

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA.No.1353/92

Date of Decision: 15.01.1992

Shri Malkhan Singh and others

Applicants

Versus

Union of India and others

Respondents

Shri D.R. Gupta,

Counsel for the applicant

Shri M.I. Verma,

Counsel for the respondents

CORAM:

The Hon'ble Mr. P.K. KARTHA, Vice Chairman(J)

The Hon'ble Mr. B.N. DHOUNDIYAL, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter, or not?

JUDGEMENT

(of the Bench delivered by
Hon'ble Member Shri B.N. DHOUNDIYAL)

This OA has been filed by Shri Malkhan Singh and four others who are aggrieved by the non-regularisation of their services against the Group 'D' posts, even though they have been working for more than 10 years.

2. Applicant No.1 Shri Malkhan Singh was recruited as a Casual Labourer w.e.f. 19.4.82 and has also been earning increments in the pay scale of Rs.750-940. Applicant No.2 Shri Bahadur Singh belongs to 'Scheduled Caste' community and was recruited as Casual Labourer on 6.5.81 and was appointed as adhoc Peon w.e.f. 2.3.87. Applicant No.3 Shri Om Prakash Sharma was recruited as Casual Labourer w.e.f. 20.3.81/ as adhoc Peon w.e.f. 2.3.87. Applicant No.4 Shri Chattar Singh is also a member of 'Scheduled Caste' community and was recruited as

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casual labourer w.e.f. 14.4.81 and was appointed as adhoc Peon w.e.f. 2.3.87. Applicant No.5 Shri Ranjit Mahato was recruited as Casual Labourer w.e.f. 20.4.82 and was appointed as adhoc Peon w.e.f. 1.5.87. Their grievance is that, they have not been regularised even though they fulfil all the eligibility criteria prescribed by the Department of Personnel and Training for regularisation. In other Ministries/ Departments, persons who were appointed as Casual Labourers much later have been so regularised. Now the respondents have threatened to reduce them to the status of casual labourers with the consequent loss of pay and allowances. They have prayed that the respondents be directed to consider their regularisation as Peons in accordance with the instructions issued by the Department of Personnel and Training and in case sufficient number of vacancies are not available in the Department, to send their particulars to the Central Surplus Cell for redeployment and absorption against the vacancies in other departments and offices of the Government of India located in Delhi.

3. The respondents have contended that the applicants have not exhausted the remedies available to them under the Industrial Dispute Act, 1947 and in accordance with the Judgement given by the Tribunal in the case of A. Padmavally Vs. C.P.W.D.; 1990(3) SIJ (Hyd) FB 544, the application is liable to be dismissed. In the absence of any vacancy, there cannot be any regularisation and whenever vacancy occurs, they would be considered on the basis of merit-cum-seniority along with other daily rated employees. In case of Shri Malkhan Singh, they have stated that he was appointed as Peon on adhoc basis during the period from 2nd March, 1987 to 28th February, 1991. Thereafter, his status was again that of the Casual Labourer, but due to a clerical error, he was allowed to draw his salary as adhoc Peon. Similar was the case of Shri Ranjit Mahato. The other 3 applicants were appointed as adhoc Peons upto 15.7.92.

4. We have heard the arguments put forth by the learned counsel for both parties and perused the documents on record. The learned counsel for the applicant has contended that, as held by the Delhi High Court in the case of Mahipal Singh Versus Trade Fair Authority of India and others; II (1992) CSJ (HC) 56, a person, who has been appointed by a letter of appointment, has to be given a letter of termination in case his services are sought to be terminated. The Supreme Court has observed in the State of Haryana and others Versus Piara Singh and others; 1992 SCC (I&S) 825 that a long continuance of the services gives rise to the presumption about the need for the regular post and the Government should consider the feasibility of regularisation having regard to the particular circumstances with the positive approach and empathy for the concerned person.

5. The learned counsel for the respondents has argued that the respondents do not have any vacancy and the case for regularisation will be considered on the basis of merit-cum-seniority as and when vacancies occur.

6. Another Bench of this Tribunal, in which, one of us (Sh.P.K. Kartha) was a party, had directed the respondents to prepare a rational scheme with a view to regularising casual labourers who have worked for 240 days and more in a year for two consecutive years (206 days in case of offices observing 5 days a week) (1990 (2) SLJ (C.A.T.) 169; Raj Kamal Versus Union of India). A direction was also given to the effect that for the purpose of absorption, Government of India should be treated as a single Unit. There is no mention of the merit-cum-seniority formula in the instructions issued by the Department of Personnel and Training.

7. In the conspectus of the above facts and circumstances of the case, the application is disposed of with the following orders and directions :-

(a) The respondents shall take steps to regularise the casual labourers in accordance with the instructions issued by the Department of Personnel & Training from time to time. Those who have worked for longer periods shall be given preference for engagement in accordance with their length of service over juniors and outsiders.

(b) Since the applicants have been working for about 10 years, the respondents should carry out an objective assessment of their requirements of Group 'D' posts to enable them to regularise those casual workers who have already put in more than 240 days service a year in two consecutive years (206 days in case of offices observing 5 days a week).

(c) Till such time, a review is carried out, the services of the applicants shall not be disengaged and they shall be entitled to minimum of their scale of Group 'D' posts.

(d) Their past service as adhoc Peons will be counted for increments as soon as they are regularised.

(e) For the purpose of regularisation, all the offices under the Ministry of Coal located at Delhi shall be treated as one Unit and no fresh recruitment shall be made till already existing eligible candidates are absorbed in service.

(f) The regularisation of the services shall proceed subject to the eligibility criteria laid down by the Department of Personnel and Training.

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(g) The above order shall be complied with expeditiously and preferably within a period of three months, from the date of communication of this order.

There will be no order as to costs.

B.N. Dhoudiyal
(B.N. Dhoudiyal) 13/1/93
Member (A)

Arvind S
Arvind S (15/1/93)
(P.K. Kartha)
Vice Chairman (J)

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