

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

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Regn.Nos. (1) OA 948/88
(2) OA 1091/88
(3) OA 1031/88 &
(4) OA 1302/88

Date of decision: 02.8.1991.

(1) OA 948/88

Shri Surya Narayan

... Applicant

Vs.

Union of India & Another ... Respondents

(2) OA 1091/88

Shri Jai Veer

... Applicant

Vs.

U.O.I. through the
Secretary, Min. of
Agriculture & Another
... Respondents

(3) OA 1031/88

Shri Hari Das Shinde & Others ... Applicant

Vs.

U.O.I. & Another

... Respondents

(4) OA 1302/88

Shri Surender Singh

... Applicant

Vs.

U.O.I. & Another

... Respondents

For the Applicants in (1) to (4)

... Shri K.L.
Bhatia, Counsel

For the Respondents in (1) to (4)

... Shri M.L. Verma,
Counsel

3. It may be recalled that the DMS Employees

Union had filed in this Tribunal OA 1059/89, which

was disposed of by judgment dated 21.10.1987. In

the said application, they had prayed that the

daily paid mates/badli workers be brought over to

regular establishment and that they be paid salary,

allowances etc. on par with Group 'D' employees.

The said application was disposed of by judgment

dated 21.10.1987, the operative part of which

reads as follows:-

"(a) The respondents should accord to the

daily rated mates(badli workers) who

are concededly performing the same

Isolated and short-term duties and if basically engaged

duties as regular class IV Mates, the

same salary and conditions of service

be given every year to such mates/badli workers

other than regular appointment, as are

being received by the regular class IV

Mates from the dates of their appointment

as Badli workers.

(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 months of the said

period. The gap if any in their

employment subsequent to the date of such

to determine who has right to regularization should be treated as leave and that notation will be given on leave documents and record of balance of leave will be given on leave book along with or without pay as 'not due' or 'dies non' allow only those who have a right to regularization and not to regularization as the case may be. Supernumerary posts in Latawadi will be regularized within three months and will be reduced to 100% strength. It will be necessary to allow one day for regularization of posts in Latawadi and the regular establishment may be created if need be leaving posts which are being left to date of regularization necessary for this purpose. One month to be given as leave duration in case of regularization.

4. There was another round of litigation before the Tribunal on the same issue in OA 37/1988 (Shri Pramod Kumar & Others Vs. Union of India & Others). The applicants who had worked as daily paid Mates on contracts of employment between December 1986 and March 1987 had alleged that they had not been allowed to work by verbal orders issued by the respondents. They had prayed that they should be allowed to work and regularised in the DMS and that they should be paid the same salary.

and that they should be paid the same salary and allowances as in the case of regular employees. The said application was disposed of by judgment dated 10.8.1989 to which one of us (Shri P.K. Kartha) was a party. The operative part of the judgments reads

as under:-

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In the conspectus of facts and circumstances of the case, we are of the opinion that the applicants shall be deemed to have been transferred to the regular establishment from 1st November, 1987. The striking off/their names from the rolls of Workmen of the respondents amounted to retrenchment under Section 2(00) of the Industrial Disputes Act and was in violation of Section 25 F thereof. In the circumstances of the case, we do not pass any order regarding payment of back wages. The intervening period 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. The respondents shall comply with the above directions within a period of three months from the date of receipt of this order. There will be no order as to costs."

55. The case of the applicants is that they are

similarly situated like the applicants in OA 1059/87 and OA 37/88, mentioned above.

6. After the filing of these applications, some other employees similarly situated moved Misc. Petitions with a prayer for impleading them as applicants as mentioned below:-

(1) In OA 1091/88 MP No. 1646/90 was filed seeking

impleadment of Mohan Jha as applicant.

(2) In OA 1031/88 MP Nos. 2586/90 and 2587/90 were

filed for impleadment of Shri Balwan Singh and

Shri Rajeshwar Shah as applicants.

(3) In OA 1302/88 MP No. 2582/90 was filed for

impleadment of Shri Virdhi Chand as applicant.

The aforesaid MPs are allowed as the petitioners therein
whereas (1.) are also similarly situated.

7. We have carefully gone through the records of these
two cases and have considered the matter. The respondents
have raised a preliminary objection in their counter-
affidavit to the effect that these applications are not
maintainable in view of the judgment of this Tribunal in
the above case of Ar. Padmavally & Others Vs. C.P.W.D. and Tele Communication
reported in 1990(3) SLJ(CAT) 544, decided by a five Member
Bench on 30.10.1990.

8. In Padmavally's case, one of the questions
considered by the Larger Bench was whether a Central
Government employee who is a workman has two remedies
open to him, namely, to approach the Central Administrative
Tribunal or the Industrial Tribunal and whether it is open
to him to choose his remedy. The Tribunal, inter alia,
held that an applicant seeking a relief under the
provisions of the Industrial Disputes Act, 1947, must
ordinarily exhaust the remedies available under that
Act.

9. In Padmavally's case, the Tribunal, however,
observed that alternative remedy cannot be pleaded as a
bar to the exercise of jurisdiction under Article 226

in two situations, namely, (i) where there is violation of Article 14 of the Constitution and (ii) where there is a statutory violation. In such case, it is open to the employee to plead violation of Article 14 of the Constitution or allege statutory violation and seek redress without approaching the Industrial Tribunal for adjudication of rights vested under the provisions of the Industrial Disputes Act, 1947. In this context, reference may be made to paras 37 to 39 of the judgment.

10. It follows therefore, that the preliminary objection raised by the respondents would be valid and tenable only in cases and situations where there is no plea of violation of Article 14 of the Constitution or statutory violation by the authorities concerned.

11. In the applications before us, there is allegation of statutory violation as well as violation of Article 14 of the Constitution, as will be discussed hereinafter. In view of this, we see no force or merit in the preliminary objection raised by the respondents.

12. The applicants before us were recruited after getting their names sponsored by the Employment Exchange. Their service is governed by the terms and conditions of

employment and hours of work etc. specified in the
Certified Standing Orders for the employees of the
DMS under the Industrial Employment (Standing Orders)
Act, 1946, by the certifying officer and Deputy
Chief Labour Commissioner (Central). The applicants
have also invoked the provisions of Article 14 of
the Constitution to the extent that they are seeking
the benefit of the judgment of the Tribunal dated
21.10.1987 in OA 1059/87 and the judgment dated 10.8.1989
in OA 37/1988. Therefore, in our opinion, it will be
open to them to seek relief from the Tribunal without
first knocking at the doors of the Industrial Tribunal.

12. The workers of the DMS have been classified under
the Certified Standing Orders as (a) Casual (b) Badli and
(c) Apprentice. A casual worker has been defined to
mean/a worker who is employed on work of a casual or
occasional nature or to fill posts in regular work,
provided that a casual worker after continuously
working for 3 months in regular work shall be transferred
to regular establishment governed by the Fundamental
and Supplementary Rules. 'Badli' means a worker who is
employed for the purpose of working in place of regular
employees who are temporarily absent. A Badli worker
is not entitled to the same rights and benefits as a regular worker.

who has actually worked for not less than 240 days in

any period of 12 months shall be transferred to

regular establishment governed by the Fundamental

and Supplementary Rules of the said

and Supplementary Rules. These are the salient

provisions of the Certified Standing Orders of the

to be followed in calculating and calculating wages of

DMS relevant in the present context.

13. In the first case of DMS Employees Union

(OA 1059/87) decided on 21.10.1987 it was held that

those 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. In the

second case of Shri Pramod Kumar and Others (OA 37/1988)

decided on 10.8.1989, it was held that the applicants

therein shall be deemed to have been transferred to the

regular establishment from 1st November, 1987 and that

the striking off of their names from the rolls of Workman

of the respondents amounted to retrenchment under

Section 2(00) of the Industrial Disputes Act, 1947

and was in violation of Section 25 F thereof. The

Tribunal did not pass any order regarding payment of

back wages. The intervening period was directed to be

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treated as leave with or without pay as due or dies non, respondent who has given right to superannuation with or without pay as the case may be. It was further directed that if necessary and to a number sufficient to do so, the supernumerary post in the regular establishment may be created, if necessary.

14. The applicants before us have contended that they have worked for over 240 days from the respective dates of their appointment as Daily Paid Mates. They have computed this figure after taking into account the sundays and holidays. On the other hand, the respondents have contended that the applicants have not worked for a period of 240 days in any period of 12 months. Their computation does not take into account sundays and holidays. This aspect of the matter was considered to be settled by the court in the judgment of the Supreme Court in Pramod Kumar's case in which it was held that the sundays and holidays should also be included for the purpose of computing the period of 240 days in a year.

In this context, reliance was placed on the judgment of the Supreme Court in H.D. Singh Vs. Reserve Bank of India, 1985 SCC(L&S) 975. We reiterate the same view.

15. The respondents have not produced before us any record to show how the applicants could be treated as Badli Workers and in whose place they occupied the post on which they were appointed.

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16. In the conspectus of the facts and circumstances of the case and following the judgments of this Tribunal in **DMS Employees Union Vs. Union of India & Others**

(OA 1059/87) decided on 21.10.1987 and **Pramod Kumar & Others Vs. Union of India & Others (OA 37/88)** decided on 10.8.1989, these applications are disposed of with the following orders and directions:-

(i) We hold that the termination of the services of the applicants is not legally tenable and the same is set aside and quashed.

(ii) The applicants shall be deemed to have been transferred to the regular establishment after having worked for not less than 240 days in any period of 12 months. For the purpose of computing the period of 240 days in a year, sundays and other paid holidays should also be included.

(iii) In the circumstances of the case, we do not pass any order regarding payment of back wages to the applicants. However, the intervening period should be treated as leave with or without pay as due, or dies non, as the case may be.

(iv) Supernumerary posts in the regular establishment may be created, if necessary.

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

There will be no order as to costs.

Let a copy of this order be placed in case files bearing No. OA 948/88, OA 1091/88, OA 1031/88 and OA 1302/88.

(B.N. DHUNDIYAL) 2/9/91
MEMBER (A)

(P.K. KARTHA) 2/8/91
VICE CHAIRMAN (J)