IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.Nos. OA 1745/88, 1838/88 & 1840/88 Date of decision: 22.08.1990.

(1) OA 1745/1988

Shri Rajinder Goel & Others ...Applicants

Vs.

Delhi Administration & Others ...Respondents

(2) OA 1838/1988

Shri Ram Charan Singh & Others ...Applicants

Vs.

Delhi Administration & Another ...Respondents

(3) OA 1840/1988

Shri Vinod Kumar & Others ...Applicants

Vs.

Delhi Administration & Another ...Respondents

For the Applicants in (1) to (3) ...Shri Ashok Aggarwal, Counsel

For the Respondents in No.(1) ...Shri B.R. Parashar, Counsel

For the Respondents in Nos.(2) and (3) ...Shri J.S. Bali, Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)
THE HON'BLE MR. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

JUDGMENT

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

The applicants before us have worked as Malis in the Forest Department of Delhi Administration for various periods, ranging from 3 to 5 years. As common questions of law arise

for consideration, it is proposed to deal with them in a common judgment.

2. The grievance of the applicants is that though they continuously worked till 31.8.1988 as Malis on daily rated basis, the respondents effected a break in their service by disengaging them for the period from 1.9.1988 to 1.10.1988. All of them are presently working as Malis and are being paid wages at the rate of Rs.488.80 per month as daily wages. The Malis who are employed on regular bais are paid the pay scale of Rs.750-950 with all usual allowances as admissible under the rules. The respondents have also effected artificial breaks in service for a week during the months of March/April each year with a view to overcoming the provisions of labour legislations. The applicants are also claiming the protection of the Industrial Disputes Act, 1947.

3. The stand of the respondents is that the applicants were engaged as unskilled daily wages labourers on work load basis, that they are seasonal casual labourers, that the Forest Department where they are working is not an industry within the meaning of the Industrial Disputes Act, 1947 and that they are being paid at the rate of Rs.750/- per month plus D.A. with effect from 1.10.1988 pursuant to the direction of the Supreme Court in Niader and Another Vs. Delhi Administration (Writ Petition No.9609-10 of 1983) which was decided on 29.9.1988.

4. We have carefully considered the rival contentions of both parties. The practice of giving artificial breaks

with a view to prevent the employees from seeking service benefits on the basis of continuous service, is neither fair nor just (See Dr. Prem Lata Chaudhari Vs. E.S.I. Corporation, 1987(3)(CAT) 569; Rattan Lal & Others Vs. The State of Haryana & Others, 1985(2) SLJ 437(SC); Dr.(Mrs.) Sangeeta Narang Vs. Delhi Administration, ATR 1988(1) CAT 556). It has been deprecated by the apex court and this Tribunal.

5. The Supreme Court has considered the plight of the casual labourers employed in the Horticulatural Department of the Delhi Administration in its judgment dated 28.9.1988 in Niader and Another Vs. Delhi Administration and Another (Writ Petition Nos. 9609-10 of 1983), in its order dated 12.3.1990 in Vijay Pal Sharsi and Others Vs. Delhi Administration & Others (Writ Petition No. 818 of 1989) and its order dated 7.8.1989 in Delhi Development Horticulture Employees Union Vs. Delhi Administration and Others. Following a number of decisions rendered by the Supreme Court on the question of regularisation of casual labourers and the need for paying them the minimum salary payable to a regular employee in a comparable post, direction has been issued to the Delhi Administration to prepare a scheme for absorbing the casual labourers who have worked for one year and more and to absorb those who are found fit to be regularised under the scheme. Until then, they are to be paid wages at the rate of Rs.750/- per month plus allowances which work out in all to Rs.1100/-. The services

of such employees shall not be terminated.

6. In the light of the aforesaid legal position, the applications are disposed of with the following orders and directions:-

(i) We hold that the break in service effected in service of the applicants from 1.9.1988 to 1.10.1988 is legally unsustainable and quash the same. The respondents are directed to pay to the applicants wages for the period from 1.9.1988 to 1.10.1988 at the rate of Rs.750/- plus allowances within a period of one month from the date of communication of this order.

(ii) The respondents are restrained from terminating the services of the applicants. They shall consider the suitability for regularisation and absorption of the applicants in accordance with the scheme to be prepared pursuant to the directions given by the Supreme Court in Niader's case.

(iii) The artificial breaks effected by the respondents in the service put in by the applicants shall be ignored for the purpose of counting the length of service put in by the applicants for the purpose of regularisation.

(iv) The parties will bear their respective costs.

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

(D.K. CHAKRAVORTY)
MEMBER (A)
22/8/1990

22/8/90
(P.K. KARTHA)
VICE CHAIRMAN(J)