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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.844/2004

New Delhi, this the 20th day of December, 2004

Hon'ble Shri S.K. Naik, Member(A)

1.Prem Nath  
2.Suresh  
3.Parmed Kumar  
4.Ajay Kumar, all working as Badli Workers  
in Delhi Milk Scheme  
New Delhi

.. Applicants

(Shri R.S. Rawat, Advocate)

versus

Union of India, through

1. Secretary  
Dept. Of AH and Dairying  
Ministry of Agriculture  
Krishi Bhavan, New Delhi  
2. General Manager  
Delhi Milk Scheme  
West Patel Nagar, New Delhi

.. Respondents

(Shri R.N. Singh, Advocate)

ORDER

Applicants, four in number and working as Badli Workers in Delhi Milk Scheme since 1999, claim that they have completed more than 240 days in a calendar year and therefore they are entitled to be transferred to regular establishment as Group D employees. They had earlier filed OA 1197/2001 seeking the same relief and the said OA was disposed of by order dated 9.5.2001 directing the respondents to transfer their services to the regular establishment of Mates wholly in terms of the Standing Orders and to grant them all consequential benefits in accordance with the said orders and instructions on the subject. Respondents had challenged the order of the Tribunal in the OA before the Delhi High Court which had been dismissed. When no action even thereafter was taken by the respondents, they preferred another OA being No.2007/2003 which was disposed by the Tribunal on 21.11.2003 with the direction to the respondents to reconsider the case of the applicants and pass a speaking order thereof. Thereafter, applicants made a representation on 14.12.2003 which was rejected by the respondents vide their order dated 11.2.2004. Applicants have challenged the said order in the present OA inter alia seeking further direction to the respondents to regularize their services.

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2. Respondents have contested the case on the ground that the applicants have not completed 240 days in a calendar year even after computing the weekly offs given to them and therefore there is no question of their regularization and the applicants have been informed accordingly.

3. While the learned counsel for the applicants has contended that in view of the direction given by the Tribunal in OA No.2007/2003 the respondents have no other option but to transfer the applicants to regular establishment as Mates. Further, even otherwise in accordance with their own Standing Orders, the applicants are entitled to be transferred to regular establishment since they have completed 240 days during the calendar year after taking into account the weekly offs and national holidays. The counsel contends that despite the direction by the High Court that weekly offs and national holidays have to be taken into account for computing the number of working days, respondents are still playing with the figures and have been denying the benefit of weekly offs and national holidays in computing their period of working days. He emphatically states that the applicants have completed 240 days of working and are entitled to be transferred to regular establishment.

4. Learned counsel for the respondents, on the other hand, while contending that while no doubt the respondents are bound to take into consideration the weekly offs and national holidays for computing the working period during a month, has submitted that in a particular month if it is 30 days, for the purpose of calculation the number of working days will have to be restricted to 30 and not beyond 30 days even if the Badli workers have been paid wages for more than 30 days period because of their working on weekly offs/national holidays. If the number of working days are restricted to the maximum of number of days in a calendar month, he states that none of the applicants are eligible to cross 240 days of working. On this ground, he contends, the applicants are not entitled to be transferred to regular establishment.

5. I have heard the learned counsel for the parties and carefully perused the records.

6. While the learned counsel for the applicants has relied on the claim that the applicants have worked for more than 240 days during a calendar year, respondents have refuted the claim. The dispute therefore can be resolved if the statements of their engagement are properly scrutinized and re-<sup>conducted</sup> ~~computed~~.

7. Both the parties have enclosed their respective claims that they have worked for various periods from 1.1.1999 to 31.12.1999. After a careful perusal of the same, I put it to the learned counsel for the respondents as to why they have not included Sundays/public holidays during which the worker has discharged his duty in the number of working days on which he has worked, as it has been clearly held

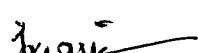


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that Badli Workers would be entitled to the benefit of holidays/weekly offs. Bringing to his notice the statement in respect of applicant No.1 (Prem Nath) in which against January, 1999 it has been stated that the applicant has worked for 25 days during the week days and in addition has worked for 5 days during holidays why he has been given the benefit of only 25 days, the counsel has not been able to explain as to why the period of 5 days on account of holidays/weekly offs has not been counted in favour of the applicant. Similarly, I find from the statement of this applicant that respondents have not computed weekly offs and national holidays properly. Therefore, even if it is considered that a Badli Worker will not be entitled to be credited more than the maximum days in a calendar month, I find that the applicants have been denied the benefit of holidays/weekly offs even when their period of working days during that month is below the maximum number of days in that particular month.

8. On careful computation of the statements enclosed with the OA, I find that after the weekly offs and national holidays are taken into account restricting to the maximum days in a calendar month, applicant No.1 (Prem Nath) would be entitled to a working period of 256 days while in case of applicant No.2 (Suresh) it is 230 days. Similarly in case of applicant No.3 (Parmod Kumar) it will be 230 days while in case of applicant No.4 (Ajay Kumar) it comes to 254 days. Thus, it is clear that applicants No.1 and 4 have crossed 240 days limit and they would be entitled to be transferred to regular establishment. With regard to applicants No.2 and 3, since they have not completed 240 days during the 12 months from 1.1.99 to 31.12.99, they would not be entitled to be transferred to regular establishment as they do not fulfill the ~~requirement of the~~ Standing Orders.

9. In the result, the OA is partly allowed with the direction to the respondents to transfer applicants No.1 and 4 to regular establishment. In case of applicants No.2 and 3, the said relief cannot be allowed.

  
 (S.K. Naik)  
 Member(A)

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