

Central Administrative Tribunal  
Principal Bench, New Delhi

O.A.No.2164/94

New Delhi this the 31st Day of March, 1995.

(7)

Hon'ble Sh. J.P. Sharma, Member (J)  
Hon'ble Sh. B.K. Singh, Member (A)

1. Sh. Bijendra Kumar,  
S/o late Sh. Chander Lal,  
R/o A-291, Sangam Park,  
R.P. Bagh, Delhi-7.
2. Sh. Bir Singh,  
S/o Sh. Jee Ram Singh,  
R/o Mansarovar Park,  
Gali No.10, H.No.E-66,  
Shahdara, Delhi-32.
3. Sh. Subhash Chand,  
S/o Sh. Giri Lal,  
R/o H.No.356, G-Block,  
Govt. Flat, Srinivaspuri,  
Delhi-65.
4. Sh. Randhir Singh,  
S/o Sh. Amir Singh,  
R/o Shastri Nagar, E-202,  
P.S. Sarai Rohala, Delhi-52.
5. Sh. Narendra Kumar,  
S/o late Sh. Surender Kumar,  
H.184, Gali No.2, Padam Nagar,  
Kishan Ganj, Delhi-7.
6. Sh. Vinod Kumar,  
S/o Sh. Har Pal Singh,  
R/o WZ E-31, Milap Nagar,  
Uttam Nagar,  
New Delhi-59.
7. Sh. Hari Om,  
S/o Sh. Ram Richh Pal,  
H.No.WZ-97, Basai Darapur,  
New Delhi-15.
8. Sh. Dinesh Pal,  
S/o Mr. Adel Singh,  
R/o I-8, G Pocket,  
Staff Quarter,  
President House,  
New Delhi.
9. Sh. Rohatesh Singh,  
S/o Sh. Dariyab Singh,  
R/o H.No.338, Chhuttan Nagari,  
Bijwasan,  
New Delhi-61.

Applicants

(through Sh. Sunil Malhotra, advocate)

versus

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1. Union of India,  
through Secretary,  
Ministry of Defence,  
South Block,  
New Delhi-11.
2. Air Marshal,  
Indian Air Force,  
Vayu Sena Bhavan,  
Rafi Marg,  
New Delhi-11.
3. O.S. (Administration),  
I/C Civil Administration,  
Indian Air Force Station,  
Palam, New Delhi.

Respondents

(through Shri K.C. Sharma, advocate)

ORDER

delivered by Hon'ble Sh. B.K. Singh, Member(A)

These applicants who were appointed as Anti Malaria Lascars from May 1994 to 31st October, 1994, approached this Tribunal before the expiry of their contractual appointment filing a misc. application No.3625/94 alongwith the O.A. claiming that the respondents should not be permitted to engage fresh people in their places and this Tribunal on 31.10.1994 while issuing the notice to the respondents passed an order that no fresh hands should be engaged to the prejudice of the applicants in this O.A. without the application being heard on the next date.

It is admitted that Air Force Station Palam, New Delhi has certain buildings and areas under its control at New Delhi and it is the responsibility of Respondent No.3 to maintain this area in a proper condition and in order to ensure proper maintenance of the area, respondent No.3 every year appoints Anti Malaria Lascars from May to October which is the rainy season. These people are paid

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from the contingency fund and the employment is of 12 persons every year on seasonal basis from 1st May to 31st October.

The names are invited from the Employment Exchange and the applicants are interviewed and selected for this job.

In this application, the two prayers contained are that the applicants should be reengaged without sponsoring names from Employment Exchange and that they should be paid Rs. 62.80 instead of Rs.53.15 which is being paid to them.

The reliefs prayed for are:-

- "(a) pay to the applicants the wages @ Rs.62.80 as applicable to establishments working five days' a week;
- (b) pay to the applicants the arrears of difference of wages @ Rs.9.65 for the period from the date of employment till date i.e. from 26.5.94 to 31.10.94;
- (c) continue the applicants in their employment after 1.11.1994;
- (d) regularise the applicants in Group 'D' categories as and when they became eligible.

A notice was issued to the respondents who filed their reply contesting the application and the grant of reliefs prayed for.

We heard the learned counsel for the parties.

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The learned counsel for the applicants referred to the judgement of the Hon'ble Supreme Court where the practice of hire and fire policy on the part of Government which is a model employer has been deprecated and he also filed a copy of an Order No. S.32021/16/88-WC(MW) dated 23.08.1988. This circular issued by the Ministry of Labour refers to the fixation/revision of daily rates of wages for casual daily rated workers/employees working in the Central Government.

The relevant portions are these:-

"xxxx(i) Where the nature of work entrusted to the casual workers and regular employees is the same, the casual workers may be paid at the rate of 1/30th of the pay at the minimum of the relevant pay scale plus dearness allowance for work of 8 hours a day.

(ii) In cases where the work done by a casual workers is different from the work done by a regular employees the casual worker may be paid only the minimum wages notified by the Ministry of Labour or the State Government/Union Territory Administration, whichever is higher as per the Minimum Wages Act, 1948. However, if a Department is already paying daily wages at a higher rate, the practice could be continued with the approval of its Financial Adviser.

2. It has also now been decided that henceforth whichever minimum wages are to be paid to the casual workers in the Central Government Offices, they may be paid on the basis of the wage notified by the concerned State Government/Union Territory Administration and no reference need be made to the Ministry of Labour for this purpose."

On this basis, the learned counsel for the applicants claimed that the respondents should pay them the minimum wages notified by the Union Territory of Delhi. It was further argued by the learned counsel for the applicants that Air Force Station Palam is an office which is working for 6 days a week and not 5 days a week and

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annexure A-4 has been filed in proof thereof. He further stated that the applicants on the basis of 5 days a week are entitled to Rs.62.80 per day. The applicants thus have been paid wages less than they are due to the extent of Rs.9.65 from the very first day of employment. It was further argued that Anti Malaria Lascars work is of a perennial nature and there is no reason why the respondents should resort to artificial break in engagement of Anti Malaria Lascars from May to October. Secondly he also objected to the respondents requisitioning the names of fresh people from the Employment Exchange and it was pointed out that they have already sent a requisition on 1.11.94 for the season beginning from 1st May, 1995. It is with regard to this that the interim order was passed on 31.10.94 that no fresh requisition should be made and no fresh hands should be appointed till the matter is decided. The learned counsel for the applicants also argued that the replacement of the old hands by a fresh batch of lascars with effect from 1.11.94 is illegal, arbitrary and malafide since the applicants have been discharging their duties to the best satisfaction of the respondents and, therefore, there is no need for recruiting fresh people to do that job. It was also pointed out that they have acquired experience and expertise which will stand in good stead to the respondents. Since the applicants have put in 6 months of service and after completion of 240 days or 206 days, they would be eligible for conferment of temporary status and all the benefits flowing from that, they should be reengaged.

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The learned counsel for the respondents argued that it is a fact that in January, 1994, a requisition was sent to the Employment Exchange and after reminders, the Employment Exchange sponsored the names of 73 candidates on 10.5.1994 vide Annexure-I. The candidates were interviewed on 18.5.94 and 12 candidates were selected for the period from 26.5.92 to 30.5.94 and that formal letters of appointment were issued to them on 18.7.94 (Annexure-2).

It was further argued that the appointment letters and the requisition sent to the Employment Exchange both categorically stated that the requirement was seasonal for a fixed period, ending on 31.10.94 and that the engagement which is purely on casual and seasonal basis would automatically come to an end on the afternoon of 31.10.94.

It was further argued that the applicants accepted these terms and conditions contained in the appointment letter of their engagement and, therefore, they are estopped from challenging these terms and conditions and the nature of their contractual appointment. The learned counsel relied on the ruling of the Hon'ble Supreme Court in case of State of U.P. Vs. Smt. Pushpa Srivastava (JT 1992(4) SC 489). In this the Hon'ble Supreme Court held the view that appointment made purely on adhoc and strictly for a limited period, comes to an end after the expiry of the period whereafter the incumbent does not enjoy any right to continue on the said post. It is also pointed out that these are not regular appointments but just casual and seasonal appointment and when the appointment is seasonal and for a specified period, this has to be treated as a contractual appointment. A contract is between two parties and the terms and conditions of the

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contract are binding on both the employer and the employee.

These casual and seasonal appointments have been made for a limited work and for a limited period. This will not amount to termination of service and this will not attract Article 311 of the Constitution. There is no allegation of misconduct or negligence and there is no disqualification attached while terminating the services of the applicants.

The law has been laid down in *Shrinivas Ganesh Vs. U.O.I.* (AIR 1956 Bombay 455) and a Constitution Bench of the Hon'ble Supreme Court considered the judgement delivered by Hon'ble Chief Justice Mr.M.C. Chagla as wholly relevant in cases of appointment and termination based on contract or termination of appointment under a specific rule. It was held that if the termination of service is founded on the right flowing from the contract or the service rule, then *prima facie*, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted at all. It was further laid down that if the Government has, by contract or under the rules, the right to terminate the employment under a specific rule or under the contract of the appointment in which the conditions are stipulated then it will come to an end by a specific date, it will not amount to termination by way of punishment. A contractual appointment automatically comes to an end on the date the contract expires. In the instant case, it is admitted that these applicants were appointed only till 31st October, 1994 and the Tribunal cannot fetter the hands of the respondents to continue their engagement further nor can impose any condition that they cannot sponsor fresh candidates from Employment Exchange for fresh appointment beginning from 1st May and that they should appoint only these people. The only direction can be issued is that

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while considering the case of the freshers, these applicants also should be considered and if otherwise found suitable, they should be preferred to freshers and juniors.

As regards relief No.2 that they are being paid less than what is due, the circular produced clearly lays down that this circular will be applicable to Central Government offices also. There is a stipulation in this circular that the matter need not be referred to Labour Department. If a Department or a Ministry is already paying daily wages at the rate of 1/30 of the pay and this is less than the minimum wages notified by the Union Territory of Delhi which is higher, the applicants have to be paid the minimum wages prescribed by the Union Territory of Delhi and the difference of payments between Rs. 62.80 minus what they are getting should be paid to them by the respondents and no reference is required in this regard to the Ministry of Labour only internal Financial Advisor is competent to sanction this excess amount. After obtaining the sanction of the F.A., the amount should be paid to them.

Thus no direction can be issued in regard to the first relief that engagement should continue and the order passed by the Tribunal on 31.10.94 which is per incurium also not in conformity of the norms laid down by the Hon'ble Supreme Court, is vacated and the respondents are given the liberty to sponsor fresh candidates from Employment Exchange, if desired, and also to consider the cases of the applicants, if they are otherwise suitable and some weightage may be given to them for the past service that they have rendered with the respondents. As regards

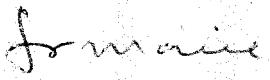
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the payment, the difference, as already indicated, should be paid to them. The O.A. is disposed of with these directions, but without any order as to costs.

  
(B.K. Singh)

Member (A)

  
(J.P. Sharma)

Member (J)

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