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In the Central Administrative Tribunal  
Principal Bench, New Delhi

Regn. No. OA-57/90

Date: 18.5.1990.

Smt. Shakuntla Devi .... Applicant

Versus

Secretary, Department .... Respondent  
of Food, Ministry of  
Food & Civil Supplies.

For the Applicant .... Shri M.P. Saxena, Advocate

For the Respondents .... Shri P.H. Ramchandani,  
Sr. Advocate.

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)  
Hon'ble Shri D.K. Chakravorty, 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*

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

The applicant, who has worked as a daily-wage  
labourer in the Department of Food, filed this application  
under Section 19 of the Administrative Tribunals Act, 1985,  
praying that the respondents be directed to regularise her  
services w.e.f. 5.5.1986 with consequential benefits. She  
had filed OA-1873/88 in this Tribunal which was disposed  
of by judgement dated 11.10.1988. The Tribunal had  
directed the respondents to consider her case for regularisa-  
tion in terms of the orders regulating the same on or before  
30.11.1988 till which time the respondents were directed  
to continue her in service. She was also given the  
opportunity to make a representation to the respondents  
with all the relevant documents on or before 31.10.1988.

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2. The application filed by the applicant earlier had been disposed of along with two other applications filed by two other similarly situated persons (OA-1844/88 and OA-1877/88) filed by Behari Lal and Mehak Singh, respectively). While the respondents have continued in service S/Shri Behari Lal and Mehak Singh, the services of the applicant have been dispensed with w.e.f. 7.11.1987 by verbal orders. S/Shri Behari Lal & Mehak Singh have also been regularised w.e.f. 25.8.1989.

3. Being aggrieved by the decision of the respondents, the applicant has filed the present application.

4. We have carefully gone through the records of the case and have heard the learned counsel for both the parties. The ground on which the respondents have sought to justify the impugned order of termination is that the applicant has not put in the requisite number of days for the purpose of regularisation in a Group 'D' post unlike that of Behari Lal and Mehak Singh who have already been regularised. The learned counsel for the respondents produced before us the details of the period of service put in by the applicant and S/Shri Behari Lal and Mehak Singh which are as under:-

| <u>Behari Lal</u>                | <u>Mehak Singh</u>               | <u>The applicant</u>           |
|----------------------------------|----------------------------------|--------------------------------|
| July 88 to June 89<br>(292 days) | July 88 to June 89<br>(254 days) | Dec.88 to Nov.89<br>(224 days) |
| July 87 to June 88<br>(211 days) | July 87 to June 88<br>(221 days) | Dec.87 to Nov.88<br>(190 days) |

4. Thus, it will be seen that the period of service of the applicant is short by 16 days in 1987-88, while it is 18 days more than 206 days in 1988-89. Strictly speaking, the applicant does not fulfil the criterion of having

worked for 206 days continuously as Casual Labourer during each of the two years of service prescribed in the Office Memorandum issued by the Department of Personnel on 26th October, 1984. In other respects, she fulfils the requirements for regularisation.

5. In our opinion, the case of the applicant is a borderline case. If the criterion of having worked for 206 days in each of the two years is not insisted upon, she would fulfil the requirement. Apart from this, the statistics provided by the learned counsel for the respondents does not take into account the weekly off/holidays. The learned counsel for the applicant has contended that the wages of the daily-rated labourers have been fixed after taking into account the weekly off holidays. He has drawn attention to the Office Memorandum No. S-32021/16/86-W.C. (M.W.) dated 8th September, 1987 issued by the Government of India, Ministry of Labour, para.2 of which reads as under:-

"It is hereby clarified that this rate (wage rate of unskilled casual workers employed in Central Government offices) is inclusive of the pay for two weekly days of rest for which no separate payment is to be paid. However, if the workers are asked to work on these weekly offs/holidays, they will be entitled to the normal wages referred to above, provided their working hours is same as during the normal working days."

6. In H.P. Singh Vs. Reserve Bank of India, A.I.R. 1986 S.C. 132, the Supreme Court has observed that Sundays and holidays should also be reckoned for the purpose of computing the number of 240 days put in by an industrial

employee for purposes of protection under the Industrial Disputes Act, 1947. Though the provisions of the Industrial Disputes Act are not applicable to Central Government establishments performing governmental functions, the principle enunciated by the Supreme Court would be applicable for the limited purpose of computing the number of working days put in by a casual worker.

7. If we take into account Sundays and holidays for computing the number of 206 days, the applicant will come within the parameters of the Office Memorandum issued by the Department of Personnel.

8. The respondents have stated in their counter-affidavit that they are not engaging any daily-wage labourers at present following the instructions issued by the Department of Personnel & Training to discourage the engagement of all daily-wage labourers. As against this, the learned counsel for the applicant has brought to our notice that there are vacancies in the office of the respondents. In this context, he referred to the promotion of 9 employees to higher posts and the resultant vacancies in the posts of Casual Labourer vide serial Nos. 1-9 of the seniority list circulated by the respondents on 23rd February, 1990 (vide Circular No. A-23015/1/90-Estt. 2).

9. In two recent decisions, this Tribunal has dealt with in detail the position of the Casual Labourers employed in Central Government establishments (vide judgement dated 11.1.1990 in Durga Prasad Tewari & Ors. Vs. Union of India & Another, A.T.R. 1990 (1) C.A.T. 233 and judgement dated 16.2.1990 in OA-2306/89 - Raj Kamal & Others Vs. Union of India). In Raj Kamal's case, we have referred to the authoritative pronouncements of the

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Supreme Court on the subject and have observed that the Union of India should consider the question of formulation of a scheme for absorption of Casual Labourers who have worked continuously for more than one year. We reiterate the same view.

10. In the light of the foregoing discussions, the application is disposed of with the following orders and directions:-

- (i) The respondents are directed to consider the question of regularisation of the applicant in a Group 'D' post in any of the vacancies arising in the Ministry of Food & Civil Supplies and its offices at Delhi. In case no vacancies exist in the Ministry of Food & Civil Supplies and its offices in Delhi, she should be adjusted against the vacancies of Group 'D' staff in other ministries/departments/attached/subordinate offices of the Central Govt.
- (ii) Till the applicant is regularised as directed in (i) above, the applicant shall be retained as a Casual Labourer in the office of the respondents. The respondents are also further directed not to induct fresh recruits as Casual Labourers through Employment Exchange or otherwise, overlooking the preferential claim of the applicant.
- (iii) The emoluments to be given to the applicant till her regularisation, should be strictly in accordance with the orders and instructions issued by the Department of Personnel and

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Training. After regularisation, she should be paid the same pay and allowances as a regular employee belonging to the Group 'D' category.

The parties will bear their own costs.

*D. K. Chakravorty*  
(D. K. Chakravorty)  
Administrative Member

18/5/70

*P. K. Kartha*  
18/5/70  
(P. K. Kartha)  
Vice-Chairman (Judl.)