

Central Administrative Tribunal
Principal Bench, New Delhi

Regn. Nos. 1. CA-1793/88
2. CA-1794/88
3. CA-1796/88

Date: 2.3.1990.

1. Shri Maheshwar Singh &
23 Others

....

Applicants

Versus

Union of India & Ors.

Respondents

2. Shri Harish Chand &
30 Others

Applicants

Versus

Union of India & Anr.

Respondents

3. Shri Ravi Shankar &
20 Others

Applicants

Versus

Union of India & Ors.

Respondents

For the Applicants

Shri K.L. Bhatia, Counsel

For the Respondents

Shri M.L. Verma, Counsel

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri D.K. Chakravorty, Administrative Member.

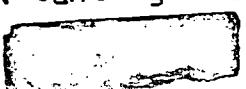
(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

The applicants in these cases are working as
Mates in the Delhi Milk Scheme which is a subordinate
office under the Ministry of Agriculture (Department of
Agriculture & Cooperation, New Delhi). The issues
raised in these applications as well as the reliefs
sought by the applicants are identical and it is
proposed to deal with them in a common judgement.

2. The reliefs sought by the applicants are the
following:-

(i) The respondents be directed to reckon
their seniority from the date of their
initial appointment as daily-paid Mates
and not to place them below the Mates
who have recently been transferred to
regular establishment and otherwise are
junior to them;

and (ii) the applicants be deemed to have been
and transferred to regular establishment
under the provisions of F.R. and S.R.
and (iii) the period of service to be counted from the dates they had completed three
months or 240 days within a period of
12 months or 10 months, as the case may be, as
stipulated in the Certified Standing
Orders for the employees of the D.M.S.;
and (iv) the benefit of the judgement of this
Tribunal in D.M.S. Employees Union Vs.
Union of India & Others, A.T.R. 1988(1)
and (v) the recommendations of the S.I. Unit be not
implemented as they are not relevant and
impartial, and the results do not give objective assessment of the
staff requirement and the current workload.
3. The case of the applicants in brief is as follows.
They were initially employed as daily-paid Mates and were
transferred to regular establishment of the D.M.S. on the
dates shown against each of them in Annexure A-1 (vide
Annexure A-1, p.14 of the paper-book). At the time of their initial
appointment, their terms and conditions of service were
governed by the Certified Standing Orders for the
employees of the D.M.S. as certified under the Industrial
Employment (Standing Orders) Act, 1946 by the Certifying
Authority.



Officer and Deputy Chief Labour Commissioner (Central), New Delhi on 15.6.1962, copy of which is at Annexure-A-2 (vide pages 15-23 of the paper-book).

4. In accordance with the aforesaid Standing Orders, the applicants should have been transferred to the regular establishment of the D.M.S. after continuously working for three months in the case of casual workers and after working for 240 days in a period of 12 months in the case of Badli workers. Accordingly, they acquired the status of regular Mates in the years 1977-78 but these orders were not complied with strictly in accordance with the provisions of the Standing Orders and they were transferred to regular establishment after a lapse of 5-6 years, thereby giving them seniority in the post of regular Mates from the date of their transfer to regular establishment, ignoring their service as daily-paid Mates.

5. Some of the colleagues of the applicants filed an application in representative capacity in this Tribunal in 1987 which was disposed of by judgement dated 21.10.1987 (D.M.S. Employees Union Vs. Union of India & Others, A.T.R. 1988 (1) CAT 183). In the operative part of the judgement, the following directions were issued to the respondents:-

"(a) The respondents should accord to the daily rated Mates (Badli Workers) who are concededly performing the same duties as regular class IV Mates, the same salary and conditions of service other than regular appointment, as are being received by the regular class IV Mates from the dates of their appointment as Badli worker.

(b) These daily rated Mates who have actually worked for not less than 240 days in any period of 12 months should be transferred to the regular establishment with effect from the first day of the month immediately following the 12th month of the said period. The gap if any in their employment subsequent to regularisation is equal to the date of such regularisation should be treated as leave with or without pay as due or 'dies non' as the case may be. Supernumerary posts in the regular establishment may be created if necessary for this purpose.

6. The above directions should be carried out as follows:

(c) The respondents should issue necessary orders and make good the payments of arrears of salary, etc., within a period of four months from the date of communication of this order."

7. The above directions should be carried out as follows:

6. In compliance with the above directions, the services of the applicants in the aforesaid case were referred to the respondents and they were regularised by the respondents with effect from the 26.7.1988. The dates when each of them completed 240 days of his service (vide Order dated 26.7.1988 at Annexure A-4, at page 30-A of the paper-book).

7. The grievance of the applicants is that their seniority was not recognised by the respondents junior colleagues who have thus been regularised, have been given seniority over them. This happened because they were not parties in the earlier proceedings before the Tribunal.

8. The applicants also have referred to a recommendation made by the Staff Inspection Unit of the Ministry of Finance in 1983 for reduction of the number of Mates which is sought to be implemented after a lapse of 5-6 years. The applicants, therefore, apprehend that their services may be dispensed with in view of the higher seniority given to their colleagues who had obtained a judgement in their favour from this Tribunal earlier.

9. The case of the respondents is that the applicants were Badli Workers and did not hold any civil post under the administrative control of the state, and, therefore, the provisions of Articles 309 to 311 of the Constitution are not applicable to them and that no seniority list of Mates who have been regularised, has so far been prepared and as such, no cause of action has arisen.

10. We have carefully considered the rival contentions and have gone through the records of the case carefully. Same issues had been raised by the respondents in D.M.S. Employees Union Vs. Union of India & Others, A.T.R. 1988 (1) C.A.T. 183, and in OA-37/88 (Pramod Kumar & Others Vs. Union of India & Others)

which was disposed of by judgement dated 10.8.1989, The Special Leave Petition filed by the respondents against both the aforesaid judgements of the Tribunal, have been dismissed by the Supreme Court. The grievance of the applicants is genuine. As the applicants in the present applications had been appointed earlier in point of time, it would be fair and just to give them seniority over the others who have been regularised earlier though they had been employed later in point of time. The respondents have admitted in their counter-affidavit that the Staff Inspection Unit of the Ministry of Finance have made certain recommendations for the reduction of staff. They have not, however, sought to justify the same by giving the facts and figures in support of such recommendations which are sought to be implemented after a lapse of 5-6 years.

The respondents have not given any particulars in regard to the reduction of work and as to how the applicants will be rendered surplus.

11. In the facts and circumstances of the case, we allow the applications with the following directions:-

- (i) The respondents are directed to reckon the seniority of the applicants from the date of their initial appointment as daily-paid Mates and not to place them below the Mates who have been employed at a later stage but have already been regularised by them; ~~or~~ deemed to have been
- (ii) the applicants should be transferred to the regular establishment from the dates they had completed 240 days within a period of 12 months, as stipulated in the Central Standing Orders. Their services should not be terminated so long as their juniors are kept in service;
- (iii) the recommendations of the Staff Inspection Unit made in 1983, shall not be implemented at this stage; and
- (iv) the respondents shall comply with the above directions within a period of three months from the date of communication of this order.

There will be no order as to costs.

A copy of this order be placed in all the three case files.

(D.K. Chakravorty)
Administrative Member
21/1/1990

(P.K. Kartha)
Vice-Chairman (Judl.)