(36)

Central Administrative Tribunal
Principal Bench

OA No. 410/2004

New Delhi, this the 5th day of December, 2006

Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J),
Hon'ble Mr. V.K. Agnihotri, Member (A)

Devendra Tiwari & Anr. ...Applicants

(By Advocate: Shri L.R. Khatana)

-Versus-

Union of India & Ors. ...Respondents

(By Advocate: Shri B.K. Berera)

O R D E R

1. To be referred to the Reporters or not? Yes

2. To be circulated to outlying Benches of the Tribunal or not? Yes

(V.K. Agnihotri)
Member (A)

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Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J),
Hon'ble Mr. V.K. Agnihotri, Member (A)

1. Devendra Tiwari
s/o Shri Ram Lal
R/o House No. 322, Gali No. 5,
Harsh Vihar,
Delhi – 110 093.

2. Surendra Singh,
s/o Shri Raghuvir Singh,
RZ-4, (A-Block),
Roshan Vihar Extension,
Nazafgarh, Delhi. ...Applicants

(By Advocate: Shri L.R. Khatana)

-Versus-

Union of India through:

1. Secretary,
Ministry of Urban Development,
Shastri Bhawan,
New Delhi – 110 011.

2. The Director General of Works,
CPWD, Nirman Bhawan,
New Delhi – 110 011.

3. Chief Engineer (ODZ),
Seva Bhawan, RK Puram,
New Delhi. ...Respondents

(By Advocate: Shri B.K. Berera)

O R D E R

By Mr. V.K. Agnihotri, Member (A):

In this OA the applicants have challenged the orders of the respondents dated 13.02.2004 [Annexure A-1 (Colly.)] and sought the following relief:

> "(i) It be held that the orders dated 13.2.2004 whereby the applicants have been retrenched are unconstitutional and illegal and accordingly the same be quashed and set aside;
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> (ii) The Respondent be directed to continue employing the applicants in the post of MLD (Drivers) on the basis that no order of retrenchment has been served upon them;
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> (iii) It be also directed that the Respondent should follow the provisions of rules and regulations relating to retrenchment in view the law laid down by Apex Court keeping in view the law laid down by Apex Court and the applicants cannot be retrenched unless they happen to be junior most;
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> (iv) The Tribunal may pass such other suitable order or orders as it may deem fit to meet the ends of justice;
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> (v) The cost of this litigation may be ordered to be paid by the Respondents to the applicants."

2. The brief facts of the case are that the applicants were working as MLD (Drivers) in the organization of respondent no. 3 (CPWD). They were recruited in the year 1989. The character of their employment, no doubt, is Hand Receipt i.e. on Muster Roll

basis. The respondents had issued a provisional Seniority List dated 09.12.2002 (Annexure A-2), which has subsequently become final without affecting the seniority position of the applicants. The applicants were also parties in OA No. 401/2001, filed by CPWD Karamchari Union, praying for regularizing the services of the applicants therein in accordance with the rules. The said OA was disposed of by an order dated 20.08.2002 with the following directions:-

> "5. On consideration of the principles enunciated by the Apex Court, we find that there is substance in the applicants' claim that the respondents should consider regularizing their services as expeditiously as possible. The learned counsel appearing on behalf of the respondents submits that at present there are no regular vacancies available against which the applicants can be considered for regularization. He does not foresee any problem, however, to the consideration of the applicants' claim in due course as and when regular vacancies arise. Accordingly, we direct the respondents to consider the claims of the applicants for regularization as expeditiously as possible and in accordance with their seniority amongst the muster roll workers. It goes without saying that when it comes to regularizing the applicants, the relevant rules regarding eligibility will find application. There will, however, be age relaxation by the number of years the applicants have worked as muster roll workers."

3. While the applicants were thus awaiting orders of regularization in accordance with the directions of this Tribunal

mentioned above, the impugned order dated 13.02.2004 was issued stating that as the maintenance work of NSG Garrison, Manesar had been handed over to NSG on 31.01.2004, the services of the applicants were no longer required w.e.f. 14.02.2004 (F.N.). They were further directed to collect their dues from the office of Deputy Director of Horticulture, Horticulture Division-VI, C.P.W.D., I.P. Bhawan, New Delhi on any working day between 10.00 a.m. to 5.00 p.m. in terms of Section 25 (F) of the Industrial Disputes Act, 1947. Hence, the OA.

4. When the OA came up for the first hearing on 17.02.2004, a Single Bench of this Tribunal ordered that the impugned order dated 13.02.2004 shall be kept in abeyance till the matter is heard on interim relief. This Tribunal heard the matter relating to the interim relief on 24.03.2004 and ordered that the interim relief granted earlier shall continue until further orders. The final orders in this OA were pronounced on 09.11.2004 with the following directions to the respondents:

> "11. On perusal of the facts of the case, it is thus observed that while the applicants have rendered several years of service with the respondents on their Project at Manesar as casual workers, their services have been dispensed with with the closure of the project and with the handing over of the maintenance of the project to the NSG, to whom the project belonged. It is also noted that the respondents did try to adjust them at their other places of work, like,

Faridabad/Ghaziabad, but they could not adjust them at these places for want of work of the kind at which the applicants were engaged at Manesar project. They are, therefore, left with no alternative, but to give an undertaking that due weightage will be given for the services rendered by them in the project and also that their services will be regularized as and when regular vacancies arise. There is no doubt that the seniority of the applicants as maintained by the respondents in the order of their engagement shall be kept in view at the time of regularization of their services. At this stage, therefore, the only relief which could be available is that the respondents must stand by their undertaking that the applicants shall be given due consideration and weightage while engaging casual workers at any of the projects or places of work and shall not be engaging anyone junior to them without giving due opportunity to the applicants. They will also be ensuring that the services of the applicants are regularized in the order of seniority when regular vacancies arise.

12. With the above observations, this OA is disposed of with a direction to the respondents that the same will be kept in view by them in their future recruitments and that they will be making appropriate endeavor to regularize the services of the applicants as and when there are regular vacancies. Ordered accordingly. No costs."

5. Thereafter, a Review Application No. 216/2005 was filed by the applicants seeking review and recall of the order of this Tribunal dated 09.11.2004 on the ground that a week prior to the disposal of the O.A. by the learned Single Bench of this Tribunal, a Division Bench had allowed O.A. Nos. 267 & 268/2004 [in the

case of **Shri Kilob Singh (Driver) & Ors. etc. v. Union of India & Ors. etc.**] involving identical issues, vide order dated 02.11.2004, which was not brought to the knowledge of the Single Bench, which decided OA No. 410/2004. Review Application No. 216/2005 was disposed of by a Division Bench, vide order dated 19.05.2006, recalling of the order dated 09.11.2004 and restoring the O.A. to its number.

6. The applicants have stated that they had been assigned the job of driving a tractor and a tanker and, by and large, they were asked to work in Manesar where the office of NSG was situated. They are on the pay roll of the C.P.W.D. only and thus, they are the employees of C.P.W.D. Provision exists for their being asked to perform their duties at any other place than Manesar and on many occasions they were even asked to perform such duties elsewhere. Thus, their appointment is not confined to any specific project at Manesar but is an appointment whereby they could be asked to function anywhere as drivers by respondent no. 3.

7. It has been further averred by the applicants that the C.P.W.D. had, after completing their assignment given by NSG, handed over the maintenance work of NSG Garrison, Manesar back to NSG on 31.01.2004 and, thereafter, the applicants were asked to function as drivers of tractor/tanker at Faridabad/Ghaziabad with headquarters at Horticulture Division-

VI, I.P. Bhawan, New Delhi. Thus from 01.02.2004 onwards their assignment has been at the aforesaid places and they are to report to Horticulture Division-VI in whose charge their services have been assigned.

8. The applicants have further stated that their having approached the Tribunal earlier for regularization seems to have irked the respondents and the order impugned herein seems to be the reflection of their reaction to the direction of the Tribunal. It is reliably understood that two more applicants to OA No. 401 of 2001 viz. Shri Sunil Kumar (Beldar) and Shri Kilob Singh (Driver) have also been victims of such retrenchment. When the question of retrenchment comes, under the Industrial Disputes Act and in accordance with the settled position of law, the last in should be first out. In this regard the applicants have relied upon a judgment of the Hon'ble Apex Court in the case of ***Workmen of Sudder Workshop of Jorehaut Tea Company v. Mangement of Jorehaut Tea Co. Ltd.***, 1980 (3) SCC 406 and the judgment in the case of ***Central Welfare Board and Ors. v. Anjali Bepari (Ms) & Ors.,*** 1996 (10) SCC 133. It may be seen from the former judgment, vide para 5, that the keynote thought of the provision, even on a bare reading, is evident. The rule is that the employer shall retrench the workman who come last, first, popularly known as `last come, first go'. Of course, it is not an inflexible rule and

extraordinary situations may justify variations. For instance, a junior recruit who has a special qualification needed by the employer may be retained even though another who is one-up is retrenched. There must be a valid reason for this deviation, and, obviously, the burden is on the Management to substantiate the special ground for departure from the rule.

9. Similarly, in the latter judgment too it has been held that the dispensing with the service should be on last-come-first-go basis i.e. the junior most incumbent has to go out first. If this principle is adopted then the retrenchment of the applicants who are at serial nos. 16 and 21 in the Seniority List cannot be retrenched when after them there are as many as 80 MLD (Drivers) whose dates of appointment are subsequent to the dates of appointment of the applicants. In fact, it can be seen that the incumbent at serial no. 101, having joined as MLD as late as 1st March, 1997, has been retained in service whereas the applicants, whose dates of joining are of March 1989 and May 1989 respectively, have been unceremoniously thrown out. Thus the retrenchment is basically against the spirit of the Labour Laws and is diagonally opposite to the decisions of the Apex Court in the aforesaid judgments.

10. It has been further stated that if retrenchment has to take place within the same unit, even then insofar as the applicants

are concerned, they are attached to the Horticulture Division of the C.P.W.D. and it can be seen from the Seniority List that one Hari Singh s/o Man Singh, who joined duty on 1.4.1989, belongs to Horticulture Division and is junior to applicant no. 1. Similarly, one Shri Rajiv Kumar s/o Mangey Ram, whose date of first appointment is 31.05.1990 and figures at serial no. 34, is junior to the second applicant, namely, Surendra Singh. Hence, if retrenchment should take place on the basis of units, even then it is only upon the junior most in the unit as per the seniority that the acts of retrenchment should fall. That being not so, in the instant case, the orders of retrenchment are illegal. The juniors do not have any special qualification to be retained at the cost of the seniors.

11. It has been further stated that when some casual employees are attached to a specific project, on the completion of the projects they are shifted to some other units and no retrenchment is resorted to. Earlier a project called Border Fencing Road (BFR) was on where a number of MLDs were attached. After the completion of BFR project, the incumbents were transferred to other units.

12. The order of retrenchment was made available to the applicants at 5.05 hours in the afternoon on 13.02.2004. The order contained an offer that the applicants could draw the

compensation from the office at I.P. Bhawan on any working day from 10.00 a.m. to 5.00 p.m. Since the order of retrenchment was handed over on 13.02.2004 (i.e. on a Friday) with a stipulation that the retrenchment would take effect from 14.02.2004, the earliest day when the applicants would have been able to draw the compensation was 16.02.2004 (14th and 15th Feb., 2004 being closed holidays). Thus the compensation has not been made available either before or on the date of retrenchment. In a recent case of **Promod Jha & Ors. v. State of Bihar & Ors.,** 2003 (4) SCC 619, it has been held as follows:

> "The underlying object of Section 25-F is twofold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so, either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but is also a sustenance to the worker for the period which may be spent in searching for another employment. Section 25-F nowhere speaks of the retrenchment compensation being paid or tendered to the worker *along with one month's notice*; on the contrary, clause (b) expressly provides for the payment of compensation being made *at the time of retrenchment* and by implication it would be permissible to pay the same before retrenchment. Payment or tender of

> compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment."

13. The Hon'ble Supreme Court has clearly held that unless the compensation is paid either before or at the time of retrenchment, the retrenchment becomes illegal. In the instant case, as stated earlier, the amount was not paid on 13.02.2004. Thus, the compensation neither stands offered which would be capable of being received before or at the time of retrenchment nor paid before or at the time of retrenchment. From this point of view also the retrenchment ordered is illegal.

14. Regarding exhausting of other remedies, the applicants have stated that this Tribunal has inherent power to waive the requirement of exhausting the remedies, it is prayed that the Tribunal may be pleased to invoke the said powers and waive the requirement of exhausting the remedies as required under Section 20 of the Administrative Tribunals Act, 1985. In this regard, the applicants have relied upon the judgment of the Tribunal in **Kishore Chandra Pattanayak v. R.N. Das, I.A.S.,** 1987 (4) SLJ (CAT:Cutt.) 414 wherein it has been held that there being no absolute bar on its powers, Tribunals can entertain cases in emergent situations without exhausting other remedies. Such a

view has also been taken in a matter of transfer by this Tribunal in the case of **H.S. Ajmani v. State of M.P. & Ors.**, 1989 (9) ATC 122 (Jab.). Further, in a matter of Department enquiry, in the case of **Thakur Prasad Pandey v. Union of India & Ors.**, 1988 (8) ATC 911 (Jab.), it has been held that non-exhaustion of alternative remedies is not an absolute bar to admission of an application and the matter would have to be decided on the basis of circumstances of each case.

15. The respondents have stated that the applicants were engaged on Hand Receipt basis during 1989 in the NSG Project at Manesar, Gurgaon only for project work. They were not engaged against any sanctioned post or work of a perennial nature. The applicants were engaged purely for MLD job in the NSG Project and no formal appointment letters were issued to them. They were engaged purely for a time bound project and they knew this fact. Though, the project was completed in March, 2002 but the maintenance work was initially entrusted to CPWD. Now the DG (NSG) has taken over the maintenance work form CPWD. Hence, all the workers employed at the project have become surplus and there is no work for them at NSG, Manesar. The services of any labour engaged on casual basis on Hand Receipt is not required there. There is no regular vacancy available with the respondents in the category for regularization of any casual worker. Moreover,

there are a number of casual workers, who were engaged in the department prior to the applicants and they too have been waiting for regularization. Therefore, with the completion of project and withdrawal of work by the client, the department has no alternative but to retrench all the workers/applicants, which has been done as per the provisions of the Industrial Disputes Act, 1947.

16. It has been further averred that the applicants were offered compensation on the same days but they refused to collect the same. The applicants herein have raised the industrial dispute. It is settled law that if the applicants are seeking relief under the provisions of the Industrial Disputes Act, 1947, they must ordinarily exhaust the remedies available under the Act.

17. The respondents have further stated that it is true that the applicants figured at serial nos. 16 & 21 in the Seniority List prepared by the SE (Coordination Electrical), CPWD for Hand Receipt workers of all categories working in different Division. But it is also true that the applicants are not regular employees of the department and, therefore, there is no concept of service seniority of casual labourers by means of which a casual worker in a project may claim retention when the project comes to an end. This list of the casual labourers was prepared in order of seniority according to the date of engagement only with the view that in

case vacancies arise and the ban is lifted by the Government, the casual labourers can be considered for regularization in the orders of such seniority. The applicants were working in Horticulture Division-VI Unit as MLD for NSG Project but as on date, there is no work of MLD at NSG. In O.A. No. 401/2001 this Tribunal had directed the respondents that the applicants be considered for regularization if vacancies are available with the respondents. In this regard, it has been stated that no vacancy of MLD has been created and no regular vacancy has arisen till date.

18. It has been further averred that after completion of project work, the Department examined possibility of adjusting the applicants on other places of work like Faridabad/Ghaziabad under Horticulture Division-VI, but due to non-availability of such work, the Department was unable to adjust the applicants at aforesaid places. As regards their regularization, it has to be considered in the order of seniority of casual labour as per the date of their engagement. The applicants cannot be considered for regularization before considering those who have been working in the Department from before them.

19. The respondents have relied upon a judgment of the Hon'ble Apex Court in the case of ***IRCON International Ltd. v. Daya Shankar & Anr.,*** AIR 2002 (SC) 2404 wherein it has been held: "As a matter of principle, when employee is appointed on a project

and for the duration of the project, the question of his services continuing automatically thereafter do not arise." As all the labourers / Hand Receipt workers at the NSG, Manesar Project, have been retrenched there is no question of application of the principle of 'last come first go'. The applicants have no right to ask for continuation of service thereafter. The names mentioned by the applicants i.e. Hari Singh and Rajiv Kumar are working in the different divisions as can be seen from the seniority list.

20. In their rejoinder the applicants, apart from reiterating the various averments made in the O.A., have emphatically denied that they were engaged only for project work. They have agued that had they been engaged only for project work, their names would have been so reflected in the Seniority List, which does not state that they were attached to the office of N.S.G., Manesar.

21. During the final arguments, Shri L.R. Khatana, learned counsel for the applicants, was at pains to establish, on the basis of the Seniority List (Annexure A-2), that while the services of the applicants have been terminated, persons junior to the applicants have been continuing in the services of the respondents, and hence there is hostile discrimination against the applicants. He further invited attention to the order of this Tribunal in the case of **Shri Kilob Singh (Driver) & Ors. etc. v. Union of India & Ors. etc.** (supra), which was the basis for the recall of the earlier order

in the present O.A., wherein, while allowing the O.A., the following observations were recorded:

> "9. Hostile discrimination, without intelligible differentia and reasonable nexus with the object sought to be achieved, is invidious discrimination and is violative of Articles 14 and 16 of the Constitution of India. We find that in pursuance of the direction in OA 401/2001, the respondents have regularized similarly situated junior persons. The plea of non-availability of vacancies and ban has also been taken note of in OA No. 1338/2000 and has been repealed. The applicants, who are similarly situated, cannot be deprived of the benefit of the ratio of the above decision. We also find that junior employees to the applicants, namely, S/Shri Hari Chand, Devki Nandan and Sanship Kumar have also been regularized, which fact has not been effectively defended and explained by the learned counsel of the respondents.
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> 10. In our considered view, having regularized the juniors when the seniority was the criteria for regularization, the applicants have also right for consideration and existing ban would not come in their way.
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> 11. In the result, both these OAs are allowed. Respondents are directed to device ways and means to regularize the services of the applicants under direct recruitment quota in compliance with the directions dated 20.8.2002 rendered in OA No. 401/2001 and in that event, the applicants shall be entitled to all consequential benefits. We, however, make it clear that till then the status quo as of date regarding their continuance, shall be maintained. There shall be no order as to costs."

22. The learned counsel for the applicants further stated that since the Seniority List at Annexure A-2 has not been contradicted, it can be deemed to have been admitted and, therefore, the services of the applicants, being senior in the seniority list, cannot be terminated while their juniors are continuing. He finally averred that the applicants are aware of the orders of the Hon'ble Supreme Court in **Secretary, State of Karnataka & Ors. v. Uma Devi & Ors.,** 2006 (4) SCC 01 and hence are not seeking regularization of their services. They are only seeking continuance of their services on the same terms and conditions on which they have been working for the past more than 15 years.

23. Shri B.K. Berera, learned counsel for the respondents, reiterated some of the averments made in the counter. He specially highlighted the stand of the respondents that the applicants were employed on N.S.G. project at Manesar and were retrenched upon closure of that Project. He further averred that no junior of the applicants in the C.P.W.D., Horticulture Division-VI has been continued or retained in service upon closure of the Project. All the twenty-seven employees in the Horticulture Division-VI have been retrenched. As regards the case of **Shri Kilob Singh (Driver) & Ors. etc. v. Union of India & Ors. etc.** (supra), the learned counsel for the respondents stated that a Writ

Petition had been filed in the Hon'ble High Court of Delhi and was pending.

24. We have heard the learned counsel for the parties at length and given anxious consideration to their averments. We have also perused the material on record as well as the citations mentioned in the course of the final arguments.

25. The applicants' case is largely based on the averment that the retrenchment should have followed the principle of `last-come-first-go', alternatively, `first-come-last-go', in the context of the Seniority List issued by the respondents, vide Office Order dated 09.12.2002 (Annexure A-2). They have cited some examples of persons who are junior to the applicants as per the said Seniority List but have been continued. The respondents, on the other hand, have stated that the applicants were appointed to work on NSG Project at Manesar and have been retrenched upon closure of that Project. The applicants have rebutted this argument of the respondents by stating that after the NSG Project at Manesar was closed, the applicants were posted at different places like Faridabad/Ghaizabad. The respondents, in turn, have replied that after the closure of the NSG Project at Manesar, the respondents tried their best to accommodate the applicants at other places, as far as possible, but in the end they had to go. During the course of the arguments, the learned counsel for the respondents has stated

that all the 27 employees, who were working in Horticulture Division-VI (NSG Project being part of it), have been retrenched.

26. The applicants have relied on the order of this Tribunal in the case of **Shri Kilob Singh (Driver) & Ors. etc. v. Union of India & Ors. etc.** (supra) to argue that there has been hostile discrimination against the applicants. The learned counsel for the respondents has argued that Shri Kilob Singh did not belong to the Horticulture Division-VI. To this, the reply of the learned counsel for the applicants was that Shri Kilob Singh was earlier working in the Horticulture Division-VI but was later transferred to the Electrical Division. In any case, Shri Kilob Singh was not working in the Horticulture Division-VI, even as per the Memo of Parties in the case of **Shri Kilob Singh (Driver) & Ors. etc. v. Union of India & Ors. etc.** (supra).

27. At this particular point of time, however, we stand at a watershed defined by the judgment of the Hon'ble Supreme Court in the case of **Secretary, State of Karnataka & Ors. v. Uma Devi & Ors.** (supra). Even though, the learned counsel for the applicants has stated that the applicants are not seeking regularization and, therefore, are not within the ambit of the said judgment, the fact remains that the applicants were daily wagers employed on muster roll basis. Admittedly, there was no formal letter of appointment. In this context, the message of the above

mentioned judgment of the Hon'ble Supreme Court is loud and clear:

> "43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued.
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> x x x
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> "45...It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the

> exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic.) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution." (Emphasis supplied.)

The relief provided to the applicants in **Shri Kilob Singh (Driver) & Ors. etc. v. Union of India & Ors. etc.** cannot, therefore, now be extended to the applicants in view of this judgment of the Hon'ble Supreme Court, nor was it specifically sought by the applicants, in any case.

28. Taking the totality of facts and circumstances of the case into consideration, we find that in view of the assertion of the respondents that the NSG Project at Manesar has been closed and all its employees have been retrenched, the applicants have no case even on the ground of hostile discrimination. We, therefore, do not consider it necessary to interfere with the present decision of the respondents. However, as far as the future is concerned, insofar as respondents have prepared a Seniority List, we can do no better than to reiterate the direction of this Tribunal given earlier in this O.A., namely, that the respondents must stand by their undertaking that the applicants shall be given due consideration and weightage while engaging casual workers at any of the projects or places of work and that they shall not engage anyone junior to them without giving due opportunity to the applicants.

29. In the result, the OA is disposed of in terms of our direction given above. Needless to mention, the stay order of this Tribunal dated 07.02.2004, which was later confirmed by the order dated 24.03.2004, stands vacated. There will be no order as to costs.

(V.K. Agnihotri)
Member (A)

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

/na/