

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 954
T.A. No.

19890

DATE OF DECISION

26. 10. 70.

Shri A. Rai & Ors.

Petitioner

Shri P. T. S. Murthy,

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri A. K. Behra, proxy counsel
for Shri P. H. Ramchandani, Sr.

Advocate for the Respondent(s)

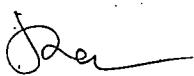
CORAM

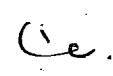
The Hon'ble Mr. P.C. Jain, Member (Administrative)

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

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?
4. Whether it needs to be circulated to other Benches of the Tribunal?

MGIPRRND-12 CAT/86-3-12-86-15,000


(J.P. Sharma)
Member (Judl.)


(P.C. Jain)
Member (Admn.)

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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. NO.954/90

DATE OF DECISION: 26. 10. 1990

SHRI A. RAI & OTHERS

..APPLICANTS

VERSUS

UNION OF INDIA & OTHERS

..RESPONDENTS

SHRI P.T.S. MURTHY WITH
SHRI M.L. CHAWLA

..COUNSEL FOR THE APPLICANTS

SHRI A.K. BEHRA

..PROXY COUNSEL FOR
SHRI P.H. RAMCHANDANI, SR. ADVOCATE

CORAM:

HON'BLE SHRI P.C. JAIN, ADMINISTRATIVE MEMBER

HON'BLE SHRI J.P. SHARMA, JUDICIAL MEMBER

J U D G E M E N T

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

The applicants filed the application under Section 19 of the Administrative Tribunals Act, 1985 assailing the order of their termination dated 29.9.1988 with effect from 1.10.1988. The applicants claimed the relief for quashing the impugned order dated 29.9.1988, for being treated in continuous service with the respondents; for entitlement to be regularised in appointment having put in more than 240/206 days of work, in a calendar year, with occasional artificial breaks given by the respondents.

2. Applicants' case is that they were given employment as casual labour by the Air Headquarters,

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New Delhi through the Employment Exchange. The Specimen appointment letter of Hira Lal Applicant No.2 dated 11.7.1987 (Annexure-II) is filed to show that the initial appointment was to last for 89 days which could be curtailed; giving no right to the applicants to claim any lien on the posts. The engagement of the applicants, however, continued with artificial breaks of some duration.

3. The applicants alleged that the respondents recently discontinued issue of memo of appointments. It is further alleged that in order to keep the period of engagement less than 240/206 days in a year, the applicants are not appointed for a continuous period though most of the applicants have worked as casual labour for 240 days in a year. It is stated by the applicants that even after terminating the services of the applicants on 30.9.1988, the respondents have been continuing to engage fresh casual labourers. Seven fresh casual labourers were engaged on 6.12.1989 though the applicants were available for engagement or re-appointment if continuity was not desired to be broken by the respondents. Only applicant No.1, Shri A. Rai was re-engaged on 5.10.1989 while other applicants were not taken back on the posts. The applicant No.4 Raj Dev, No.9 Inder Singh and No.11 Dilbar Singh Rawal were engaged with effect from 2.4.1990 while the other applicants were not given further appointment. The respondents are continuing to make fresh appointments through the Employment Exchange ignoring the claim of the applicants, hence representations were made to the respondents for redressal of their grievances. In spite of several

reminders made to the respondents by the applicants, they have not been given any engagement; hence this application.

4. The respondents in their reply stated that the work assigned to these casual labourers is not of regular nature. The emoluments are paid out of the contingency fund allotted to respondent No.1. These casual labourers are given employment under the Provisions of Rule 58-C(V) of Financial Regulations, Pt. I, Vol.I It is further contended that the break in the period of service of these casual labourers is given under the authority of C.A.O. & J.S., Ministry of Defence O.M. No.A/13683/CL/CAO/R-1 dated 27.9.1988. The total number of days the applicant have worked with the respondents is given in Annexure R-3. The applicants Shri Raj Dev and Hira Lal only have to their credit 240 working days in a year and other applicants are far behind this target. The respondents have conceded that after the termination of the services of already engaged casual labourers, when the occasion arises to fill up the vacancies, a requisition is made to the Employment Exchange and after selection from the list received the fresh appointments out of the persons sponsored by the Employment Exchange are made. The respondents followed O.M. dated 7.6.1988 issued by the Department of Personnel in the matter of casual labourers. This O.M. lays down the guidelines for the retention, regularisation and termination of the casual labourers appointed and also provides

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for review of such appointments after every six months. Applicants, as per the contention of the respondents, are not entitled to any relief.

5. We have heard the learned counsel of the parties and perused the record.

6. The respondents' objection on the point of limitation has no force. The impugned order is dated 29.9.1988 and the order is a sort of intimation calling upon the applicants and others to collect their wages on 7.10.1988 and not to report for work on 1.10.1988. The present application is filed on 26.4.1990. In case where a representation has been made, the impugned order can be challenged after waiting for six months within a year. However, in the present case some of the applicants on the basis of representations have been given re-engagement in October, 1989 and some in January, 1990. This application, therefore, is not barred by Section 21 of the Administrative Tribunals Act and is within time.

7. The learned counsel for the applicants pointed out that the policy of breaking the continuity of employment of these already working on the jobs and engaging fresh labourers is not in accordance with law, and further there has been violation of Section 25F of the Industrial Disputes Act, 1947. The respondents cannot resort to hire-fire policy. The Department of Personnel and Administrative Reforms has issued O.M. of 26.10.1984 and 7.6.1988 regarding the engagement of casual labourers. According to

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O.M. of 26.10.1984, the services of the casual labourers in Grade 'D' post are to be regularised provided he has put in 2 years' continuous service with 240 days or more service in each of the two years. Where 5 days' week is observed, this figure of 240 days is taken as 206 days. In the Rehmatullah's case (1989) 2 SLJ 293, the Full Bench of this Tribunal held that although a casual labour does not hold a civil post, yet he is in the civil service of the Union of India. There are no specific Rules for their appointment and termination of service. They are to be governed by the principles of natural justice.

8. The learned counsel for the applicants pointed out that the respondents in their reply in para 4.4. of page 6 have stated that the casual labourers are kept on duty within the scope of para 15 of the Model Standing Orders (Annexure R-1) whereby the limitations of casual employment do not extend beyond the one given in Section 25B of the Industrial Disputes Act, 1947. It is further admitted by the respondents in the reply that the work as also the need for employment of casual labourers is there but the services of the 24 casual labourers had to be terminated under the Authority of CAO & JS Ministry of Defence O.M. No.13683/CL/CAO/R-1 dated 27.9.1988 (Annexure-II) It is therefore, a clear case of termination of services without any reasonable and proper cause.

9. The model orders lay down the guidelines in para 15 (Annexure R-1) as follows:

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"Regularisation:

(i) A casual workman who has completed six months of continuous service in the same establishment or under the same employer within the meaning of sub-clause (b) of Clause (2) of Section 25B of the Industrial Disputes Act, 1947, shall be brought on to the regular strength of the establishment and his pay shall be fixed at the minimum in the time scale of pay applicable to the work he has been doing as a casual workman.

(ii) A casual workman who has completed 90 days of continuous service in the same establishment or under the same employer shall be given preference for such casual employment in that establishment or under the same employer over a workman who has not completed his period of 90 days."

The termination is also violative of the ratio laid down by the Hon'ble Supreme Court in Dharwad District P.W.D. Literate Daily Wage 'Employees Association and Others Vs. State of Karnataka & Others reported in (1990) 2 S.L.J. page 43. The Hon'ble Supreme Court has issued directions for absorption of the casual labourers who have put in years of service. The fresh recruitment after termination of the services of a casual labourer who has worked for 89 days and not retaining him is arbitrary. The Department of Personnel and Training also issued the O.M. dated 7.6.1988 on the recruitment of casual workers and persons on daily wages. In para (xi)(a) it has been specifically laid down "all eligible casual workers are adjusted against regular posts to the extent such regular posts are justified."

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10. The contention of the respondents that the work taken from the applicants is not of a regular nature is not correct. Paras 4.3 and 4.4. of the counter of the respondents state the types of work being taken from these labourers. The work conformed is of usual comon type which needs to be done regularly and daily. The respondents themselves have stated in the reply that cleanliness is of utmost importance in the AIR Headquarters as foreign digniteries and V.I.Ps visit the Chief of the Air Staff. This warrants a situation where the engagement of the applicants becomes more necessary and imminent. The policy of calling frfresh names from the Employment Exchange and allowing the experienced tested labourers to go unceremoniously cannot be justified by any reasoning.

11. In view of the above discussion, the application is disposed of in the manner that the respondents shall give employment to the applicants in preference to the fresh casual labour from the Employment Exchange or open market as and when vacancy occurs. A further direction is issued to the respondents not to disengage the so employed applicants unless and until there is no work on which they can be employed and there is no need to engage any casual labour. A further direction is given to the respondents that those applicants who have put in more than the minimum working days as casual labour with the respondents as per O.M. dated 7.6.1988 should be regularised as and when clear vacancies occur.

12. In the circumstances of the case, the parties are left to bear their own costs.

J. P. SHARMA
(J.P. SHARMA)
MEMBER (J)

C. C. JAIN
(P.C. JAIN)
MEMBER (A)