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In the Central Administrative Tribunal
Principal Bench, New Delhi

Regn. Nos.:

Date: 24.12.1991.

- ✓ 1. OA-1154/91
2. OA-1827/90
3. OA-1843/90
4. OA-1954/90

- | | | |
|-----------------------|---|-----------------|
| 1. Shri P. Munu Swamy |) | |
| 2. Shri Maham Das |) | |
| 3. Shri Yash Pal |) | Applicants |
| 4. Shri Ramesh Chand |) | |

Versus

Union of India through
the Dir. Gen., All
India Radio, New Delhi

.... Respondents

For the Applicants

.... Shri K.N.R. Pillai, Counsel

For the Respondents 1 & 2

.... Shri K.C. Mittal, Counsel

For the Respondents 3 & 4

.... Shri P.P. Khurana, Counsel

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

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

The applicants, who have worked as Casual Labourers in the office of the respondents, are aggrieved by the termination of their services by the respondents. As common questions of law have been raised in these applications, it is proposed to deal with them by a common judgement.

2. The applicant in OA-1154/91 has worked as a casual labourer in the office of the respondents from 1984 to 1987 with breaks in between. The details of his service from

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1987 till 8.5.1991, when his services were terminated, are as follows:-

1987 : 6 months from 18.5.87 to 17.11.87 in External Service Division. Photocopy of Identity Card is attached as Annexure A-I.

1988 : 6 months from 14.4.88 to 13.10.88 under Station Director, Delhi. Photocopy of Identity Card is attached as Annexure A-II.

1990 : April 16 days from 16.4.90
May 31 days
June 30 days
July 31 days
August 10 days
September 30 days Identity Cards are attached
October 6 days as Annexures A-III & A-IV.

1991 : April 16 days from 16.4.1991
May 8 days - terminated on 8.5.91.

3. The applicant in OA-18 27/90 has worked as Casual labourer from 1.11.1989 to 30.3.1990 and thereafter, from 23.4.1990 to 14.9.1990 (with breaks in between) when his services were terminated.

4. The applicant in OA-18 43/90 worked as a casual labourer from 8.5.1989 to 10.11.1989 and thereafter from 1.12.1989 to 28.2.1990 (with breaks in between) when his services were terminated.

5. The applicant in OA-1954/90 has worked as a casual labourer from 1.11.1989 to 30.3.1990 and thereafter from 1.5.1990 to 30.9.1990 (with breaks in between) when his services were terminated.

6. A common feature in these cases is that the engagement of casual workers is in short spells, followed by breaks and re-engagement for another short spell of the same persons or

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those who have worked earlier as casual labourers or engagement of fresh recruits from the Employment Exchange. In this manner, a casual worker will not have continuous service for a period of 240 days in a year, so as to claim the protection of the Industrial Disputes Act, 1947 or continuous service of 240 days each year which has been prescribed as an essential condition for regularisation in Central Government offices under the administrative instructions issued by the Department of Personnel and Training from time to time. The case of the respondents is that the engagement of casual labourers is on work-oriented basis and whenever the work is over, the casual labourer is disengaged and again when the need arises, the Employment Exchange is approached to sponsor suitable engagement, ⁹ candidates for/depending on the requirement of work.

7. We have gone through the records of these cases and have heard the learned counsel for both the parties. In our opinion, the system followed by the Central Government and its attached and subordinate offices in this regard is neither fair nor just. In departments or offices needing the services of casual labourers in greater number such as the Railways, Posts & Telegraphs, the C.P.W.D. and the like, the Supreme Court has, therefore, directed formulation of viable schemes with a view to regularising the casual labourers who have worked for 240 days in a year.

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8. As regards the other Central Government departments and their attached offices and subordinate offices, this Tribunal has considered this issue in Durga Prasad Tewari and Others Vs. Union of India & Another, 1990 (3) SLJ (CAT) 94 and Rajkamal and Others Vs. Union of India, 1990 (2) SLJ (CAT) 169. In Durga Prasad Tewari's case, after reviewing the decision of the Supreme Court and the administrative instructions issued by the Department of Personnel & Training, this Tribunal has held that a unit of the Ministry/Department should not be taken in isolation and the Ministry/Department should be taken as a single unit. Reiterating this, it was held in Rajkamal's case, ~~xxxxxxxxxxxx~~ that in order to solve the problem of casual labourers engaged in Central Government offices in a fair and just manner, the proper course for the Government is to prepare a scheme as mentioned in paras. 21 and 22 of the judgement which are reproduced below:-

"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 redeployment of surplus staff, vide Department of Personnel and A.R.'s O.M. No. 3/27/65-CS-II dated 25.2.1966 and amplified vide Department of Personnel and Training 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 and 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."

9. In a batch of cases concerning casual labourers engaged in the Doordarshan, which is a sister organisation of the All India Radio, under the same Ministry of Information & Broadcasting, the respondents were directed "to frame a suitable scheme for absorption of casual labourers and pending this, they were directed to allow the applicants to continue to work as casual labourers in their office so long as there was requirement of casual labourers. In case the disengagement of some of them becomes unavoidable, it should be on the principle of 'last come, first go'. Till the applicants

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have been regularised, the respondents may not resort to fresh recruitment through Employment Exchange or otherwise. Till they are regularised, the wages to be paid to them should be in accordance with the minimum in the scale of pay of the post held by a regular employee in a Group 'D' post. After regularisation, they should be placed on par with regular Group 'D' employees in respect of their service conditions and benefits." (Vide judgement dated 26.4.1991 in DA-2052/89 and connected matters, Rameshwar and Others Vs. Union of India through the Director General, Doordarshan).

10. In the light of the above, the appropriate course for the respondents would be to frame a suitable scheme on the same pattern in their Department. The learned counsel for the respondents, however, submitted that it is not feasible to prepare such a viable scheme with respect to All India Radio where the number of casual labourers engaged from time to time is not considerable. Be that as it may, we are of the view that the All India Radio and its various attached offices should not be treated as isolated pockets for the purpose of engagement and disengagement of casual labourers and all of them should be treated as a single unit for that purpose. The learned counsel for the applicants stated that there are several units of the All India Radio, such as the Engineering Units and Establishments located not only at Delhi, but spread all over the country. The details of these are not available on record.

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11. In the light of the above, the applications are disposed of with the following orders and directions:-

- (i) The respondents are directed to prepare a list of casual labourers engaged in their various offices located in Delhi and elsewhere from time to time through Employment Exchange or otherwise. Whenever they need the services of casual labourers, they should be engaged from the said list, preference being given to those who have put in longer period of service than the others. The broken periods of service shall not be reckoned for the purpose of determining the total length of service.
- (ii) We hold that the practice of disengaging casual labourers and engaging fresh recruits through Employment Exchange is not legally sustainable and disapprove the same.
- (iii) The respondents shall consider regularisation of the casual labourers in Group 'D' posts whenever vacancy arises due to retirement or otherwise. Such regularisation should be in accordance with the administrative instructions issued by the Department of Personnel & Training. Till they are so regularised, they should be paid wages on the scale prescribed by the Department of Personnel & Training.

(iv) The applicants shall be accommodated as casual labourers in their offices located at Delhi or elsewhere, depending on the availability of vacancies and in accordance with the aforesaid directions. Interim orders passed in these cases, are hereby made absolute.

(v) There will be no order as to costs.

Let a copy of this order be placed in OA-1154/91, OA-1827/90, OA-1843/90 and OA-1954/90.

B. N. Dhoundiyal
(B.N. Dhoundiyal)
Administrative Member

P.K. Kartha
24/12/81
(P.K. Kartha)
Vice-Chairman(Judl.)