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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

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CA.No. 2060 of 1989

Dated at New Delhi, this the 15 th day of July, 1994

Hon'ble Mr Justice S. K. Dhaon, Acting Chairman  
Hon'ble Mr B. K. Singh, Member(A)

Shri Krishna Deo Poddar  
C/o Shri Uma Kant Poddar  
C-201, Albert Square  
Gole Market  
NEW DELHI

... Applicant

By Advocate: *Sh I C Sudhiv*

VERSUS

Union of India through

1. The Secretary  
Ministry of Communication  
Department of Posts  
Government of India  
NEW DELHI
  2. The Director General (Postal Services)  
Department of Posts  
Dak Tar Bhawan  
NEW DELHI
  3. The Chief Postmaster General  
Delhi Circle, Department of Posts  
Mohan Singh Place  
NEW DELHI
  4. The Accounts Officer  
Central Pairing Office  
Delhi Circle, Department of Posts  
Bhai Veer Singh Marg  
NEW DELHI
- ... Respondents

By Advocate: *SR M.K. GUPTA*

ORDER

Shri B. K. Singh, M(A)

This application has been made for directions to the respondents: (a) to withhold appointment of 6 Group 'D' (NTC), EDAs, daily wagers, all junior to the applicant to Group 'D' (TC) posts, consequent upon the result declared on 23.9.89 by the office of Chief Post Master General, Delhi Circle, Delhi

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vide no. Staff/B-15/CO/Vol. II to XII. b) to arrange for the permanent absorption/regularisation of the applicant in the Group 'D' (TC) post of Peon/Packer in the Department of Posts, Central Pairing Officer, Delhi Circle, Bhai Veer Singh Marg, New Delhi, in the scale of pay of Rs. 750-12-870-EB-14-940 in terms of the Department of Personnel and Training O.M. No. 49014/18/84-Estt(C) dated, 7.5.85.

2. The admitted facts of the case are these:

The applicant was engaged as Casual Labour with effect from 29.1.81 and he has been working continuously since then. It is admitted by both the parties that the applicant was engaged from the open market without sponsorship through the Employment Exchange, on daily wages. Originally he was subjected to a literacy test/interview conducted by the respondent no. 4. The certificate of appointment is at Annexure A/1. The following eligibility conditions for engagement of casual/daily wage workers against Group 'D' posts were normally followed in 1981:

- (i) the recruitment should be made through employment exchange;
- (ii) the person to be engaged fulfils other eligibility conditions, viz. age limit, educational qualification, etc., and
- (iii) the Department/Office concerned has a suitable vacancy to accommodate him.

The educational qualification laid down was

that one should have passed VIIIth standard.

There were 14 vacancies available in Group 'D' (TC) against which 6 of the persons junior to the applicant

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were regularised. The applicant made representations against their regularisation and the copies of the representations are at Annexure A/4. The Hon'ble Supreme Court vide its order dated 27.10.87 in the casual labour case directed for framing a scheme for absorption of casual labourers within eight months from the date of judgement, i.e. 26.6.88 for regularising casual labourers who have been continuously working for more than one year, and if the posts were not available, the Department of Posts and Telegraph and Communications were directed to create posts to accommodate them. It is also admitted by both the parties that the Department of Personnel and Training vide O.M. No.F.No.49014/2/86-Estt (C) dated 7.6.88 (Annexure A/5), directed the authorities that all eligible workers should be adjusted against the regular post in the light of the judgement of the Hon'ble Supreme Court. It is also admitted that the post of Packer (Group 'D') is of a perennial nature. It is further admitted that the applicant was subjected to another literacy test comprising English, Hindi and Mathematics and he cleared Hindi and Mathematics but failed in English. Though the judgement of the Hon'ble Supreme Court did not lay down the educational qualification for regularising the casual labour but it did make the following observations:

" .....We, therefore, direct the respondents to prepare a scheme on a rational basis for absorbing as far as possible the casual labourers who have been continuously working for

more than one year in the Posts and Telegraph Department. . . .

The respondents shall prepare a scheme for absorbing the casual labourers as directed above, within eight months from today."

While framing the scheme, the Hon'ble Supreme Court had presumably wanted regularisation of all the casual labourers who have put in more than one year's service. The presumption is that their original appointment as casual labour must have been in conformity with the <sup>parameters</sup> laid down by the departments.

It is also admitted that the Department of Personnel and Training issued instruction vide O.M. no.49014/18/84-Estt.(C) dated 7th may, 1985 (Annexure A/3) relaxing employment exchange procedure for regularisation of service of casual workers in Group 'D' posts by laying down:

" . . . . Having regard to the fact that casual workers belong to the weaker section of the society and termination of their services will cause undue hardship to them, it has been decided, as a one time measure, in consultation with the DGE&T that casual workers recruited before the issue of these instructions may be considered for regular appointment to Group 'D' posts, in terms of the general instructions, even if they were recruited otherwise than through the Employment Exchange, provided they are eligible for regular appointment in all other respects."

It is also admitted that Delhi is categorised as one of the regions where Hindi is the official language, and that the applicant had cleared the original literacy test held by the respondents. Literacy test implies that a person should be able to read and write. It is not denied by the respondents that the applicant can read and write, in Hindi and also in English. Holding a test comprising English, Hindi and Mathematics, does not seem to be necessary in the light of the

Hon'ble Supreme Court's judgement.

3. The applicant prays for the following reliefs:

- "(i) To declare the alleged literacy test for recruitment to Group 'D' (TC) cadre as invalid in view of the judgement of the Hon'ble Supreme Court and the fact that the applicant is 8th standard pass in Hindi medium and is adequately literate, and was engaged as such on 29.1.81 after qualifying the literacy test conducted by the Department, i.e. respondent no.3;
- (ii) The respondents be also directed to regularise the applicant on Group 'D' (TC) with effect from 29.1.83, post of Peon/Packer in view of his having completed more than 8 years of continuous service on daily wages without break and to pay the arrears of pay, etc., and all other benefits for which applicant is entitled to;
- (iii) The respondents be directed to withhold appointment (regularisation) of Group 'D' (NTC), EDAs, daily wages to Group 'D' posts (TC) in the Delhi Circle as most of them are junior to the applicant by virtue of the applicant having put more than 8 years' of continuous service on daily wages, till the regularisation of the service of the applicant...."

4. A notice was issued to the respondents who filed their reply and contested the application and the reliefs prayed for.

5. We heard learned counsel Shri M. K. Gupta, counsel for the respondents and perused the record of the case. The learned counsel for the respondents very fairly conceded that on the basis of admitted facts, the applicant deserves regularisation on the basis of length of service that he has put in with the department as a casual labour. During the course of arguments, he produced letter No. Staff/E-15/CO dated 3.12.93 which has been placed on record, where the department only conferred

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temporary status on the applicant in the light of their scheme which came into force w.e.f. 29.11.92. This letter, however, is certainly not in conformity with the circular of Department of Personnel and Training quoted above nor is it in conformity with the judgement of the Hon'ble Supreme Court which has been quoted in the foregoing paragraphs. The purpose of the circular and the judgement of the Hon'ble Supreme Court is that Government should make a rational policy which should seep down through the political overhead into permanent career service, making it an agent in the refinement of policy as well as for its execution. When a change is ordered to be made in an existing policy, it should be based on sense of empathy, the capacity to place oneself in place of those for whom such a policy is ordered to be framed. In a welfare State and Government has to be a model employer and it should make a policy by which Government and public will be better served. The Hon'ble Supreme Court's diktat meant that the policy adopted by the Department of Posts and Telegraph and also Telecommunication and Railways had run their course and were not producing just and fair results. The idea was that where casual workers<sup>who</sup> have been continuing for years together and were continuing without<sup>B</sup> the benefits admissible to others employed in<sup>the</sup> same category, a clear-cut policy should<sup>B</sup> be adopted and executed.

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6. Ethics of service is an integral part of principles of administration. This ethics is separate from the statutory rules governing conduct and behaviour of civil servants. Human element in administration is needed for bonafide action and one should not be only guided by cold logic of law.

7. The applicant has already put in more than 13 years' service as a casual labour and, justice and equity demand that in the light of the Hon'ble Supreme Court's judgement and in the light of the relaxation granted by Department of Personnel and Training in 1985, he should be regularised against any of the available vacancies. It has been fairly conceded by the learned counsel for the respondents that it is a fit case for regularisation and the respondents must deal with this case with fairness, justness and sympathy. If no vacancy is available, a supernumerary post should be created to accommodate <sup>the</sup> applicant. This <sup>and when</sup> post should be abolished if <sup>B</sup> a regular vacancy occurs. These instructions <sup>B</sup> should be complied with by the respondents within a period of three months from the date of receipt of a certified copy of this order.

8. The application is thus partly allowed but without any order as to costs.

  
(B. K. Singh)  
Member (A)

  
(S. K. Dhaon)  
Acting Chairman