

8

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1699/88 198
~~XXXX~~ with MP No. 1140/89

DATE OF DECISION 11.1.1990.

Shri Durga Prasad Tewari & Others Applicant (s)

Shri Jog Singh Advocate for the Applicant (s)

Versus

Union of India & Another Respondent (s)

Mrs. Raj Kumari Chopra Advocate for the Respondent (s)

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 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

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

The applicants, who have worked as Group 'D' employees in the office of the Controller of Accounts, Ministry of External Affairs, New Delhi filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

- (i) to direct the respondents to regularise them from the date of their initial appointment to Group 'D' posts with all consequential benefits such as continuity of service and difference in pay on the basis of equal pay for equal work from the date of their initial recruitment;
- [Signature]*

- (ii) to direct the respondents to formally regularise them on the posts of Group 'D' employees which they have been holding since last 2 to 4 years; and
- (iii) to allow them all other consequential benefits such as continuity of service, seniority etc.

2. On 26.9.1988, the Tribunal passed an interim order to the effect that status quo be maintained pending further orders. On 8.11.1988, the status quo order already passed was made absolute.

3. The case of the applicants is that they have worked in Group 'D' posts on temporary basis from 1984 to 1988. The first applicant was appointed on 4.8.1984, the second applicant on 22.10.1984, the third applicant on 5.8.1985, the fourth applicant on 12.9.1985, the fifth applicant on 24.9.1985, the sixth applicant on 1.11.1985, the seventh applicant on 2.12.1985 and the eighth applicant on 5.5.1986. They possess minimum educational qualifications prescribed for Group 'D' posts. They have also stated that after having served the respondents for so many years, they have now become overage and they would be disentitled on that account for applying ^{for} any other job also.

4. The respondents have admitted in their counter-affidavit that the applicants have worked for the last 2 to 4 years though not continuously. They have stated that out of 8 sanctioned Group 'D' posts in the office of the Controller of Accounts under the Ministry of External Affairs, 6 officials are already working. Two vacancies arose due to promotion of two peons as Daftry's on ad hoc basis. Out of these two

Q

vacancies, one is reserved for Scheduled Caste candidate. In the absence of sanctioned posts for regularisation, there is no way for regularising the applicants. They have also contended that according to the Government directives, persons to be regularised should have been recruited through employment exchange only. As far as the main Ministry of External Affairs is concerned, they have a separate sanctioned strength of staff and the same cannot be compared to the other wings of the said Ministry including the office of the Controller of Accounts. They have also raised the plea that the application is premature and barred by jurisdiction as the applicants have approached the Tribunal during the pendency of their representation dated 26.7.1988. The present application was filed in the Tribunal on 23.8.1988.

5. We have carefully gone through the records and have considered the rival contentions. The applicant had filed MP 401/89 praying that this case may also be referred to the Full Bench which had been constituted to consider the question of jurisdiction of this Tribunal to adjudicate upon service matters of casual labourers. The respondents have also filed MP 1140/89 seeking the vacation of the stay order passed by the Tribunal.

6. We may, at the outset, refer to the decision of the Full Bench of the Tribunal in Rehmat Ullah Khan & Others Vs. Union of India & Others, 1989(2) SLJ 293(CAT), in which the Full Bench considered the question as to whether daily rated

02

workers or casual workers employed in the various departments of the Government are entitled to present any application or whether transferred applications pertaining to their service matters can be entertained and decided by the Central Administrative Tribunal. The Full Bench held that although a casual labourer does not hold a civil post, he is in the service of the Union. He is essentially in the civil service of the Union. In view thereof, it was held that this Tribunal has jurisdiction to entertain the cases of casual labourers under Section 19 of the Administrative Tribunals Act, 1985 and also in similar cases in transferred applications^{or} under Section 29 of the said Act.

7. The Full Bench did not give an answer to the question as to the exact status of a casual labourer as that was not an issue before it. It was, however, observed that there are no rules about the appointment or termination of service of casual labourers. In any event their services are absolutely temporary in the wider sense of the word and they are not entitled either to regularisation or to make a claim that their services should be regularised except in accordance with the rules and instructions on the subject.

8. The applicants have drawn our attention to the office memorandum dated 26th October, 1984 issued by the Ministry of Home Affairs, Department of Personnel & Administrative Reforms regarding the regularisation of services of casual workers

Or

in Group 'D' posts in the organisations observing five day week. According to the instructions contained in the said OM, the services of ^acasual worker may be regularised in a Group 'D' post provided, inter alia, he has put in 2 years as a casual worker with 240 days or more of service as such, during each year. The number of 240 days was worked out with reference to six day week being observed in Central Government offices. As regards organisations observing a five day week, a question ^{arose} as to whether the requirement of 240 days or more of service during each of the 2 years may be enforced. This was clarified in the aforesaid OM. It was stated that in the organisations observing five day week, casual labourers may be considered for regular ^{or} appointment to Group 'D' posts, if otherwise eligible, if they have put in 2 years of service as casual workers, with 206 days of service during each year (as against the usual 240 days) (vide Annexure A-21, page 37 of the Paper-Book).

9. The applicants have also drawn our attention to another office memorandum dated 7.5.1985 issued by the Government of India, Ministry of Personnel & Training, Administrative Reforms & Public Grievances and Pension (Department of Personnel & Training) regarding relaxation of the employment exchange procedure for regularisation of services of casual workers in Group 'D' posts. By the said OM, a one time relaxation was given in respect of regularisation of the services of casual workers even if they were recruited otherwise than through the employment exchange, provided they are eligible for regular appointment

on

in all other respects (vide Annexure A-22, page 38 of the Paper-Book).

10. We see no substance in the contention of the respondents that the applicants have filed the present application prematurely while their representation was still pending with the respondents. The casual labourers being not holders of any civil post under the Union, there are no service rules as to redressal of grievances applicable to them.

11. We also do not see any force in the contention of the respondents that only those casual workers who have been sponsored by the Employment Exchange are entitled to be considered for regularisation. In our opinion, casual labourers who have worked for 2 to 4 years, as in the instant case, should be considered for regularisation of their services irrespective of whether their names have been sponsored by the employment exchange (vide Union of India & Others Vs. Hargopal & Others, 1987(3) SCC 308; Swaminath Sharma & Others Vs. Union of India, ATR 1988(1) CAT 84; and T.S. Sadashivaiah & Others Vs. the Secretary to Government of India & Others, ATR 1989(1) CAT 172).

12. Regularisation of casual labourers would depend upon the existence of regular Group 'D' posts in the Ministry/Department concerned. For this purpose, a unit of the Ministry/Department, as the office of the Controller of Accounts in the instant case should not be taken in isolation and the Ministry/Department should be taken as a single unit.

02

13. In view of the fact that the applicants have worked for more than 2 to 4 years as casual labourers and have already become overage by now for seeking employment in Government service elsewhere, it will be fair and just to consider their regularisation in the available vacancies 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. The principle of last come first go should be applied to the instant case. In view of the paucity of work or otherwise, ^{if} the respondents intend to dispense with the services of any of the casual labourers, it should be in conformity with the aforesaid principle. We do not, however, propose to give any direction to the respondents on the reliefs sought by the applicants for giving them equal pay for equal work. The emoluments to be paid to the casual labourers should be strictly in terms of the orders and instructions issued by the Department of Personnel & Training. In the facts and circumstances of the case we, however, do not consider it appropriate to pass any orders regarding consequential benefits as sought in the application. Once the applicants have been regularised, they would be entitled to the same salary and allowances as are being paid to regular employees holding Group 'D' posts.

13. In the light of the above discussion, we order and direct as follows:-

(i) The respondents are directed to consider the question of regularisation of the applicants in Group 'D' posts in any of the vacancies available in the office of the Controller of Accounts or any other office under the Ministry of External Affairs located at Delhi or 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.

(ii) Till the applicants are regularised as mentioned in (i) above, 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, where^{or}ver a vacancy of casual labourer is available. The respondents are further directed not to induct fresh recruits as casual labourers through employment exchange or otherwise overlooking the preferential claims of the applicants.

(iii) The emoluments to be given to the applicants till their regularisation should be strictly in accordance with the orders and instructions issued by the Department of

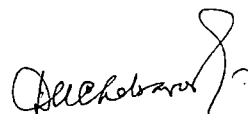
02

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

(iv) The respondents shall comply with the above directions within a period of 3 months from the date of communication of this order.

(v) The interim order passed on 26.9.1988 is modified to the extent indicated above. MP 1140/89 is disposed of accordingly.

The parties will bear their own costs.


(D.K. CHAKRAVORTY)
MEMBER (A) 11-1-1990


(P.K. KARTHA)
VICE CHAIRMAN(J) 11/1/90