

Central Administrative Tribunal
Principal Bench: New Delhi

OA- 1618/2000

New Delhi this the 9th day of March, 2001

Hon'ble Mr. V.K. Majotra, Member (A)

1. Shri Kamal Singh, S/o Late Shri Jarman Singh,
R/o A-53, Krishi Vihar, Masjid Moth,
New Delhi-110048.
2. Shri Mohinder Pal, S/o Shri Amar Nath,
R/o A-67, Krishi Vihar, Masjid Moth,
New Delhi-110048.
3. Shri Raju Saha, S/o Shri Ram Ekbal Saha,
R/o C-12, Krishi Vihar, Masjid Moth,
New Delhi-110048.

--Applicants

(By Advocate: Shri T.C. Aggarwal)

Versus

Union on India through,

1. The Secretary to G/I,
Ministry of Agriculture,
Krishi Bhavan,
New Delhi-110001.
2. The Secretary ,
Indian Council of Agriculture Research,
Krishi Bhavan,
New Delhi-110001.

--Respondents

(By Advocate: Dr. S.P. Sharma)

ORDER (Oral)

The applicants claim that they have been engaged as casual workers from time to time by respondent No.2. Whereas applicant No.1 Kamal Singh was engaged in 1990 for six months in two batches of 90 days and again in 1992 for the same period, applicant No.2 was engaged in 1996 and applicant No. 3 in 1994 and 1998. It is alleged that casual workers including the applicants are being engaged and discharged by verbal orders at the end of 90 days. On discharge of the former workers, immediately another batch of casual workers replaces them. As per Memo dated 25.6.1986 of the respondents, all Institutes under the ICAR have been directed not to

employ casual workers for a period of more than 40 days at a time and that it should be ensured that a total period of a casual worker does not exceed 100 days during the six month's period or 200 days in a year. It is alleged that the policy of replacing casual workers after short spells of 90 days is arbitrary and discriminatory and violative of Articles 14 & 16 of the Constitution. The learned counsel of the applicants drew attention to Annexure A-1 which is order dated 17.9.99 in OA-517/99 in the matter of Yogesh Kumar Vs. Union of India in which it was disengagement against settled policy laid down by the Hon'ble Supreme Court in the case of Inder Pal Yadav Vs. U.O.I. & Ors. (1985 (2) SCC 648) and Ghaziabad Development Authority Vs. Shri Vikram Chaudhary & Ors 1995 (3) SC 536 was disapproved. It was stressed that the Hon'ble Supreme Court had repeated the need of continuing casual worker till work lasts and when services of the casual workers are terminated, panel should be drawn and re-engagement of workers on availability of work should be as per seniority in the panel. In the case of Yogesh Kumar (supra), the following directions were issued:-

i) The respondents shall consider re-engaging the applicant for casual jobs in preference to the freshers and new comers.

ii) The respondents are directed to maintain the seniority list for the purpose of engagement of the casual labourers who shall be engaged on the basis of "First to come last to go" as held in Inder Pal Yadav's case.

iii) If the projects and jobs are available and if the applicant is senior, he will have the claim for being engaged in preference to others who have been taken on the roll later on".

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16

2. It is alleged that whereas the name of applicant No.1 who is admitted to have worked during 1990 and 1992 does not find place in the panel made by the respondents and applicants 2 & 3 are included in the panels at Sr. No. 12 & 62, 17 freshers have been engaged as casual workers allegedly on account of favouritism and nepotism. The learned counsel also referred to order dated 28.2.2001 in OA-57/99 Yogender Vs. Union of India wherein that applicant had sought proper placement of seniority in the casual labours taking into view his initial date of engagement. The respondents were directed to consider the case of the applicant for assigning proper seniority by taking into account his initial date of appointment as casual labour. The learned counsel contended that Shri Yogesh Kumar-2 was a Waterboy like the applicants in the present OA. The applicants have sought direction to the respondents to re-engage them in preference to the 17 freshers and that they should be given further engagement in accordance with the panel after inclusion of applicant No.1's name.

3. The learned counsel of the respondents has maintained that the applicants are Waterboys and in this way they are distinguished from other type of casual labour namely, Messengers. However, it is also admitted by the respondents that as per directions of the Tribunal in OA-517/99 in the matter of Yogesh Kumar (supra) the respondents have prepared seniority list of the Watermen also. However, the respondents have maintained that the applicants cannot be accorded temporary status as their cases are not covered in terms of DOPT Scheme of 10.9.93

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where the requirement is that a person must have worked for a period of one year continuously before September 1993 and must have completed 240 days (206 days in case of office observing 5 day's week) and that the applicants were not in employment on 10.9.93. Thus, they cannot claim temporary status and regularisation. The learned counsel of the respondents also referred to order dated 28.11.2000 in OA-521/99 and other connected matters whereby similar cases were dismissed. The learned counsel of the applicants pointed out that a review application has been made against the said order as the ratio in the case of Yogesh Kumar (Supra) had not been taken into account in that case. The learned counsel of the respondents also mentioned that prior to 1998 Waterboys used to be employed by the respondents. However, the practice of Waterboys in ICAR has been given up and since 1998 the work which was being done by the Waterboys is got done through Contractor. He also raised the question of limitation. As to the point of limitation, the learned counsel of the applicants contended that the cause of action for the respondents had arisen on 31.10.99 when the panel of casual work was drawn and name of the applicant No.1 was not included. He also relied on judgment dated 23.8.99 in Shish Pal Singh & Ors. Vs. Union of India and Ors 2000 (1) ATJ 153 wherein when applicant's name was not in the live register and junior to him was re-engaged, it was held that application for re-engagement cannot be rejected on the ground of limitation. Agreeing with the learned counsel of the applicants, I find that the present OA is not barred by limitation. Whereas Shri Yogesh Kumar, Applicant in OA-517/99 and OA-1149/2000 was

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12

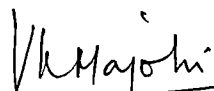
also a Water man like the applicants, I find that no distinction can be made between different categories of casual workers as per the directions laid down in the matter of Yogesh Kumar (supra). The respondents are directed to include the name of applicant No.1 in the panel prepared by them as he had admittedly been engaged in 1990 and 1992 i.e. much earlier than ^{the} some other persons included in the panel.

4. Having regard to the facts and circumstances of the case, the OA is disposed of with the following directions:-

i) The respondents shall consider the applicants in preference to the 17 freshers.

ii) Respondents shall consider engagement of the applicants in accordance with the panel after including the name of applicant No.1. Such inclusion of the applicant No.1 in the panel must be completed within a period of one month from communication of this order.

iii) No costs.


(V.K. Majotra)
Member (A)