

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 3028/2004
MA 2549/2004
MA 343/2005
MA 446/2005
MA 1171/2005
MA 1172/2005

New Delhi, this the 4th day of July, 2005

Hon'ble Mr. S.K. Malhotra, Member (A)

1. Shri Rajender Kumar
S/o Shri Gyan Chand
R/o 205-L, Savitri Nagar,
New Delhi – 110 017.
2. Amar Bahadur
S/o Teg Bahadur,
R/o Swaran Jyanti Vihar,
Tikri Khurd, Narela,
Delhi – 110 040.
3. Rajbir Singh
S/o Sh. Bhajanlal,
R/o Village Sadallapur,
Post Vedpura,
Distt. Gautam Budh Nagar,
(U.P.)
4. Digamber Singh
S/o Shri Sardar Singh,
R/o B-708, Jawalapuri,
Nangloi, Delhi – 110 087.
5. Narender Singh
S/o Kuwar Singh,
R/o G-72, Sector-4, Pushp Vihar,
New Delhi – 110 017.
6. Surender Kumar,
S/o Shri Rambali Prasad,
R/o M-569, Mangol Puri
Delhi – 110 083.
7. Bhuwan Chand
S/o Sh. Krishna Nand
R/o 78/121, Roshnara Road,
Delhi – 110 007.
8. Mahesh Chand
S/o Shri Prem Ballabh,
R/o A-1/26, Rajapuri,
Uttam Nagar,
New Delhi – 110 059.
9. Surender Singh
S/o Late Sh. Trilok Singh Adhikari,
R/o 361, Block-A, Minto Road,
New Delhi – 110 002.

10. Deepak Singh
S/o Sh. Sahdev Singh Rawat,
R/o RZ-34/216, J-Block,
West Sagarpur, New Delhi.
11. Dinesh Singh
S/o Jagat Singh Bhandari,
R/o C-349, Sector-22,
Noida (U.P.)
12. Harsh Kumar
S/o Shri Ramesh Chander Sharma
R/o 24, Block-3,
Prem Nagar, New Delhi.
13. Badri
S/o Shri Chiranji Lal
R/o Gali No.8, Shankar Vihar,
Khora Colony, Gautam Budh Nagar,
(U.P.)
14. Dharam Parkash
S/o Shri Om Prakash
R/o 678, Lodhi Complex,
CGO Complex, New Delhi -3.
15. Anil Kumar
S/o Shri Rajbir
R/o F-2/354, Sunder Nagri,
Nand Nagari, Delhi-93.
16. Smt. Nisha
W/o Shri Nishar Ahmed,
R/o B-162, Jawala Puri,
Nangloi, New Delhi.

.....Applicants.

(By Advocate Shri S.K. Gupta)

Versus

1. Union of India,
through Secretary,
Ministry of Culture,
Shastri Bhawan,
New Delhi.
2. Director General,
Archaeological Survey of India,
Janpath, New Delhi - 110 011.
3. Director (Administration),
Archaeological Survey of India,
Janpath, New Delhi-110 011.

...Respondents.

(By Advocate Shri S.M. Arif)

ORDER

The present OA has been filed by the applicants with the prayer to quash and set aside the order dated 14.12.2004 (Annexure A-1) by which they have

been informed that their services are no longer required after 31.12.2004 in the headquarters of Archaeological Survey of India (ASI). They have however been informed that in case they are willing to work as daily-wagers in the circle offices/ branch offices at Delhi, Agra, Dehradun etc., they may give their option within one week. It has also been prayed by the applicants that the respondents be directed to consider their case for regularization in terms of Government of India scheme dated 7.6.1988 and thereafter, if necessary, they could be transferred.

2. The facts of the case in brief are that the applicants have been working on daily-wage basis as Office Attendants, Sweepers etc. since 1997-98. Some of these applicants had earlier approached this Tribunal by filing OAs on which directions were issued on different occasions that they should be considered for granting temporary status and they should not be replaced by other daily-wage freshers, till regular appointments are made. The applicants had, therefore, been continuing as daily-wagers. However vide order dated 14.12.2004, they were informed that their services are not required at the headquarters after 31.12.2004 (Annexure A-1) but they can be considered for appointment in circle/branch offices in and outside Delhi, if they give their consent and option. They have approached the Tribunal assailing this order of the respondents. The applicants are, however, continuing till date, based on the interim order granted by this Tribunal vide order dated 21.12.2004.

3. It has been contended by the applicants that, work on which the applicants are deployed is of perennial nature and it is not correct to say that there will be no work for them at the headquarter after 31.12.2004. Besides, despite directions having been issued by the Tribunal, they have not been regularized. They are also not liable to be transferred under any transfer policy and as such the action on the part of respondents to issue an order dated 14.12.2004 is illegal and deserves to be quashed.

4. The respondents have filed their counter reply in which they have stated that the earlier order of the Tribunal for granting temporary status to the applicants was challenged by them and the Hon'ble High Court vide order dated

10.5.2002 has set aside that order. Thus the relief sought by the applicants in the present OA for regularization is barred by the principle of resjudicata. Once the Hon'ble High Court has rejected their plea for grant of temporary status in terms of DOP&T scheme dated 10.9.1993, the applicants cannot ask for regularization under the guidelines issued by the Government vide OM dated 7.6.1988. This plea of the guidelines could have been taken by them in the earlier OA but was not taken and as such, such a plea cannot be raised in a fresh OA, being barred by resjudicata.

5. The respondents have further stated that in so far as their engagement is concerned, their services are no longer required at the headquarters after 31.12.2004 as there is no work for them. However, they have taken a sympathetic view and an option has been given to them that if they are willing to work in circle offices/ branches of ASI in and outside Delhi, they could be considered for engagement even after this date, depending upon the availability of work.

6. I have heard Sh. S.K. Gupta, the Ld. counsel for the applicants and Sh. S.M. Arif, the Ld. Counsel for respondents and have also gone through the pleadings available on record, including the rejoinder and the M.A.s filed on behalf of the applicants.

7. During the course of discussion, the learned counsel for the applicants stated that the plea taken by the respondents that there is no work at the headquarters is misleading. In support of his averment, he drew my attention to the MA No. 1171/2005 filed by the applicants in which it has been stated that eleven persons have recently been employed by them as attendants/ night watchmen in the headquarters. According to their information, sufficient work is available and as such the decision taken by the respondents to dis-engage them after 31.12.2004, is arbitrary and illegal.

8. In so far as the regularization is concerned, the Ld. Counsel for the applicants referred to an order dated 29.1.2003 passed by the Principal Bench of the Tribunal in OA 104/2002 in which directions were issued to consider the claim of the applicants for regularization under DOP&T schemes of 7.6.1988 and

26.10.1984. He however admitted that while the applicants are not eligible to be considered for regularization under the scheme of regularization announced by the Government vide order dated 10.9.1993 as it was only one-time scheme and was applicable only to those who were in position on that date, the applicants are entitled to be considered for regularization under the guidelines issued by DOP&T in 1988.

9. The learned counsel for the respondents vehemently opposed the stand taken by the Ld. Counsel for the applicants. He reiterated that there was no work available with the respondents after 31.12.2004 for the applicants at the Headquarters in Delhi. He confirmed that no casual worker/ daily-wager has been freshly appointed by them after the issuance of order dated 14.12.2004 (Annexure A-1). The persons who have been deployed at the Headquarters as mentioned in MA No. 1171/2005 are those who are holding temporary status and are working on regular basis. Their services can be utilized wherever required by the respondents either at the Headquarter or in Circle Office. In so far as the applicants are concerned who are daily wagers, they have no legal right for continuation at the headquarters where there is no work for them. However, still the respondents have taken a sympathetic view, and they are ready to engage them as daily-wagers in circle offices/ branch offices in Delhi, Agra, Dehradun, in case they give their willingness and option. The learned counsel for the applicants stated that to this effect an undertaking has been given by the applicants in para 1 of the OA filed by them. It was, however, pointed out by the learned counsel for the respondents that this undertaking was conditional that their cases for regularization should be considered in the first instance, which was not possible. The respondents department was ready to consider them for deployment, if an unconditional undertaking is given by them to work in the circle offices/ branch offices mentioned above. In so far as their regularization is concerned, it attracts the principle of resjudicata, as explained above. In any case, the applicants are not eligible for regularization under 1993 scheme, as conceded by the Ld. Counsel for the applicants. They are also not eligible for


regularization under the instructions issued by DOP&T vide OM dated 7.6.1988 which are only guidelines for engagement of casual workers and do not constitute a scheme for regularization. He stated that if those instructions were meant for regularization, then there was no need for DOP&T to introduce another scheme of regularization in 1993. There cannot be two schemes of regularization running concurrently. He stated that presently there is no scheme of regularization of casual workers/daily wagers after 1993, which was only a one time measure. The applicants cannot, therefore, be considered for regularization under any scheme.

10. After hearing the rival contentions of both the parties, I am of the considered view that the applicants have no legal right to continue to work as casual workers/ daily-wage employees in the headquarters of ASI, if there is no work available for them. In view of the categorical averments made on behalf of the respondents that there is no work available for the applicants at the headquarters and that no fresh daily-wage employees have been employed after the issuance of order dated 14.12.2004, it will not be appropriate to issue any directions to the respondents for continuation to engage the applicants. Govt. Departments cannot be compelled to continue engaging daily wage employees, irrespective of their requirement. This would entail unnecessary burden on the exchequer. However, on a sympathetic consideration the respondents have already sought the options of the applicants to work at circle offices/ branch offices, if they so desire. The question of regularization under the 1993 scheme is not possible as it was a one-time measure, as already explained. The guidelines issued by the DOP&T in 1988 were only for engagement of casual workers and not for the regularization. On this aspect of the matter, I am relying on the judgement dated 29.10.2004 passed by the Principal Bench of this Tribunal in OA 981/2004 in the case of Titu Ram and others vs. Union of India & Others, in which a view was taken that while the engagement of casual worker is governed by the instructions issued by DOP&T vide OM dated 7.6.1988, the regularization/ conferment of temporary status is governed by the Government of

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India OM dated 10.9.1993. As the 1993 scheme was a one-time measure, there is no scheme of regularization in operation at present in respect of casual workers engaged on daily-wages. 18

12. Taking an overall view of the position as explained above, I do not find any merit in the OA filed by the applicants. There is also no illegality in the order dated 14.12.2004 issued by the respondents. (Annexure A-1). The O.A. is accordingly dismissed. Consequently the interim order dated 21.12.2004 passed by the Tribunal stands automatically vacated. However, considering the facts that the applicants have been working for 7-8 years, the respondents are advised to consider their deployment as casual/daily workers, in case work is available, at the Headquarters or in Circle/ branch offices at Delhi, Arga, Dehradun etc., provided the applicants give their willingness and option, in the form required by the respondents. No costs.


(S.K. Malhotra)
Member (A)

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