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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No981./2004

New Delhi this the 29th day of October,2004

Hon'ble Mr. S.K. Malhotra, Member (A)

1. Titu Ram S/o Shri Kali Ram,
R/o Jatauli Helli Mandi,
Tehsil Pantodigi,
Gurgaon.
2. Shri Satbir S/o Shri Banwari Lal,
R/o WZ 1672, Jail Road, Nangal Rai,
New Delhi-16
3. Shri Bachhu Lal, S/o Shri Ram Sunmer,
R/o 270, Raksha Enclave, Mohan Garden,
Uttam Nagar, New Delhi-59
4. Shri Narayan Dey, S/o Shri Nepal Chand Dey,
R/o WZ-1528, Nangal Raya, New Delhi-46
5. Shri Chirangi Lal S/o Shri Rurha Ram,
R/o T-52, Purani Nangal, Delhi Cantt-10
6. Shri Kartar S/o Shri Mange Ram,
R/o WZ-598, Goan Nariana,
Post Office Nariana, New Delhi
7. Shri Udhaybhana, S/o Shri Hakum Chand,
R/o Goân Nasirpur,
8. Shri Raj Kumar, S/o Shri Ram Chander,
R/o T-32, Purani Nangal,
Delhi Cantt-10
9. Shri Braham Prakash, S/o Shri Daya Ram,
R/o C-18, Sagarpur, East Gali No.12,
New Delhi-46

.....Applicants

(By Advocate: Shri U. Srivastava)

Versus

1. Union of India
Through the
Secretary,
Ministry of Defence, South Block,
New Delhi

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2. The Director General,
Army Supply Corps, Saina Bhawan,
PODHQ,
New Delhi-11.

3. The Officer Commandant,
POL Depot (210 POL),
ASC, Delhi Cantt.,
Delhi

....Respondents

(By Advocate Shri Ashish Nischal, proxy for Shri Rajinder Nischal)

ORDER

The applicants have filed this OA for quashing and setting aside the order dated 9.2.2004 (Annexure A-1) issued by the respondents, rejecting the claim of the applicants for grant of temporary status and regularization. They have also requested that directions be issued to the respondents to consider them for extension of benefits of the judgments dated 17.7.2000 and 16.10.2000 issued by the Tribunal in OA Nos.2053/99 and 213/2000 respectively.

2. The facts of the case, in brief, are that the applicants have been engaged as casual labourers in the respondents Department during the period 1982-93. They have been serving for long period ranging from 12 to 22 years. They approached the department for regularization in terms of the relevant rules and instructions on the subject but to no avail. They filed an OA No.334/2001 which was disposed of by the Tribunal vide their order dated 12.9.2001 with the directions that the applicants may be considered for conferring temporary status and further regularization in accordance with the 1993 Scheme of DOPT. The respondents, however, filed a CWP in the Hon'ble Delhi High Court challenging the above judgment. This CWP was disposed of by the Hon'ble High Court in terms of judgment dated 29.4.2002 of the Hon'ble Supreme Court in the case of **Union of India & Another Vs. Mohan Pal etc.** The applicants filed a C.P. for non-compliance of the judgment dated 12.9.2001. However, later it was dismissed as the same was withdrawn. The applicants, thereafter filed another OA No.454/2003 which was disposed of by the Tribunal with a direction to the respondents to treat the OA as representation and consider the claim of the applicants for regularization in terms of DOP&T instructions dated 7.6.1988. The representation was rejected by the respondents for grant of temporary status in



terms of 1993 Scheme of DOP&T. However, on an MA filed by the applicants, the Tribunal directed the respondents to re-examine the case of the applicants in accordance with the DOP&T instructions dated 7.6.1988. Now by an order dated 9.2.2004 (Annexure A-1), passed by the respondents, the claim of one of the applicants for regularization has been rejected by the respondents on the ground that the applicant has never completed 240 days of continuous service. It is against this order that the applicants have now filed the present OA.

3. The applicants in the OA have contended that based on OAs filed by certain similarly situated persons, some of the employees who were junior to them, having joined later, have been regularized by the respondents. It has been claimed that all of them have completed more than 240 days of service as Casual Labourers during each of two years of service, after taking into consideration the weekly offs and holidays and as such they are eligible for regularization, as per scheme of the Govt. Action of the respondents of not regularizing them when their juniors have been regularized is contrary to the law laid down by the Hon'ble Supreme Court in case of **UP State Mineral Development Corporation Ltd. And Anr. Vs. Vijay Kumar Upadhyay and Anr. SC etc. 1998(1)SLJ 165.**

4. The respondents have filed their counter reply in which they have denied that the applicants have completed 240 days in the respondent organization which observes six working days in a week. It has been stated that the respondents engaged casual labourers for 4 to 5 days in a week and as such they are not eligible for any weekly off i.e. Sunday under the instructions issued by Govt. They have appended statements showing the number of days the applicants have worked since 1982 to prove that none of them worked for 240 days in any year. The request of the applicants for regularization has accordingly been rejected by them mainly on this ground.

5. I have heard both the learned counsel for the parties and have also gone through the material on record.

6. The main argument advanced by the learned counsel for the applicants was that in computing 240 days of work by the casual labourers, one weekly off and holidays are also required to be taken into consideration. In support of his arguments, he cited the judgment dated

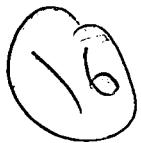


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18.5.1990 of the Principal Bench in OA No.57/1990 (1991) 18 ATC 142 (II) in which it was held that Sundays and holidays will also have to be counted while calculating number of working days for the purpose of regularization of casual labourers. He also cited another recent judgment dated 1.9.2004 of this Bench of the Tribunal in OA No.1003/2004 in which similar question of the applicants who were engaged for 4-5 days in a week was considered. The contention of the respondents that a casual worker is entitled to one paid weekly off only if he renders six days of "continuous" work, was also considered in this judgment. It was held that the phrase "paid weekly off after six days of continuous work" shall mean one weekly off after 6 days of working (including broken period of service). In other words, the casual worker will be entitled to one paid weekly off after 6 days, even if he is working for 4-5 days in a week. Thus, a casual worker who has worked for say 210 days in a year, will be entitled to 35 days paid holidays during this period (210 divided by 6) and these 35 weekly off days will be counted for the purpose of computing his working days in a year. If an exercise is done on this basis, the applicants would have completed 240 days every year during the period 1998-2003, as per information given by the respondents in the statements at Annexure R-1. However, they do not seem to have completed 240 days in any of the years from 1982 till 1997 and as such they are not eligible for regularization, even if paid weekly off is taken into consideration after every 6 days of work. The learned counsel for the respondents, however, reiterated that since the applicants have been working only for 4-5 days in a week, they were not entitled to a paid weekly off, as per the instructions of DOPT.

7. However, the main question to be considered in this case is whether a casual worker who has worked for more than 240 days in two consecutive years during the period 1998-2003 is entitled for conferring temporary status/regularization? For this purpose, we will have to go through the instructions issued by the Govt. from time to time. According to the instructions issued by Govt. in their OM dated 26.10.1994, all those casual workers who have been recruited through employment exchange for work of purely temporary/casual/seasonal nature and who have put in at least 240 days (206 days in the case of offices observing 5 days week) of

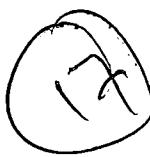
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service for two years of service as daily wage workers during each of the years, are eligible to be considered for regular appointment against a Group 'D' post, in case there are suitable vacancies to accommodate them. Further instructions on the subject were issued vide OM dated 7.6.88 keeping in view the judgment of the Hon'ble Supreme Court on 17.1.1986 in writ petition filed by **Surinder Singh and others Vs. UOI**, laying down certain guidelines for recruitment of casual workers on daily wage basis. The main point brought out in these instructions was that a review of the work load should be made in all Ministries and work being done by casual workers should be entrusted to the regular employees, to the extent possible. All eligible casual workers should be adjusted against regular posts to the extent such regular posts are justified and the remaining casual workers whose retention is considered absolutely necessary should be paid emoluments in accordance with the guidelines specified in the OM. It was specifically mentioned in these instructions that there should not be any more engagement of casual workers for attending to the work of regular nature, particularly after review of the work load has been completed. The main emphasis of this OM was to minimize the number of casual workers and not to engage their services to the extent possible in future.

8. After the issue of the above OM dated 7.6.1988, it appears that Govt. Departments still continued to engage casual workers. Further instructions had, therefore, to be issued by the Govt. vide OM dated 10.9.1993. These were based on a policy review in the light of the judgment dated 16.2.1990 of this Bench in the writ petition filed by **Shri Raj Kamal and Others vs. UOI**. It was mentioned in the instructions that while the existing guidelines contained in OM dated 7.6.1988 may continue to be followed, the grant of temporary status to the casual employees, who are presently employed and who have rendered one year of continuous service as on 1.9.1993, may be regulated by the Scheme titled "Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Govt. of India, 1993" which came into effect from 1.9.1993. The Hon'ble Supreme Court has already given its verdict that this Scheme is not an on-going scheme but is only a one time measure.





9. The learned counsel for the applicants argued that while the case of the applicants has been rejected under the 1993 Scheme, the same deserves consideration under the instructions dated 7.6.1988. He tried to create an impression as if there were two distinct schemes, one based on instructions dated 7.6.1988 and the other announced by Govt. vide OM dated 10.9.1993, which is effective from 1.1.1993. This is not borne out by facts. The sequence of events explained above shows that instructions on the subject have been issued from time to time starting with the OM dated 26.10.1984, followed by OM dated 7.6.1988 and thereafter OM dated 10.9.1993. All these instructions have culminated ultimately in introduction of a Scheme of regularization which came into effect from 1.1.1993. The instructions issued in the above three OMs have to be read in continuity and cannot be taken as separate from each other. In my considered opinion, the instructions issued by DOP&T vide OMs dated 26.10.84 and 7.6.88 get subsumed in the Scheme of Regularisation announced by Govt. vide OM dated 10.9.93. Besides, it is inconceivable that there could be two parallel schemes of regularization in operation simultaneously, one based on 1984/1988 instructions and the other based on 1993 instructions. The underlying emphasis of all these instructions/Scheme is that casual workers who were in service on 10.9.1993 should be considered for conferring temporary status and regularization in accordance with the extant instructions. While casual workers may continue to be engaged even after 10.9.1993 for work which is of casual or seasonal or intermittent nature or for work which is not of full time nature, there is no scheme after 1993 under which they are entitled to be regularized or conferred temporary status.

10. According to sub-para (x) of the instructions issued vide OM dated 7.6.1988, the regularization of the services of the casual workers will continue to be governed by the instructions issued by the Department. This regularization process continued till the issuance of another OM dated 10.9.93 which was in continuation of the earlier OM dated 7.6.88, whereby a new Scheme of conferring temporary status and regularization was introduced. However, this scheme was applicable only to those casual workers who were in employment on the date of issue of this OM i.e. 10.9.93 and rendered a continuous service of at least one year. In para 10



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of this OM, it was mentioned that "in future, the guidelines as contained in the OM dated 7.6.1988 should be followed strictly in the matter of engagement of casual employees in Central Government Offices." The word "engagement" of casual employee in this OM is very important. This means that while the conferment of temporary status/regularization in respect of casual workers will be governed by the scheme introduced w.e.f. 1.1.1993, their "engagement" for seasonal or intermittent work will be governed by the instructions contained in OM dated 7.6.1988.. These instructions were guidelines in the matter of engagement of casual workers, which included persons on daily wages not to be recruited for work of regular nature; payment of wages to be made at the rate of 1/30th of the pay at the minimum of pay scale; one paid weekly off after 6 days of work etc etc. In other words, neither conferment of temporary status nor regularization of casual workers could be made under the earlier instructions dated 26.10.1984 or 7.6.88, after the introduction of the new scheme vide OM dated 10.9.1993. It will thus be logical to conclude that previous instructions get subsumed in the OM dated 10.9.1993, except what has been specifically mentioned about the engagement of the casual workers in para 10 of the OM dated 10.9.1993, which governs only their engagement after 1993 and not their regularization/conferment of temporary status. Besides the above, no Govt. can allow the operation of two schemes of regularization of casual workers simultaneously, one governed by 1993 instructions and the other by 7.6.1988/26.10.1984 instructions. Thus, in my considered opinion, while the engagement of casual workers will be governed by the instructions dated 7.6.1988, their regularization/conferment of temporary status will be governed by the scheme announced by Govt. vide OM dated 10.9.1993. There is no scheme of regularization in operation at present in respect of casual workers engaged on daily wages for seasonal/intermittent work after 10.9.1993.

11. The present OA filed by the applicants will have to be examined in the light of the above discussions. As mentioned above, all the applicants in this OA have been working as casual workers since the period 1982-1992. From the information given by the respondents in the statements at Annex. R-1, it is observed that till 1996-97, all these applicants have worked for far

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less than 200 days in a year. The maximum days for which any one of them has worked is one applicant who has worked for 191 days during the year 1991. Even if 1/6th of the working days are added as weekly paid days, as explained above, none of them had completed 240 days in two years during the period 1982-97. Thus these applicants are not eligible for regularization in accordance with the instructions issued in 1984 and 1988. Under the 1993 Scheme effective from 1.1.1993, they were required to be in continuous service for one year prior to 10.9.1993 to be entitled for consideration for conferment of temporary status. All of them appear to have completed 240 days (after including the paid weekly off) only during the period 1998-2003. This period cannot be taken into consideration for the purpose of regularization under the 1993 Scheme which clearly stipulates that regularization can be considered only in case of those employees who had one year's continuous service on the date of issue of the OM i.e. 10.9.1993. This condition is not fulfilled by any of the applicants in this OA. Thus, all the applicants in the OA do not fulfil the conditions of regularization/temporary status laid down in the instructions issued in 1984, 1988 and 1993. It is also now a well settled law by the Hon'ble Supreme Court that the Scheme of 1993 is not an on-going Scheme but was only a one time measure.

12. Another point raised by the Ld. Counsel for the applicants is that some of the casual workers who were junior to the applicants, have been regularized. We have not been furnished full particulars of such employees. It could be that they had completed 240 days of work in two consecutive years during the relevant period and were eligible for regularization. The applicants cannot claim any parity with them, unless they fulfill the basic criterion of regularization which apparently they have not done, as explained above.

13. As a result of the above discussions, the OA turns out to be devoid of any merit and the same is accordingly dismissed. No order as to costs.

Paray
 (S.K. Malhotra) 29/10/04
 Member (A)

New Delhi
 29.10.2004
 /ug/

27.06.2005

Item No.05.
OA No.672/2005
With
OA No.981/2004

Present: Ms Seema Nair, proxy for Mrs. Rani Chhabra, counsel
for the applicant.
Shri Ashish Nischal, counsel for the respondents.

Learned counsel for the respondents seeks and is
granted four weeks' time to file their reply with a copy to the
other side, who may file rejoinder, if any, within two weeks
thereafter.

List the case before Principal Registrar's Court for
completion of pleadings on 17.08.2005.


(T.J.S. Sandhu)
Deputy Registrar

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