states that there is no need for the Court to give any directions in respect of the latter demand: that is a situation where the employee can always respond and apply to any advertisement for recruitment along with others. In this case the applicants have not put in 240 days of continuous service in a year. They have no right to be considered as 'temporary status' employees. These people work seasonally. The question at issue is: is the employer bound to invite only those employees in the next season and is he precluded from calling any other names from the Employment Exchange? The law on the subject is that once engaged as a daily wager he has no vested right in any job and cannot compel the employer to re-engage him simply because he was engaged earlier for a particular job. In this regard there is no difference between the Government and any other private employer. Otherwise this would lead

to absurd results. The Government departments engage casual labourers for specific items of work like Carpentry, Electrical maintenance, repair work, maintenance of the building, etc. etc. which are specific short term items of work. Once the work is over the daily wage labourer is paid the emoluments and he is discharged. Does it mean that when the need next comes for any of the above jobs - a repair work or a carpentry job or an electrical job, it is obligatory on the part of the employer to call the same daily wage earner? The answer is no. There are several competing workers in the market and the employer has the discretion to employ any one and not necessarily the one that was called to do a special job earlier. There is a ~~no~~ freedom of the employer to choose between various skills available in the market as there is freedom for the workers to compete amongst themselves for a specific job. 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 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.

6. In the result, the Original Application is dismissed. The parties shall bear their own costs.

*N. Sahu*  
(N. Sahu)  
Member (Admnv)

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