

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 1059      1987  
T.A. No.

DATE OF DECISION 21.10.1987

D.M.S. Employees Union

Petitioner

Shri K.L. Bhatia

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri M.L. Verma

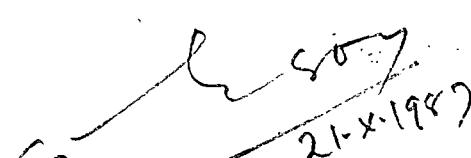
Advocate for the Respondent(s)

**CORAM :**

**The Hon'ble Mr. S.P.Mukerji, Administrative Member**

**The Hon'ble Mr. Shreedharan Nair, Judicial Member**

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?

  
(Shreedharan Nair)  
Judicial Member

  
(S.P. Mukerji)  
Administrative Member

Central Administrative Tribunal  
Principal Bench, Delhi

Regn. No. O.A. 1059/87

Date: 21.10.1987

D.M.S. Employees Union .... Applicant

Versus

Union of India & Ors. .... Respondents

For Applicant .... Shri K.L. Bhatia, Advocate.

For Respondents .... Shri M.L. Verma, Advocate.

CPRAM: Hon'ble Shri S.P. Mukerji, Administrative Member  
Hon'ble Shri Shreedharan Nair, Judicial Member.

(Judgement of the Bench delivered by Shri S.P. Mukerji, Member)

The applicant, in its representative capacity, has moved the Tribunal under Section 19 of the Administrative Tribunals Act through its application dated 28.9.1987 praying that the daily paid Mates (Badli workers) appointed as such in the Delhi Milk Scheme, a Central Government departmental undertaking, from different dates between 14.5.1981 onwards and as listed in Annexure A-1 to the application, should be treated as regular Group 'B' employees in all matters relating to salary, allowances, medical facilities, T.A., D.A., etc. from the dates of their intial appointment with payment of arrears with 18 per cent rate of interest. It has also been prayed that these Badli workers may be brought over to regular establishment.

2. The relevant facts of the case can be briefly narrated as follows. In the Delhi Milk Scheme, there is a regular establishment of Mates and a category of Mates who are appointed on daily basis though these Mates in either of these categories discharge identical duties. However, the daily <sup>paid</sup> Mates are paid a daily wage of Rs. 13.60 per day and except on three national holidays, they are not paid anything when they are not engaged in work. The regular Mates, according to the applicant, receive an average emoluments of Rs.1,000 per month, apart from other privileges. In accordance with the Standing Orders for the employees of the Delhi Milk Scheme (Annexure A-3) certified under the Industrial Employment (Standing Orders)

Act, 1946, dated 15th June, 1962, the D.M.S. is obliged to take over such Badli workers to the regular establishment as have put in not less than 240 days' work in any period of 12 months. The grievance of the applicant is that in spite of this mandatory provision of the Standing Orders, the casual daily rated Badli workers having put in 5-6 years of service, have neither been taken over in the regular establishment nor given pay as regular Mates.

3. The contention of the respondents is that the Staff Inspection Unit of the Ministry of Finance have already recommended reduction/abolition of 193 regular Mates and, therefore, the question of taking over the daily-paid Badli workers to the regular establishment is out of question. These daily rated Mates are employed in place of regular employees who are temporarily absent and cannot claim the status of regular Mates.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. It is admitted by the respondents that the Standing Orders for employees of the Delhi Milk Scheme, as appended at A-3 to the petition, are issued under the Industrial Employment (Standing Orders) Act, 1946. In accordance with Item 23 of the Standing Orders, "the Chairman shall be responsible for the proper and faithfully observance of the Standing Orders". Sub-para (iii) of para.4 of the Standing Orders defines Badli workers and provides as follows:-

"(iii) 'Badli' means a worker who is employed for the purpose of working in place of regular employees who are temporarily absent.

Provided that a badli 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."

The learned counsel for the respondents, during the course of the arguments, agreed that the relief claimed is for the daily-rated Mates who fall within the definition of 'Badli worker', who after 240 days of working in any period of 12 months, have to be transferred

to regular establishment governed by the Fundamental and Supplementary Rules. It is also admitted that such workers listed at A-1 to the application have completed 240 days of work in a period of 12 months. The main contention of the respondents is that they could not be transferred to the regular establishment as there was no vacancy and, as a matter of fact, the number of regular Mates has been found by the Staff Inspection Unit <sup>(SIU)</sup> to be in surplus and has been recommended for reduction in number.

5. We are not impressed by the aforesaid arguments of the respondents. The Standing Orders are statutory in nature and, to our mind, binding on the respondents. The mere fact that the Delhi Milk Scheme is a departmental undertaking under the Central Government, does not absolve them from the obligations which devolve on them under the various Acts governing industrial establishments. It is also rather intriguing that whereas the regular establishment of Mates has been found to be over-staffed, the D.M.S. has been maintaining several hundreds of Mates as Badli workers and engaging them for 240 or more days in a year. This means that either the assessment of manpower requirement <sup>by the S.I.U</sup> has been erroneous or the Mates in the regular or casual establishments are not properly utilised. These factors are, however, within the domain of the internal management of the D.M.S. and we cannot probe into these factors. The statutory obligations of the Standing Orders will, however, have to be honoured and the respondents cannot escape from them on the plea of the recommendations of the Staff Inspection Unit which they themselves have not implemented. The learned counsel for the respondents brought to our notice the ruling of the Supreme Court in Dhirendra Chamoli and others Vs. the State of Uttar Pradesh, A.T.R. 1986 (1) (S.C.) 172 in which, while allowing the casual workers in the Nehru Yuval Kendra similar salaries and conditions of service as are received by Class IV employees, <sup>the Court</sup> did not direct regularisation of their services since there were no sanctioned posts. The Supreme Court, however, hoped

that posts would be sanctioned by the Central Government for their regularisation. However, these observations cannot be advanced to deny regularisation of the Badli workers in the instant case before us because while in the latter case the statutory Standing Orders ordained such regularisation, it is not clear whether such statutory obligations subsisted in case of the Nehru Yuval Kendras. The respondents in the instant case, are obliged to transfer the Badli workers who have completed 240 days of work in a year to the regular establishment by creating additional posts in the regular establishment of Mates and reducing the strength of Badli workers by an equal number of such posts created in their regular establishment.

6. The learned counsel for the respondents raised a technical question that since the casual workers are not holding any posts in <sup>the</sup> D.M.S., no relief can be granted by the Tribunal. We are not prepared to accept this contention as Section 14 of the Administrative Tribunals Act brings within the jurisdiction of the Tribunal not only those who are holding "any civil posts under the Union" but also those who are appointed to any civil service of the Union". Since the Badli workers are rendering service in connection with the affairs of the Union, the service matters relating to them squarely fall within the jurisdiction of the Tribunal. Still another objection raised by the learned counsel for the respondents is that in relation to certain Badli workers, the Central Government Industrial Tribunal, in its award dated 24th March, 1984, accepted a similar claim of the Badli workmen and a writ petition is pending before the High Court of Delhi challenging the award. Thus, according to the learned counsel, the present application is barred under Section 10 of the C.P.C. We cannot persuade ourselves to accept this contention because the High Court of Delhi has not so far stayed or set aside the award of the Industrial Tribunal and the provisions of the C.P.C. as such are not binding on this Tribunal in accordance with Section 22 of the Administrative Tribunals Act, 1985. It may

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be of interest to note that the Industrial Tribunal in ID No.2 of 1981 in the aforesaid case directed as follows:-

7. The workmen have approached this Industrial Tribunal only because the standing orders are not being obeyed and they have not been regularised, in spite of the clear mandate of the standing orders of Delhi Milk Scheme referred to earlier. The opinion of the Law Department, Govt. of India that regularisation should await happening of a vacancy is not acceptable because the Standing orders do not require that such regularisation should happen only on occurring of a vacancy in the regular establishment. The standing orders ordain transfer to regular establishment on completion of 240 days service in any period of 12 months, and require no other formality.

8. The claim made by them a Badli Worken is sound and legal and is in accordance with the standing orders of the Management of Delhi Milk Scheme. The refusal of Delhi Milk Scheme Management to honour the standing orders is not understood. The Management of Delhi Milk Scheme is directed to make all these Badli Workmen regular w.e.f. 21.1.80, when the demand was lodged with the Management and the Management should create posts for their regularisation in the regular establishment since that date."

The above is in accord with what we have observed in the earlier parts of this order.

7. So far as the other relief regarding the pay and allowances of the Badli workers is concerned, the learned counsel for the respondents fairly agreed that in accordance with the various rulings of the Supreme Court and this Tribunal, since the Mates who are working as Badli workers discharge identical duties as the Mates in their regular establishment, they should be given the same basic salary as is received by the Mates in the regular establishment. In the above mentioned case of Dhirendra Chamoli Vs. the State of U.P., the Supreme Court held that the casual workers "who are in the service of the different Nehru Yuval Kendras in the country and who are admittedly performing the same duties as class IV employees, must, therefore, get same salary and conditions of service as class IV employees. It makes no difference whether they are appointed in sanctioned posts or not. So long as they are performing the same duties, they must receive the same salary and conditions of service as class IV employees."

8. In the facts and circumstances discussed above we allow the application with the following directions:-

(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 <sup>in</sup> ~~in~~ their employment subsequent 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.

(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 letter.

(Sreedharan Nair)  
Judicial Member

S.P. Mukerji  
Administrative Member