

Central Administrative Tribunal
Principal Bench, New Delhi

OA-847/2004

New Delhi this the 20th day of August, 2004.

Hon'ble Shri V.K. Majotra, Vice-Chairman(A)
Hon'ble Shri Shanker Raju, Member(J)

1. Satish Chand Chauhan,
S/o Sh. Pyarelal,
R/o House No.437, Sector-3, R.K. Puram,
New Delhi-22.
2. Laloo Yadav,
S/o Sh. Tulsi Yadav,
WZ 315/1, G Block, Hari Nagar,
Near Sethi Coal Depot.,
New Delhi-64.
3. Jitendra Kumar,
S/o Sh. Babu Lal,
R/o H, A/C, T-29, Palam Colony,
East Mehram Nagar Colony,
New Delhi.
4. Balveer Singh,
S/o Sh. Rajpal Singh,
G. House No.3, Pappu Colony,
Post-Pasonda,
Distt. Ghaziabad.(UP).
5. Jorg Thomas,
S/o Sh. Prem Thomas,
H.No.8/1, K Block,
Multi Story, Sector-13, R.K. Puram,
New Delhi.
6. Rangi Lal,
S/o Sh. Mangal Singh,
M-14, Mahaveer Enclave,
Near Madras Colony,
Dawri Morth,
New Delhi-45. Applicants

(through Sh. A.K. Shukla, Advocate)

Versus

1. The Union of India through
Secretary,
South Block,

Ministry of Defence,
New Delhi-11.

2. The Commanding Officer,
CSD canteen, Race Course,
Air Force Station,
New Delhi-3.
3. The Canteen Manager,
C.S.D. Canteen, Race Course,
New Delhi-3. Respondents

(through Ms. Avinash Kaur, Advocate)

Order (Oral)

Hon'ble Shri Shanker Raju, Member(J)

Applicants who are daily wagers working as helpers in the CSD Canteen Race Course, through this O.A. have sought regularisation with all consequential benefits.

2. The controversy regarding status of employees of the unit run canteen has been set at rest by the Apex Court in CA-1039-1040 of 1999 [Union of India & Ors. Vs. M. Aslam and Ors.] decided on 4.1.2001 . The following observations have been made:-

"As already stated, we have come to the conclusion about the status of the employees serving in Unit-Run Canteens to be that of Government servants, but that by itself *imso facto* would not entitle them to get all the service benefits as is available to the regular government servant or even their counter parts serving in the CSD Canteens. It would necessarily depend upon the nature of duty discharged by them as well as on the Rules and Regulations and Administrative Instructions issued by the employer. We have come across a set of Administrative Instructions issued by the Competent Authority governing the service conditions of the employees of such Unit-Run Canteens. In this view of the matter, the direction of the Tribunal that the employees of the Unit-Run Canteens should be given all the benefits including the retiral benefits of regular

government servants cannot be sustained and we accordingly, set aside that part of the direction. We, however, hold that these employees of the Unit-Run Canteens will draw at the minimum of the regular scale of pay available to their counter parts in the CSDI and, we further direct the Ministry of Defence, Union of India to determine the service conditions of the employees in the Unit-Run Canteens at an early date, preferably within six months from the date of this judgment. This appeal is accordingly disposed of with the aforesaid direction and observation."

3. As a result thereof when the conditions of service were not finalized led to filing of CCP-243-247 of 2001. The Apex Court gave liberty to the respondents to form the terms and conditions which had been duly formed on 28.4.2003.

4. Applicants have been working for the last six to seven years as helpers and have been issued entry passes and were paid for the work rendered on daily basis. Minimum wages have been paid to the applicants. Though they stated to have made request to the respondents to regularize their services but the same is denied by the respondents.

5. Learned counsel of the applicants states that having worked for more than six to seven years, applicants in view of decision in M. Aslam's case have the status of Central Government employees and as the applicants are exploited by not treating at par with counterparts regularly appointed though performed the identical duties and also discharging work which is perennial in nature, denial of regularization is violative of Articles 14 & 16 of Constitution of India.

6. Learned counsel Sh. Shukla relied upon a common decision of this Bench in OA-2114/96 & Ors. in Ram Pher Vs.

U.O.I. & Ors. wherein the applicants who had been working in various capacities including helper though treated on casual basis, directions have been issued to draw necessary scheme for their regularization and were accorded the same benefits from January 1995 i.e. one year preceding the filing of the applications.

7. In the above conspectus, it is stated that applicants being daily wagers are also entitled to be considered on formulation of scheme.

8. Sh. Shukla further states that in Writ Petition No. 687/1998 in Dharma Nand & Anr. Vs. U.O.I & Ors. decided on 29.4.2004, the Apex Court directed reinstatement of canteen employees who were appointed for the fixed term on consolidated amount.

9. On the other hand learned counsel of the respondents Ms. Avinash Kaur vehemently opposed the contentions and stated that the work of the applicants is contingent depending upon the requirement for specific task and had been performing the work of loading and unloading and are paid at daily wages rates. It is stated that the entry passes issued to the applicants are not proof of their regular appointment but in order to get entry in defence area even private persons are issued passes which are temporary in nature.

10. By referring to the terms and conditions framed on 28.3.2003, it is stated that these terms and conditions do not apply to casual workers or daily wagers. Accordingly, it is stated that the applicants have no right for regularization.



11. We have carefully considered the rival contentions of the parties and perused the material placed on record.

12. The Apex Court in State of Haryana & Anr. Vs. Tilak Raj & Ors. (2003(6)SCC 123, regarding claim of regular scale to the daily wagers held as follows:-

“A scale of pay is attached to a definite post and in case of a daily-wager, he holds no posts. They cannot be held any post to claim comparison with regular staff.”

13. In State of Punjab & Ors. Vs. Sardara Singh (1998 SCC(L&S) 1528), the following observations have been made by the Apex Court:-

“1. Delay condoned.
2. Special leave granted.
3. By the impugned judgment, the High Court has directed that the respondent who has been employed on daily-wage basis as a labourer should be regularized since he has put in more than three years of service. The submission of Shri Sodhi, the learned counsel appearing for the appellants, is that the State Government has framed a scheme for regularization vide circular dated 7-5-1993 and that the regularization could only be made in accordance with the said scheme. We find merit in the said contention. The High Court could not direct for regularization of the respondent but could only direct the appellants to frame a scheme for the said regularization and since the scheme has already been framed, the regularization can only be made in accordance with the said scheme. In these circumstances, the appeal is allowed and the directions given by the High Court regarding regularization of the respondent is set aside and it is directed that the appellants shall consider the matter of regularization of the respondent in accordance with the scheme, as revised from time to time, as per the circular dated 7-5-1993. No order as to costs.”

14. If one has regard to the above, a daily wager who does not hold a post yet keeping in view the apathy and the fact that

these applicants had continued on daily wages for number of years and also casual workers working in unit run canteen have already been regularized following the directions of the Tribunal. It is within our domain to direct the respondents to frame an appropriate scheme to regularize the services of the applicants.

15. If the respondents had proceeded towards framing a scheme for casual workers, the same shall also be extended to the applicants otherwise this would be a discrimination violative of Articles 14 & 16 of Constitution of India.

16. The performance of work of loading and unloading as helper by the applicants is perennial work, requirement of which is permanent. The applicants are discharging other work for the last six to seven years. This cannot be treated as seasonal one.

17. We do not agree with the applicants' counsel that decision in M. Aslam or in Dharma Nand by the Apex Court applies to the facts of the present OA. In M. Aslam the person was substantially appointed and in Dharma Nand's case the appointment was on a tenure on consolidated sum. Daily wager gets wages at daily rates and does not hold the post.

18. In the fitness of things, we dispose of this O.A. with a direction to the respondents to frame necessary scheme for regularizing the applicants and also to set out the structure of pay, allowances and other conditions of service within six months from the date of receipt of a copy of this order. Till

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then as it is not disputed that there is requirement of work
with the respondents as performed by the applicants, they shall
be continued in same capacity.

No costs.

S. Raju
(Shanker Raju)
Member(J)

V.K. Majotra
(V.K. Majotra) 20.8.04
Vice-Chairman(A)

/vv/