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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2518/2000

New Delhi, this the 19th day of October, 2001

HON'BLE MR. S.A.T. RIZVI, MEMBER (J)

1. Shri Jagdish, Badli Worker,
Delhi Milk Scheme,
2. Sharvan Kumar, Badli Worker,
Delhi Milk Scheme
3. Chhotel Lal, Badli Worker,
Delhi Milk Scheme

Correspondence Address:

C/o R.S. Rawat, Advocate,
2151/17A/12, New Patel Nagar,
New Delhi-110 008

..... Applicant

(By Advocate : Shri R.S. Rawat)

Versus

Union of India

1. through the Secretary,
Ministry of Agriculture,
(Department of A.H. & Dairying)
Krishi Bhawan, New Delhi-1
2. The General Manager,
Delhi Milk Scheme,
West Patel Nagar,
New Delhi-110008

..... Respondents

(By Advocate : Shri K.R. Sachdeva)

O R D E R

Applicants, three in number, all Badli workers in the employ of the Delhi Milk Scheme, stated to have worked as such for more than 240 days in each case during 1998 and 1999, pray for directions to be issued to the respondents in the following terms.

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- "i) Direct the respondents to transfer the applicants to the regular establishment of Mates to be governed by the Fundamental and Supplementary Rules right from the first day of the month following 12 months in which the applicants completed 240 days.

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ii) Direct the respondents to make payment to the applicants of their arrears of pay right from the date of their regularisation and grant to them all other benefits as are applicable to regular Mates.

iii) Direct the respondents to pay to the applicants the same salary as is being received by the Class IV Regular Mates from the date of their appointment as Badli Workers.

iv) Direct the respondents to grant to the Badli Workers/applicants the seniority in the cadre of Mates according to the date of regularisation."

2. I have heard the learned counsel on either side and have perused the material placed on record.

3. The respondents, I find, dispute the claim made by the applicants that each one of them has worked for more than 240 days as Badli workers. They have calculated the number of days by leaving out the weekly offs and the national holidays. The learned counsel appearing on behalf of the applicants submits that in terms of several judgements rendered by this Tribunal, the respondents are obliged to take into account the weekly offs as well as the national holidays in computing the length of service of Badli workers. According to him, if the services rendered by the applicants are computed accordingly, each one of them will be found to have rendered a service of more than 240 days as Badli workers. The learned counsel appearing on behalf of the respondents has agreed with the above position.

4. In support of his contention, the learned counsel for the applicant has relied on the orders

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passed by this Tribunal on 22.12.2000 in OA No. 1551 of 2000 with OA No. 1552 of 2000. Paragraph 13 (i) of the aforesaid order of this Tribunal provides as follows.

"(1) The respondents while counting the period of actual working days of the applicants (Badli Workers) shall also add the number of weekly offs and three National holidays in the number of actual working days of the applicants if not already counted and out of these workers who are found to have completed 240 days then in accordance with the provision of para 4 (iii) of the Standing Orders, the said Badli Worker shall be transferred to the regular establishment."

A similar order has also been passed by a Division Bench of this Tribunal on 28.5.2001 in OA Nos. 1155/2000 with OA Nos. 1396/2000 and OA 1910/2000.

5. In support of his argument, the learned counsel for the applicants has further relied on the provisions made in the Certified Standing Orders applicable to the employees of the DMS. I have perused the same and find that according to the said orders a Badli worker who has actually worked for not less than 240 days in any period of 12 months shall have to be transferred to regular establishment governed by the Fundamental and Supplementary Rules. In the face of this provision, the non-availability of regular posts of Mates will not stand in the way of the applicants. The corresponding plea raised on behalf of the respondents is, therefore, found to be untenable.

6. The learned counsel appearing on behalf of the respondents has also submitted that the DMS is

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experiencing serious financial problems and furthermore, there is a ban on creation of posts. I have considered these pleas and find no force in them ^{+ the} for very same reason which has been mentioned in the above paragraph. The provisions made in the Certified Standing Orders are binding on the DMS as well and, therefore, there is no escape from transferring the applicants (Badli Workers) to regular establishment. The aforesaid plea of non-availability of posts was negatived by this Tribunal in OA Nos. 2414 and 2415, both of 1997, referred to in this Tribunal's above mentioned order of 28.5.2001. Insofar as the financial problems of DMS are concerned, the respondents are, in my view, competent to deal with the situation in the best possible manner and as deemed ^{+ by them} fit ~~best~~ in accordance with the provisions of law, rules and regulations.

7. For the reasons mentioned in the preceding paragraphs, the OA is found to have merit and is allowed. The applicants will be transferred to regular establishment in the manner laid down in the Certified Standing Orders from the first day of the month following 12 months during which the applicants completed 240 days. The applicants will be entitled to all the consequential benefits arising from their transfer to the regular establishment. The matter concerning the seniority of the applicants in the cadre of Mates will be decided by the respondents in accordance with the Certified Standing Orders and such other rules and regulations as are found to be applicable.

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8. The remaining relief relating to the payment of the same salary to the applicants as is paid to Class IV regular Mates from the dates of their respective appointment as Badli workers has not been pressed. I do not, therefore, consider it necessary to go into this question.

9. The respondents will comply with the directions contained above in a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.



(S.A.T. RIZVI)
MEMBER (A)

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