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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA-852/91
OA 852/91

Date of decision: 19.12.1991

Shri Jaibir Singh and Applicants
Others

Versus

Union of India through Respondents
Secy., Miny. of Energy
& Another

For the applicants Shri V.P. Sharma, Counsel

For the Respondents Shri M.L. Verma, Counsel

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *yes*
2. To be referred to the Reporters or not? *yes*

JUDGMENT

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

The applicants, who have worked as casual labourers in the office of the respondents from 10.5.1989 to 16.10.90, are aggrieved by the termination of their services by verbal orders. They have prayed for their reinstatement in service and regularisation.

2. We have gone through the records of the case and have considered the rival contentions. We have also

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gone through the case law cited by both parties.*

There is divergence in the versions of both parties as regards the nature of the engagement and the period thereof. According to the applicants, they were selected for engagement as Peons from a list of 180 names forwarded by the Employment Exchange and to substantiate this, they have produced a photocopy of the minutes of the Selection Committee dated 3.5.1989. The respondents have stated that the applicants have deliberately tinkered with the original report and interpolated the word "Peon" in place of "Waterman" and to substantiate this, they have produced a photocopy of the same document (vide pages 3 and 85 of the paperbook). In our opinion, the version of the respondents deserves credence and not that of the applicants.

3. As regards the period of engagement, the version of the applicants is that they have worked for 525 days from 10.5.1989 to 16.10.1990. The version of the respondents is that they were engaged for summer seasons of 1989 and 1990 and they have produced a chart indicating the number of days worked by them in 1989 from May to December and in 1990 from January to October. Normally, Watermen are engaged in Government offices from April-May to September. That being so, the version of the

* Case law cited by the applicants:

Raj Kamal Vs. Union of India, 1990 (2) SLJ 156;
Dharam Pal Vs. Union of India, OA-146/89.

Case law cited by the respondents:

1987 (4) ATC 109; 1989 (3) SLJ 474;
1990 (1) SLJ 38.

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respondents that the applicants were engaged for summer season as Watermen, is not very convincing. It will, therefore, be appropriate to treat them as Casual labourers having been engaged to ^{do} various odd jobs in the office of the respondents.

4. The applicants have alleged that the respondents were resorting to engage fresh candidates on the posts held by them. They have not given the particulars of such persons. The respondents have stated in their counter-affidavit that with the nomination of a large number of regularly selected candidates for the post of Lower Division Clerks and Stenos through the Staff Selection Commission, the Department had to replace a large number of regularly appointed Group 'D' employees who were holding higher post of Clerk (on ad hoc capacity). They have been reverted to their substantive posts, with the result that a number of ad hoc arrangements made in the chain vacancies of the cadre of Peons/LDC's etc., have been replaced. This has not been controverted by the applicants.

5. According to the administrative instructions issued by the Department of Personnel on 26.10.1984, the services of a casual worker may be regularised in a Group 'D' post, provided, inter alia, he has put in two years as a casual worker with 240 days or more of

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service as such during each year if there is 6-day working week in the office concerned or if he has put in 206 days of service during each year if there is 5-day working week. If Saturdays and Sundays and holidays are reckoned, a view can be taken that the applicants would be entitled to the benefit of the aforesaid O.M. The Tribunal cannot, however, issue any directions to the respondents directing them to re-engage the applicant even if there are no vacancies. At the same time, they have the limited right of being considered for engagement if vacancies exist, in preference to those with lesser length of service and fresh recruits. In our perception, vacancies do occur every year due to retirement of staff in Group 'D' category, creation of posts, etc.

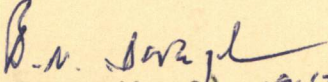
6. In the conspectus of the facts and circumstances of the case, the application is disposed of with the direction to the respondents to consider ^{engaging} the applicants as casual labourers in any existing or future vacancies. The respondents are restrained from making fresh recruitment through Employment Exchange or otherwise, ignoring the preferential claims of the applicants. In the event of their re-engagement, the service already put in by

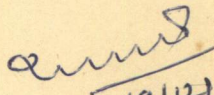
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them should also be reckoned for the purpose of their regularisation. The application is disposed of accordingly. The interim order passed on 12.4.1991 is hereby made absolute.

6. There will be no order as to costs.


(B.N. Dhoundiyal) 19/12/91,
Administrative Member


19/12/91
(P.K. Kartha)
Vice-Chairman(Judl.)