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Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. JA-1401/88
MP-2242/88
MP-576/88

Date: 24-5-89

Shri Omveer Singh Applicant

Versus

Union of India & Ors. Respondents

For the Applicant Smt. Subhadra, Advocate

For the Respondents Shri M.L. Verma, Advocate.

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri 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*

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

The applicant, who had worked as a Casual Labourer in the Department of Telecommunications, Office of Telecom District Manager, Ghaziabad, filed this application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- (i) Absorption as regular Class IV employee w.e.f. 26.10.1983 and all consequential benefits resulting therefrom;
 - (ii) payment of all the arrears on account of revised rates w.e.f. 5.2.1986 along with interest thereon at the rate of 18 per cent per annum; and
 - (iii) declaration that he continued in service even after 15.4.1988, the date of forced retrenchment.
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2. The facts of the case in brief are that the applicant was appointed in October, 1983 as a Casual Labourer by the respondents after he was sponsored by the Employment Exchange. His appointment continued till April, 1984. He thus worked for about 7 months. After a break of about two years, he was appointed again in June, 1986 as Casual Labourer and he continued to work till April, 1988.

3. The applicant has alleged that his services were terminated while retaining Shri Mam Chand, who was junior to him.

4. The applicant has also relied upon the rulings of the Supreme Court, including Daily-Rated Casual Labourers employed under the P & T Department Vs. Union of India & Others, A.I.R. 1987 S.C. 2342. The applicant has relied upon the decision taken by the respondents on 23rd February, 1988 regarding the absorption of casual labourers in the light of the Supreme Court's decision dated 27th October, 1987. The Supreme Court has directed 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 & Telegraphs Department. After the judgement was delivered by the Supreme Court, the respondents decided to retrench the daily-rated mazdoors who had been appointed after 1.4.1985. A number of them filed applications in the Tribunal which were disposed of by judgement dated 4.5.1988 wherein the respondents were directed as follows:-

"In fact, all those that are employed after 1.4.1985, even if they are continued for one year, are entitled for absorption in view of the orders of the Supreme Court.

*CA-529/88 (Shri Sunder Lal & Ors. Vs. U.O.I. & Ors.)
decided by the Principal Bench.3,,
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These applicants being entitled to be absorbed, their services could not be terminated..... These applicants shall be reinstated in service forthwith. The impugned order of termination is accordingly quashed and the respondents are directed to reinstate the applicants with immediate effect and in any case not later than 9th May, 1988. They shall, thereafter, be continued in service and shall be absorbed in accordance with the scheme that is said to be under preparation. It is also hereby declared that even if no formal orders reinstating those in service on or before 9th May 1988 are issued, they will be entitled to the wages due to them from 9th May, 1988 onwards."

5. The contention of the applicant is that his case is also covered by the aforesaid judgement as he had been employed as a daily-rated Casual Labourer for about 30 months out of which he worked continuously for 23 months. He, therefore, claims to be entitled for absorption and payment of arrears and enhanced wages in terms of the directions of the Supreme Court.

6. The respondents have contended in their counter-affidavit that the applicant was a Casual Labourer on work-charged basis, that he was engaged purely on ad hoc and or daily-rated basis/ that his services were discontinued as the work was over. However, they have admitted that the Department of Telecommunications is working out a scheme to absorb casual labourers on regular basis. The respondents are also considering the question of payment of enhanced wages and the applicant also will be paid the same after a decision is taken. It has further been contended that since there was no work, the applicant is not entitled to any wages beyond 15.4.1988.

7. As regards the period of engagement of the applicant, the respondents have contended that he was employed for 615 days in all. Out of this, 145 days

were in one stretch and 470 days were after a break of 26 months. When the work was over, his services were discontinued.

8. We have carefully gone through the records of the case and have heard the learned counsel for both the parties. The learned counsel for the applicant drew our attention to MP-576/89 filed by the applicant wherein he has alleged that the respondents had appointed Shri Lila Ram as a Casual Labourer after the applicant's services had been terminated.

9. The respondents have not denied the allegation made by the applicant that after the termination of the services of the applicant, other persons were appointed as Casual Labourers.

10. The respondents have admitted that a scheme for absorption of Casual Labourers is under their consideration and that the applicant would also be considered under the said scheme. In view of this, we do not consider it necessary to make any specific directions to the respondents in this regard.

11. The regularisation of Casual Labourers is governed by the Office Memorandum issued by the Department of Personnel which has been consolidated in their O.M. dated 7th June, 1988 (vide Swamy's Complete Manual on Establishment and Administration, 2nd edition, pp.154-159). According to the said O.M., all eligible casual workers are to be adjusted against regular posts to the extent such regular posts are justified. O.M. of 26th October, 1984 issued by the Department of Personnel provides, inter alia, that Casual Labourers appointed through

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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 applicant worked as a Casual Labourer in two spells - for 145 days in one spell between October 1983 and April, 1984, and 470 days in another spell between June, 1986 and April, 1988. According to the O.M. dated 26th October, 1984 issued by the Department of Personnel, a Casual Labourer may be given the benefit of two years' continuous service as Casual Labourer if he has put in at least 240 days (226 days in case of offices observing 5-day a week) of service as a Casual Labourer (including broken period of service) during each of the two years of continuous service. We are of the opinion that the applicant in the instant case must be deemed to have fulfilled the above requirements for consideration for appointment to Group 'D' post on regular basis if there is a vacancy in that post.

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

- (a) the respondents shall consider the appointment of the applicant on regular basis to any Group 'D' post if any vacancy is available, subject to the fulfilment of other formalities such as verification of character and antecedents, medical examination, and the like. This is without prejudice his case being considered for absorption on regular

basis pursuant to the scheme prepared by the respondents for absorption of Casual Labourers on a regular basis;

- (b) Pending appointment on regular basis as directed in (a) above, the applicant should be considered for appointment in any vacancy of Casual Labourer in the Office of the respondents in preference to any person who may have been inducted after the applicant's services were terminated in April, 1988;
- (c) the respondents shall comply with the directions in (b) above within one month from the date of the receipt of a copy of this order;
- (d) MPs filed by the applicant also stand disposed of accordingly; and
- (e) there will be no order as to costs.

D. K. Thakravarty 24/5/1989
(D.K. Thakravarty)
Administrative Member

P. K. Kartha 24/5/89
(P.K. Kartha)
Vice-Chairman (Judl.)