

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

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O.A. No. 249/90  
T.A. No.

199

DATE OF DECISION 6.9.1991

Shri Laxman

Petitioner Applicant

Shri R.L. Sethi

Advocate for the Petitioner(s) Applicant

Delhi Admn. and Others

Respondent

Shri Lalit Mohan

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? /
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 has worked as a Casual Labourer in the Office of the respondents from February, 1989 to 28th December, 1989. He has prayed that the action of the in or respondents/terminating his services after 28.12.1989 without assigning reasons, be set aside and quashed. He has also prayed for all consequential benefits.

2. The name of the applicant had been sponsored by the Employment Exchange. He has averred that he has performed his duties honestly and diligently, and that he

he had given no opportunity to the respondents to complain against him. This has not been denied in the counter-affidavit filed by the respondents.

3. The applicant has stated that the respondents held an interview as a result of which he was denied employment, though two persons junior to him were retained in service. As against this, the respondents have stated that a Staff Selection Board consisting of one Chairman and two Members (including a Scheduled Caste Member) each of the rank of Joint Director, was duly constituted, who had assessed the merits of each case and had given their recommendations which were duly accepted by them. They have denied that persons junior to the applicant have been retained in service.

4. The applicant has stated that he had put in 240 days' service and that there is regular nature of work available. In view of this, he has argued that there is absolutely no justification to deny him ~~excess~~ regularisation or even temporary work.

5. With reference to the above contention, the respondents have stated that according to the administrative instructions contained in O.M. dated 2.12.1966 and 12.2.1969 issued by the Ministry of Home Affairs, only a casual labourer who has put in at least 240 days (206 days in case of 5 days week of service as casual labourer - including broken period of service)

during each of two years of service, is eligible to be appointed to posts borne on the regular establishment. They have stated that there were twelve daily-wage casual workers, including the applicant, working as Sweeper upto 28.12.1989. None of these daily-wage Sweepers had put in at least two years' service (as referred to above) and as such, none of them was, strictly speaking, eligible to be considered for appointment to regular establishment.

6. There were 16 posts of Sweepers and 3 posts of Chowkidar-cum-Sweeper (Group-D posts) in the pay-scale of Rs.750-940, to be filled up during December, 1989.

7. According to the Recruitment Rules for these posts, notified by the Services Department, 50% posts of these categories are to be filled up from amongst the Group 'D' employees who have served as part-time workers in the local offices of Delhi Administration for a total period of five years, failing which by direct recruitment and 50% posts by direct recruitment.

8. Accordingly, in accordance with the notified Recruitment Rules, the vacancies were circulated amongst the departments of Delhi Administration for obtaining particulars/willingness of eligible part-time Group 'D' employees. The vacancies were also notified to the Employment Exchange for sponsoring candidates for these posts.

9. For the posts to be filled by part-time Group 'D' employees, only three female part-time Group 'D' Sweepers had applied for the posts of Sweeper. However, out of these three, only one was found suitable for appointment to the said post for regular establishment.

10. Thus, there remained only fifteen posts of Sweeper and 3 posts of Chowkidar-cum-Sweeper to be filled by direct recruitment. After following the reservation roster, these posts were required to be filled by the following categories of persons as under:-

1. Chowkidar-cum-Sweeper (3 posts)	i) Ex-Servicemen :01
	ii) Others :02
2. Sweepers (15 posts)	i) Ex-Servicemen :06
	ii) Physically Handicapped (Particularly blind) :01
	iii) Others :08.

11. Although none of these daily-wage twelve Sweepers (initially sponsored by muster-roll Employment Exchange) were eligible to be considered for appointment to regular establishment (being without two years' service - 206 days in each year), yet keeping in view the facts that the incumbents, including the applicant, had been working in this Department as daily wagers and also that the recruitment to be made was at the lowest rung of Group 'D' - the duties which were of Sweeper, it was thought proper to give them an opportunity

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for selection and their candidature was considered sympathetically as a special case and they were allowed to face the Staff Selection Board along with others (i.e., nominees of Employment Exchange).

12. Moreover, the Employment Exchange had not sponsored any candidate for consideration against these posts by the time the Staff Selection Board was held (i.e. no names were received in the Office of the L by 29.12.1989). Further, these recruitments were to be made urgently in the interest of public sanitation since the sanction to recruit Sweepers on daily-wage basis given by the Delhi Administration, had lapsed in the light of their having approved the creation/ filling up of these posts on full time basis. As such, all the twelve daily wagers were considered for these two posts of Chowkidar-cum-Sweeper and eight posts of Sweeper (after excluding Ex-Servicemen and physically handicapped categories quota). The Staff Selection Board interviewed all the daily wagers for appointment to these two posts of Chowkidar-cum-Sweeper and eight posts of Sweeper and after assessing their performance, record and suitability for the job, recommended only one daily wager for appointment to the post of Chowkidar-cum-Sweeper and eight daily wagers for appointment against the 8 vacancies of Sweepers. Three of these 12 daily wagers were not found suitable for the full-time job, including the On

applicant.

13. The Staff Selection Board did not recommend any reserve list or panel. Since these three incumbents, including the applicant, were not found suitable for appointment to regular establishment, one post of Chowkidar-cum-Sweeper which remained unfilled, was also recommended by the Staff Selection Board for re-notifying to the Employment Exchange instead of recommending any of these daily wagers for appointment to this post.

14. Thus, according to the respondents, though the applicant was not eligible to be considered for appointment to regular establishment, he was, along with the others in the same situation, given an equal chance for facing interview for selection at par with the other daily wagers already working in the Department.

15. We have carefully gone through the records of the case and have considered the rival contentions. The applicant has not contended that persons junior to him have been regularised even though they do not fulfil the criteria for such regularisation laid down in the relevant administrative instructions. The learned counsel for the applicant submitted that the applicant has worked for a period of 328 days from 3.2.1989 to 28.12.1989 and that three juniors of the applicant have been retained.

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16. The respondents have resorted to a process of selection of the persons sponsored by the Employment Exchange through a Staff Selection Board, even though the persons did not fulfil the criteria for regularisation. The suitability of the applicant was also considered by the said Board on the basis of performance, record and suitability for the job. The applicant was not found suitable and was not, therefore, selected. As the respondents have admitted in their counter-affidavit, the averment in the application that the applicant <sup>or</sup> had worked hard and that he gave no opportunity to the respondents to complain against him, it is not clear as to what material was before the Staff Selection Board to conclude that the applicant was not suitable for retention in service. The contradictions in the counter-affidavit have thus become apparent. The respondents have not stated that the work and conduct of the applicant were not upto the mark or that he had been warned for dereliction of duty.

17. In Raj Kamal and Others Vs. Union of India, 1990(2) SLJ (CAT) 169, the Tribunal have observed as follows:-

"21. We are, therefore, of the opinion that in order to solve the problem of casual labourers engaged in the Central Government offices in a fair and just manner, the proper course for the Government would be to prepare a scheme, somewhat like the one in operation for re-deployment of surplus staff, vide Department of Personnel and AR's O.M. No.3/27/65-CS-II dated 25.2.1966 and amplified

or

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vide Department of Personnel and Training's O.M. No. 1/8/81-CS-II dated 30.4.1987, and the Department of Personnel and Training's O.M. No. 1/14/88-CS-III dated 31.3.1989 and 1/18/88-CS-III dated 1.4.1989, for all casual labourers engaged prior to 7.6.1988, but who had not been regularised by the authority concerned for want of regular vacancies or whose service has been dispensed with for want of regular vacancies. Since the Department of Personnel & Training is monitoring the implementation of the instructions issued vide O.M. dated 7.6.1988, the Union of India through that Department, should undertake to prepare a suitable scheme for absorbing such casual labourers in various ministries/departments and subordinate and attached offices other than the Ministry of Railways and Ministry of Communications. Their absorption should be on the basis of the total number of days worked by the persons concerned. Those who have worked for 240 days/206 days (in the case of six days/five days week, respectively), in each of the two years prior to 7.6.1988 will have priority over the others in regard to absorption. They would also be entitled to their absorption in the existing or future vacancies. Those who have worked for lesser periods, should also be considered for absorption, but they will be entitled to wages for the period they actually worked as casual labourers. No fresh engagement of casual labourers against regular vacancies shall normally be resorted to before absorbing the surplus casual labourers. The fact that some of them may not have been sponsored by the Employment Exchange, should not stand in the way of their absorption. Similarly, they should not be considered ineligible for absorption if at the time of their initial engagement, they were within the prescribed age-limit.

22. A scheme as indicated above should apply to all the ministries/departments of the Government of India and offices under their control except where schemes have already been prepared pursuant to the directions of the Supreme Court, such as in the Railways and the Ministry of Communications. It should also apply, mutatis mutandis, to the Office of the Comptroller and Auditor General of India and offices under the Comptroller and Auditor General of India."

18. In the light of the above, the application is disposed of with the following directions:-

(i) We hold that the impugned order of termination

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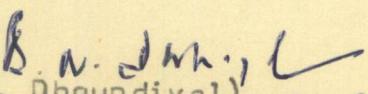
of services of the applicant is not legally sustainable. The respondents are directed to continue the services of the applicant as Casual Labourer in any vacancy in the post of Group 'D' arising in the Office of the respondents. For this purpose, the Delhi Administration and the various offices under them shall be treated as a single unit. They shall comply with this direction within a period of three months from the date of receipt of this order.

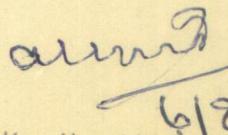
(ii) The respondents are directed not to induct fresh recruits as Casual Labourers through Employment Exchange or otherwise, overlooking the preferential claims of the applicant.

(iii) In the facts and circumstances of the case, we do not direct payment of back wages to the applicant.

(iv) The emoluments to be given to the applicant should be strictly in accordance with the instructions issued by the Department of Personnel & Training.

(v) The respondents shall consider the case of the applicant for regularisation after he has put in the requisite number of days of service. There will be no order as to costs.

  
(B.N. Dholiyal)  
Administrative Member 6/9/91

  
(P.K. Kartha)  
Vice-Chairman (Judl.) 6/9/91