

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

2.5.91

O.A. No.1914/90

Shri Chander Pal
Vs.

.....Petitioner

Union of India

.....Respondents

O.A. No.1919/90

Shri Sher Singh
Vs.

.....Petitioner

Union of India

.....Respondents

O.A. No.1931/90

Shri Avdesh Kumar
Vs.

.....Petitioner

Union of India

.....Respondents

Shri P.I. Ooman with
Shri C.N. Reddy

.....Advocate for the Petitioner

Shri K.C. Mittal

.....Advocate for the Respondents

CORAM

The Hon'ble Mr. P.C. Jain, Administrative Member.

The Hon'ble Mr. J.P. Sharma, Judicial Member.

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J)).

The applicants were engaged as Casual labourers in the National Museum, Janpath under Ministry of Human Resources Development, Department of Culture, New Delhi. The grievance of the applicants is that their services have been terminated by oral order w.e.f. 1.9.1990. In these applications separately filed under Section 19 of the Administrative Tribunal Act, 1985, the applicants claimed the relief (a) of re-instatement, (b) of regularisation on the first available opportunity on any Grade 'D' post (Gallery Attendants or Peon), and (c) other consequential benefits.

2. The facts of the case are that the

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applicants have worked as Casual Labourers with the respondent No.3, with some breaks, for a period of more than 240 days in a year. It is averred that inspite of the work being available, the applicants' services have been determined and one of the junior to the applicants has been retained and allowed to work. It is also stated that the respondent No.3 has not followed the instructions contained in the letter of Ministry of P.P.G. Department of Personnel dated 7.2.90 (Annexure-B) which laid the norms for regularisation of the all eligible casual labourers against the regular posts. The case of the respondents in their reply to the application is that the applicants in all these applications were employed as daily wage employees for a fixed term. As and when the necessity of their continuity was found necessary looking to the available work in the National Museum, they were re-engaged, but as daily wagers. The respondents have specifically stated that the applicants never worked as Gallery Attendants or as peons. According to them, the work assigned to these applicants was ^{of} a casual nature as 'Safaiwalas'. In support of their contentions the respondents have also filed certain documents showing the engagements of daily wagers and the sanctions for retaining them. It is also stated in reply that seeing to the prevailing law and order situation, personnel of Central Industrial Security Force have been employed to perform, watch and ward duty looking to the valuable objects in the National Museum. A case had already been filed in Delhi High Court by non-gazetted employees of the museum against the employment of C.I.S.F. for their wrongful employment by the respondents. That said writ petition has been disposed of by the order dated 11-2-1991.

(copy enclosed with the reply to MP 428/91)

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3. We have heard the learned counsel for both the

parties and have gone through the record of the case.

It is not disputed that all the applicants who have

filed separate applications under Section 19, have

worked for more than 240 days. According to admission

of the respondents in their counter, applicant

Shri Chander Pal has worked for about 305 days since

1.1.1988 till 9.3.1990. Applicant Shri Avdesh Kumar

who is applicant in O.A. 1931/90 has worked for 496 days

from 12.9.1988 till 31.8.1990. Shri Sher Singh who is

applicant in O.A. 1919/90 has worked for 323 days from

10.3.1989 till 9.3.1990. In fact, casual labourer is

generally identified with the labourer who is engaged

to meet temporary labour requirements due to pressure

of work or absenteees. The employers prefer such labour

in order to circumvent various provisions of law that

confer benefits to permanent or regular labour. Many of

them who might be employed for longer duration are at the

fact there are no rules for

mercy of the employers. In 7 regularising the service

condition of casual labourers. It is only under

administrative instructions that casual labourers are

engaged from time to time to meet the exigency of work that

has to be done on urgent basis. The O.M. dated 7.2.1990

issued by the Ministry of P.P.G., Department of Personnel

and Training lays down certain instructions for

recruitment of casual workers and persons on daily wages

and the policy in regard to which has been reviewed. It

has specifically been mentioned in this O.M. that all the

eligible casual workers be considered for regularisation

against regular posts to the extent such regular posts

are justified. The rest of the casual workers who could

not be adjusted against the regular posts, but whose

retention is considered absolutely necessary, may be retained

and paid emoluments as per the provisions laid down in

the guidelines. Thus, if the work is available in the

department concerned, then the casual labourer need not be discharged to make room for fresh arrivals from the market, but in fact those already engaged be allowed to work on the same terms and conditions. The contention of the respondents is that the applicants have not been appointed against the sanctioned posts, but only engaged on daily wage for casual work like cleaning of floor and removing of left over debris left from the construction of second wing of the National Museum building. It is further stated by the respondents that there is no vacant post of Peon in the National Museum, so it is not possible to absorb them against the post of Peon. The respondents have also stated in the reply that the work of Gallery Attendant is highly responsible, in that he is to keep a watch on the safety of art treasurers of unestimatable value displayed in the gallery. This work cannot be entrusted to a Casual Labourer. The applicants had never been allowed to work as Gallery Attendants. It is contended by the learned counsel for the respondents that seeing to the present law and order situation in the country, it had been decided to strengthen the security of the National Museum by employing personnel of CISF which is a para-military Police Force and they have already been posted in the National Museum.

4. The question of ad-hoc employees as well as of casual labourer has drawn the attention of the Hon'ble Supreme Court also, particularly in the case of Railways wherein Indrapal Yadav's case in 1982, the Hon'ble Supreme Court directed the formulation of a policy for absorbing the casual labourers on the basis of a seniority list prepared on the number of working days put in by each of such casual labourers in the Railways. The matter was also considered in the case of Shri Dheerender Chamoli Vs. Union of India.-1986(1) SCC P-637, Daily Rated Casual Labour Employees of Post and Telegraph Vs. Union of India-1988(1) SCC P-122 and U.P. Income Tax Department Casual Labourers Vs. Union of India-1987 Supplement SCC P-668. It has been held that hire and fire policy should not be resorted to in the case of employment of the daily wagers and those who have put in a number of years' service, should be given regularisation as and when opportunity arises for regularisation. In Bhagwan Das Vs. State of Haryana, 1987(4) SLR P-517 S.C., it has been held that the persons doing similar work cannot be denied equal pay on the ground that the mode of recruitment was different and (ii) a casual or temporary employee performing the same or similar duties and functions is entitled to the same pay as that to a regular or permanent employee (See Jaipal and Others Vs. State of Haryana, 1988(2) SLR 710).

5. The applicant, after the close of argument have also filed one M.P. No.428/91 requesting that the photo copy of the attendance register kept in the Gallery, Annexure 'A' attached to the petition may be taken on record. It is stated that the applicants have signed the register in token of their duty as Gallery Attendant. Annexure 'A' goes to show the names of some persons Pyeray Lal, Sher Singh having come on 4-6-1989. The respondents in reply to the M.P. have denied the appointment on any post of Gallery Attendant in the National Museum. It is stated that no post is available in the National Museum as the personnel of Central Industrial Security Force (C.I.S.F.) have been posted in the National Museum. After C.I.S.F. takes over the security of the National Museum of watch and ward staff, of the Gallery Attendant and Chowkidar shall be deployed in other Government organisations. It is also stated that the non gazetted employees' association had gone to High Court of Delhi for preventing posting of C.I.S.F. in the National Museum. The Delhi High Court by its order dated 11-3-1991 rejected the writ petition and upheld the action of respondent reasonable and not contrary to law.

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It was also observed on the basis of affidavit of Director General that the scheme which has now been proposed, to replace civil staff of C.I.S.F. personnel, is in the interest of general public and nation.

6. The learned counsel for the applicants argued that the applicants cannot be dispense with from their services because in the case of Sher Singh he has put in from 10-3-1989 till 9-3-1990 about 323 working days. It is therefore argued that as the applicants have fulfilled all the criteria laid down in the memo issued by the department of Personnel on 7-2-1990 the applicants need to be regularised as per Government orders. In fact after the replacement of the staff, even the permanent ones, by the C.I.S.F. personnel the applicants have not any claim of regularisation. The learned counsel for the respondents argued that in spite of applicants having no right to the regularisation of their services, since the applicants have good number of ^{working days, to their} credit so their cases also along with the other permanent/ temporary employees have been recommended to Surplus if possible. Call for their absorption/in other organisation of

of Central Government. In view of this fact the document Annexure 'A' filed by the applicants do not ^{weight} add further ^{to} to their case.

7. Having given a careful consideration to the aspect of the matter, we are of the view that the applications ^{are} ^{are} is devoid of merit and ^{is} therefore dismissed leaving the parties to bear their costs.

A copy be place in each of the file.

(J.P. SHARMA)
MEMBER (J)

(P.C. JAIN)
MEMBER (A)