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**Central Administrative Tribunal
Principal Bench**

OA No. 2691/2004

New Delhi, this the 25th day of November, 2005

Hon'ble Mr. Shanker Raju, Member (J)

1. Ashok Kumar
2. Birender Singh
3. Ram Narain Singh
4. Bina Devi
5. Son Kumar
6. Raj Kumar
7. B.D. Paswan
8. Mohd. Firoz Khan
9. Rajveer Singh
10. Ranbir Kumar
11. P. Balkrishnan
12. Sarat Singh

(All the applicants have been working as Daily wager with Temporary Status in the office of Respondent no. 1.)

...Applicants

(By Advocate: Shri M.K. Bhardwaj)

-versus-

Union of India through

1. The Secretary
Govt. of India,
Ministry of Social Justice and Empowerment,
Shastri Bhawan, New Delhi.
2. The Secretary,
Ministry of Personnel,
Public Grievances & Pension,
Department of Personnel & Training,
North Block,
New Delhi.

...Respondents

(By Advocate: Shri V.P. Rao)

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ORDER (ORAL)

By virtue of the present Original Application, applicants have assailed Office Memorandum dated 26.04.2004 whereby, on introduction of new Pension Scheme, the deduction towards GPF has been stopped from the wages of casual labours with temporary status. They have also assailed their non-regularization.

2. Applicants undisputedly have been working as casual labourers for 12 to 15 years and have been accorded temporary status, yet they are not being regularized as an effect of OM dated 26.04.2004 in the grade of casual service.

3. Learned counsel for the applicants would contend, by placing reliance on a decision in the matter of **Ramsaran & Ors. vs. Union of India & Ors.** (OA No. 284/2004) decided on 25.05.2005 where a challenge has been made by the casual workers having temporary status to the OM dated 26.04.2004, whereby the Division Bench of this Tribunal at Jaipur allowing the O.A. held that applicants therein are covered under the old scheme and are entitled to get their GPF contributions deducted.

4. Learned counsel, as regard to regularization, contends that as per DoP&T guidelines dated 26.10.1984 and 07.06.1988 coupled with a decision of Division Bench in **Badri & Others vs. U.T. of Chandigarh**, SLJ 2004 (1)

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CAT, 204; a decision of the Apex Court in **State of West Bengal vs. Pantha Chatterjee**, 2004(1) SLJ SC 135 and the decision in **Rajbir Singh vs. Union of India & Ors.**, (OA No. 1828/2005 decided on 10.11.2005), it is revealed that non-availability of post is not an impediment and consideration for regularization has been ordered. Learned counsel seeks the benefit of the above decisions as according to him, applicants are in all fours covered by the ratio deci dendi derived in the above referred cases.

5. On the other hand, learned counsel for the respondents opposed the contentions and defended the legality of OM dated 26.04.2004. As regards regularization, it is stated that on accord of temporary status unless the applicants are subjected to a selection through regular selection process for group 'D' post, subject to availability of vacant post, claim cannot be considered. However, taking a lenient view, the applicants are being continued in service.

6. On careful consideration of the rival contentions of the parties, as a Single Bench, I am bound by the decision of the Division Bench of this Tribunal at Jaipur in **Ramsaran & Ors. vs. Union of India & Ors.**, (supra) which, by allowing the O.A., restored contribution of GPF in respect of the casual workers having temporary status under the old scheme. I, following the same, also hold that contribution to the GPF cannot be stopped and respondents are bound to allow the casual labourers to contribute towards GPF under

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the old scheme. As regards regularization, if a casual worker has continued for a long, there is presumption of availability of post and work as held by the Apex Court in **Pantha Chatterjee** (supra) relying upon the same in **Badri & Others**, non availability of post and work is not found to be an impediment. Accordingly, a recent decision of **Smt. Guddi vs. NCTD & Ors.** (OA No. 10/2005 decided on 05.05.2005), while according posthumous regularization to a casual worker, it has been held that as a model employer, Government has onerous duty to expedite the process for regularization of service. In **Rajbir Singh's** case (supra), the following observations have been made

"8. A person even performs working in Group-C post on casual basis, does not hold a post in Group-C and , as such, a causal worker even if he performs any sort of work, remains a casual worker as the duties performed by him are incidental to the work attached with the regular service. As such, he neither holds a post nor is treated to be appointed to the said post. According, taking into consideration the welfare of these persons who had continued for long periods and performing work even of casual nature and as the Apex Court in Pantha Chatterjee's case (supra) held that a person even a part time or casual posts has been continued to function for number of years, it raises a presumption that the work which had been performed is of perennial nature and a valid presumption as to the existence of post against which he can be adjusted in future. Relying upon the decision of the Central Administrative Tribunal at Chandigarh in **Badri & Others vs. Union Territory of Chandigarh & Ors.,** 2004(1)SLJ 204, wherein it is held that plea of no vacancy is not a camouflage to deny regularization when a person is

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working for a number of years on casual basis and is being paid pay and allowances, creation of post would not entail extra financial burden. However, the direction to create a post is not domain of the Court.

9. In the result, for the foregoing reasons, this O.A. stands disposed of with a direction to the respondents, keeping in view that the applicants are validly appointee on casual basis, to consider their regularization against Group - D posts in accordance with DoP&T Schemes of 1984 and 1988 respectively. Till then, as it is not disputed that they are still continuing, they shall be continued in the present form. No costs."

7. In the result, for the discussion and reasons recorded above, O.A. stands disposed of with a direction to the respondents to allow contribution of GPF in case of applicants and this would be regulated under the old Scheme and further to consider the cases of the applicants for regularization, within a period of three months from the date of receipt of a copy of this order. No costs.

S. Rajm

(Shanker Raju)
Member (J)

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