

(3)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH.

REGN' NO. OA 1212/89

DATE OF DECISION: 12.6.1989

Shri R.K. Sharma

..... Applicant.

Versus

Union of India & Ors

..... Respondents.

Shri V.P. Sharma

..... Counsel for the
Applicant.

CORAM :

The Hon'ble Mr. Ajay Johri, Member(A).

The Hon'ble Mr. T.S. Oberoi, Member(J).

(Order of the Bench delivered by the
Hon'ble Member, Mr. Ajay Johri.)

ORDER

Heard Shri V.P. Sharma for the Applicant in
this Application which is filed under Section
19 of the Administrative Tribunals Act, 1985.

The Application is against the order dated
1.6.1989, a fair copy of which has now been
filed before the Registry. He has also produced
a copy of the same before us. This order reads
as under:-

"The above named casual labour engaged
by you as Hot Weather Waterman should be
discharged forthwith if he has not worked
prior to 3.1.81. Advise the date of
discharge."

The applicant has prayed for declaration
that the impugned order dated 1.6.1989 is
illegal and for passing an order restraining
the respondents to discharge the applicant, as
other similarly placed persons are working as
Hot Weather Waterman.

The applicant's case is that he has worked

3/ Waterman *3/ at*
as Hot Weather ~~on~~ Northern Railway, Lohari~~l~~
during 1986, 1987 and 1988 and is working during
1989. He has done/more than 120 days in each of
these spells and, therefore, he has attained
Temporary Status. The applicant seeks protection
under the scheme laid down by the Respondents
consequent to the Supreme Court's decision ⁱⁿ Inder
Pal Yadav and Others Vs. Union of India and others
SLR 1985(2)248 on the subject of regularisation
of Casual Labour working ~~on~~ the Railways.

On 13.4.89, DRM's Office at Bikaner issued
a circular on the subject of engagement of Casual
Labourer/Hot Weather Waterman-cum-Khalysi in
summer season of 1989 which starts from 15.4.1989
and ends on 14.9.1989. According to this
circular, the vacancies are to be filled by
engaging casual labourer/hot weather waterman-cum-
Khalysi, who have worked prior to 1.8.78 or in
between 1.8.78 to 3.1.81 on the Bikaner ~~g~~ division.
The instructions say that the Subordinate Incharges
will ensure that the list of Casual Labourer/Hot
Weather Waterman, who had worked during these
3/ is prepared *3/ there are*
periods and on that basis engaged during the summer
3/ The list is to be 3/ of 1988, ~~is~~ displayed on the notice Board and a letter
may also be sent to their home addresses. If the
such post remains unfilled even after engaging/Casual
3/ weather labourers/Hot waterman, who were appointed prior
to 1.8.78 or in between 1.8.78 to 3.1.81, they may
be filled by borrowing senior most jobless casual
labourers from sectional PWIs/IOWs provided that the
casual labourers fulfil the conditions for such
engagements.

The applicant challenged the impugned order dated 1.6.89 on the ground that the principles laid down for the benefits of the ^{3/} ~~Yadav's~~ Casual labour in the Inder Pal ^{3/} case are being violated. On the basis of Surender Singh Vs. The Engineer in Chief AIR 1986(SC)584, the Government was supposed to regularise the service of all the employees, who have been in continuous employment/more than 6 months as temporary or daily wage workers. Similarly, in AIR 1987 SC, 1153 Dakshin Railway Employees Union Trivandaram Division Vs. General Manager, Southern Railway, a casual labour who had been in continuous employment for 360 days ^{3/} ~~was~~ was entitled to absorption even though not in services on 1.1.1981. He has also drawn support ^{3/} ~~from~~ ^{3/} in the decision of the Daily Rated casual labour employed under P & T Dept through Bhartya Daklar Mazdoor Manch Vs. Union of India.

The substance of all the decisions was that the respondents had to formulate a scheme for regularisation of the Casual labourers who have been employed for ^{3/} ~~the~~ certain periods ^{3/} ~~13.4.89~~ under them. The ^{3/} ~~instructions~~ ^{3/} ~~were~~ issued by the D.R.M's, Bikaner vide his letter dated 13.4.89. The impugned orders being an outcome of the same ^{3/} ~~circular do not~~ ^{3/} ~~policy~~ ^{3/} ~~session~~ appear to militate against the ^{3/} ~~session~~ laid down in regard to providing senior most jobless casual labourers from sectional PWIs/ IOWs on the active list as also for regularisation of the casual labourers under the control of the respondents in accordance with the ^{3/} ~~sceme~~ ^{3/} ~~Yadav's~~ spelled out consequent to the Inderpal ^{3/} case. Being

(5)

so, if a decision is taken by the respondents to give employment on the basis of seniority for which they have prepared a list for certain period and ~~they have~~ ^{which principle has} also provided in the circular dated 13.4.89, which has been produced before us, to fill the post by those who were in employment prior to 1.8.78 or in between 1.8.78 to 3.1.81 and thereafter by those who are the senior-most jobless casual labourers, the same cannot be assailed by the applicant who joined service only in 1984. Therefore, we find nothing wrong in the action taken by the respondents, and do not see any merit in this Application. It, therefore, fails at the Admission Stage.

We accordingly dismiss this Application. We would however like to make an observation that the respondents will follow the policy of 'first-cum-last go' and the applicant will not be replaced by any of his juniors, or discharged, allowing juniors to continue.

Deo
(T.S. OBEROI)
MEMBER(J)

SPR/STC/N
(AJAY JOHRI)
MEMBER(A)