

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 277 of 1994

New Delhi, this the 31st day of July, 1997

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

1. Karan Pal, S/o Sh. Khemchand, G. Block,
1922-23, Ambedkar Nagar, Sector-1,
New Delhi-62

2. Pradeep Kumar, S/o Sh. Dharam Singh,
V-217, Arvind Mohalla, Gonda, Delhi-53

-APPLICANTS

(By Advocate - Shri B.B. Raval)

Versus

1. U.O.I. Through the Secretary, Govt. of
India, Ministry of Personnel, Public
Grievances & Pensions, Deptt. of Personnel
& Training, Lodhi Road, New Delhi

2. The Secretary, Staff Selection Commission,
CGO Complex, Block No. 12, Lodhi Road,
New Delhi

-RESPONDENTS

(By Advocate - Shri N.S. Mehta)

J U D G M E N T

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

The prayer in this Original Application is for a direction to the respondents to reengage the applicants with immediate effect and then regularise their services with full back wages from 28.7.1993 till the date of re-engagement.

2. When the case came up on 10.2.1994 the applicants were granted time to file a supplementary affidavit stating therein specifically that each of the applicants had rendered service for 240 days each in two consecutive years. After filing of this supplementary affidavit, a direction was given to issue notice to the respondents.

3. The brief facts are that applicant no. 1 Karan Pal was first engaged by the Staff Selection Commission as a casual labourer on 8.11.1990 and he

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continued there till 9.6.1992. According to the affidavit filed by him on 11.2.1994 he claims that he had worked for more than 240 days or 206 days in a year from 8.11.1990 to 7.11.1991 and from 8.11.1991 to 9.6.1992. He was then deputed to the Ministry of Agriculture from 30.4.1993 to 27.7.1993. Thereafter he claims to be unemployed. Applicant No.2 Pradeep Kumar was stated to be engaged as a casual labourer on 14.12.1990 and he continued upto 9.6.1992. Thereafter he was deputed to the Ministry of Agriculture from 1.5.1993 to 30.7.1993. The grievance of the applicants is that the list of casual labourers prepared by the respondents was not proper and the principle of first come last go was not observed.

4. The learned counsel for the respondents submits that applicant Karan Pal worked for 51 days in 1990 and 282 days in 1991. He also worked for 59 days in 1992. Therefore, he did not work for 206 or 240 days in two consecutive years. With regard to applicant no.2 Pradeep Kumar, no figures are available with the respondents. It is clearly stated that because of automation in the Office of the Staff Selection Commission there is no additional work on which the applicants could be engaged. Accordingly, when requests for daily wagers were received from certain departments the names of the applicants along with other daily wagers were sponsored to the Department of Agriculture, Krishi Bhawan. It is stated that the names of the applicants appeared at serial nos.51 and 53 respectively in the list prepared by the respondents as per the scheme for daily wagers in accordance with the order of the Tribunal in the case of T. Dominie & others Vs. Union of India & another, O.A.1489 of 1990 decided on 11.2.1992 along with 16 other similar matters. This list is

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utilised for engagement of daily wagers as and when work arises in the Commission. With regard to the allegation of employment of others, the respondents stated that one retired Section Officer Shri Ashok Kumar was engaged by them for accounts work which is a highly specialised and confidential work for which honorarium has been paid. The learned counsel for the respondents cited a decision of the Hon'ble Supreme Court in the case of Himanshu Kumar Vidyarthi & others Vs. State of Bihar & others, (1997) 4 SCC 391. That was a case where services of daily wage employees were terminated and the termination was contested as violation of Section 25-F of the Industrial Disputes Act, 1947. Their Lordships observed that admittedly the petitioners were not appointed to the post in accordance with the rules but were engaged on the basis of the need for work and they were temporary employees working on daily wages. Under these circumstances their disengagement from service cannot be construed to be retrenchment under the Industrial Disputes Act. Their Lordships further held that a daily wage employee has no right to the post.

5. In the rejoinder the applicants cite the names of Ms. Shashi, Ms. Laxmi Rawat and Mr. Manoj as appointed to work to which they themselves could have done.

6. I have carefully considered the submissions made. There is no evidence that the applicants had worked for 240 days in two consecutive years. The scheme for daily wages was also prepared by the Staff Selection Commission, Annexure-R-1. A list of the daily wagers who had worked two consecutive years with the requisite number of days of service and are also

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eligible for regularisation is prepared. Another list of daily wagers who have not put in two consecutive years of service and are not eligible for regularisation has also been prepared. ^{from} In the first ^{list} instance the daily wagers are considered for regularisation. With regard to the second list, their services are utilised as and when work arises. Otherwise, this list is forwarded to the DOPT for considering their engagement in any other department. The applicants figured in the second list and as there was no work in the Commission, their names were sponsored to other Ministries. With regard to Ms Shashi and Ms. Laxmi Rawat, the order dated 12.9.1994 (Annexure-R-1 filed with the rejoinder) shows that they were not paid wages but honorarium. They performed work relating to Advertisement No. 1/94. Therefore, the instances cited do not advance the cause of the applicants for priority in reengagement. The applicants have no evidence that they have rendered 240 days of service in each consecutive year. The respondents have denied this. The respondents further state that in the list prepared by them of those casual employees who have put in requisite number of days the names of the applicants do not figure and it is only in the other list that the applicants' name figure at serial nos. 51 and 53 of the list. The respondents clarified that they have no work in hand. They have engaged outsiders for confidential work and work of a technical nature ^{for} which the applicants are not competent to perform. They were paid honorarium and not daily wages. The respondents have promised to engage the applicants as and when work arises in preference to juniors and outsiders. The applicants have no right to a post. The respondents are the sole judge as to when there would be a need for work to a casual labourer.

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They have forwarded the names of the applicants to the Ministry of Agriculture and the Ministry of Agriculture engaged them for some short period. As the applicants have no right to demand engagement even when no work is available, I do not find any merit in this application. I would, however, direct the respondents to ensure that as and when work is available the applicants are engaged in preference to juniors and outsiders. Thus, there is no merit in the claim for regularisation and for back wages.

7. The Original Application is dismissed subject to above observations. The parties shall bear their own costs.

N. Sahu
(N. Sahu) 31.7.97.
Member (A)

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