

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 870/89
T.A. No.

198

DATE OF DECISION 30-11-89

Shri Vikram Singh & Another Applicant (s)

Shri B.B. Rawal

Advocate for the Applicant (s)

Versus

Union of India & Others

Respondent (s)

Shri M.L. Verma

Advocate for the Respondent (s)

CORAM :

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

The Hon'ble Mr. I.K. Rasgotra, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? NC
4. To be circulated to all Benches of the Tribunal? NA

JUDGEMENT

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

The applicants, who worked as Casual Labourers in the Office of the Director General, Bureau of Police Research & Development, Ministry of Home Affairs, filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying that the verbal orders of their disengagement w.e.f. 17.4.1989 be quashed and that the respondents be directed to appoint them on regular basis on account of their nearly three years' continuous service. The pleadings in the case are complete. We have heard the learned counsel for both the parties and have gone through the records carefully. We feel that the present application could be disposed of at the admission stage itself.

2. The facts of the case in brief are as follows. The applicants have worked from 13.5.1986 and 20.6.1986 respectively in the office of the respondents till they were disengaged on 17.4.1989. The disengagement was not on account of their unsatisfactory performance or conduct. They have alleged that though they have worked for the months of January, February and March, 1989 ^{and} till 17th April, 1989, they have not been paid their wages during the said period. According to them, the work for which they were engaged still continued and they apprehend that the respondents may recruit fresh persons in their place.

3. The respondents have admitted in their counter-affidavit as regards the period of service rendered by the applicants. However, they have contended that they were engaged on Muster Roll on daily-wages, that they were not sponsored by the Employment Exchange and that their services were dispensed with on administrative grounds. As they were not engaged through the Employment Exchange, it has been contended that it was not possible to regularise their services in any of the regular posts under the Rules.

4. The respondents have stated in para. 4.9 of their counter-affidavit that there are four vacancies in the post of Peons in their Office of which two are kept vacant to accommodate LDCs who have been promoted on ad hoc basis. The case of their regularisation has been taken. The posts have been kept reserved for them in case their regularisation as LDC does not materialise. The remaining 2 posts cannot be filled up due to ban on the recruitment of Peons. There are no other vacancies in their office.

5. The recruitment of casual workers and persons on daily wages is presently governed by the Office Memorandum issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training on 7th June, 1988. It has, inter alia, been stated in the said O.M. that the regularisation of the services of the casual workers will continue to be governed by the instructions issued by the Department of Personnel in this regard. The O.M. dated 26th October, 1984 issued by the Department of Personnel provides, inter alia, that casual labourers appointed through Employment Exchange and possessing the experience of a minimum of two years' continuous service as casual labourer in the office/establishment to which they are so appointed, will be eligible for appointment to posts on the regular establishment in that office/establishment without any further reference to the Employment Exchange. In the instant case, the admitted factual position is that the applicants have worked for more than three years from May-June, 1986 to 17th April, 1989. According to the O.M. dated 26.10.1984, a casual labourer may be given the benefit of two years' continuous service if he has put in at least 240 days' (206 days' in the case of offices observing 5-days a week) of service as a casual labourer (including broken period of service) during each of the two years of continuous service.

6. In the case of Union of India & Others Vs. N. Hargopal & Others, AIR 1987 S.C. 1227, the Supreme Court

has observed that the object of the Employment Exchange (Compulsory Notification of vacancies) Act, 1959 is not to restrict, but to enlarge the field of choice so that the employer may choose the best and the most efficient and to provide an opportunity to the worker to have his claim for appointment considered without the worker having to knock at every door for employment. The said Act does not oblige any employer to employ those persons only who have been sponsored by the Employment Exchange. Further it was the responsibility of the employer to obtain a panel of candidates from the employment exchange when initially employment was made. The failure of the employer to follow the established procedure cannot at this stage be allowed to be used to the detriment of the employees who have been rendering satisfactory service for about three years. That being so, we are of the opinion that the mere fact that the applicants have not been sponsored by the Employment Exchange should not be a ground for refusing to consider their cases for regularisation (see also Hari Shankar Singh Vs. Union of India & Others, 1989 (3)C.A.T. 493).

7. In the facts and circumstances of the case, we order and direct as follows :-

- (i) the respondents shall consider the case of the applicants for appointment on regular basis to any Group 'D' post in any of the available vacancies, disregarding the fact that their names have not been sponsored by the Employment Exchange. The respondents shall appoint them on regular basis subject to their fulfilment of other formalities such as verification of character and antecedents, medical examination, and the like;
- (ii) pending appointment on regular basis as directed in (i) above the applicants should be considered for appointment in any vacancies

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of casual labourer in the office of the respondents in preference to any person who may have been inducted after the services of the applicants were terminated on 17th April, 1989;

- (iii) the respondents are directed to pay the wages of the applicants for the months of January, February and March and till 17th April, 1989 during which period the applicants have worked as casual labourers; and
- (iv) the respondents shall comply with the above directions within two months from the date of receipt of a copy of this order.

There will be no order as to costs.

Sukup
(I.K. Rasgotra) 30/11/89
Administrative Member

Quarrel
30/11/89
(P.K. Kartha)
Vice-Chairman (Judl.)