

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.No.949/2003

New Delhi, this the 1st December 2004

(8)

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

1. Shri Jagdish, s/o Shri Rang Rao
Badli Worker, Delhi Milk Scheme
2. Shri Sharwan Kumar, s/o Shri Sant Lal
Badli Worker, Delhi Milk Scheme
New Delhi

..Applicants

(By Advocate: Shri R.S.Rawat)

Versus

1. Union of India
through the Secretary
Ministry of Agriculture
(Department of A. & Dairying)
Krishi Bhawan, New Delhi
2. The General Manager
Delhi Milk Scheme
West Patel Nagar
New Delhi-8

..Respondents

(By Advocate: Shri R.N. Singh)

ORDER

MA-799/2004

MA-799/2004 for joining together in a single application is allowed.

OA-949/2003

This is the second round of litigation. The applicants – S/Shri Jagdish and Sharwan Kumar along with another Shri Chhotel Lal had filed OA-2518/2000 seeking a direction to the respondents to transfer them to the regular establishment of Mates and to grant other consequential benefits, on the plea that they had completed more than 240 days of work during a year. The said OA had been allowed vide its order dated 17.10.2001, observing as under:-

“7. For the reasons mentioned in the preceding paragraphs, the OA is found to have merit and is allowed. The applicants will be transferred to regular establishment in the manner laid down in the Certified Standing Orders from the first day of the month following 12 months during which the applicants completed 240

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days. The applicants will be entitled to all the consequential benefits arising from their transfer to the regular establishment. The matter concerning the seniority of the applicants in the cadre of Mates will be decided by the respondents in accordance with the Certified Standing Orders and such other rules and regulations as are found to be applicable."

The Tribunal in the concluding paragraph had also directed the respondents to comply with the order within a period of two months from the date of receipt of a copy of the order.

2. The respondents challenged the said order of the Tribunal before the Delhi High Court in CWP-4055/2002, which was dismissed by the High Court vide their order dated 21.2.2003. The applicant had filed a contempt petition, being CP No.45/2000, before the Tribunal when the CWP filed by the respondents was pending before the High Court. The said CP had been dismissed by the Tribunal on 7.8.2002.

3. After the dismissal of their CWP before the High Court, the respondents have passed orders dated 31.5.2003 in respect of all the three applicants in the previous OA and have held that since Shri Chhotel Lal had completed 255 working days during a period of 12 months from the date of his engagement, his case was being referred to the Ministry for regularization as Mate or as a Group 'D' employee in the Delhi Milk Scheme (DMS). However, with regard to the applicants herein, the respondents have held that since they (the applicants herein) did not complete 240 days of work during 12 months of their engagement, they were not eligible for regularization. Aggrieved with the rejection of their claim, the present OA has been filed seeking a direction to the respondents to comply with the direction given by this Tribunal vide its order dated 17.10.2001 while disposing of OA-2518/2000, which has been upheld by the High Court and to transfer the applicants to the regular post of Class-IV Mates governed by the Fundamental & Supplementary Rules, and further to pay them the arrears of pay from the date of their regularization and grant them other consequential benefits.

4. Learned counsel for applicants has contended that the Tribunal in its order dated 17.10.2001 in OA-2518/2000 had specifically directed that the applicants be transferred to regular establishment in the manner laid down in the Certified Standing Orders from the first date of the month following 12

months during which the applicants completed 240 days. It had further been directed that the applicants would be entitled to all the consequential benefits arising from their transfer to the regular establishment. The learned counsel submits that the order passed by the Tribunal had conclusively taken into consideration the plea advanced by the respondents that they had not completed 240 days, which, however, had been calculated without taking into consideration the weekly offs and the national holidays, which had to be added to the actual number of working days. The order, therefore, left no room/scope for the respondents to re-calculate and take a decision of their own in contravention of the directions of the Tribunal. Since the order of the Tribunal had been challenged by the respondents before the Delhi High Court, which was dismissed, the learned counsel contends that the respondents had no other option but to transfer the applicants to the regular establishment.

5. Contending further, he has pointed out that while one of the applicants in the earlier OA, namely, Shri Chhotel Lal, who had earlier been stated to have worked for only 235 days has now been held to have worked for 255 days and transferred to the regular establishment, only the present applicants have been discriminated and have been held to have worked for less than 240 days. The learned counsel contends that this is a clear manipulation of records and the respondents are resorting to double standard in not counting the weekly offs and national holidays in their case. The learned counsel further contends that while applicant No.1 had worked for 258 days from November 1998 till October 1999 and was entitled to 41 days of weekly offs, applicant No.2 had worked for 244 days with an entitlement of 25 days of weekly offs. Thus, they were fully entitled to be transferred to the regular establishment. Even if the contention of the respondents is to be taken into account that applicant No.1 had actually worked only for 229 days, the learned counsel submits that he was entitled to 34 days of weekly offs, which makes it to 263 days, which is much more than the 240 days laid down for the purpose. Similar is the case with regard to applicant No.2, who, the respondents have admitted, had worked for 230 days and if he is allowed another 30 days on account of weekly offs, he too would exceed the requirement of 240 days. The learned counsel contends that when Shri Chhotel Lal was earlier claimed by the respondents to have worked for 235 days, they have now allowed him 255 days, which obviously means that he has been given 20 days on account of weekly offs/national

holidays. Since applicant No.1 had also worked during the same period as Shri Chhotel Lal was engaged as Badli worker, it is clearly discriminatory as to how applicant No.1 has been denied the weekly offs on the same scale as Shri Chhotel Lal had been permitted.

6. The learned counsel has further argued that while the respondents admit that they are under obligation under their own standing instructions to transfer the applicants in case they fulfill the conditions of having worked for 240 days yet they are advancing superficial plea such as the engagement of the applicants being made as Badli worker in lieu of regular staff and, therefore, they could not be taken on regular establishment unless regular vacancies are available. Their reasoning that consequent to the increase in price of milk, there has been around 50% reduction in the sales as a result of which the staff regularly employed by respondent No.2 itself is under employed, the respondents are not only shying away from their legal duties but are also deliberately denying the applicants ~~from~~ their due right. The learned counsel, therefore, contends that the impugned orders having been passed illegally, arbitrarily and just to deprive the applicants ~~from~~^{of} their due right, should be quashed and set aside and the prayer of the applicants allowed.

7. Learned counsel for respondents has contested the OA. At the outset, he has contended that the OA is misconceived and not maintainable, as the applicants had earlier filed Contempt Petition against the non-compliance of the directions of the Tribunal passed in OA-2518/2000, which had been dismissed by the Tribunal.

8. As per learned counsel, the direction/order passed by the Tribunal in OA-2518/2000 dated 17.10.2001 did not categorically direct that all the applicants were to be transferred to the regular establishment but only referred to the weekly offs and national holidays to be computed in the length of service of Badli workers and only thereafter, if they were eligible that they could be transferred to the regular establishment. The respondents were, therefore, fully within their rights to pass the necessary orders after allowing the applicants the weekly offs/national holidays. On the point of Shri Chhotel Lal having been considered for transfer to the regular establishment, who had earlier been shown to have worked for 235 days, the learned counsel contends that the calculations were arrived at on the basis of the statements

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of absentees and, therefore, the earlier statement cannot be taken as sacrosanct.

9. Another limb of argument, the learned counsel has advanced, pertains to the applicants not being entitled to more than the maximum number of days in a particular month. According to him, if a Badli worker had worked in a particular month, which has 30 days, the number of days for the purpose of calculation cannot go beyond 30 days even if a Badli worker is entitled to any number of weekly offs, which goes beyond the maximum limit of 30 days. The learned counsel has tried to persuade me to believe that the claim of the applicants that they have not worked for 240 days is based on these assumptions that irrespective of a month having 30 or 31 days, they would be entitled to calculate more than 30 or 31 days by taking into account the weekly offs that they may have been allowed. No additional weightage could be claimed for additional days to be included in a particular month beyond the number of days of that month. When a person has worked for a whole month, the benefits would necessarily be restricted to the number of days in that month, he contends. In support of this argument, he has referred to Section 25 (b) of Industrial Dispute Act.

10. I have heard the learned counsel for the parties carefully as also have gone through the records of the case. I notice from the defence advanced by the respondents in their counter reply as also from the arguments advanced before me by their learned counsel that applicability of Certified Standing Orders of the employees of the DMS is not disputed. In the said standing order, the expression "Badli" has been defined as under:

"Badli" means a worker who is employed for the purpose of working in place of regular employees, who were temporarily absent.

Provided that a badli worker who has actually worked for not less than 240 days in any period of 12 months shall be transferred to regular establishment governed by the Fundamental and Supplementary Rules."

11. On the face of a categorical provision in their own standing order, I consider it facile that the respondents are advancing the plea of Badli worker being appointed as substitute of regular employee and that in the absence of any vacancies, their case for transfer could not be acceded to. This type of pleas have been advanced earlier also in a number of cases and have been

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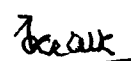
out rightly rejected. Since the respondents themselves have framed the Certified Standing Orders and have provided for the transfer to the regular establishment therein, to advance the plea that either the concern is facing financial crunch as a result of the reduction in sale, can at best be taken as a management problem, on which the Tribunal cannot take a view insofar as the applicants are concerned in providing them the relief as per rule or Certified Standing Order in the present case. The solution may lie somewhere else in the form of amending the Certified Standing Orders or doing away with the provision of not taking the Badli workers on regular establishment. But insofar as the Tribunal is concerned, it has to consider the matter as per the existing Certified Standing Orders and I find that the Tribunal while disposing of OA-2518/2000 on 17.10.2001 more or less came to the conclusion that all the three applicants therein had completed 240 days if the weekly offs/national holidays were taken into account and, therefore, had expressed the view that they should be transferred to the regular establishment. However, since they have passed an order to the contrary in respect of the present applicants, I have looked into the records. In fact, there is no explanation as to how in the case of Shri Chhotel Lal, who was one of the applicants in OA-2518/2000, the respondents have taken his total number of days as 255 days whereas they had earlier stated that he had been engaged only for 235 days. When queried, learned counsel for respondents has not been able to provide a satisfactory reply. Further, I find that in case of present applicants, while applicant No.1 has been given only 4 days of additional benefit to his earlier 229 days on account of weekly offs, applicant No.2 has been given only 1 day. In order to reconcile the statement and contradictions, I had asked both the learned counsel to submit clear cut details of applicants' period of engagement and the weekly offs/national holidays that they are entitled to. While learned counsel for applicants has submitted the details, the respondents were relying upon the same material, which had been submitted along with their counter reply from which it is not clear as to how the weekly offs had been calculated. In fact, from page 77 of the paper book, which is the statement in respect of applicant No.1, I find that he has worked for 229 days and allowed 27 weekly offs with 1 day as national holiday. Yet he has been given only 4 days of credit making the total of 233 days. Similarly, in case of applicant No.2, while he has been shown to have worked for 230 days, he has been allowed 31 days of weekly offs but has been granted only 1 day in addition to total days work taking the tally to 231 days. In case of Shri Chhotel Lal, however, they have shown him to have

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worked for 255 days as against their earlier statement of 235 days and have allowed him 31 days of weekly offs but the total has been taken as 255 days. Obviously, therefore, the respondents have either not allowed the proper weekly off in addition to their actual period of work or have computed the period wrongly. However, there is no denial of the fact that the cases of the applicants have not been considered at par and on the same scales as that of Shri Chhotel Lal. From the statement submitted by the learned counsel for applicants, I find that even if their own claim is not considered as correct if the weekly offs as admissible to them on the working days as calculated by the respondents, is taken into account, both the applicants should exceed the requirement of 240 days and would, therefore, be entitled to the transfer to the regular establishment.

12. Under the circumstances, I find that there is merit in the OA, which is allowed and the respondents are directed to take the applicants on the regular establishment. This should be done within a period of two months from the date of receipt of a copy of this order. The applicants, however, would not be entitled to any benefit retrospectively.


(S. K. NAIK)
MEMBER (A)

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