

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1070/2000

New Delhi this the 22nd day of February, 2001.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

1. Shri Charan Singh,
S/o Sh. Beet Singh,
R/o K-171, Clai Square,
Goel Market, New Delhi.
2. Shri Raksh Pal Singh,
S/o Sh. Ragubir Singh,
R/o RZ-D-27, Nagli Dairy,
Ishwar Colony, Najafgarh Road,
New Delhi.
3. Shri Surender Kumar,
S/o Sh. Shiv Kumar,
R/o H.No.789, Pana Mandan,
Villi Bawana,
Delhi-110039.

...Applicant

(By Advocate Shri T.C. Aggarwal)

-Versus-

1. Union of India through:
Secretary, Ministry of
Information & Broadcasting,
Shastri Bhavan,
New Delhi.
2. The Principal Information
Officer, Press Information
Bureau, Shastri Bhavan,
New Delhi.

...Respondents

(By Advocate Shri V.S.R. Krishna)

O R D E R

By Mr. Shanker Raju, Member (J):

MA-1347/2000 for joining together is allowed. By way of an interim order dated 9.6.2000 the applicants are continuing to work at Delhi in the office of the respondents. The applicants, three in number, have sought quashing of an order dated 3.5.2000 passed by the respondents whereby the applicants have been called for interview for the purpose of their regularisation to Group 'D' posts at Mumbai. Applicants further pray for regularisation at available posts under them in accordance

with the reservation roster for OBC and that their seniority be maintained till then. The grievance of the applicant is that the applicants are casual group 'D' employees and have been working under the respondents for about last 10 years and are covered by the grant of temporary status as per the Scheme of the Government of India contained in OM dated 10.9.93. According to the applicants as per para 8 of the Scheme they have to be regularised inn the officer where they are working. As the seniority of Group 'D' employees are maintained unitwise the applicants contend that casual labour cannot be transferred outside the Department. The applicants after being recommended through the Employment Exchange joined the respondents and were bestowed the temporary status as per DOP&T Scheme dated 10.9.93. The applicants' name figured at serial No.29-31 of the seniority maintained by the respondents' office order dated 2.12.93. As members of the OBC the applicants contend that they have a preferential claim in their own quota for regularisation. The applicants contend that despite existence of 7 regular vacancies with the respondents, the vacant posts have not been filled up and rather fresh recruitment had been resorted to by the respondents in Group "D" posts. two out of every three vacancies in Group 'D' cadre in respect of office where the casual labour had been working would be filled up from amongst the casual workers. It is alleged that the respondents have failed to comply with this requirement with the result the applicants are suffering. The applicant's counsel further contended that against the laid down policy the applicants have been directed to appear for a test for their consideration against the Group 'D' posts in Film Division, Mumbai and they have been asked.

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to face interviews. The applicants further contend that no test can be held with regard to regularisation in Group 'D' posts. It is contended on behalf of the applicants that as per the ratio laid down in Bachan Kumar Sahoo & Others v. Union of India & Others, 1999 (2) SLJ 23 the casual labour who had worked satisfactorily for long years cannot be asked to appear in the suitability test. The applicant further took resort to the ratio laid down by the Apex Court in Union of India & Others v. Munim Singh & others, 1993 Supp. (1) SCC 724 that the seniority of the Group 'D' employees is to be maintained unitwise and are to be regularised in the unit itself. It has been further contended that a casual worker cannot be transferred outside the department and for this the ratio laid down in Jiyi Chaku v. Union of India, 1987 (3) ATC 413 has been relied upon. The applicant's counsel lastly relies upon the ratio of Apex Court in Bhaqwati Prasad v. Delhi State Mineral Development Corporation, 1990 1 SCC 361 to contend that rendering of three years service is sufficient for regularisation.

2. The respondents in their reply took exception to the contentions of the applicants and raised a preliminary objection by contending that no irregularities have been committed by them to call the applicants for interview to consider their suitability in Group 'D' posts outside Delhi for the purpose of regularisation and in a similar case in OA-1137/92 the directions have been given to the respondents to consider the applicants for engagement in other offices and for regularisation in accordance with the Scheme prepared. In another case of Ram Dhan & Others v. Union of India, OA No.1079/95 the directions were issued

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and according to the respondents it is in the greater interests of the applicants to get regularised at the earliest opportunity as the offices of Media units of respondents are spread throughout the country and the vacancies available in offices outside Delhi were also considered to be filled up. The respondents admitted that there is no question of subjecting the applicants to written test for Group 'D' post, however, they were called for interview only for verification of particulars relating to qualification, age, category, previous experience, etc. The respondents further took exception to the contention of the applicant that subjecting them to regularisation in the outside posts would not amount to the transfer of the applicants. It is contended that as the applicants do not hold any regular posts with the respondents for considering their suitability in Group 'D' post, consideration for their regularisation as per the directions of the Tribunal would not amount to transfer. The respondents further resorted to the judgment of this Tribunal in OA-756/2000 filed by Shri Surender Kumar Sharma and Others where the prayer of the applicants for quashing the letter offering them appointment to Group 'D' posts appears to have been rejected. The respondents further contend that it is the option of the applicants whether to comply with the direction of participating in the interview and in the event of their non-appearance their services would not be terminated. It is also admitted by the respondents that according to the Scheme casual labours are to be regularised against the regular vacancies arising in the offices where they are working as per the order passed by this Tribunal in OA-1079/95 upheld by the High Court in CWP-3201/98 vide order dated 10.11.99. The applicants

therein have been ordered to be regularised in the Ministry of Information & Broadcasting or in other departments or wing of the said Ministry. The seniority list has been drawn in pursuance of the order and on the basis of the eligibility and merit of the casual labour from All Over India the seniority list was settled. It has been further contended that the seniority of the applicant cannot be considered for regularisation of their service as a common seniority list has been prepared and the applicants have already been given an opportunity for regular appointment in Group 'D' posts and the reservation norms have been strictly followed. As regards the nine available vacant posts after getting approval from the concerned authorities the same are to be filled up by regularisation. CLTS were included in the CISL prepared by the publication division by the Ministry of I&B as per the scheme of DOP&T. The respondents further contend that mere rendering of long service as casual labour temporary status does not entitle them for regular appointment to Group 'D' posts but depends on their being fulfilling the eligibility conditions as per the recruitment rules and availability of vacancies. The applicants further contended that the order of the High Court of Delhi has been meticulously complied with and the vacancies of offices attached with Information and Broadcasting have been clubbed together and 2/3rd of the vacancies, including six vacancies in question have been decided to be filled up by regularising the temporary status employee in accordance with their seniority and category for whom the posts are reserved according to the reservation roster maintained in the Media Unit.

3. The applicants in their rejoinder reiterated their contentions taken in the OA and further contended that the applicants who are casual labours have to be regularised against available regular Group 'D' posts in the Division and cannot be transferred outside for the purpose of being regularised as Group 'D' employees. The applicants resorted to OA-1826/91 in case of Ram Dhan (supra) to contend that the regularisation is to be done in that Division or any other unit of the Ministry of I & B in Delhi. The applicants further contended that the ratio of Ram Dhan's case (supra) would not be applicable on the facts as they were not parties to the case and relied upon the ratio of J. Jose Dhanpal v. S. Thomas, JT 1996 (3) SC 197 and Arun Tewari v. Zila Mansari Shikshak Sangh & Others 1998 SCC (L&S) 541 to substantiate their contentions. The applicants further contend that despite having nine regular vacancies at Delhi Office the respondents are directing the applicants to take interview for the vacancies at Mumbai. According to them Group 'D' posts are direct vacancies and cannot be filled up by transfer.

4. We have carefully gone through the rival contentions and perused the material on record. The contention of the applicants that under the garb of interview the applicants are being subjected to a test for the purpose of regularising their services in Group 'D' posts is not well founded. The respondents have categorically stated in their reply that the interviews are recommended to ascertain the suitability of the applicants for their regular appointment and there cannot be a question of test for Group 'D' posts for regularisation of

a casual labour. The interviews are meant for verification of their qualifications and requisites certificates and also the records. As such the contention of the applicants counsel that the applicants being casual labours are subjected to a test is rejected.

5. It is also contended by the learned counsel for the applicants that the respondents are wrongly complying with the directions given by the Tribunal in OA-1826/91 dated 7.4.92 in Ram Dhan's case (supra) where the casual workers in Publication Division are directed to be regularised in that Division or in any other unit of the Ministry of Information and Broadcasting in Delhi and further that the orders passed by the Tribunal has been upheld by the High Court of Delhi. According to this order the regularisation of casual workers of publication Division is to be taken up right from 7.4.92. The counsel of the applicants relies upon the ratio laid down by the Apex Court in Jose Dhanpal's case (supra) and Arun Tewari's case (supra) and contended that no order could be enforced on an employee in which he was not a party.

6. We have carefully considered this contention of the applicants and are of the considered opinion that in the present case the applicants are seeking regularisation in accordance with DOPT Scheme dated 10.9.93 whereas in Ram Dhan's case the Tribunal has issued specific directions independently of the Scheme as the Scheme was not in existence at that time and as such the applicants are not similarly situated as the applicants in OA-1826/91. As such these persons cannot be compared with the applicants in Ram Dhan's case by the respondents as the applicants

were not parties to the aforesaid decision (supra). The directions issued therein are not at all binding on them and cannot be enforced legally on the applicants.

7. We will now consider the contentions of the applicants' counsel that as per clause 8 of DOPT Scheme dated 10.9.93 two out of every three vacancies in Group 'D' cadres in respective offices where the casual labours have been working would be filled up as per the extant recruitment rules. The applicants contention that the applicants in the present OA are belonging to OBC category and they cannot be forced to appear for interview for regularisation to Group 'D' post in other Department, i.e., Film Division, Mumbai as the applicants were working at Delhi under the Press Information Bureau and their services are to be regularised in Group 'D' post at their respective offices and Film Division, Mumbai is different office and this would be in violation of the DOPT Scheme which is statutory in nature in view of Article 309 of the Constitution of India under which the Scheme has been framed, as in absence of any rule the instructions are to be given effect to. Apart from this the contention of the applicants is that interview for verification of particulars for the purpose of their regularisation in Group 'D' posts should be done in the office where the casual labour is working. This contention has been supported by the fact that the seniority of each individual office is to be prepared separately for office where the casual labour is working for the purpose of regularisation in Group 'D' post. The ratio laid down by the Supreme Court in Munim Singh's case (supra) further strengthens the arguments of the applicants. As the directions issued in

Ram Dhan's case (supra) cannot be legally enforceable on the applicants and the fact that calling them for interview to regularise in group "D" posts at Mumbai in different offices would not be in consonance with the Scheme of regularisation of casual labours. The action of the respondent by calling the applicants for interview for appointment in Group "D" posts in Film Division at Mumbai and not considering them for regularisation at the respective offices where they had been working is not legally sustainable.

8. The next contention of the applicants is that the applicants have a right for regularisation in Group "D" against the nine vacancies available with respondent No.2. The respondents in their reply to para 4.4 of the OA admitted that there are 9 vacancies in the office of respondent No.2 and are intimated to respondent No.1 for considering regularisation of CLTS working in the various Media of the Ministry of Information & Broadcasting against the available vacancies in those Media and the same are to be utilised for regularising CLTS included in the CSIL issued by the Publication Division complying with the orders of the Tribunal passed in Ram Dhan's case (supra). The applicants contended that it was an arbitrary exercise by the respondents as despite availability of vacancies in offices in which the applicants were working they were being subjected to interview in outside offices is in contravention of the DOPT Scheme. As per the DOPT Scheme dated 10.9.9 two out of every three vacancies in Group 'D' in the respective offices where the casual labours have been working would be filled up as per the extant recruitment rules. The diversion of these vacancies to

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casual labours of other department is against the rules as this is only permissible when they are surplus posts and as Group 'D' posts are direct vacancies the same cannot be filled by transfer. The applicants relies upon the ratio of the Tribunal in Surendra Prasad & Ors. v. Union of India & Ors., 1996 (33) ATC 815 and also relying upon the ratio of Ram Chander v. G.M. Northern Railway and contended that regularisation in Group 'D' post is to be done in direct vacancies only and any surplus vacancies after regularising the applicants could have been allowed to the casual workers of the other Department. The applicants further relied upon the ratio of Apex Court in Gaziabad Development Authority v. Sh. Vikram Chaudhary, JT 1995 (5) SC 536 and Central Welfare Board & Ors. v. Anjali Bepary JT 1996 (8) SC 1 to contend that it is the vested right of a casual worker to be allowed to work till the work permits as per his seniority. We agree with the contention of the applicants and are of the considered opinion that vacancies arisen in Group 'D' posts have been wrongly sent to R-1 to be filled up by regularising Group 'D' employees of other Divisions while complying with the orders of the Tribunal in another case. It is not disputed that these vacant posts were diverted to respondent No.1 and the same existed in the office of respondent No.2 where the applicants had been working for the last 10 years. This is permissible only if after adjusting the applicants the posts become surplus and the same can be utilised for regularising the other Group 'D' employees in different units. The applicants are entitled to be regularised in Group 'D' posts under clause 8 of DOPT Scheme dated 10.9.93 and their right cannot be taken away by the respondents by resorting to the directions passed in another OA and under

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the guise of implementing the said directions. In Ram Dhan's case, the directions were issued by the Tribunal independently as such after coming into operation the case the applicants would be covered by the Scheme dated 10.9.93 and in accordance with the provisions contained therein. The casual labour working in the office are to be regularised subject to their fitment in Group 'D' post. The action of the respondents by not regularising the applicants as per the vacant posts and subjecting them to interview for the purpose of being regularised in the Film Division at Mumbai is not legally sustainable. We also find from the record that vide an order dated 9.6.2000 the applicants had continued to work at the office of respondent No.2. Having regard to the discussion made above we allow this OA and set aside the order dated 5.5.2000 issued by the respondents asking the applicants to face interview for being appointed to Group 'D' posts. The respondents are further directed to regularise the applicants against the available posts in their respective offices where they had been working in accordance with the reservation roster for OBC and as per the DOPT Scheme dated 10.9.93 & subject to their fulfilling other eligibility critaria as per the rules. The aforesaid directions shall be complied with by the respondents within two months from the date of receipt of a copy of this order. No costs.

S. Raju

(Shanker Raju)
Member (J)

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V.K. Majotra

(V.K. Majotra)
Member (A)