

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 756/89  
T.A. No.

199

DATE OF DECISION 25.10.91

Shri Azad Singh &amp; Another

~~Petitioner~~ ApplicantsS/Shri P.T.S. Murthy and M.L.  
ChawlaAdvocate for the ~~Petitioner(s)~~ Applicants

Versus

Union of India &amp; Another

Respondent

Shri K.S. Dhingra, Sr. A.O.,  
~~Miny. of Defence~~

Advocate for the Respondent(s)

## CORAM

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

The Hon'ble Mr. B.N. Dhoundiyal, 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. Whether it needs to be circulated to other Benches of the Tribunal? *No*

(Judgement of the Bench delivered by Hon'ble  
Mr. P.K. Kartha, Vice-Chairman)

The grievance of the two applicants, who have worked as Casual Labourers in the Ministry of Defence, relates to their disengagement on the ground that they were over-aged at the time of their initial engagement.

2. Applicant No.1 was engaged on 30.8.1985 and applicant No.2 on 11.9.1985. They were disengaged on 1.9.1987 and 14.9.1987 respectively without assigning any reasons.

3. The applicants have stated that their work and

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conduct had been satisfactory throughout. They have alleged that some persons similarly situated like them, have been retained in service at the time of the termination of their services. They have given the names of such employees in para.4.11 of the application. The first applicant was over-aged by one year, six months and 7 days while the second applicant was over-aged by one year, 11 months and three days. They have contended that they should be given exemption from the age-limit having regard to the fact that they belong to the lowest strata of the society. ~~and on the basis of the past precedents.~~ They have further contended that the question of age-limit would arise only at the time of regularisation and that they ought to have continued as casual labourers, regardless of the age-limit.

4. The respondents have contended in their counter-affidavit that no proper verification of age or qualifications was carried out at the time of the initial engagement of the applicants. Upon the completion of two years in casual employment, the cases of the applicants were considered for regularisation in Group 'D' posts. At that time, it came to light that they were over-aged.

5. As regards the retention in service of similarly situated persons, the respondents have stated that one person who was regularised, had long period of service, that the second person was physically handicapped, that

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the third person had worked as casual worker in another department earlier, which was also taken into account, and that the fourth person had worked as a Labourer on contract basis earlier and had long years of service.

6. We have gone through the records of the case carefully and have considered the rival contentions. The representative of the respondents argued that the applicants were engaged initially under the mistaken notion that they were within the age-limit and that the mistake could be corrected without giving a show-cause notice to the persons concerned. As against this, the learned counsel for the applicants stated that the termination was bad in law as no notice was given to the applicants before their termination. We agree with the contention of the learned counsel for the applicants.

7. This is a case in which the respondents should have considered the case of the applicants <sup>adopting a</sup> by humanitarian approach. In H.C. Puttaswamy & Others Vs. Karnataka High Court, Bangalore, and Others, 1991 (1) A.T.J. 31, the Supreme Court has observed that equitable considerations would apply even in a case where the selection and appointment of candidates are illegal and unsupportable. In that case, some persons had been appointed as Clerks and Typists by the Chief Justice of Karnataka, which was contrary to the

relevant recruitment rules. The Supreme Court took note of the fact that these employees had put in service for about ten years and that the circumstances of the case justified a humanitarian approach. The Supreme Court held that the employees concerned should be treated to be regularly appointed with all benefits of past service.

8. In our opinion, applicants before us also deserve to be treated in the same manner. We, therefore, set aside and quash the impugned orders of termination of services of the applicants. The respondents are directed to reinstate the applicants as Casual Labourers within a period of one month from the date of receipt of this order. They should be considered for regular appointment in Group 'D' posts in relaxation of the rules and instructions issued by them. In the facts and circumstances of the case, we do not direct payment of back wages to them. The application is disposed of accordingly. There will be no order as to costs.

*B.N. Dhoundiyal*  
(B.N. Dhoundiyal) 25/10/91  
Administrative Member

*P.K. Kartha*  
25/10/91  
(P.K. Kartha)  
Vice-Chairman (Judl.)