

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.714/2000

New Delhi, this the 13th day of November, 2000

(11)

Hon'ble Mr. S.A.T. Rizvi, Member (AO)

1. Gunaeshwar Rai, S/O Sh. Bawan Rai, R/O OA-6/74, Krishni Nikean, Paschim Vihar, New Delhi-63.
2. Dayanand, S/O Sh. Trikeshwar, R/O H.No.E-8, J.J.Colony, Khyala, New Delhi.
3. Anil Rai, S/O Sh. Jagdish Rai, R/O 1566, Krishni Kung, New Delhi-12.
4. Jagdish, S/O Sh. Badri Prashad, R/O E-26, DDA Colony Khyala, New Delhi.

...Applicants

(By Advocate: Sh. S.L.Hans)

VERSUS

1. Union of India through Secretary, Indian Council of Agricultural Research, Krishni Bhavan, New Delhi-2.
2. Director, Indian Agricultural Statistics Research, IASRI Library Avenue, Pusa Campus, New Delhi-12.

...Respondents.

(By Advocate: Ms. Geetanjali Goyal)

O R D E R

All the four applicants in this OA have worked as casual employees in the establishment of respondent No.2 (IASRI) from time to time during the year 1992 and the following four years upto 1996. Only two of them worked in 1996 and again another two in the previous year 1995, i.e., to say all the four applicants have not worked in each of the five years in question. They are not aggrieved by any positive act of the respondents but by the alleged discriminatory treatment given to them by the respondents who have, according to the applicants, engaged fresh candidates for casual employment in 1997 and 1999 and while doing so, they have not considered the

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applicants' claim. Two distinct reliefs have been sought by the applicants. One is the direction to the respondents to reengage them on daily wage basis without inviting fresh candidates from the Employment Exchange and for the purpose of this relief, they have relied on the judgement of the Hon'ble Supreme Court in Central Welfare Board & Others Vs. Anjali Bepari (Ms) & Others reported as 1996 SCC (L&S) 1358. The other relief sought is grant of temporary status on completion of 240/206 days in one year, i.e., to say the said status should be conferred on them as and when they complete the stipulated period. The respondents have raised the issue of limitation besides the issue concerning the Industrial Disputes Act.

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

3. The respondents have vehemently argued that the present OA is barred by limitation. From the details made available in the OA itself, it is seen that at least one of the four applicants, last served in the respondents' establishment in 1993. It is also seen that another applicant served last in 1995, while the remaining two served in 1996 also. None of them has remained employed in each of the five years in question. The learned counsel for the applicants has mentioned that it is not as if the applicants remained oblivious of their right to claim employment as casual workers in the respondents' establishment after 1996. According to him, the respondents preferred a representation first on

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24.2.97 and thereafter on 1.2.99, the latter being a legal notice served on the respondents. The 3rd representation was filed on 13.3.2000. The respondents' contention is that by filing representations repeatedly, one cannot get over the problem of limitation. Their contention is that even if it is assumed that a representation was indeed filed on 24.2.97, the applicants could approach the Tribunal soon thereafter so as to be within the limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985. They did not do so.

4. The fact that the applicants made a joint representation on 29.2.2000 and again on 13.3.2000 cannot help them as these representations have obviously been filed after a substantial delay of more than three years in the case of two applicants, of more than 6 years in the case of one applicant, and of more than 4 years in the case of 4th applicant. There are a catena of judgements of higher Courts to the effect that these who sleep over their rights lose their rights. The OA is, therefore, bad on account of latches and delays.

5. In the background of the above discussions, I find force in the arguments of the learned counsel for the respondents that the OA is time barred.

6. It is noticed that the applicants approached the Regional Labour Commissioner (RLC), Kasturba Gandhi Marg, New Delhi under the I.D. Act by serving on that authority the legal notice dated 1.2.99 already referred

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to. The said notice has been replied to by the respondents (IASRI) vide their letter dated 22.2.99 placed on record by the applicants themselves. The learned counsel for the respondents has taken objection to the filing of the representation with the authorities under the ID Act and has cited the judgement of the F.B. of this Tribunal in A.Padmavally and Others Vs. CPWD & Telecom reported as AISLJ XII-1990 (3) 544, The said case was decided on 30.10.90. The F.B. has in that case held that "An applicant seeking a relief under the provisions, of the Industrial Disputes Act must ordinarily exhaust the remedies available under that Act". Based on this decision, the learned counsel for the respondents has argued that it is not open to the applicants to pursue the same relief in two different forums, and if the applicants had approached the RLC, they should have exhausted that remedy. The applicants have stated that the matter filed before the RLC has been dismissed for non-prosecution and admitted that the applicants had incorrectly approached the RLC. In view of this, the learned counsel for the applicants has stressed that the OA should be considered on its own merits under the provisions of the Administrative Tribunals Act, 1985 without linking it up with the I.D. Act. I am not convinced, however.

7. The learned counsel for the applicants has brought to my notice the circular instructions dated 7.6.88 (pages 14 to 16 of the paper book) issued by the DOPT on the subject of "General Terms and Conditions for employment of casual labour". It is a one time

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instruction which provides that after a review by each Ministry/Department, all eligible casual workers should be adjusted against regular posts to the extent such posts are justified. However, the same instructions also provide that following the review, the casual workers not adjusted against regular posts or not retained for unavoidable reasons of work should be discharged. The applicants' reliance on these instructions is also not likely to be of assistance to them in this OA.

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8. The above-mentioned judgement of the Supreme Court covers the case of casual employees and lays down as under:-

"....As and when vacancies would arise, such persons whose services have been dispensed with will be taken back without following the practice of requisitioning the names of candidates from the employment exchange. They would be regularised only when regular posts are available and in accordance with the order of seniority."

While the OA cannot be sustained on the ground of limitation, I cannot help observing that administrative authorities are required to act fairly and in accordance with the principles of natural justice at all times and on all occasions. This makes me feel confident that the respondents if and when approached by the applicants will certainly look into their grievance and provide casual employment to them to the extent possible subject to availability of work and having regard to the length of service rendered by each of them during the aforesaid five years period in keeping with the spirit of the rule laid down by the Supreme Court in Anjali Bepari's case (supra).

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Y 9. In the result, the OA fails and is dismissed on the ground of limitation. No costs.

(A.T.R.)

(S.A.T. Rizvi)
Member (A)

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