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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.Nos.(1) OA 1833/87 Date of decision: 13.3.1990.
(2) OA 1382/88
(3) OA 1812/88
(4) OA 2230/88
(5) OA 2296/88
(6) OA 386/89
(7) OA 1082/89
(8) OA 1518/89
(9) OA 1788/89
(10) OA 2502/89

(1) OA 1833/87

Shri Hari Shankar Swamy ....Applicant

Vs.

Union of India & Others ....Respondents

For the Applicant ....Shri V.P. Sharma, Counsel

For the Respondents ....Shri P.P. Khurana, Counsel

(2) OA 1382/88

Shri Joginder Singh ....Applicant

Vs.

Union of India & Others ....Respondents

For the Applicant ....Shri E.X. Joseph, Counsel

For the Respondents ....Shri P.H. Ramchandar Sr. Counsel

(3) OA 1812/88

Shri Pooran Chand ....Applicant

Vs.

Union of India & Others ....Respondents

For the Applicant ....Shri E.X. Joseph, Counsel

For the Respondents ....Shri P.H.Ramchandan Sr. Counsel

(4) OA 2230/88

Shri Jai Pal Singh ....Applicant

Vs.

Union of India & Others ....Respondents

For the Applicant ....Shri E.X. Joseph, Counsel

For the Respondents ....Shri M.L. Verma, Counsel

(5) OA 2296/88

Shri Balwan Singh ....Applicant

Vs.

Union of India & Others ....Respondents

For the Applicant ....Shri Mahesh Srivastava, Counse

For the Respondents ....Shri P.P. Khurana, Counsel

(6) OA 386/89

Shri Sanjay Kumar ....Applicant

Vs.

Union of India & Others ....Respondents

For the Applicant ....Shri E.X. Joseph, Counsel

For the Respondents ....Shri P.P. Khurana, Counsel

(7) OA 1082/89

Shri Naveen Kumar ....Applicant

Vs.

Union of India & Another ....Respondents

For the Applicant ....Shri O.P. Kshatriy Counsel

For the Respondents ....Shri P.P. Khurana, Counsel

(8) OA 1518/89

Shri Ratan Pal Singh ....Applicant

Vs.

Union of India & Another ....Respondents

For the Applicant ....Shri B.K. Aggarwal, Counsel

For the Respondents ....Shri P.P. Khurana Counsel

(9) OA 1788/89

Shri Ram Avtar ....Applicant

Vs.

Union of India & Others ....Respondents

For the Applicant ....Shri Sant Singh, Counsel

For the Respondents ....Shri M.L. Verma, Counsel

(10) OA 2502/89

Shri Khem Chand ....Applicant

Vs.

Union of India & Others ....Respondents

For the Applicant ....Shri Sant Lal, Counsel

For the Respondents ....Mrs. Raj Kumari Chopra, Counsel

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 judgment? Yes

2. To be referred to the Reporters or not? Yes

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

After the Full Bench of this Tribunal in Rehmat Ullah Khan & Others Vs. Union of India & Others, 1989(2)

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SLJ 293 (CAT) had held that this Tribunal has jurisdiction to entertain the cases of casual labour/daily rated/daily wager under Section 19 of the Administrative Tribunals Act, 1985 and also in similar cases in Transferred Applications under Section 29 of the Act, the Hon'ble Chairman directed that cases pertaining to the Ministry of Communications be grouped together and heard expeditiously. In the 10 applications filed under Section 19 of the Administrative Tribunals Act, 1985, which are being dealt with herein, common questions of law have been raised and it is proposed to deal with them in a common judgment.

2. All these cases relate to termination of services of Casual Labourers who have been variously described, such as, Mazdoors, Malis, Beldars etc. All of them have worked for more than one year. The Industrial Disputes Act, 1947 applies to such employees of the Ministry of Telecommunications. In some case, the termination is by verbal or oral order while in others, there are written communications in this regard. The plea of the respondents in some of these cases is that there is not enough work available. In some others, the plea taken is that the applicant left the service on his own accord, thus amounting to abandonment of service. The applicants have prayed for reinstatement with back wages and other benefits, as also for regularisatio

3. We may, at the outset, briefly refer to the relevant judicial pronouncements in regard to the Casual Labourers engaged by the Ministry of Communications and

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other relevant decisions.

4. The leading case on the subject is that of Daily Rated Casual Labour employed under P&T Department through Bhartiya Dak Tar Mazdoor Manch Vs. Union of India & Others, AIR 1987 SC 2342. In the said case, the Supreme Court held that the State cannot deny to the casual labourers at least the minimum pay in the pay scales of regularly employed workmen even though the Government may not be compelled to extend all the benefits enjoyed by regularly recruited employees. The Supreme Court noted that many of the casual labourers in the P&T Department had not been regularly recruited but that many of them have been working continuously for more than one year with the department. They were rendering the same kind of service which was being rendered by the regular employees doing the same type of work. The Supreme Court observed that this practice amounts to exploitation of labour. The Supreme Court referred to its earlier decision in Dhirendra Chamoli Vs. State of U.P., 1986(1) SCC 637 wherein a similar view had been taken in respect of the employees working in the Nehru Yuvak Kendras, who were considered to be perfonming the same duties as Class IV employees. The Supreme Court, therefore, directed the Government and other authorities to pay wages to workmen who were employed as casual labourers belonging to the several categories of employees in the Postal and Telegraphs Department at the rates equivalent to the minimum pay scales of the regularly employed workers in the corresponding cadres but without any increments. The

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Supreme Court also directed the authorities to prepare a scheme on a rational basis for absorbing as far as possible the casual labourers, who have been continuously working for more than one year in the Posts and Telegraphs Department.

5. The scheme known as Casual labourers (grant of temporary status for regularisation) scheme has been formulated and put into operation from 1.10.1989. A copy of the same was palced for the consideration of the Supreme Court in Jagrit Mazdoor Union Vs. Mahanagar Telephone Nigam Ltd., 1989(2) SCALE 1455. The Supreme Court found that the scheme was comprehensive and apart from provision for conferment of temporary status, it also specified the benefits available on conferment of such status. A similar scheme has also been prepared for the Postal employees working in the Department of Posts. In J.M. Union's Case, the Supreme Court further observed that temporary status would be available to the casual labourers in the Postal Department on completion of one year of continuous service with at least 240 days of work (206 days in the case of offices observing 5 days week) and on confirment of temporary status, the House Rent Allowance and City Compensatory Allowance shall be admissible. After rendering three years of continuous service with temporary status, the casual labourers shall be treated at par with temporary Group 'D' employees of the Department of Posts and would thereby be entitled to such benefits

as are admissible to Group 'D' employees working on regular basis.

6. The judgment of the Supreme Court in the case of Daily Rated Casual Labour employed under the P&T Department was delivered on 27.10.1987. Subsequently, a Misc. Petition was filed in the Supreme Court (CWP No.23751/88 in WP No.302/86 - The National Federation & Another Vs. Union of India & Others) wherein the Supreme Court passed an order on 26.9.1988 giving extension of time to the respondents to comply with the order dated October, 1987 by six months. The Supreme Court further directed as follows:-

> " In the meantime, no employee in respect of whom the order dated October, 1987 has been passed by this Court, shall be discharged from service". (emphasis added)

7. It may be recalled that the order of the Supreme Court dated 27.10.1987 had directed the respondents to prepare a scheme to absorb the casual labourers who had been continuously working for more than one year in the Posts and Telegraphs Department.

8. It is also relevant to note that the Supreme Court has directed the Government including the Railways to prepare schemes for regularising casual labourers who have continuously worked for one year (Vide Inder Pal Yadav Vs. Union of India, 1985(2) SLR 242; Dakshin Railway Employees Union, Trivandrum Division Vs. General Manager, Southern Railway, AIR 1987 SC 1153; U.P. Income Tax

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Department Contingent Paid Staff Welfare Association Vs. Union of India & Others, AIR 1988 SC 517; and Delhi Muncipal Karm-chari Ekta Union (Registered) Vs. P.L. Singh, AIR 1988 SC 519).

9. Another point to be mentioned is that the employees of the P&T Department are workmen within the meaning of Industrial Disputes Act, 1947 and that the P&T Department is an industry within the meaning of Section 2(j) of the Industrial Disputes Act. In Kunjan Bhaskaran Vs. Special Divisional Officer Telegraphs, Changanassery, 1983 Lab.IC 135, the Kerela High Court observed that the Posts and Telegraphs Department have nothing to do with the constitutional functions of the State. It was further observed as follows:-

> " It stands as a separate department, discharging functions analogous to trade or business even in a commercial sense. In my opinion all the precedents are in favour of holding that the Department (P&T) is an industry directly and specifically covered by the Act (I.D. Act)".
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> (see also M.A. Bukari Vs. U.O.I. & Others, 1989(9) ATC 218; Tapan Kumar Jana Vs. General Manager, Calcutta Telephones & Others, 1980(2) L&N 334; Judgment of the Tribunal dated 3.8.1989 in TA 103/86 Moti Lal Yadav Vs. Union of India & Others ; and judgment of this Tribunal dated 10.6.1988 in OA 308/88 K.C. Madhav Rao & Others Vs. Union of India & Others).

10. It may be stated that the SLPs filed by the Government against the judgment in Jana's case was dismissed by the Supreme Court (vide Circular Letter issued by the Department of Posts No.86-2/85-SPB-II dated 27.3.1986, cited in judgment of this Tribunal dated 15.12.1989 in OA 1920/88 and connected matters -

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Netra Pal Singh & Others Vs. Union of India & Another). The SLP filed by the Government against the judgment of this Tribunal in Moti Lal Yadav's case was dismissed by the Supreme Court by order dated 2.3.1990 in SLP Civil No.15784/89(Union of India & Others Vs. Moti Lal Yadav).

11. Following the decision of the Supreme Court in the case of Daily Rated Casual Labour employed under the P&T Department, AIR 1987 SC 2342, this Tribunal at the Principal Bench and its other Benches has granted reliefs in numerous cases. Reference may be made to the decision dated 4th May, 1988 in OA 529/88 of the Principal Bench of this Tribunal (Sunder Lal & Others Vs. Union of India & Others) delivered by a Bench presided over by Shri K. Madhava Reddy, the then Chairman. In that case, the respondents had terminated the services of the applicants on the basis of a decision taken by them to retrench the Daily Rated Mazdoors who had been appointed after 1.4.1985. There was also a decision to fill up the resultant vacancies. The applicants had put in nearly 3 years of service. In view of the leading decision of the Supreme Court mentioned above, the Tribunal held that the administrative decision to retrench all those who were employed after 1.4.1985 was not legally sustainable. The Tribunal quashed the impugned order of termination and directed the respondents to reinstate the applicants with

immediate effect and to consider them for absorption in accordance with the scheme, which was under preparation.

12. In the light of the forgoing discussion, the applicants in these applications are entitled to succeed. All of them have worked for more than one year. The termination of their services without any notice or payment of retrenchment compensation, is violative of the provisions of Section 25 F of the Industrial Disputes Act, 1947.

13. The plea of the respondents in OA 1382/88 that the applicant left the service on his own accord is not very convincing. In our opinion, in the case of abandonment of service, the employer is bound to give notice to the employee calling upon him to resume his duty. In case, he intends to terminate his service, he should hold an inquiry before doing so (vide G. Krishna Murthy Vs. Union of India & Others, 1989(9) ATC 158).

14. The applications are, therefore, disposed of with the following orders and directions:-

(i) We set aside and quash the impugned order dated 23.3.1988 in OA 1382/88, impugned order dated 17.7.1987 in OA 2230/88, impugned order dated 6.6.1987 in OA 2296/88 and impugned order dated 22.6.1987 in OA 386/89. We also set aside and quash the verbal order of termination of service with effect from 19.6.1982 in OA 1833/87, the verbal order dated 1.4.1988 in OA 1812/88, the verbal

order dated 8.5.1989 in OA 1082/89, the verbal order dated 1.6.1989 in OA 1518/89, the verbal order dated 13.8.1988 in OA 1788/89 and the verbal order dated 7.3.1989 in OA 2502/89.

(ii) The respondents are directed to reinstate in service the applicants in all the above mentioned applications within a period of three months from the date of communication of this order.

(iii) After reinstating them, the respondents shall consider regularising the services of the applicants in accordance with the scheme prepared by them. Till they are so regularised, they shall be paid the minimum pay in the pay scale of regularly employed workmen in the respective posts. They would also be entitled to all the benefits and privileges envisaged in the judgment of the Supreme Court in Jagrit Mazdoor Union's case, mentioned above.

(iv) In the facts and circumstances of the case, we do not direct payment of any back wages to the applicants.

(v) There will be no order as to costs.

Let a copy of this order be placed in all the 10 case files.

(D.K. CHAKRAVORTY)
MEMBER (A)
18/5/90

18/5/90
(P.K. KARTHA)
VICE CHAIRMAN(J)