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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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OA 860/2004

New Delhi, this the 27th day of May, 2004

Hon'ble Sh. Sarweshwar Jha, Member (A)

1. Prem Kumar,
S/o Sh. Ayodhya Prasad
R/o Qtr. No. 344, Sector-2,
R.K. Puram, New Delhi - 2.
2. Suresh Kumar,
S/o Sh. Udho Ram,
~ Ro~ 540, Sector-2,
~R.K. Puram, New Delhi.
3. Yogender,
S/o Sh. Ganga Ram,
R/o C-11/A, DDA Flats,
Sarai Basti, Delhi-35.
4. Ashok Kumar,
S/o Sh. Sardar Singh,
R/o Distt. Sonapat,
Haryana.

...Applicants

(By Advocate Sh. M.K. Bhardwaj)

V E R S U S

Union of India & Ors. through

1. The Secretary,
Ministry of Defence
South Block,
New Delhi.
2. The Director,
Ministry of Defence,
Directorate of Standardization,
H Block, DHQ PO, New Delhi.
3. The Deputy Director (Admn.)
Directorate of Standardization,
H Block, DHQ PO, New Delhi.

...Respondents

(By Advocate Mrs. Harvinder Oberoi)

O R D E R (ORAL)

Shri Sarweshwar Jha,

Heard.

2. This OA has been filed with prayer by the applicants that their services be regularised in terms of DOP&T OM dated 26-10-1984 read with dated 7-6-1988 in terms of the decisions of the Tribunal in the matter of Parmanand

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vs. UOI & Ors. TA No. 415/1986, Biswajyoti Ghosh & Ors.
vs. UOI & Ors. 1994 Vol.I ATJ 488 and Ashok Kumar & Ors.
vs. UOI & Ors. OA No. 104/2002 in which it has been held
that casual labourers who have rendered 206 days in two
consecutive years are entitled for regularisation.

3. The facts of the matter, briefly, are that the applicants on having been found fit amongst the candidates sponsored by the Employment Exchange in response to a requisition received from the respondents were engaged by them on daily wage basis in the Directorate of Standardization on payment of Rs. 90.30 per day w.e.f. 11-9-2000 for a period of 89 days on provisional basis, which could be curtailed without assigning any reason under the terms as specified in the said Memorandum (Annexure A-1). The applicants joined the respondents on 6-10-2000, 20-6-2001 and 3-10-2000, as explained in paragraphs 4.2, 4.3 and 4.4 of the OA. They continue to serve the respondents to their utmost satisfaction. Following the decisions of the Hon'ble Apex Court and as referred to by the Hon'ble Tribunal in several cases, the respondents were required to pay them wages at par with regular Group 'D' employees. But they were paid only @ Rs. 90.30 per day arbitrarily, as alleged. The applicants have claimed that their services have also been utilised as polling officials during the elections held in 2003 and they have taken this as to mean that their services were satisfactory. They submitted a representation to the respondents seeking regularisation of their services in May, 2003. While the respondents kept assuring the applicants of their request being considered, they were faced with termination of their services after completion of 89 days followed by one or two days break before they were re-engaged so as to prevent them from completing 90 days and claiming

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regularisation on that basis. They have also alleged that the respondents have shown arbitrariness towards them by paying them lower wages than what were being paid to other regular Group 'D' employees working with them.

4. It is observed from their submissions as made in paragraph 5(C), (D), (E) and (F) that they have claimed that they are eligible for regularisation of their services on the basis of their having rendered more than two years of services in each of the two consecutive years and also that their case is covered under the decisions of the Tribunal in OA No. 104/2002 and also Department of Personnel and Training OM dated 26-10-1984 and 7-6-1988. They have accordingly prayed that their services may be regularised in terms of DOP&T OM dated 26-10-1984 and 7-6-1988.

5. The respondents have admitted that the applicants were engaged afresh for 89 days or till further order, whichever was earlier, on daily wage basis and that it would not confer any right on them to claim regular employment to any grade. This fact is strengthened by their submission that the Directorate of Standardization does not have a cadre of its own and no recruitment is done by them. They have been sanctioned an establishment where posts are authorised by the Ministry of Defence and that the manpower against these posts is provided by the feeder organisations on deputation/tenure basis. Accordingly, no recruitment is done by them to any of the posts authorised in this establishment. As regards Group 'D' personnel, the same are provided by the Chief Administrative Office, Ministry of Defence. All the personnel are posted to the Directorate of Standardization on tenure basis. As regards the Group 'D' employees, they have referred to the Office Memorandum of the Department of

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Personnel and Training dated 26-10-1984 and 7-6-1988 and have submitted that the casual workers on daily wage basis are engaged as per the guidelines laid down by them. The applicants were paid according to the minimum wages as notified by the Delhi Government (NCT), as they were not engaged for any job which was perennial in nature. They were not engaged on continuous basis. They have further informed that as per the Government of India letter dated 9-1-2004, as referred to in paragraph 4.1 of their reply, the applicants are working on contract basis w.e.f. 1-4-2004 (Annexure 'P') for which a contract has been entered into by the respondents with a contractor who pays to the casual workers @ Rs. 107.10 per day which is higher than that which was being paid by the Directorate of Standardization till 31-3-2004, whereafter the contract has become effective. They have emphatically submitted that the applicants cannot be made permanent in the Directorate of Standardization as it does not have a cadre of its own.

6. The applicants, however, in the rejoinder, have disputed the claim of the respondents that they have not been engaged for work of perennial nature. They have strongly argued that their claim for regularisation cannot be denied merely because no recruitment is done by the Directorate of Standardization. In this connection, they have referred to the decisions of the Calcutta Bench of the Tribunal. They have reiterated some of the things submitted earlier in the OA to contend that casual labourers with 206 days of service during each year of two successive years are entitled to regularisation of their services.

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7. On perusal of the facts of the case it is observed that, while it is a fact of record that the applicants had been in the service of the respondents as casual labourers for a certain period, presently they are serving them on contract basis. It is also apparent that the respondents do not have their own establishment and do not make recruitment of their manpower. They are given an establishment and a budget and they cater to their needs within them. While the other posts of their establishment are filled on deputation by the parent organisation (Ministry of Defence), Group 'D' establishment is also provided by the Ministry of Defence only. According to them, to take a position that the applicants are not concerned with who provides the establishment and that they are considered with their claims is not quite a rational approach. As regards the rate of daily wages being paid to the applicants, it has been submitted by the respondents that the same is being paid as per the rates approved for such workers and the same has not been disputed. It has also been clarified by the respondents that the applicants are engaged on jobs which are not perennial in nature and, therefore, such jobs have to be performed by workers engaged on contract basis through contractors. Decisions of the Tribunal which have been referred to by the applicants in support of their contention that they be regularised, are relevant in the case of casual labourers of one kind or the other. But the present case relates to contract labour and it is doubtful if similarity can be established with the cases already decided. However, a reference will need to be made to the respondents to clarify whether what has been submitted by the applicants in regard to the nature of their employment is confirmed by

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their records. The question of regularising their services in terms of the provisions of the Department of Personnel and Training OM dated 26-10-1984 and 7-6-1988 would become relevant only if they fulfilled the conditions of the said OM before they became contract labourers employed through contractors.

8. In consideration of the facts and circumstances of the case and also the submissions made by the learned counsel for the parties, I partly allow this OA with a direction to the respondents that they verify the nature of employment and service which has been rendered by the applicants since their initial engagement and whether they had fulfilled the conditions as laid down in the OM of the Department of Personnel and Training as referred to by the applicant and whether they could be given the benefit of regularisation of their services in terms of the said provisions before they were employed afresh as contract labourers through contractors. If, on verification, it is found that they fulfilled the conditions as laid down in the OM of the Department of Personnel and Training as referred to, they may consider giving them the benefit of the scheme. They are also directed to dispose of the matter by issuing a reasoned and speaking order within three months from the date of receipt of this order. No order as to costs.



(Sarweshwar Jha)
Administrative Member

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