

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A.No. 212 /1997 Date of Decision: 21/8/-1998

Shri Ram Asheesh & Ors. .. APPLICANTS
(By Advocate Shri S.M. Garg)

versus

Union of India & Ors. .. RESPONDENTS
(By Advocate Shri KCD Gangwani)

CORAM:

THE HON'BLE SHRI

THE HON'BLE SHRI S.P. BISWAS, MEMBER(A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES
2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER BENCHES OF THE TRIBUNAL?


(S.P. Biswas)
Member(A)

Cases referred:

1. Surinder Singh & Anr. Vs. Engineer-in-Chief, CPWD & Ors. (1986(1) SCC 639).
2. State of Haryana & Ors. Vs. Piara Singh & Ors. (1992(4) SCC 118).
3. U.P. Income Tax Deptt. Contingent Paid Staff Welfare Association Vs. U.O.I. & Ors. (1987(Supp) SCC 658)
4. Ram Nath Paswan & Anr. Vs. UOI & Ors. (OA 901 & 910 of 1990).
5. Mukesh Bhai Chhota Bhai Patel Vs. Joint Agriculture & Marketing Advisor, Govt. of India & Ors. (1994 SCC (L&S) 126)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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OA-212/97

New Delhi this the 21st day of August 1998.

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

1. Sh. Ram Asheesh,
S/o Sh. Ram Bhujart,
R/o 2/56, D.B. Gupta Road,
Karol Bagh,
New Delhi-5.
2. Sh. Sohan Singh,
S/o Sh. Gaje Singh,
R/o F-2/82, Netaji Nagar,
New Delhi.
3. Sh. Sultan Singh,
S/o Sh. Gaje Singh,
R/o F-2/82, Netaji Nagar,
New Delhi.

.... Applicants

(through Sh. S.M. Garg, advocate)

versus

1. Central Public Works Division,
through its Director General,
Nirman Bhawan, New Delhi-1.
2. The Supdt. Engineer(HQ),
S.P.G. Project, CPWD,
Block-11, II Floor, CGO Complex,
Lodhi Road, New Delhi.

.... Respondents

(through Sh. K.C.D. Gangwani, advocate)

ORDER(ORAL)

We have before us three applicants-one working in Group-D and the other two working in Group-C. The applicant No.1 claims to have worked continuously for more than 206 days right from 1988 to 1997-1998. Whereas applicants No.2 & 3, claim to be working as drivers, having working experience of more than 206 days in each year right from 1992-93 to

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1997-98. All the three applicants seek relief in terms of equal pay for equal work particularly for applicants No. 2 & 3; (ii) temporary status and (iii) regularisation.

2. Shri S.M. Garg, the learned counsel for the applicants argued strenuously to say that the applicants case for consideration of equal pay for equal work as well as for temporary status/regularisation are covered by the law laid down by the Hon'ble Supreme Court in the cases of Surinder Singh & Anr. Vs. Engineer-in-Chief, CPWD & Ors. (1986(1) SCC 639 and State of Haryana & ors. Vs. Piara Singh & Ors. (1992(4) SCC 118. In Surinder Singh's case, the Apex Court had the occasion to point out how the principles of equal pay for equal work is not an abstract doctrine and that the Central Government, the State Governments and likewise, all public sector undertakings are expected to function like model and enlightened employers and arguments such as those which were advanced before us that the principle of equal pay for equal work is an abstract doctrine which cannot be enforced in a court of law should ill come from the mouths of the State and State Undertakings. In the case of Piara Singh, their Lordships held that when a work charged/casual/daily wage worker continues for a long period in service, a presumption could be raised for regular need of that service and the State is obliged to consider the possibility of regularisation. To add strength to his

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arguments that similar reliefs are extenable to contingent paid staff, the learned counsel cited the judgement of the Hon'ble Supreme Court in the case of U.P. Income Tax Department Contingent Paid Staff Welfare Association Vs. U.O.I. & Ors. (1987 (Supp) SCC 658). In support of his contentions that sponsorship by the Employment Exchange is no more a necessity, pre condition, the learned counsel for the applicants quoted the decision of this Tribunal in the case of Ram Nath Paswan & Anr. Vs. U.O.I. & Ors. decided by the Calcutta Bench of the Tribunal on 30.1.95 in OA-901 and OA-910 of 1990.

3. Learned counsel for the applicants would further submit that the cases of applicants No.2 & 3 are different from that of applicant No.1. This is because these two applicants were initially allowed to go through trade tests required for regularisation as drivers but they could not qualify in the first attempt, since they did not possess licences for heavy vehicle drivers. These applicants have now obtained all the necessary qualifications for regularisation with requisite driving licence. With this the learned counsel for the applicants would argue that the applicants No.2 & 3 deserve atleast one more chance for passing trade tests and the consequent benefit of regularisation in the category of driver in Group "C". In support of his contention that those who are working as casual drivers could be considered for

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regularisation as such straight away, the learned counsel drew our attention to the decision of the Madras Bench of the Tribunal in OA 727 and 729 of 1992 decided on 23.6.93. (Please see ATJ 1993(2) P. 502) That was the case where the applicants were appointed as casual drivers against vacancies in Group-C posts. They were sponsored by the Employment Exchange and had completed more than 8 years of service and, therefore, respondents were directed to regularise their services.

4. The learned counsel for the respondents Shri KCD Gangwani opposed the claims of the applicants on all the three points. In respect of the claim for temporary status, and regularisation, the learned counsel would say that there is no appropriate Scheme against which the cases of the applicants could be considered. The applicant No.1 is an contingent paid staff and do not qualify to be considered under the Scheme of 10.9.93. This is because this 10.9.93 Scheme only makes provision for temporary status in respect of those who have been engaged as casual labourers. So far as applicants No.2 & 3 are concerned, they were engaged as skilled labourers and not as drivers in Group-C. The learned counsel further contended that these two employees are also outside 1993 Scheme and could be otherwise considered alongwith others against future vacancies in the appropriate grade. He further argued that the applicant No.1 could apply for the post of peon or equivalent nature in Group-D and the department will have no hesitation to consider him in

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terms of the rules. Even in respect of Applicants No.2 & 3, the learned counsel for the respondents submitted that they have to wait but could be considered alongwith others in terms of rules against the vacancies arising in future. Shri Gangwani submitted the ratio arrived in the case of U.P. Income Tax Department (supra) is only applicable to those working in that organisation.

5. It is not in dispute that the applicants are eligible for consideration of temporary status or regularisation. It is also not the contention of the respondents to discontinue the services of the applicants. On the contrary, the fact that all the applicants have continued serving the respondents for a period for 5-8 years has not been in disputed. The dispute is only with reference to the need for providing the benefit of regularisation on the strength of applicants continuous service for doing jobs of perennial nature.

6. It would be necessary at this stage to bring out the rules/law laid down on the issue of regularisation. It is well settled in law that regularisation can be made pursuant to a Scheme or an order in that behalf. as pointed out in the case of Mukesh Bhai Chhota Bhai Patel Vs. Joint Agriculture and Marketing Advisor, Government of India & Ors. (1994 SCC (L&S) 126). Merely working on a post for a number of years on ad hoc basis will not vest the person with the right to be regularised which can be

only done on fulfillment of the regular recruitment/statutory rules and that too against a vacant post. At this stage it is apposite to mentioned the portion of judicial pronouncements of the Hon'ble Supreme Court in the case of Piara Singh (supra) relevant for the purpose of disposal of this application. In para 51, their Lordships held as under:-

"So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and also subject to availability of work. If a casual labourer is continued for a fairly long spell - say two or three years - a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the authority concerned to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court, security of tenure is necessary for an employee to give his best to the job. In this behalf, we do commend the orders of the Government of Haryana (contained in its letter dated April 6, 1990 referred to hereinbefore) both in relation to workcharged employees as well as casual labour."

7. The learned counsel for the respondents pointed out that the orders of the Hon'ble Supreme Court in aforesaid case covers only workcharged employees and not contingent paid staff. In the background of details in para 5 of the judgement of the Hon'ble supreme Court in U.P. Income Tax Department

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Contingent Paid Staff Welfare Association case (Supra), I am not in a position to accept the contention of learned counsel for the respondents that contingent paid staff could not be covered for regularisation in departments other than Income Tax.

8. In respect of equal pay for equal work, the 1d. counsel for the respondents drew my attention to para 4.4. of the counter at page 33. The respondents appear to have been paying the applicants at the prescribed rate by the NCT or as prescribed in the O.M. dated 7.6.88 whichever is beneficial to them. This provision takes care of the applicants claim of relief in terms of equal pay for equal work as in para 8(b) in the paper book.

7. In view of the detailed legal position enumerated, as aforesaid, in the three cases by the Apex Court, the O.A. merits consideration and is allowed with the following directions:-

- (i) The respondents shall consider the applicants for the purpose of regularisation against vacancies arising in the appropriate categories in terms of rules/regulations laid down on the subject.
- (ii) There shall be no order as to costs.

(S.P. Biswas)
Member(A)

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