

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 838/91
T.A. No.

199

DATE OF DECISION 30th January, 1992,

Shri Raja Ram MaliPetitionerMrs. Rani ChhabraAdvocate for the Petitioner(s)

Versus

Union of India & OthersRespondentShri P.P. KhuranaAdvocate for the Respondent(s)

CORAM

The Hon'ble Mr.

The Hon'ble Mr.

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

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

D.K. Chakravorty
(D.K. CHAKRAVORTY)
MEMBER (A)

(13)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN.NO.OA 838/91

Date of decision : 30th Jan., 92.

Shri Raja Ram Mali. ... Applicant

Versus

Union of India & ors. ... Respondents

CORAM:

THE HON'BLE MR.D.K.CHAKRAVORTY, MEMBER(A)
THE HON'BLE MR.J.P.SHARMA, MEMBER(J)

For the Applicant ... Mrs.Rani Chhabra,
Counsel.

For the Respondents ... Shri P.P.Khurana,
Counsel.

JUDGEMENT

**(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR.J.P.SHARMA, MEMBER(J))**

The applicant moved this application under section 19 of the Administrative Tribunals Act, 1985 being aggrieved by the Memorandum dated 5.6.1990 issued by the Department of Telecommunication whereby he was demoted and deputed as a part time employee instead of absorbing him on permanent basis. The impugned Memorandum dated 5.6.1990 goes to show that XXXXXXXXXXXXXXXXXX wages of Rs.776/- per month was sanctioned for payment to the applicant as part time Mali.

2. The applicant has claimed the relief that said impugned order dated 5.6.1990 (Annexure 'C') be quashed and set aside and the respondents be directed to absorb him permanently as full time Mali and to restrain the respondents from terminating

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his services.

3. The facts of the case are that the applicant was recruited by the Department of Telecom. as casual labourer for doing the work of Mali in the Telegraph Department under the Divisional Office X-Bar Exchange, Meerut and then under Sub-Divisional Office, Baraut which comes under the Meerut Division. The applicant has been working continuously/^{in the Department} since July 1986, under the Divisional Office X-Bar Exchange Meerut from July 1986 to January, 1988 and then from February 1988 to May, 1990 under the Sub-Divisional Office Baraut and as such he has completed 1397 days continuously in the Department. The name of the applicant was on the muster roll maintained by the respondents (Annexures 'A' & 'B'). The respondents, however, instead of regularising the applicant as per the directions of the Hon'ble Supreme Court, issued the Memorandum dated 5.6.1990 demoting him and deputing him as a part time employee. According to the applicant, the respondents have devised this method to get rid of him instead of directly retrenching him. The grievance of the applicant is that instead of being regularised, as he has put in for more than 4 years service and acquired a temporary status, he has been punished unceremoniously

and as such his demotion is ab-initio illegal. The applicant earlier moved OA 1263/90 under Section 19 of the Administrative Tribunals Act, 1985 and the Hon'ble Tribunal passed an order directing the applicant to approach the concerned authorities requesting them for absorption in the regular cadre in accordance with the various directions of the Hon'ble Supreme Court. The applicant accordingly made a representation dated 29.6.1990 (Annexure 'D'). However, on the representation of the applicant no action has been taken and six months have since passed when the present application had been filed. The case of the applicant is that the casual labourers are covered by the definition of 'Workman' and the Industrial Disputes Act is applicable to them. It is the case of the applicant that he having worked for more than 4 years should have been regularised and the respondents through their action have violated the fundamental rights guaranteed under Articles 14, 16 & 21 of the Constitution.

4. The respondent No.3, Sub-Divisional Officer Telegraph, Telecommunication Office, Barut contested the application, filed the written statement and stated that the applicant was only a casual labourer and was not in the employment of the Central Government. The applicant was engaged purely on casual basis

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for different works and never worked continuously with the respondents. Since he was engaged after 30.3.1985, he was removed from the casual labourer and kept as part-time Mali. The applicant was engaged purely on casual basis to work on muster roll. He was never in the employment of the Department. It is further stated that he was engaged after March, 1985 and, therefore, the scheme of the Government giving the applicant as temporary status is not applicable. In view of the objections raised in the written statement, the respondent No.3 has prayed that the application be dismissed being devoid of merit and misconceived.

5. We have heard the learned counsel for for both parties and have gone through the records of the case carefully.

6. The applicant has filed a chart as Annexure 'A' showing that he had been engaged since July 1986. He was also engaged for the months of August, October, November and Decembe in 1986. In the year 1987, he worked for the whole year. In the year 1988, he worked in January. In all these years, he has worked in the X-Bar Exchange, Meerut. The applicant has also filed another chart at Annexure 'B' showing that he has worked in the office of the Sub-Divisional Officer Telegraphs from Feb.1988 till May, 1990. The applicant has

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also filed a copy of the Casual Labourers(Grant of Temporary Status and Regularisation) Scheme of the Department of Telecommunication,1989(Annexure 'E' page 30 of the paper-book).

7. The learned counsel for the applicant argued that as per the judgement of the Full Bench of this Tribunal in Rehmat Ullah Khan & Ors. Vs. Union of India & ors.,1989(2) SCJ 293(Cat),the Tribunal has jurisdiction to entertain the cases of casual labour/daily rated/daily wager under Section 19 of the Administrative Tribunals Act,1985. The learned counsel for the applicant also relied upon the judgement of the Principal Bench delivered in a bunch of OAs decided on 18.5.90(Sh.Hari Shankar Swamy Vs.Union of India & ors) and 9 other OAs in which the matter in issue was also casual labourer. In the above-referred case, the Bench also considered the judgement of the Hon'ble Supreme Court in the case of **Jagrit Mazdoor Union Vs. Mahanagar Telephone Nigam Limited, 1989(2) SCALE**

1455. The Supreme Court found that the scheme of Casual Labourers(Grant of Temporary Status and Regularisation) was comprehensive and apart from provision for conferment of temporary status, it also specified the benefits available on conferment of such status. In above-referred judgement, in the case of J.M.Union, the Supreme Court further observed that temporary

status would be available to the casual labourers in the Postal Department on completion of one year of continuous service with at least 240 days of work(206 days in the case of offices observing 5 days week) and on conferment of temporary status, the House Rent Allowance and City Compensation Allowance shall be admissible. After years of continuous service with temporary status, the casual labourers shall be treated at par with temporary Group 'D' employees of the Department of P&T would thereby be entitled to such benefits as are admissible to Group 'D' employees working on regular basis. Similarly, the Hon'ble Supreme Court in the case of **Dhirendra Chamoli vs. State of U.P. 1986(1) SCC 637** a similar view had been taken in respect of the employees working in the Nehru Yuvak Kendras; who were considered to be performing the same duties as Class IV employees. The Supreme Court, therefore, directed the Government and other authorities to pay wages to workers who were employed as casual labourers belonging to the casual categories of employees in the Postal and Telegraphs Department at the rates equivalent to the minimum pay scales of the regularly employed workers in the corresponding cadres but without any increments. In **Inder Pal Yadav Vs. Union of**

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India, 1985(2) SLR 242; Dakshin Railway Employees Union, Trivandrum Division Vs. General Manager, Southern Railway, AIR 1987 SC 1153; U.P. Income Tax Department Contingent Paid Staff Welfare Association Vs. Union of India & Ors, AIR 1988 SC 517, and Delhi Municipal Karmachari Ekta Union(Registered) Vs. P. L. Singh, AIR 1988 SC 519, the Hon'ble Supreme Court directed the Respondents to prepare schemes for regularising casual labourers who have continuously worked for one year.

8. The plea taken by Respondent No.3 in the Written Statement is that the applicant was only a casual labourer and was not under the employment of the Government. However, in reply to para 4-A 1&2 in the Written Statement, it is submitted by the respondents that the applicant was engaged purely on casual basis for different works and never worked continuously with the respondents. Annexures 'A' & 'B' filed by the applicant to the Original Application goes to show that the applicant has been in continuous engagement, firstly in the Ex-Bar Exchange at Meerut and subsequently at Baraut Telephone Exchange and the period for which the applicant had been on the rolls is about 4 years. In view of this position, respondent No.3 could not in any view of the matter demote the applicant to only a part-time worker and instead,

the applicant should have been considered for regularisation on a post in Class 'D'.

9. The respondent No.3 has also taken the plea that the applicant was disengaged there being no work and he was never employed against regular employment. But this fact is belied by their own documents placed at Annexures 'A' & 'B' to the application.

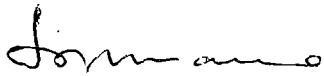
10. There are catena of decisions of this bench also. In OA No.2543 of 1989 which was disposed of by the Principal Bench vide order dated 23.10.90, the applicant therein was recommended for consideration for the post of Typist and was allowed to appear in another examination and the selection to be held by the Staff Selection Commission for the post of Typist/Clerk and provide adequate opportunity for qualifying in the said selection examination. However, he was declared to be entitled to other benefits applicable to casual employees granted temporary status from the date, the temporary status was conferred on him.


11. The applicant has since been working with Respondent No.3 though of course on part-time basis. In view of the above discussion and also as the applicant has already acquired temporary status, the respondents are directed to give him all the benefits of an employee entitled to temporary

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status and he shall be considered for regularisation as and when a clear vacancy arises. He shall also be entitled to regular scale of pay but in the circumstances no back-wages are allowed. The respondents are directed to comply with the above directions within three months from the date of receipt of a copy of this order.

In the circumstances, we leave the parties to bear their own costs.


(J.P.SHARMA)
MEMBER(J) 30.1.92


(D.K.CHAKRAVORTY)
MEMBER(A) 30.1.92