

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

..... O.A.NO.2390/94

(b)

New Delhi, this the 26th day of July, 1995

Hon'ble Shri J.P. Sharma, Member(J)

Hon'ble Shri B.K. Singh, Member(A)

1. Jai Kishore
s/o Shri Fula Ram,
r/o Vill. & P.O. Sumera,
Distt. Aligarh, U.P.

2. Chandrapal
s/o Shri Chunni Lal
r/o V. & P.O. Sumera,
Distt. Aligarh, U.P.

3. Veerpal Singh,
s/o Inderjeet Singh
V. & P.O. Sumera,
Distt. Aligarh, U.P.

4. Nahar Singh
s/o Ram Sahay,
Vill. Kastali,
P.O. Pala, Distt. Aligarh,
U.P.

5. Kishore Kumar
s/o Shri Vinay Shanker
Kasimpur Power House, Aligarh,
P.O. Kasimpur, Panighar,
Aligarh, U.P.

6. Sukhbir
s/o Vill. Sudiyal,
P.O. Sudiyal, Distt. Aligarh,
U.P.

... Applicants

By Advocate: Shri A.K. Bhardwaj

Vs.

1. Union of India
through
The Secretary,
Ministry of Information and Broadcasting,
Shastri Bhawan, New Delhi.

2. The Director General,
All India Radio,
Akashwani Bhawan,
Sansad Marg, New Delhi.

3. The Superintending Engineer,
High Power Transmission,
All India Radio, Aligarh,
U.P.

... Respondents

By Advocate: Shri Madhav Panikar

...2.

ORDER (ORAL)

(X)

Hon'ble Shri J.P. Sharma, Member (J)

M.A.No.3904/94 for joining together and the same is allowed. The case of the applicants is that they have been working as Casual Labourers (Beldar) in All India Radio with the Superintending Engineer, High Power Transmission, Aligarh. The various dates of initially joining the service as a casual labour is given by the respondents themselves. Applicant No.1 Jai Kishore initially joined on 7.12.83, Applicant No.2 Chanderpal initially joined on 11.9.86, Applicant No.3 Veerpal Singh initially joined on 9.12.90, Applicant No.4 Nahar Singh initially joined on 10.1.87, Applicant No.5 Kishore Kumar initially joined on 19.1.84 and Sukhbir, Applicant No.6 initially joined on 25.4.91. Out of these, Applicant Nos.1, 3 and 4 are S.C. candidates. The rest are general candidates. It is not disputed that all these applicants are working as casual labourer with Respondent No.3. The Ministry of Personnel, DOP&T issued an O.M. on 10.9.93 regarding grant of temporary status and regularization of Casual workers and that scheme came

into force w.e.f. 1.9.93. This scheme applies to
casual labourers in employment of the Ministries/
Departments of Govt. of India and their attached
and subordinate offices. The scheme conferred
the grant of temporary status on all casual
labourers who are in employment on the date of
issue of this O.M. and who have rendered a
continuous service of at least one year, which
means that they must have been engaged for a
period of at least 240 days (206 days in the case
of offices observing 5 days week). Such confer-
ment of temporary status would be without reference
to the availability or creation of regular
Group 'D' posts. The conferment of this temporary
status on a casual labourer would not involve
any change in his duties and responsibilities.
The engagement will be on daily rates of pay on
need basis. He may be deployed anywhere within
the recruitment unit/territorial circle on the
basis of availability of work. Such casual
labourers who acquired temporary status will
not, however, be brought on to the permanent
establishment unless they are selected through
regular selection process for Group 'D' posts.
Certain benefits are available to such temporary

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status holder which are also mentioned in the aforesaid O.M.

The applicants jointly prayed in this application that the direction be issued to the respondents to confer temporary status on the applicants and the benefit of the scheme dated 10.9.93 be given to them. It is also prayed that the wages of the applicants be paid @ Rs.62.50 per day with arrears and they should not be disengaged from the service of the A.I.R.

The respondents contested this application and filed a reply. The main plea taken by the respondents is that the benefit of the aforesaid scheme cannot be extended as some of the applicants had not been sponsored by the Employment Exchange. It was only Applicant No.1 and 5 who were sponsored through Employment Exchange. Since the applicants have not completed 240 days so temporary status to them was also not granted. The applicants were not engaged for any regular work and they were only performing the casual labour of miscellaneous nature. The applicants are also not working continuously and they were engaged

10

when there was job requirement. The applicants were not given any ~~artificial~~ break as alleged but they were not given engagement on particular occasions because of lack of work by them which they were doing like cutting wild grass, cleaning of stores and other miscellaneous works. There was no proposal to hold an interview as alleged.

The respondents have given a chart of the working days put in by the applicants in Annexure 'A' of the counter, which is reproduced below:-

ANNEXURE - A

S. No.	Name of the Applicants	Year	Number of days of service (effective from 1st January, to 31st December)
1.	2.	3.	4.
1.	Jai Kishore s/o Phuila Ram	1983	11
		1984	175
		1985	214
		1986	200
		1987	231
		1988	174
		1989	114
		1990	223
		1991	224
		1992	191
		1993	226
		1994	182
2.	Chander Pal s/o Chunni Lal	1986	31
		1987	189
		1988	190
		1989	212
		1990	194
		1991	182
		1992	206
		1993	240
		1994	235

1.	2.	3.	4.
3.	Veer Pal s/o Inderjeet Singh	1990 1991 1992 1993 1994	20 253 217 229 235
4.	Nahar Singh s/o Ram Sahay	1987 1988 1989 1990 1991 1992 1993 1994	219 123 173 158 223 218 227 236
5.	Kishore Kumar s/o Vinay Shankar	1984 1985 1986 1987 1988 1989 1990 1991 1992 1993 1994	138 131 126 227 79 103 160 120 208 236 236
6.	Sukhvir Singh s/o Devi Ram	1991 1992 1993 1994	106 229 239 238

It is, therefore, said that the applicants cannot be granted any relief.

The applicants have also filed the rejoinder and disputed the chart of the working days filed by the respondents. It is said that the applicants were given technical breaks and that should be counted in the working days of their continuous engagement. As regards the daily wages

paid to the applicants, in the rejoinder it is reiterated that the applicants are entitled

@ Rs.62.50 per day while the case of the respondents is that they are paid @ Rs.35/- per day as prescribed under the various Government orders. It is said that the applicants have completed requisite number of days in one year and are entitled for the grant of temporary status.

We heard the learned counsel Shri A.K. Bhardwaj for the applicants and Shri Madhav Panikar for the respondents and also perused the record of attendance maintained by the respondents. Firstly we find that the record of attendance brought by the respondents of particular year shows that there has been certain breaks in engagement and only on those when work was taken, the attendance was marked as 'P' but the case of the applicants is that deliberately after 1992 the work was taken from the applicants only for 20 days and for 10 days they were kept idle and not provided with work though they attended. It is also argued by Shri A.K. Bhardwaj that most of the attendancesheets brought by the respondents does not show the

(3)

real picture and some of the record is not available. We have also seen one of the latest record of the casual workers. Shri Madhav Paniker for the respondents laid stressed primarily on the point that the applicants were not sponsored from the Employment Exchange except Applicant No.1 and 5. It was for the administration itself to see that engagement either on regular or casual basis should have been offered to those who have been sponsored by Employment Exchange after requisition was made. If the administration has not placed any requisition with the Employment Exchange, and casual workers are recruited or appointed directly for a number of years then the applicants should not suffer for breach of rules committed by the administration itself. The person in authority must have seen that casual labourers are duly appointed after they are nominated by the Employment Exchange. The employment bureau is available in every district and it is purposely that one who is registered earlier with the Employment Exchange to be offered the appointment first if there is a job requirement.

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But at this point of time when the applicants have already been working like Applicant No.1, 2, 4 and 5 for more than 10 years and Applicant No.3 and 6 for the last 5 years the non sponsorship by the Employment Exchange should not at this age disentitle them to the benefit of the scheme if they are otherwise eligible for the grant of temporary status.

The number of working days required is 240 days for an office having 6 days of working and 206 days for an office having 5 days of working. The contention of the applicants' counsel is that since R.I.R. is a Central Govt. office, the working hours are 5 days a week. But the learned counsel Shri Madhav Panikar on instructions from the Departmental Representative has stated that the office of A.I.R. has 6 working days in a week. In any case, we find that the Applicant No.1 who is also S.C. with respondents in service since 1983 and in 1990 he has completed 230 days which is the maximum number of working days he has put in, while in other years the working days are less. Similarly, Applicant No.4 has put in about 236 days of working in the year 1994 and so also Applicant No.5. Applicant No.6

(5)

has put in 239 days of working in the year 1993 and 238 days of working in the year 1994. Applicant

No.2 has put in 240 days of working in the year

1993 and Applicant No.3 has put in 253 days of working in the year 1991. All these applicants

who were in engagement on the rolls of the

respondents on the date of the enforcement of

the scheme. It does not appear to reason that

Jai Kishore who was engaged in 1983 was not

allowed to continue 240 days in any of the years

though he is S.C. candidate and has been in

service with the respondents since 1983, while

Applicant No.3 Veer Pal who is also S.C. candidate

was engaged for the first time in 1990 and was

allowed to complete 253 days in 1991. Similarly

Applicant No.4, who joined in 1987 is S.C. candidate

completed only 236 days in 1994, while Applicant

No.6, a general candidate was allowed to complete

239 days in 1993 and 238 days in 1994. Similarly

Kishore Kumar who joined in 1984 and has been on

continuous roll with Respondent No.3 was allowed

Chander Pal to complete 236 days but Applicant No.2/ who was

engaged in 1986 was allowed to complete 240 days

in 1993 and Veer Pal, Applicant No.3 who was

engaged in 1990 was engaged for 253 days in 1991.

(b)

Thus, the respondents are not maintaining uniform practice of engagement of the casual labourers on the basis of their year of seniority. It is not the case of the respondents that job was offered to any of these applicants who is short of couple of days in reaching 240 days did not like to continue the working. It shows that in every year Jai Kishore, Nahar Singh and Kishore Kumar were available but their period fell short of a couple of days and others who were recently engaged after these applicants were allowed to continue so that they could reach the target of 240 days. This action on the part of the respondents is arbitrary and is not easily justifiable on the basis of record seen by us.

The contention of the applicants' counsel is that the work taken from the applicants is not of casual nature but it is the same work which is taken from Group 'D' employees. Though this fact is denied by the respondents in the counter but it is admitted that the applicants besides cutting wild grass and cleaning the offices are also doing the miscellaneous work of like nature. There is no specific denial of this fact. The applicants' counsel has also pointed out that the record

(X)

maintained by the respondents is not clean and clear and in each and every month record has not been furnished to show the actual engagement of these applicants in particular years. In fact it is said that the applicants did join the job they were earlier performing but they were given technical breaks to avoid payments and to cut short the period of 240 days. It is evident from the muster roll that the respondents have been engaging the casual labourers. Taking all these into account, it is apparent that the applicants have been in engagement with the respondents and have been continuously working with them though the working period of some of the applicants is falling short of few days. These applicants are Nahar Singh, Kishore Kumar who had put in 236 days of working and have been continuously working since 1987 and 1984 respectively and in the case of Sukhbir Singh it is 239 days 1993 and 238 days in 1994. The holidays which are available are added then they will also complete the target of 240 days. Now the case remains of Jai Kishore who was duly sponsored by the Employment Exchange and is a S.C. candidate. The chart of the working

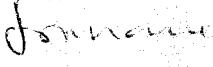
days shows that the maximum number of working days he has put in in the year 1990 is 233 days but in subsequent years he was also engaged as well as in the years earlier to 1990. The persons who were engaged after were also to complete 240 days or more number of days than this applicant Jai Kishore without creating the precedent and to maintain equity, fairness and to condone the arbitrariness of the respondents he cannot also be denied the benefit of temporary status.

The learned counsel for the applicant has placed the reliance on the case of V.K. Damodaran Vs. The Defence Pension Disburing Officer, Kottayam and 2 others reported in 1991(2) SLJ 159. In this case the Hon'ble Supreme Court has also referred to the case of Dharward Distt. P.W.D. Literate Daily Wage Employees Association Vs. State of Karnataka reported in 1990(1) SCALE 288 and K.C. Rajeevan V. State of Kerala reported in 1991(1) SCC 31. In view of this, even all those casual labourers who have longer years of service are allowed for regularisation. The case of the applicants is covered by the above ratio.

(19)

In view of the above facts and circumstances, the application is allowed and the respondents are directed to consider the cases of all these applicants for grant of temporary status taking into account that each one of them have almost completed the target of 240 days and much more than 206 days if the office has 5 days a week. The temporary status be granted to them according to the aforesaid O.M. inspite of the fact that some of them were not sponsored by the Employment Exchange. The application is, therefore, partly allowed with no order as to costs.


(B.K. SINGH)
MEMBER(A)


(J.P. SHARMA) 267115
MEMBER(J)

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