

(14)

In the Central Administrative Tribunal
Principal Bench, New Delhi.

1. OA-768/88

Date: 24.1.1992.

Shri Ashok Kumar Applicant

2. OA-776/88

Shri P. Ankaya Applicant

Versus

Supdt. of Police, C.B.I. Respondents
& Another

For the Applicants Shri Gyan Prakash, Advocate

For the Respondents Smt. Raj Kumari Chopra, Counsel

CORAM: Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Mr. B.N. Dhoundiyal, 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
Mr. P.K. Kartha, Vice-Chairman)

The two applicants before us have worked as casual labourers in the office of the Central Bureau of Investigation (C.B.I.) under the Ministry of Home Affairs. The applicant in OA-768/88 was appointed as a casual labourer/Waterman on 26.10.1984, while the applicant in OA-776/88 was appointed as casual labourer/Sweeper on 3.1.1984, as per their version. They are aggrieved by the impugned orders of termination of their services on 30.9.1987 and have prayed that they be reinstated in service and be given

2

all benefits of service, including bonus, etc., along with the cost of litigation.

2. As common questions of law have been raised, it is proposed to dispose of the applications by a common judgment.

3. The respondents have stated in their counter-affidavit that the applicant in OA-768/88 joined service on 26.10.84, and the applicant in OA-776/88, on 10.9.1984. Their services were terminated w.e.f. 30.9.1987 by office order dated 23.9.1987. Their services were terminated on account of non-existence of regular posts.

4. We have gone through the records of the cases and have heard the learned counsel for both the parties. While the learned counsel for the respondents argued that there are no vacancies in which the applicants could be accommodated, the learned counsel for the applicants stated that the office of the C.B.I. is a very big organisation having offices on All-India basis and that there are several posts of casual labourers/Group 'D' posts. The learned counsel for the respondents relied upon the decision of the Supreme Court in Satyanarayan Sharma & Others Vs. National Mineral Development Corporation & Others, 1990 (2) SCALE 159. The learned counsel for the applicants drew our attention to MP-75/90 filed in OA-776/88, wherein it has been alleged

✓

that after terminating the services of the applicant, the respondents had engaged casual labourers for periods ranging from 4-6 months. The names of the persons employed by the respondents have been given in the Annexure to the M.P.

5. Casual labourers belong to the lowest strata of society and are engaged in Government departments in the exigencies of work. In *Durga Prasad Tiwari Vs. Union of India*, 1990 (3) SLJ, CAT 94, this Tribunal has held that casual labourers who have worked for 2-4 years, should be considered for regularisation and Group 'D' posts, depending on the availability of vacancies. For this purpose, a unit of the Ministry/Department should not be taken in isolation and the Ministry/Department should be taken as a single unit.

6. The decision in *Durga Prasad Tiwari's* case was reiterated in the case of *Raj Kamal & Others Vs. Union of India*, 1990 (2) SLJ, CAT 169, wherein the respondents were directed to prepare a rational scheme with a view to regularising casual labourers who have worked for more than 240 days. Such a scheme should apply to all the Ministries/Departments and their subordinate and attached offices. It was further observed that no fresh engagement of casual labourers against regular vacancies shall normally be resorted to before absorbing the surplus casual labourers.

12

7. The learned counsel for the respondents was right in her argument that if there is no vacancy, a mandamus cannot be issued to the respondents to engage the casual labourers. At the same time, we are of the opinion that the question whether a vacancy exists or not, has to be considered taking the office of the respondents as a whole as a single unit. We do not have before us the data as regards the number of casual labourers engaged in the various Sections of the C.B.I. and its various offices located in Delhi and elsewhere.

8. The respondents have not stated in their counter-affidavit that the work and conduct of the applicants were not up to the mark, and that the termination was necessitated due to their unsatisfactory performance.

9. The learned counsel for the respondents stated that the applicants were offered in October, 1991 engagement as casual labourers pursuant to the interim orders passed by the Tribunal on 30.4.1991 in OA-776/88 to the effect that the respondents shall consider engaging the applicant as a casual labourer if a vacancy was available and in preference to his juniors and outsiders. While the applicant in OA-776/88 has joined duty pursuant to the interim order, the learned counsel for the respondents stated that the applicant in OA-768/88 did not turn up. The learned counsel

α

18

for the respondents submitted on instructions that he could not join due to illness.

10. In the conspectus of the facts and circumstances of the case and having regard to the fact that the applicants have worked for more than three years in the office of the respondents, we are of the opinion that the applicants in both the cases should be engaged as casual labourers so long as the respondents need the services of that category of employees and so long as persons with lesser length of service have been retained by them. For the purpose of engagement of the applicants as casual labourers, the office of the C.B.I., including its various offices in Delhi and elsewhere, should be treated as a single unit. The applicants should be accommodated wherever the vacancies exist. We further direct that the respondents shall not resort to direct recruitment of posts in Group 'D' category till the applicants and persons similarly situated are considered for regularisation, in accordance with the relevant administrative instructions issued by the Department of Personnel and Training.

11. The applications are disposed of on the above lines. The interim order dated 30.4.1991, is hereby made absolute. The respondents shall comply with the



19

- 6 -

above directions within a period of three months from the date of receipt of this order. There will be no order as to costs.

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

B.N. Dhoondiyal
(B.N. Dhoondiyal) 27/1/22
Administrative Member

P.K. Kartha
24/1/22
(P.K. Kartha)
Vice-Chairman (Judl.)

SLP
230192