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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.147/2000

New Delhi, this 11th day of September, 2000

Hon'ble Smt. Shanta Shastry, Member(A)

1. Dilip Kumar Shukla
2. Ravinder Kumar
3. Irfan Ahmed Khan
4. Mukesh Kumar
5. Mahesh Kumar
6. Satish Kumar
7. Bhikari Shah
8. Jaswant
9. Uday Sharma
10. Sunil Dutt
11. Anil Kumar
12. Anil Kumar Singh
13. Bhule Ram
14. Ajay Singh
15. Sushil Kumar
16. Sunil Kumar
17. Rajinder Kumar

All working as daily rated Mates in
Delhi Milk Scheme, Patel Nagar, New Delhi.. Applicants

(By Shri S.M.Garg, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Agriculture
Krishi Bhavan, New Delhi
2. Chairman
Delhi Milk Scheme
West Patel Nagar, New Delhi .. Respondents

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

ORDER

The relief sought in this application is to direct the respondents to transfer the applicants to the regular establishment of Delhi Milk Scheme (DMS, for short) by giving them the benefit of certified standing orders of the respondents and directions issued by this Tribunal in OA No.948/88 as well as in OA 37/88.

2. The applicants, seventeen in number, have been working as daily rated Mates from November-December, 1999 in DMS. They were earlier also employed as such from May, 1998/January, February, 1999 continuously with an artificial break in October-November, 1999. According to the applicants, they have completed more than 240 days in the year 1998-99 and accordingly they should have been regularised in Group D posts by giving them the benefit of various judgements of this Tribunal dealing with casual/casual rated/badli workers of DMS. In the judgement and order dated 2.8.91 in OA 948/88, The Tribunal passed the following orders/directions:

- (i) We hold that the termination of the services of the applicants is not legally tenable and the same is set aside and quashed;
- (ii) The applicants shall be deemed to have been transferred to the regular establishment after having worked for not less than 240 days in any period of 12 months. For the purpose of computing the period of 240 days in a year, Sundays and other holidays should also be included;
- (iii) In the circumstances of the case we do not pass any other order regarding payment of back wages to the applicants. However, the intervening period should be treated as leave with or without pay as due or dies non as the case may be; and
- (iv) Supernumerary posts in the regular establishment may be created, if any.

3. There was an earlier judgement dated 10.8.89 in OA No.37/88. The applicants therein were appointed to supernumerary posts of Mates in the pay scale of Rs.750-940 in the establishment of DMS from the dates of their completion of 240 days. Subsequently, they were transferred to the regular posts of Mates. Further 12

(3)

badli workers were again appointed in the supernumerary posts from the dates they completed 240 days following other judgements of this Tribunal. Applicants are therefore pleading that the respondents ought to have regularised their services in the light of the judgements cited above. Instead the respondents have started adopting unfair practice of giving artificial break to the workers much before the completion of 240 days and are employing new persons for short durations and after some time the original workers are again re-employed as has happened in the case of the applicants. This practice is meant only to defeat the provisions of the standing orders.

4. Respondents in their counter have submitted that no cause of action has accrued to the applicants for filing the present application. It is premature. Applicants have not completed 240 days of service in any period of 12 months in a year. They have approached this court without completion of requisite number of days of attendance as laid down in certified standing orders for the badli workers. Applicants are badli workers i.e. substitutes for regular Mates. Respondents are aware of the rules position and are anxious to extend their benefits to the applicants but at the present juncture they are handicapped due to paucity of regular posts. It is further stated that the case of the applicants is very much under constant attention and will be considered as expeditiously as possible as soon as regular posts of Mates are available and the applicants

fulfil the eligibility conditions. There is no dispute that the rules do provide for the transfer of badli workers to regular establishment after putting in 240 days of service. Respondents are obliged to comply with the standing instructions. They assure that there is no intentional delay or excuse to by-pass the instructions and the applicants will be given priority for regularisation as soon as vacancies become available subject to their fulfilment of the conditions. However, they deny that all the applicants have put in 240 days in a year. They were engaged w.e.f. January, 1999 and have not completed 240 days in a year.

5. I have heard the learned counsel for both the parties. From the facts stated, it is clear that the applicants have not put in 240 days of service in one year as required for transferring them to regular establishment of DMS. However, the point made by the applicants is that respondents are evading their obligation by giving the applicants technical break so that they do not complete 240 days in one year. When work is available, no break should be given. It is not proper on the part of the respondents to engage freshers. Applicants should have been continued so long as there is work.

6. Learned counsel for the applicants has cited the judgement in the case of State of Haryana Vs. Piyara Singh 1992(4) SCC 118 in support of their claim. Applicants deserve to be continued instead of employing