

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2306/89
T.A. No.

198

DATE OF DECISION 16.2.1990.

Shri Raj Kamal & Ors.

Applicant (s)

Shri V.P. Sharma

Advocate for the Applicant (s)

Union of India Versus

Respondent (s)

Shri P.H. Ramchandani

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. To be circulated to all Benches of the Tribunal ? No

JUDGEMENT

(delivered by Hon'ble Shri P.K. Kartha, V.C.)

The applicants, who have worked as Casual Labourers in the Ministry of Food & Civil Supplies, Department of Civil Supplies, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for a direction to be issued to the respondents to regularise their service and to quash the impugned orders dated 12th October, 1989 issued by the respondents. By the impugned orders dated 12th October, 1989, the respondents informed the applicants that their ad hoc appointments had been terminated by the Office of the National Consumer Disputes Redressal Commission (NCDRC) and that they should

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make a representation to the said Commission. Insofar as the Department of Civil Supplies was concerned, their case for appointment shall be considered, as and when vacancies arise, in the said Department giving due consideration to the services rendered by them as Daily Wager/Peon on an ad hoc basis and in accordance with the rules/regulations on the subject. It was also said that at present there was no vacancy in the grade of Peon in the Department of Civil Supplies against which they could be appointed (vide Annexures A-1, A-2, A-3 and A-4, pages 11-14 of the paper-book).

2. The application was admitted on 24.11.1989. On 11.12.1989, the Tribunal passed an interim order to the effect that the status quo as regards the continuation of the applicants as Casual Labourers be maintained. The interim order has been extended until further orders.

3. In the meanwhile, on 1.1.1990, the respondents have filed an application for clarifying the factual position regarding the disengagement of one of the applicants. According to the said affidavit, the services of the third applicant (Shri Ganga Ram) had already been terminated on verbal orders w.e.f. 8.12.1989. The other three applicants ⁱⁿ are continuing service by virtue of the stay order passed by the Tribunal on 15.12.1989.

4. As regards the period of service put in by the applicants, there is some divergence in the versions given in the application and the counter-affidavit filed by the respondents. The details of the service of the applicants given in the counter-affidavit are as under:-

Applicant No. 1

He was engaged as a daily-wager w.e.f. 16.11.1983

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through Employment Exchange. As a Casual Worker, he worked from 16.11.1983 onwards for the following number of days:-

<u>Year</u>	<u>No. of days</u>
1983	38
1984	299
1985	269
1986	249
1987	226
1988	75
1989 (Up to Nov.)	165.

From 23.1.1987 to 27.2.1987 and from 19.4.1988 to 15.3.1989, he has worked as Peon on purely ad hoc and temporary basis in the Department of Civil Supplies and National Consumer Disputes Redressal Commission.

Applicant No. 2

He was engaged as a daily-wager w.e.f. 3.8.1983 through Employment Exchange and he worked in that capacity for the following number of days:-

<u>Year</u>	<u>No. of days</u>
1983	130
1984	315
1985	315
1986	127.

For brief periods, he was appointed as ad hoc Peon w.e.f. 6.6.1986 on co-terminus basis for working in the Personal Staff of Minister of Food and Civil Supplies against a temporary post created for the period the Minister held charge of the said Ministry. This ad hoc appointment was terminated on demitting of office by the

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Minister w.e.f. 14.2.1988. He was again appointed as ad hoc Peon w.e.f. 14.2.1988 against NCDRC post. This ⁴ ad hoc appointment was initially made by the Department of Civil Supplies as the posts were initially controlled by the said Department and this ad hoc appointment was continued in short spells upto 31.12.1988. When the NCDRC started functioning and they were delegated all administrative and financial powers, they appointed him as ad hoc Peon w.e.f. 3.1.1989 and extended the same in short spells upto 15.3.1989. Thereafter, he was discharged w.e.f. 16.3.1989.

Applicant No.3

He was engaged as a daily-wager w.e.f. 30.4.1984 through Employment Exchange and he worked for the following number of days as a daily-wager:-

<u>Years</u>	<u>No. of days</u>
1984	195
1985	278
1986	269
1987	241
1989	140.

He has also worked as ad hoc Chowkidar in NCDRC w.e.f. 29.12.1987 to 15.3.1989. He was also discharged by the NCDRC w.e.f. 16.3.1989.

Applicant No.4

He was engaged as a daily-wager from 16.11.1983 through Employment Exchange and he worked in that capacity for the following number of days:-

<u>Year</u>	<u>No. of days</u>
1983	38
1984	298
1985	279
1986	134.

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From 23.6.1986 to 27.2.1987, 1.2.1988 to 13.2.1988 and 14.2.1988 to 15.3.1989, he has worked as ad hoc Peon in the Department of Civil Supplies and NCDRC.

5. The applicants had filed four separate applications in this Tribunal earlier, seeking various reliefs without availing of the remedies available to them under the relevant service rules as to the redressal of their grievances. These applications had been disposed of by the Tribunal at the admission stage itself directing that the applicants may, if they so choose, make representations to the authorities concerned in regard to their grievances. The authorities concerned were directed to consider the representations received by them within a period of two months from the date of receipt thereof. In case, the applicants were aggrieved by the decision of the authorities, they were given liberty to file fresh application in the Tribunal in accordance with law, if so advised.

6. Thereafter, the applicants submitted representations to the concerned authorities who passed the impugned orders dated 12.10.1989, mentioned above.

7. The case of the applicants is that they have worked for several years in the Office of the respondents and that they are entitled to regularisation of their services. In this context, they have relied upon the decisions of the Supreme Court in Inder Pal Yadav Vs. Union of India, 1985 (2) SLR 248; Surinder Singh Vs. Union of India, A.I.R. 1986 S.C. 584, Dakshin Railway Employees Union, Trivandrum Division Vs. Manager, Southern Railway, A.I.R. 1987 S.C. 1453; and Daily Rated Casual Labourer employed under P & T Department through Bhartiya Dak-Tar Mazdoor Manch Vs. Union of India, A.I.R. 1987 S.C. 2342. They have

also relied upon the decision of the Punjab & Haryana High Court in Piara Singh Vs. State of Haryana delivered on 26.9.1988.

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8. The L referred to the Office Memoranda No. 49014/19/84-Estt.(C) dated 26th October, 1984 and issued on 7th June, 1988 by the Department of Personnel & Training regarding the regularisation of the services of Casual Workers in Group 'D' posts.

9. The case of the respondents is that the four applicants were initially engaged as daily-wagers/Casual Workers and have worked in that capacity for varying periods since 1983-84, mentioned above. For brief periods, they were also appointed as Peons on ad hoc basis against short-term vacancies. When the short-term vacancies were no longer in existence, they were reverted from their respective posts. Under Consumer Protection Act, 1986, a new office, namely, National Consumer Redressal Commission was established and five temporary posts of Peon were created for that office. Since that office was not physically working in the initial stage, the posts were controlled by the Department of Civil Supplies. These four applicants were appointed on purely ad hoc basis against these posts by the Department of Civil Supplies. Their ad hoc appointment was further continued by the Department upto 31.12.1988 in short spells. Thereafter, the office of NCDRC came into existence and all financial and administrative powers were delegated to them. As a consequence of this, NCDRC appointed them on ad hoc basis w.e.f. 3.1.1989 and extended their ad hoc appointment in short spells upto 15.3.1989, when they were no longer required. In the ad hoc on

appointment orders issued by the NCDRC, it was clearly mentioned that the appointments are purely temporary and the services are liable to be terminated without any notice. The applicants did not raise any objection when they were appointed against the NCDRC posts.

10. The applicants have not represented to the NCDRC for regularisation of their services, as the present D.A. is silent about this aspect. Their services are no longer required by the respondents and hence, the respondents are desirous of terminating the same. They have further submitted that they have not retained the services of any other daily-wager junior to the applicants. In fact, they have dispensed with the services of all daily-wagers. They have taken a policy decision to do so.

11. With regard to the instructions issued by the Department of Personnel, relied upon by the applicants, the respondents have contended that these instructions apply only when the vacancies exist in the Department. As and when vacancies existed ⁱⁿ ~~of~~ the Department, the applicants were appointed on ad hoc basis and when the vacancies were not in existence, they were reverted from the ad hoc posts. No post is vacant at present in the Department and it not possible to regularise their services. NCDRC terminated their services, as they were no longer required by them.

12. We have carefully gone through the records of the case and have heard the learned counsel for both the parties. In Rehmat Ullah Khan & Others Vs. Union of India & Others, 1989 (2) SLJ 293, a Full Bench of this Tribunal

has held that although a Casual Labourer does not hold civil post, he is in the service of the Union. He is essentially in the Civil service for the Union. The Full Bench, however, left open the question as to what relief a Casual Labourer may be entitled to in a given case. There are no rules about their appointment or termination of their services. Their services are absolutely temporary in the widest sense of the word and they are not entitled either to regularisation or to make a claim that their services should be regularised.

13. As regards the policy regarding engagement of Casual Workers in Central Government offices, the Department of Personnel & Administrative Reforms have issued certain administrative instructions. The office memoranda dated 26th October, 1984 and 7th June, 88 are relevant in this context.

14. According to the Office Memorandum dated 26th October, 1984, the services of a casual worker may be regularised in a Group 'D' post, provided, inter alia, he has put in two years as a casual worker with 240 days or more of service as such, during each year. The requirement of 240 days was worked out with reference to 6-day week being observed in Central Government offices. Some organisations were observing a 5-day week. In view of this, it was mentioned in the said O.M. that in such organisations observing 5-day week, casual workers may be considered for regular appointment to Group 'D' posts if otherwise eligible, if they put in two years of service as casual workers, with 206 days

of service during each year (as against the usual 240 days).

15. The Office Memorandum dated 7th June, 1988 was issued, keeping in view the judgement of the Supreme Court delivered on 17th January, 1986 in the writ petition filed by Shri Surinder Singh & Others Vs. Union of India. Pursuant to that judgement, the policy regarding engagement of casual workers in Central Government offices was reviewed by the Govt. No doubt, the O.M. issued in 1988 refers to the policy of not recruiting persons on daily-wages for work of a regular nature. It provides, inter alia, that the work presently being done by the regular staff should be reassessed by the administrative departments concerned and in cases where it is not possible to entrust all the items of work being handled by the casual workers to the existing regular staff, additional regular posts may be created for the barest minimum necessity, with the concurrence of the Ministry of Finance. The regularisation of the services of the casual workers will continue to be governed by the instructions issued by the Department of Personnel & A.R. in this regard. While considering such regularisation, a casual worker may be given relaxation in the upper-age limit only if, at the time of initial recruitment as a casual worker, he had not crossed the upper-age limit for the relevant post.

16. According to the instructions issued by the Department of Personnel & A.R., no casual labourer not registered with the Employment Exchange, should be appointed to posts borne on the regular establishment.

17. The O.M. issued in 1988, also lays down a time-limit for completing a review of the cases in the various ministries/departments/offices of the Central Government and envisages furnishing of quarterly statements to the Department of Personnel & A.R.

18. The stand of the respondents in the instant case is that they have reviewed their requirements of Group 'D' staff in the Department of Civil Supplies and have discharged the casual labourers who could not be regularised in that Department for want of vacancies of posts in Group 'D' category. The review was undertaken in the light of the O.M. issued in 1988 by the Department of Personnel & A.R.

19. Engagement of casual labour in various ministries/departments/offices of the Central Government and its various attached and subordinate offices in Delhi and of the Office of the Comptroller & Auditor General of India and the offices under the Comptroller & Auditor General of India, is the subject matter of numerous applications filed in the Tribunal. These have been grouped together under the orders of the Hon'ble Chairman to facilitate expeditious disposal. In our opinion, the question has to be considered in its totality and not in an isolated manner, ministry-wise or department-wise. The existing instructions issued by the Department of Personnel & Training seek a review of the matter by each ministry/department as the powers in this regard have been decentralised. To our mind, the existing guidelines would result in inequity and injustice in several cases, as will be borne out from the following discussion.

20. Under the existing guidelines, each ministry/department is given the power to assess the requirement

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of Group 'D' staff and regularise the casual labourers who fulfil the requisite qualifications and experience, depending on the availability of vacancies/posts in that category. It might happen that in one ministry/department, ^{or} person who has put in lesser length of service as casual labourer, may be regularised if a vacancy or post in Group 'D' category exists. A casual labourer who has put in longer period of service in another ministry/department, may not be regularised for want of vacancy/post in Group 'D' category. This results in injustice and inequity. The Government of India is a single unit in the eyes of law. The practice in vogue to engage and disengage casual labourers and to regularise them in the vacancies of Group 'D' posts followed by the different ministries/departments and the offices under them on the basis of their separate strength of staff ~~does~~ results in inequities and injustices. Even though casual labourers are not holders of civil posts and on that basis, they are not entitled to the protection of Article 311 of the Constitution, the protection of Articles 14 and 16 of the Constitution would undoubtedly be available to them. In this context, reference may be made to our judgement dated 11.1.1990 in OA-1699/88 (Shri Durga Prasad Tewari and Others Vs. Union of India and Others), to which both of us are parties. That case related to the question of regularisation of casual labourers working in the office of the Controller of Accounts under the Ministry of External Affairs. Rejecting the plea of the respondents that there were no vacancies in the Office of the Controller of Accounts as distinguished from the main Ministry of External Affairs, each of which

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had separate sanctioned strength of staff, the Tribunal held that a unit of the ministry/department, as the Office of the Controller of Accounts, should not be taken in isolation and the ministry/department should be taken as a single unit. Consequently, it was observed that it will be fair and just to consider their regularisation not only in the Office of the Controller of Accounts where they are working presently but also in the main Ministry of External Affairs and its various other units whether at the Headquarters at Delhi or in their offices located elsewhere. Such regularisation should be regardless of the fact that the names of the applicants have not been sponsored by the Employment Exchange and that they have become overage by now provided that at the time of their initial engagement, they were within the prescribed age limit for regularisation. Till they are so regularised, they shall be continued as casual labourers in the Office of the Controller of Accounts or any other office of the Ministry of External Affairs located at Delhi or elsewhere, wherever a vacancy of casual labourer is available. The respondents were further directed not to induct fresh recruits as casual labourers through Employment Exchange or otherwise overlooking the preferential claims of the applicants.

21. We are, therefore, of the opinion that in order to solve the problem of casual labourers engaged in the Central Government offices in a fair and just manner, the proper course for the Government would be to prepare a scheme, somewhat like the one in operation for redeployment of surplus staff, vide Department of Personnel & A.R.'s

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O.M. No.3/27/65-CS-II dated 25.2.1966 and amplified vide Department of Personnel & Training's O.M. No.1/8/87-CS-II dated 30.4.1987, and the Department of Personnel & Training's O.M. No.1/14/88-CS-III dated 31.3.1989 and 1/18/88-C.S.III dated 1.4.1989, for all casual labourers engaged prior to 7.6.1988, but who had not been regularised by the authority concerned for want of regular vacancies or whose service has been dispensed with for want of regular vacancies. Since the Department of Personnel & Training is monitoring the implementation of the instructions issued vide O.M. dated 7.6.1988, the Union of India through that Department, should undertake to prepare a suitable scheme for absorbing such casual labourers in various ministries/departments and subordinate and attached offices other than the Ministry of Railways and Ministry of Communications. Their absorption should be on the basis of the total number of days worked by the persons concerned. Those who have worked for 240 days/206 days (in the case of six days/five days week, respectively), in each of the two years prior to 7.6.1988, will have priority over the others in regard to absorption. They would also be entitled to their wages till their absorption in the existing or future vacancies. Those who have worked for lesser periods, should also be considered for absorption, but they will be entitled to wages for the period ~~when~~ they actually worked as ⁹ ~~On~~ against regular vacancies casual labourers. No fresh engagement of casual labourers/ shall normally be resorted to before absorbing the surplus casual labourers. The fact that some of them may not have

been sponsored by the Employment Exchange, should not stand in the way of their absorption. Similarly, they should not be considered ineligible for absorption if at the time of their initial engagement, they were within the prescribed age-limit.

22. A scheme as indicated above should apply to all the ministries/departments of the Government of India and offices under their control except where schemes have already been prepared pursuant to the directions of the Supreme Court, such as in the Railways and the Ministry of Communications. It should also apply, mutatis mutandis, to the Office of the Comptroller & Auditor General of India and offices under the Comptroller & Auditor General of India.

23. In this context, we may briefly refer to the background in which the Supreme Court dealt with the casual labourers of the Railways and in the P.&T. Department. In the case of the Railways, the problem of absorbing casual labourers engaged on project works, was before the Supreme Court in Inderpal Yadav's case. Several writ petitions and Special Leave Petitions had been filed in the Supreme Court on the issue. The Court adjourned these matters to enable the Railway Ministry to work out a scientific scheme. Accordingly, that Ministry prepared a scheme in June, 1984 and the Supreme Court observed that it was an improvement on the prevailing situation though it was not wholly satisfactory. It gave certain directions to modify the scheme. According to the modified scheme, the cut-off date for the purpose of regularisation was to be January 1, 1981 and not January 1, 1984, as proposed by the Railways. This matter again came

up before the Supreme Court in Dakshin Railway Employees Union, Trivandrum Division Vs. General Manager, Southern Railway, A.I.R. 1987 S.C. 1153, in which a direction was issued by the Supreme Court to include the names of the petitioners in the scheme for absorption even though they were not in service on January 1, 1981. The criterion for absorption was that the person concerned had completed 360 days of continuous employment.

24. In the case of the daily-rated casual labour employed under the P&T Department, AIR 1987 S.C. 2342, the respondents had not prepared a similar scheme. The Supreme Court referred to its earlier decisions in Dhirendra Chamoli Vs. State of U.P., 1986 (1) S.C.C. 637 and observed that "non-regularisation of temporary employees or casual labour for a long period, is not a wise policy". The Supreme Court, therefore, directed them 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 & Telegraphs Department.

25. In U.P. Income Tax Department Contingent Paid Staff Welfare Association Vs. Union of India & Others, A.I.R. 1988 S.C. 517, the Supreme Court observed that the Government orders providing for the absorption of the contingent-paid staff "are hedged by a number of conditions". The Court also found that many such employees had been working on daily-wages for several years. The Supreme Court, therefore, directed the respondents to prepare a scheme on a rational basis for absorbing, as far as possible, the contingent-paid staff of the Income Tax Department, who have been continuously working for more than one year as Class IV employees in the Income Tax Department.

26. In the Delhi Municipal Karamchari Ekta Union (Regd.) P.L. Singh, A.I.R. 1988 S.C. 519, the Supreme Court directed the Delhi Municipal Corporation to prepare a similar scheme.

27. In the light of the aforesaid judicial pronouncements, the framing of a scheme directed above, would be justified. The Union of India should, however, consider whether such a scheme of absorption be made applicable to persons who have worked continuously for more than one year, as directed by the Supreme Court in the case of daily-rated casual labour in the P & T Department, which was subsequently followed in other cases mentioned above.

28. In the instant case, even according to the counter-affidavit filed by the respondents, the applicants have worked continuously for more than 240 days in various years. Their services are sought to be dispensed with on the ground that there is no vacancy in the post of Group 'D' staff in the Department of Civil Supplies. In our opinion, they should be considered for continued employment in any of the vacancies of Group 'D' category which may be existing in other ministries/departments/offices of the Government in accordance with the scheme as suggested above.

29. In the light of the foregoing, the application is disposed of with the following findings, orders and directions:-

(i) We hold that the present practice and procedure followed by different ministries/departments and the offices under them in the matter of engagement, disengagement and regularisation of casual labourers on

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basis of their separate strength of staff results in inequities and injustice. The Government of India, except the Ministry of Railways, should be treated as a single unit in the context of engagement and regularisation of casual labourers;

- (ii) the impugned orders dated 12th October, 1989 passed by the respondents, are set aside and quashed;
- (iii) the respondents are directed to continue the services of the applicants as casual labourers in the regular vacancies in the post of Group 'D' arising in the Ministry of Food and Civil Supplies and its offices at Delhi and to consider their regularisation in such vacancies;
- (iv) In case, no vacancies exist in the Ministry of Food & Civil Supplies and its offices, they should be adjusted against the vacancies of Group 'D' staff, in other ministries/departments/attached/subordinate offices for appointment in accordance with the scheme directed to be prepared as mentioned in paragraph 21 above;
- (v) the respondents are directed not to induct fresh recruits as casual labourers through Employment Exchange or otherwise, overlooking the preferential claims of the applicants; and
- (vi) the emoluments to be given to the applicants till their regularisation should be strictly in accordance with the orders and instructions

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issued by the Department of Personnel & Training.

After their regularisation, they shall be paid the same pay and allowances as regular employees belonging to the Group 'D' category;

(vii) the interim order passed on 11.12.1989 and continued thereafter directing the respondents that the status quo as regards the continuance of all the four applicants as casual labourers, be maintained, is made absolute.

The parties will bear their own costs.

D. K. Chakravorty
(D. K. CHAKRAVORTY)
MEM BER (A)

16/2/1990

Partha
16/2/90
(P. K. KARTHA)
VICE CHAIRMAN (J)