

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 2330/90  
T.A. No.

199

DATE OF DECISION 24.12.1991.

Shri Jagdish Prasad	<del>Petitioner</del> Applicant
Shri Ashok Aggarwal,	Advocate for the <del>Petitioner(s)</del> Applicant
Versus	
Union of India through Secy., Miny. of Science & Technology	Respondent
Smt. Raj Kumari Chopra	Advocate for the Respondent(s)

### CORAM

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The 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*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

(Judgement of the Bench delivered by Hon'ble  
Mr. P.K. Kartha, Vice-Chairman)

The applicant, who has worked as a casual labourer in the office of the respondents, is aggrieved by the impugned order of termination of his services w.e.f.

9.10.1990. He has prayed for issuing directions to the respondents for reinstating him in service with full back wages, continuity of service and all other consequential benefits. He has also prayed for a direction to them to regularise his services in a Group 'D' post.

2. On 13.11.1990, an interim order was passed directing the respondents to consider engaging the applicant as a

Class IV employee in preference to his juniors.

3. The applicant worked in the office of the respondents from 23.2.1990 to 8.10.1990. Having worked for more than 240 days in a year, he claims that he is entitled to regularisation against Class IV post in terms of policy decision of the Government. This is being disputed by the respondents.

4. The applicant has alleged that a large number of employees junior to him are still working in the office of the respondents, whereas his services were terminated. In this context, he has mentioned the names of Shri Kalu Ram and Shri Mahipal. The respondents have stated in their counter-affidavit that <sup>the services of</sup> ~~Shri~~ Kalu Ram and Mahipal have also been terminated and they are no longer working in their office. According to them, there is at present no daily wage or work for a daily wage in their office.

5. We have gone through the records of the case carefully and have heard the learned counsel for both the parties. The learned counsel for the applicant relied upon the judgement of the Delhi High Court dated 13.1.1989 in C.W. No.3442 of 1989 (Suresh Kumar and Others Vs. Union of India and Another). In that case, the petitioners had contended that having put in more than 240 days' work in a year, they are liable to be absorbed in regular service in view of the

numerous decisions of the Supreme Court. The Delhi High Court observed that "it is now well settled, and it has not been disputed by the learned counsel for the respondents that a daily wager who works for more than 240 days in a year in an industry, has to be regarded as having been regularised. The services of such an employee are liable to be regularised... In that case, the petitioners had worked for over 750 days prior to their termination of services.

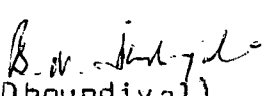
6. The aforesaid decision is clearly distinguishable. The Ministry of Science & Technology in which the applicant was engaged is a department of the Government of India, is not an 'industry' and the casual labourers engaged by them are not 'workmen' within the meaning of the Industrial Disputes Act, 1947.


7. The applicant has stated in his rejoinder that the total working days should be reckoned as 258, including the holidays, Saturdays and Sundays. According to the administrative instructions issued by the Department of Personnel & Training, a casual labourer is eligible for regularisation in a Group 'D' post if he has worked for 240 days (in an office observing 6-day week) or 206 days (in an office observing 5-day week) continuously for a period of two years. The applicant does not fulfil the aforesaid condition of eligibility. *Q*

8. The respondents have not stated that the conduct and performance of the applicant were not upto the mark. Their case is that there is no need for engagement of a casual labourer and all such persons have been disengaged by them. Two other persons who were continued as casual labourers for some period, have been disengaged by them.

9. In the above factual background, the applicant would be entitled to the relief only to the extent that in case the respondents need the services of a casual labourer, he would have a preferential right over persons with lesser length of service or fresh recruits. The application is, therefore, disposed of with the direction to the respondents that in case they need the services of a casual labourer, the applicant should be considered for engagement in preference to those with lesser length of service as casual labourers and fresh recruits through Employment Exchange or otherwise. For this purpose, the Ministry of Science and Technology and its attached/subordinate offices, if any, located in Delhi and elsewhere, should be treated as a single unit.

There will be no order as to costs.

  
(B.N. Dhoundiyal)  
Administrative Member

  
24/12/91  
(P.K. Kartha)  
Vice-Chairman(Judl.)