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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2531/2000

New Delhi this the 6th day of November, 2001.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

1. Diwan Singh
S/o late Shri Ratan Singh,
R/o H.No.382, Pocket-Q,
Dilshad Garden, Delhi.
2. Kishan Singh,
S/o Shri Jot Singh,
R/o H.No. K-68, Gali No.4,
Puran Nagar, Palam Colony,
New Delhi.
3. Khushi Ram,
S/o Shri Het Ram,
H.No.127, Sarai Kale Khan,
New Delhi.
4. Mahavir Singh,
S/o Shri H.S. Chauhan,
R/o B-2/H-15, Mayapuri Vihar,
Phase-III,
Delhi.
5. Leela Dhar Pandey,
S/o Shri K.N. Pandey,
44/13, Sector-I,
Pushp Vihar,
New Delhi.

-Applicants

(By Advocate Shri S.C. Saxena)

-Versus-

1. Shri Y.N. Chaturvedi,
Union of India, through
Secretary, Ministry of I&B,
Shastri Bhawan, New Delhi.
2. Smt. Surinder Kaur,
Director, Publication Division,
Ministry of I&B,
Patiala House,
New Delhi.

-Respondents

(By Advocate Shri A.K. Bhardwaj)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

MA for joining together is allowed. The applicants who have been regularised as Group 'D' employees have sought their regularisation w.e.f. 1992 in pursuance of a decision in OA-1137/92 alongwith seniority and

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pecuniary benefits. It is stated that their juniors by approaching this court have been regularised in various media units of Ministry of Information and Broadcasting and by an order dated 18.11.92 the respondents are directed to continue the applicants and in case no vacancy exists they may be considered for engagement in other offices against the available vacancies and to be regularised in accordance with the scheme. The applicants filed Contempt Petition No.308/99 due to non-compliance of the directions and by an order dated 16.10.2001 and in view of the pendency of this OA the matter is stated to be listed before the Court alongwith the record of the CP. The respondents have issued in pursuance of contempt petition appointment letters to all the applicants on the basis of a common seniority list of casual labours with temporary status of 31.3.2000 and accorded regularisation to the applicants against Group 'D' post w.e.f. 2000.

2. The grievance of the applicants is that having complied with the directions the respondents should have regularised the services of the applicant w.e.f. 1992 when the juniors have been accorded the same. Placing reliance on a decision of the Apex Court in U.P. State Mineral Development Corporation Limited v. Vijay Kumar Upadhyay, 1998 (1) SLJ 165 it is contended that if junior gets regularised against the court's order senior cannot be left out. The learned counsel for the applicant contended that the application cannot be barred by constructive res judicata as the regularisation from the date of junior is a fresh cause of action and the daily wage should be regularised on the basis of seniority-cum-suitability basis. As the juniors have been regularised in 1992 the

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seniority list which has now been prepared by the respondents should have been prepared earlier and after 8 years the regularisation would greatly prejudice them in the matter of seniority and further promotion. Had the respondents regularised the services of the applicants in 1992 in pursuance of the directions of the Tribunal the applicants would not have suffered.

3. On the other hand, strongly rebutting the contentions of the applicants, the learned counsel for the respondents stated that the OA is barred by the doctrine of constructive res judicata as in the earlier OA-1137/92 filed by them they had an opportunity to claim regularisation w.e.f. 1992, and having not claimed the same they cannot file the present OA for regularisation which has been considered by the court earlier and directions have been issued to regularise their services on the basis of the availability of vacancies and as per the Scheme. As the applicants are fresh appointee they cannot sought antedating their appointment. It is also stated that the applicants in OA-1826/91 have filed another OA-1079/95 before the Principal Bench for regularising their services against the Group 'D' posts which has been subject to the vacancies. The review application filed by the Union of India was rejected. A CWP was also filed which resulted in the same fate. On filing contempt petition in OA-1079/95 an interim order has been passed to prepare a combined seniority of casual labours with temporary status and to regularise the applicant by 26.4.2000. In pursuance of that and as per the availability of vacancies and the ratio of 2:3 52 vacancies were got filled up through casual labours with temporary

status depending on the seniority. In a nut shell on the basis of the various decisions of this Court 39 casual labours with temporary status have been regularised against Group 'D' posts out of which 18 have refused to join. Shri Dewan Singh and four others accepted and joined the Group 'D' posts. In this backdrop it is stated that subsequent to the case of the applicants subsequent to filing of OA-2037/90 the applicants filed the OA requested for regularisation and therein no grounds have been taken that their juniors have been regularised before them. As such the respondents have complied with the decision in Dewan Singh's case and regularised them to the extent of vacancies available and the process is still going on. The applicants on account of their seniority have been regularised and there is no junior to them who has been regularised earlier. As regards the delay, the respondents have stated through compliance report that they have made their sincere efforts to finalise inter-se-seniority of CLTS and thereafter as per the availability of vacancies and strictly going in accordance with the vacancies the applicants have been regularised in accordance with the Scheme of DOPT of 1993.

4. Having regard to the rival contentions of the parties and also keeping in view the order passed in the Contempt the present OA is liable to be dismissed on the doctrine of constructive res judicata. The applicants have earlier approached this court in OA-1137/92 and the directions have been issued to regularise their service on availability of vacancies in accordance with the Scheme of DOPT. The applicants in that OA have not raised the plea

that their juniors being working and regularised earlier and have not taken any plea or prayed for being regularised w.e.f. 1992.

5. Having failed to take the plea of regularisation with retrospective effect and despite availability the applicants cannot be allowed to raise the plea of regularisation in the present OA which would be barred by the doctrine of res judicata.

6. Apart from it, the ratio cited by the applicants that if junior is regularised in pursuance of the court's order the applicants being seniors cannot be left out would have no application as it has not been established that the juniors of the applicants have been regularised earlier to the applicants. The respondents have regularised the applicants in pursuance of various directions of this court in other OAs which have been affirmed by the Apex Court and has prepared the inter-se-seniority of CLTS and as per their seniority and availability of vacancies the applicants have been regularised which to my considered view is justifiable and legally sustainable. There is no question of antedating the appointment of the applicants in the absence of any evidence to show that the juniors have been accorded regularisation in 1992 before the applicants. In this view of the matter the applicants have failed to make out a valid and legal claim. The OA is found bereft of merit and is dismissed. No costs.

S. Raju

(Shanker Raju)
Member (J)