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Central Administrative Tribunal, Principal Bench

O.A.No.3104/91

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this 17th day of March, 1997

1. Inderjit Singh  
s/o Shri Banarasi Fass  
r/o Adarsh Nagar Colony  
Modi Nagar Road  
Near Ambedkar Library  
Ghaziabad.
2. Harendra Singh  
s/o Shri Bachchi Singh  
r/o 109, Aliganj,  
Lodhi Road  
New Delhi - 110 003.
3. Surendra Singh  
s/o Shri Sardar Singh  
r/o Village and P.O. Hiranki  
Delhi - 110 036.

... Applicants

(By Shri B.B.Raval, Advocate)

Vs.

1. Union of India through  
the Secretary  
M/o Urban Development  
Government of India  
Nirman Bhawan  
New Delhi - 110 011.
2. The Director General  
Central Public Works Department  
M/o Urban Development  
Government of India  
Nirman Bhawan  
New Delhi - 110 011.

... Respondents

(By Shri M.L.Verma, Advocate)

O R D E R

The applicants, three in number allege that their services ~~are~~ are likely to be terminated and that they are being discriminated inasmuch others similarly situated who are working with the senior officers, are being retained. The applicants were employed as daily wage workers through the Employment Exchange for various periods. Applicant No.1 joined in 1988, Applicant No.2 was appointed on 19.3.1991, and Applicant No.3 was appointed in May, 1989. They seek a

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direction that their services be continued at least till February, 1992<sup>and</sup> thereafter their services be regularised in their own turn under the respondents.

2. The respondents state in reply that the applicants were engaged as Casual Labourers for four to five months to work as Watermen during the hot weather in 1989. After the hot weather was over their services were terminated. The same exercise was again repeated in 1990 and thereafter. They admit that five persons were retained to attend to certain works in the store/record room and later on they were regularised in some other zones and circles for CPWD organisation.

3. When the matter came up first on 24.12.1991 an interim order was passed with the following directions:

"we direct that the respondents shall continue the applicants as daily paid labourers so long as they need the services of such persons in preference to persons with lesser length of service and outsiders".

4. A Miscellaneous Petition No.2034/92 was filed by the applicants stating that their services had been disbanded as on 31.1.1992 even though there were vacancies and even though juniors who came after them, continued to remain employed. It was also alleged that the respondents, in their counter affidavit, had made a blatantly false statement that they had not engaged any such workers at all. The names of such daily paid workers with their Identity Cards number were also mentioned. The respondents in their reply to the MP No.2034/92 stated that no Casual Labour was employed in the office in which the applicants had been engaged, i.e., office of DG(W), CPWD and the persons mentioned in the MA were working with other offices of Chief Engineers, Superintendent Engineers, Executive Engineers in CPWD and passes were issued

in some cases where such persons were required to visit Nirman Bhawan. In the rejoinder, the applicant, asserted that all daily wagers were appointed through the same source and some of the persons had been continued in service only because they were working at the residences of the senior officers. It was also stated that the claim of the respondents that the identity cards were issued to those who were working in outside offices to visit Nirman Bhawan was also not based on facts.

5. I have heard Shri B.B.Raval, learned counsel for the applicants and Shri M.L.Verma, learned counsel for the respondents at great length. The learned counsel for the applicants took me through the OA as well as MP No.2034/92, the additional affidavits filed on behalf of the applicants and respondents in the OA as well as the MAs and tried to show that on the basis of the replies furnished by the respondents themselves it is apparent that they had not only retained some of the juniors to the applicants but had also engaged freshers and outsiders subsequently, without re-engagement of the applicants despite the interim order passed on 24.12.1991 which has been reproduced above. He argued that the version of the applicants is not to be believed as prevarications and untruths are apparent on the basis of their own affidavits. The learned counsel for the respondents on the other hand has denied the allegation of the applicants regarding retention of juniors or engagement of freshers. He has explained that the five persons who had been retained and regularised, according to the applicants, were working in different offices and were engaged for different purposes. Further, the names of persons mentioned in the MP No.2034/92 are of those persons who were employed by the contractor engaged for maintenance of water coolers etc. and not directly by the Department.

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6. I have considered the matter carefully. In OA as well as MP No.2034/92, when the matter had come up on 17.11.1993 on the question of initiating the contempt of Court action, the following order was passed:

"The applicants have already been given interim relief by the order dated 24.12.1991. The averments made in the M.P. allege that the respondents have violated that interim order. In our view that complaint should be agitated in contempt proceedings."

7. No contempt petition was however filed. Coming to the merits of the case, clearly the applicants have no right for further engagement as Casual Labour if no work is available with the respondents. It is the case of the applicants, as argued by the learned counsel for the applicants, that work is available, since some juniors were admittedly retained, and more persons were engaged through a contractor which is nothing but <sup>an attempt to</sup> ~~trying~~ to circumvent the interim order of this Tribunal. The respondents on the other hand state that no seniority list or casual labour register were maintained for persons in the office in which the applicants had been originally employed and work of waterman had thereafter been assigned to the contractors. The plea of the respondents that they have not maintained any record, seniority list or register for the Casual Labour cannot be accepted at all. The Interim orders of this Tribunal were clear that the applicants would continue as daily wage employees so long as respondent needed services of such persons, in preference to juniors with lesser length of service and outsiders. The applicants had a right to be preferred to those who had rendered less casual service or those who had been employed as freshers. This is thus not a question of maintenance of seniority list but of preferring the applicants if they had been engaged for longer period as casual labour. The respondents explanation is that

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those who had been retained and even regularised were in different offices. The office in question is office of DG(W) which is the apex office of the CPWD.

8. The respondents say in their reply at Page 3 as follows:

"The contention of Applicant No.1 that five persons were retained to attend certain works in form store/record room and latter on they were regularised in some zones/circles for the CPWD organisation, is correct."

9. It is clear from the above statement that these persons were recruited as Daily Wagers for the office of DG(W) in the same way as the applicants. Thus the applicants were entitled to be considered for regularisation in case they had longer service.

10. In view of the above position, clearly the applicants have a case unless it can be shown that these persons <sup>in para 8 above</sup> were engaged in a different establishment and were then retained and regularised there itself.

11. In the facts and circumstances of the case I dispose of the OA with the following directions:

The respondents will consider the case of the applicants for re-engagement and regularisation, with reference to the five persons mentioned in para 3 of their reply and in case these persons had lesser service than that of the applicants at the time the applicants were disengaged then the respondents would also consider the applicants for re-engagement and regularisation. In this situation the applicants

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will also be entitled in terms of the interim order passed to the back wages as Casual Labour for the intervening period.

12. The OA is disposed of with the above directions. No costs.

*R.K. Ahooja*  
(R.K. AHOOJA)  
MEMBER (A)

/rao/