



(4)

OA 2230/88

Shri Jai Pal Singh

....Applicant

Vs.

Union of India & Others

....Respondents

For the Applicant

....Shri E.X. Joseph,  
Counsel

For the Respondents

....Shri M.L. Verma,  
Counsel

(5)

OA 2296/88

Shri Balwan Singh

....Applicant

Vs.

Union of India & Others

....Respondents

For the Applicant

....Shri Mahesh  
Srivastava, Counsel

For the Respondents

....Shri P.P. Khurana,  
Counsel

(6)

OA 386/89

Shri Sanjay Kumar

....Applicant

Vs.

Union of India & Others

....Respondents

For the Applicant

....Shri E.X. Joseph,  
Counsel

For the Respondents

....Shri P.P. Khurana,  
Counsel

(7)

OA 1082/89

Shri Naveen Kumar

....Applicant

Vs.

Union of India & Another

....Respondents

For the Applicant

....Shri O.P. Kshatriya,  
Counsel

For the Respondents

....Shri P.P. Khurana,  
Counsel

(8) OA 1518/89

Shri Ratan Pal Singh ....Applicant  
Vs.  
Union of India & Another ....Respondents  
For the Applicant ....Shri B.K. Aggarwal, Counsel  
For the Respondents ....Shri P.P. Khurana, Counsel

(9) OA 1788/89

Shri Ram Avtar ....Applicant  
Vs.  
Union of India & Others ....Respondents  
For the Applicant ....Shri Sant Singh, Counsel  
For the Respondents ....Shri M.L. Verma, Counsel

(10) OA 2502/89

Shri Khem Chand ....Applicant  
Vs.  
Union of India & Others ....Respondents  
For the Applicant ....Shri Sant Lal, Counsel  
For the Respondents ....Mrs. Raj Kumari Chopra, Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the Reporters or not? Yes

(The judgment of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice Chairman(J))

After the Full Bench of this Tribunal in Rehmat

Ullah Khan & Others Vs. Union of India & Others, 1989(2)

SLJ 293 (CAT) had held that this Tribunal has jurisdiction to entertain the cases of casual labour/daily rated/daily

wager under Section 19 of the Administrative Tribunals

Act, 1985 and also in similar cases in Transferred

Applications under Section 29 of the Act, the Hon'ble

Chairman directed that cases pertaining to the Ministry

of Communications be grouped together and heard

expeditiously. In the 10 applications filed under

Section 19 of the Administrative Tribunals Act, 1985, which

are being dealt with herein, common questions of law have

been raised and it is proposed to deal with them in a

common judgment.

2. All these cases relate to termination of services

of Casual Labourers who have been variously described, such

as, Mazdoors, Malis, Beldars etc. All of them have worked

for more than one year. The Industrial Disputes Act, 1947

applies to such employees of the Ministry of Telecommuni-

cations. In some case, the termination is by verbal or oral

order while in others, there are written communications

in this regard. The plea of the respondents in some of

these cases is that there is not enough work available. In

some others, the plea taken is that the applicant left the

service on his own accord, thus amounting to abandonment

of service. The applicants have prayed for reinstatement

with back wages and other benefits, as also for regularisation

3. We may, at the outset, briefly refer to the

relevant judicial pronouncements in regard to the Casual

Labourers engaged by the Ministry of Communications and

other relevant decisions.

4. The leading case on the subject is that of Daily

Rated Casual Labour employed under P&T Department through

Bhartiya Dak Tar Mazdoor Manch Vs. Union of India & Others,

AIR 1987 SC 2342. In the said case, the Supreme Court held

that State cannot deny to the casual labourers at least the

minimum pay in the pay scales of regularly employed workmen

even though the Government may not be compelled to extend

all the benefits enjoyed by regularly recruited employees.

The Supreme Court noted that many of the casual labourers

in the P&T Department had not been regularly recruited but

that many of them have been working continuously for more

than one year with the department. They were rendering

the same kind of service which was being rendered by the

regular employees doing the same type of work. The

Supreme Court observed that this practice amounts to

exploitation of labour. The Supreme Court referred to

its earlier decision in Dhirendra Chamoli Vs. State of

U.P., 1986(1) SCC 637 wherein a similar view had been taken

in respect of the employees working in Nehru Yuval Kendras,

who were considered to be performing the same duties as

Class IV employees. The Supreme Court, therefore, directed

the Government and other authorities to pay wages to

workmen who were employed as casual labourers belonging

to the several categories of employees in the Postal and

Telegraphs Department at the rates equivalent to the

minimum pay scales of the regularly employed workers in

the corresponding cadres but without any increments. The

Supreme Court also directed the authorities 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 Telegraphs Department.

5. The scheme known as Casual labourers (grant of temporary status for regularisation) scheme has been formulated and put into operation from 1.10.1989. A copy of the same was placed for the consideration of the

Supreme Court in Jagrit Mazdoor Union Vs. Mahanagar

Telephone Nigam Ltd., 1989(2) SCALE 1455. The Supreme

Court found that the scheme was comprehensive and apart

from provision for conferment of temporary status, it also specified the benefits available on conferment of such status. A similar scheme has also been prepared

for the Postal employees working in the Department of

Posts. In J.M. Union's Case, the Supreme Court further observed that temporary status would be available to

the casual labourers in the Postal Department on completion of one year of continuous service with at least 240 days of work (206 days in the case of

offices observing 5 days week) and on conferment of temporary status, the House Rent Allowance and City Compensatory Allowance shall be admissible. After

rendering three years of continuous service with temporary status, the casual labourers shall be treated at par

with temporary Group 'D' employees of the Department of Posts and would thereby be entitled to such benefits

as are admissible to Group 'D' employees working on regular basis.

6. The judgment of the Supreme Court in the case of Daily Rated Casual Labour employed under the P&T Department was delivered on 27.10.1987. Subsequently, a Misc. Petition was filed in the Supreme Court ( CWP No.23751/88 in WP No.302/86 - The National Federation & Another Vs. Union of India & Others) wherein the Supreme Court passed an order on 26.9.1988 giving ~~xxxx~~ extension of time to the respondents to comply with the order dated October, 1987 by six months. The Supreme Court further directed as follows:-

" In the meantime, no employee in respect of whom the order dated October, 1987 has been passed by this Court, shall be discharged from service". (emphasis added)

7. It may be recalled that the order of the Supreme Court dated 27.10.1987 had directed the respondents to prepare a scheme to absorb the casual labourers who had been continuously working for more than one year in the Posts and Telegraphs Department.

8. It is also relevant to note that the Supreme Court has directed the Government including the Railways to prepare ~~xxxxxx~~ schemes for regularising casual labourers who have continuously worked for one year (Vide Inder Pal Yadav Vs. Union of India, 1985(2) SLR 242; Dakshin Railway Employees Union, Trivandrum Division Vs. General Manager, Southern Railway, AIR 1987 SC 1153; U.P. Income Tax

Department. Contingent Paid Staff Welfare Association Vs.

Union of India & Others, AIR 1988 SC 517; and Delhi

Municipal Karm-chari Ekta Union (Registered) Vs. P.L.

Singh, AIR 1988 SC 519).

9. Another point to be mentioned is that the

employees of the P&T Department are workmen within the

meaning of Industrial Disputes Act, 1947 and that the

P&T Department is an industry within the meaning of

Section 2(j) of the Industrial Disputes Act. In

Kunjan Bhaskaran Vs. Special Divisional Officer

Telegraphs, Changannassery, 1983 Lab. IC 135, the Kerala

High Court observed that the Posts and Telegraphs Depart-

ment have nothing to do with the constitutional

functions of the State. It was further observed as

follows:-

" It stands as a separate department, discharging functions analogous to trade or business even in a commercial sense. In my opinion all the precedents are in favour of holding that the Department (P&T) is an industry directly and specifically covered by the Act (I.D. Act)".

(see also M.A. Bukari Vs. U.O.I. & Others, 1989(9) AIC 218; Tapan Kumar Jana Vs.

General Manager, Calcutta Telephones & Others, 1980(2) L&N 334; Judgment of the

Tribunal dated 3.8.1989 in TA 103/86

Moti Lal Yadav Vs. Union of India &

Others; and judgment of this Tribunal dated 10.6.1988 in OA 308/88 K.C. Madhav

Rao & Others Vs. Union of India & Others).

10. It may be stated that the SLPs filed by the

Government against the judgment in Jana's case was

dismissed by the Supreme Court (vide Circular Letter

issued by the Department of Posts No.86-2/85-SPB-II

dated 27.3.1986, cited in judgment of this Tribunal

dated 15.12.1989 in OA 1920/88 and connected matters -

Netra Pal Singh & Others Vs. Union of India & Another).

The SLP filed by the Government against the judgment of this Tribunal in Moti Lal Yadav's case was dismissed by the Supreme Court by order dated 2.3.1990 in SLP Civil No.15784/89(Union of India & Others Vs. Moti Lal Yadav).

11. Following the decision of the Supreme Court in the case of Daily Rated Casual Labour employed under the P&T Department, AIR 1987 SC 2342, this Tribunal at the Principal Bench and its other Benches has granted reliefs in numerous cases. Reference may be made to the decision dated 4th May, 1988 in OA 529/88 of the Principal Bench of this Tribunal (Sunder Lal & Others Vs. Union of India & Others) delivered by a

Bench presided over by Shri K. Madhava Reddy, the then Chairman. In that case, the respondents had terminated the services of the applicants on the basis of a decision

taken by them to retrench the Daily Rated Mazdoors who had been appointed after 1.4.1985. There was also a decision to fill up the resultant vacancies. The

applicants had put in nearly 3 years of service. In view of the decision of the Supreme Court mentioned

above, the Tribunal held that the administrative decision to retrench all those who were employed after

1.4.1985 was not legally sustainable. The Tribunal

quashed the impugned order of termination and directed

the respondents to reinstate the applicants with

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immediate effect and to consider them for absorption in accordance with the scheme, which was under preparation.

12. In the light of the foregoing discussion, the applicants in these applications are entitled to succeed. All of them have worked for more than one year. The termination of their services without any notice or payment of retrenchment compensation, is violative of the provisions of Section 25 F of the Industrial Disputes Act, 1947.

13. The plea of the respondents in OA 1382/88 that the applicant left the service on his own accord is not very convincing. In our opinion, in the case of abandonment of service, the employer is bound to give notice to the employee calling upon him to resume his duty. In case, he intends to terminate his service, he should hold an inquiry before doing so (vide G. Krishna Murthy Vs. Union of India & Others, 1989(9) ATC 158).

14. The applications are, therefore, disposed of with the following orders and directions:-

(i) We set aside and quash the impugned order dated 23.3.1988 in OA 1382/88, impugned order dated 17.7.1987 in OA 2230/88, impugned order dated 6.6.1987 in OA 2296/88 and impugned order dated 22.6.1987 in OA 386/89. We also set aside and quash the verbal order of termination of service with effect from 19.6.1982 in OA 1833/87, the verbal order dated 1.4.1988 in OA 1812/88, the verbal

order dated 8.5.1989 in OA 1082/89, the verbal order dated 1.6.1989 in OA 1518/89, the verbal order dated 13.8.1989 in OA 1783/89 and the verbal order dated 7.3.1989 in OA 2502/89.

(ii) The respondents are directed to reinstate in service the applicants in all the above mentioned applications within a period of three months from the date of communication of this order.

(iii) After reinstating them, the respondents shall consider regularising the services of the applicants in accordance with the scheme prepared by them. Till they are so regularised, they shall be paid the minimum pay in the pay scale of regularly employed workmen in the respective posts. They would also be entitled to all the benefits and privileges envisaged in the judgment of the Supreme Court in Jagrit Mazdoor Union's case, mentioned above.

(iv) In the facts and circumstances of the case, we do not direct payment of any backwages to the applicants.

(v) There will be no order as to costs.

Let a copy of this order be placed in all the 10 case files.

(D.K. CHAKRAVOORTY)  
MEMBER (A)  
18P/90

(P.K. KARTHA)  
VICE CHAIRMAN (J)