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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 1003/2004
MA NO. 839/2004

This the 1st day of September, 2004

HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)

1. Sh. Enjan Kumar
S/o Sh. Late Sh. Ram Harakh
R/o RI-541/405 Gali No.15E,
Shiv Pura, New Delhi-110046.

2. Sh. Hardev Singh
S/o Sh. Daya Ram,
C-18, Gali No.12, East Sagarpur,
New Delhi-110046.

3. Sh. Naresh Kumar
S/o Sh. Hari Ram
R/o Village Ransiaki Teh Pataudi,
Distt. Gurgaon, Haryana.

4. Sh. Brij Mohan
S/o Sh. Kherati Ram
R/o V-85 Old Nangal
Delhi Cantt. New Delhi-110010.

5. Sh. Rajesh Kumar
S/o Sh. Prabhu Lal
R/o T-87, Old Nangal
Delhi Cantt. New Delhi-110010.

(By Advocate: Sh. Surinder Singh)

Versus

1. Union of India & Others
through
The Defence Secretary
Ministry of Defence,
DHQ P.O. New Delhi-110011.

2. The Director General of Supply & Transport,
Army Head Quarter,
DHQ PO, New Delhi-110011.

3. Commandant,
POL Deptt, ASC,
Delhi Cantt. New Delhi-110010.
(By Advocate: Sh. Rajinder Nischal)

ORDER (ORAL)

By Mr. Justice M.A.Khan, Vice Chairman (J)

Applicants are working as casual labour with Resp. No.3 Commandant, POL Deptt., ASC, Delhi Cantt., New Delhi. According to the allegations made in the application they have completed more than 240 days in two consecutive years, 1999 and 2000, details of which has been given in para 4.1 of the application and in the rejoinder to the counter of the respondents. They have approached this Tribunal for direction to the respondents to regularise their services since 2000. It is further alleged that applicant No.1 had earlier come to this Tribunal in OA-935/2000 titled as Enjan Kumar vs. Union of India and others which was decided by this Tribunal on 4.1.2001 directing the respondents to pursue the matter with the respondents Army Headquarters and to provide regular employment to him but to no effect. Hence this application.

2. In the counter the respondents have repudiated the claim of applicants that they have completed 240 work days in the respondents organisation. It is alleged that the respondents unit observed six working days a week and that the respondents engaged casual labourers on work load basis for four to five days in a week and not for six days in a week. Therefore, they were ineligible for a weekly off, i.e., Sunday. The details of their attendance has been given in Annexure A-1 to the counter. It is also stated that previous application of the applicant No.1 was disposed off by this Tribunal giving directions to the respondents to regularise the applicant against the quota of compassionate appointment. The applicant No.1 was considered by the Board of Officers but he was not found suitable for compassionate appointment as there was no vacancy. It is accordingly submitted that the applicants are not entitled to be regularised in service.

3. In the rejoinder, applicants have reiterated their case as pleaded in the application. Referreing to Annexure A-1, which is an office memorandum dated 7.6.1988 issued by the DOPT and letter dated 12.10.1993 Annexure A-2, which allowed one paid weekly off after six days of continuous work, they have asserted that paid weekly off should be counted in number of working days of 240 days. It is further contended that in case, the case of the respondents is accepted that they work only five days a week then the applicants become eligible for regularisation on completion of 206 work days in two consecutive years.

4. I have given careful consideration of the submission made at the bar. Short question that arise for determination is whether in terms of office memorandum dated 7.6.1988 Annexure A-1 and office letter Annexure A-2 the applicants casual workers are entitled to count one paid weekly off day as a working day? It is not being disputed on behalf of the respondents that if paid weekly off is added to the number of working days of the applicants the applicant shall be deemed to have completed 240 days for two consecutive years of 1999 and 2000. Counsel for applicants has referred to guideline (vi) of F.No. 49014/2/86-Estt. © dated 7.6.1988 (Annexure A-1) guideline (vi) which reads as under:-

> "The policy regarding engagement of casual workers in Central Government offices has been revised by Government keeping in view the judgment of Supreme Court delivered on the 17.1.1986 in the Writ Petition filed by Sh. Surender Singh and others vs. Union of India. It has been decided to lay down the following guidelines in the matters of recruitment of casual workers on daily wage basis:
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> (i) to (v) ----------
>
> (vi) casual workers may be given one paid weekly off after six days of continuous work."

5. He also referred to the office order issued by the Directorate General of Supplies and Transport, Quartermaster General's Branch, Army Headquarters, DHQ PO, New Delhi dated 12.10.93 (Annexure A-2) which reads as under:-

REGULARISATION OF CASUAL LABOURERS IN ASC

1. Further to this HQ letter No. A/99862/Policy/VI/Q/ST dated 24 Aug 93.

2. For future purposes of regularisation at Command level, it is once again clarified that service eligibility of a casual labourer will be as per Min of Def OM No. MF.4(3)/89/D)Civ-II) dated 31 Jan 91, i.e. 240 days of casual service (including broken period of service) during each of any two years of their service. This service need not necessarily be counted on a calender year basis, but simply on a period of 12 months. (Extracts of Award of Central Govt. Industrial Tribunal-cum-Labour Court in ID Nos 77 of 1977 and 67,68 and 72 of 1977 respectively enclosed).

3. Moreover, the entire regularisation process is identification of eligible casual labourer and his subsequent regularisation against an existing vacancy in the unit will be the responsibility of the OC unit as per the existing Tech Instr No.16/75. However, in a situation where an eligible casual labourer is available but no existing vacancy is there to regularise him, such cases will be reported to DDST/MG ASC/Army HQ ST-12 (Civ) for suitable release of vacancy at various echelons".

6. It is argued on behalf of the applicants that in these memorandum and letter paid the weekly day off is to be counted while calculating the total number of working days, and if it is done, the applicants should be held to have completed more than 240 days in two consecutive years 1999 and 2000, and they are entitled to be regularised in service. Counsel for applicants has sought support to his argument from the decision of this Tribunal in OA-334/2001 titled Titu Ram & Ors. decided on 12.9.2001 and also another decision of this Tribunal in OA-1805/2001 titled Muni Lal & Ors. Decided on 1.5.2002

7. Controverting these arguments learned counsel for respondents submitted that the applicants have not completed 240 days in the respondents organisation, since the respondents unit where they are employed is not observing six working days week and respondents, in fact, is engaging the casual labourers for four to five

days and not for six days in a week. Referring to guideline (vi) of the office memorandum dated 7.6.1988 (Annexure A-1) it is submitted that the casual workers were entitled to one paid weekly off only after rendering six days of 'continuous' work and in this case the applicants are not working for six continuous days in a week, therefore, they are not entitled to be given the benefit of this memorandum. However, it has been fairly conceded that this Tribunal in the case of Titu Ram and others (supra) and Muni Lal and others (supra) has held that casual workers are entitled to one paid weekly off which has to be included in the number of working days while computing total requisite number of days. It is also significant that both these judgments pertained to the same very unit of the respondents and applied to casual workers like the applicants.

8. Plain reading of the guideline (vi) of the OM Annexure A-1 reproduced above indicates that after every six working days a casual worker becomes entitled to a paid weekly off. He has to be given a weekly off on every seventh day without actually working on that day. In the context in which it is used the word 'continuous' used in guideline (vi) has to be given a logical meaning. It will be incongruous to read the word 'continuous' synonymous to the word 'consecutive'. It is a well established canon of construction of a statute that a court should not read a word in a provision which may frustrate the very object of the enactment of office letter dated 12.10.1993. Annexure A-2 states '240 days of casual service (including broken period of service during each of any two years of their service) will be the eligibility condition precedent to the regularisation of a casual worker in the service. If broken period of service is to be counted the phrase 'continuous work' shall have to be given a liberal interpretation and not a narrow meaning, specially when it has intended to be a beneficial provision. The word 'casual' means 'occasional', 'unforeseen', 'off hand' and 'without fixed employment'. It implies that a casual worker may not necessary be employed on each day but his employment

will depend on the exigency of the service for which he is engaged on a particular day. Having regard to this the phrase 'paid weekly off after six days of continuous work' shall be interpreted to mean 'paid weekly off after six days working' (including broken period of service). Needless to say that a paid day is as good as a working day and has to be counted as an actual work day within the ambit of office memorandum dated 7.6.1988, Annexure A-2. It is not disputed by the learned counsel for the respondents that if paid weekly off day is also included as a working day each of the applicants shall be deemed to have completed requisite number of work days in two consecutive years of 1999 and 2000 and so eligible for being granted temporary status.

9. In Shakuntala Devi (Smt.) vs. Secretary, Department of Food, Ministry of Food and Civil Supplies (1991) 18 Administrative Tribunal Cases 142 (II) it has been held that Sundays and holidays will also have to be counted for calculating number of working days. Same view was taken by this Tribunal in Muni Lal (supra) and Titu Ram (supra). In the present case paid weekly off cannot be excluded from total number of working days which a casual worker is required to complete for his regular employment in an establishment.

10. There is force in the plea of the applicants that in term of the office memorandum dated 7.6.1988 (Annexure A-1) and office circular dated 12.10.1993 (Annexure A-2) they ought to have been regularised in service since they have also worked for 240 days in two consecutive years as claimed by them.

11. Applicants have prayed for regularisation of their service since 2000. It is also alleged that there are some vacancies in Group 'D' post against which their service may be regularised.

12. No other contention is raised at the time of hearing.

13. Having regard to the above discussion, OA succeeds. It is held that the applicants have completed requisite number of working days during two consecutive years 1999 and 2000 and they have become entitled to be regularised in service. Their services shall be regularised with effect from the date a vacancy becomes available in appropriate Group 'D' service for each of them. It shall be done within 3 months from today. In the circumstances, OA is allowed in above terms with no order as to cost.

(M.A. KHAN)
Vice Chairman (J)

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