

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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1. OA No.272/92

Date of decision: 28.07.1993.

Shri Gurmukh Singh

...Petitioner

Versus

Union of India through the Secretary,
Ministry of Communications, Department
of Telecommunication, New Delhi
and Others

...Respondents

2. OA No.273/92

Shri Kanhaiya Lal

...Petitioner

Versus

Union of India & Others

...Respondents

Coram:-

The Hon'ble Mr. I.K. Rasgotra, Member (A)
The Hon'ble Mr. B.S. Hegde, Member (J)

For the petitioners

Mrs. Rani Chhabra, Counsel.

For the respondents

None.

Judgement(Oral)
(Hon'ble Mr. I.K. Rasgotra)

These cases raise identical issues of law and of fact and, therefore, we proceed to dispose them of through this common judgement. However, for facility of disposal we are referring to the facts of the case in OA-272/92 - Shri Gurmukh Singh v. Union of India & Others in detail.

OA-272/92

2. We have heard the learned counsel for the petitioner. The case was admitted on 4.2.92 when and ad-interim order to the following effect was passed "In the meanwhile, the respondents are directed to consider the engagement of the applicant as casual labour, if vacancy exists, in preference to his juniors and outsiders." The respondents were given time to file counter-affidavit within 4 weeks on 4.2.92.

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The case came up again on 18.2.92, 25.3.92, 8.4.92, 22.4.92, 6.5.92, 22.5.92 and 7.7.92 but the respondents did not enter appearance. On 13.7.92, Mrs. Raj Kumari Chopra, learned counsel appeared on behalf of the respondents and prayed for three weeks' time to file counter-affidavit. Time prayed for was allowed. However, the counter-affidavit was not filed on 24.8.92 and 16.11.92. Finally on 16.3.93 it was ordered that if the respondents do not file the counter-affidavit within four weeks the case be listed for final hearing on 4.5.93. The matter remained on Board on 4.5.93, 5.5.93 and 12.7.93. Today when the matter was taken up none appeared for the respondents. In the circumstances we proceed to decide the O.A. on the basis of the record and with the assistance of the learned counsel for the petitioner. The case of the petitioner is that he was appointed as Driver muster roll (daily rate) basis in May, 1990. The details of the service put in by him in 1990 are given at page 24 of the paperbook. It is observed therefrom that in 1990 he had worked for 240 days from May to December, 1990. During the year upto 30.11.1991 he had put in 327 days' service continuously. His grievance is that having put in 240 days in 1990 and 327 days in 1991 continuously his services were dispensed with on 30.11.1991 without any notice and without passing any written order. By way of relief the petitioner has prayed that the circular No.270/6/84 dated 22.4.1987 issued by the respondents stipulating that services of all casual labours employed after 30.3.1985 be dispensed with, should be quashed and set aside, as it is contrary to the law laid down by the Supreme Court and is in violation of Articles 14, 16 and 21 of the Constitution. He has further prayed that the

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respondents be directed to take the petitioner back on duty with immediate effect with all benefits of regularisation etc. The learned counsel for the petitioner Mrs. Rani Chhabra in this connection referred us to the scheme prepared by the respondents in pursuance of the orders of the Hon'ble Supreme Court in the case of Daily rated casual labours employed under Post and Telegraph Department v. Union of India & Ors. reported in 1988(1) SCC 122. The said scheme stipulates that casual labours who have rendered continuous service of at least one year out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing five day week) should be conferred temporary status. Conferment of temporary status would entitle the casual labourers to:-

- i) Wages at daily rates with reference to the minimum of the pay scale for a regular Group 'D' official including DA HRA and CCA;
- ii) Benefits in respect of increments in pay scale will be admissible for every one year of service subject to performance of duty for at least 240 days (206 days in administrative offices observing 5 day week) in the year;
- iii) Leave entitlement will be on a pro-rata basis, one day for every 10 days of work. Casual leave or any other kind of leave will not be admissible. They will also be allowed to carry forward the leave at their credit on their regularisation. They will not be entitled to the benefit of encashment of leave on termination of services for any reason of their quitting service.

The said scheme came into effect w.e.f. 1.10.1989 onwards. The petitioner, as adverted to earlier, was employed w.e.f. May, 1990 and continued to be in

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employment till 30.11.1991. The learned counsel further referred to the decision of the Hon'ble Supreme Court in Ram Gopal & Ors. v. Union of India & Ors. Writ Petition (C) No.1280/88 decided on 17.4.1990.

3. Relying on the said judgement the learned counsel submitted that the services of the petitioner cannot be dispensed with, as in identical cases the Supreme Court has held that the casual labourers who have put in 240 days service in the Telecom department should be considered for regularisation in accordance with the scheme to be prepared on rational basis. The learned counsel, therefore, submitted that the question of superimposing an artificial cut off date of 30.3.1985 for retrenching of those who are employed after that date is legally not sustainable, as this is in violation of the law laid down by the Supreme Court. Mrs. Rani Chhabra also referred us to the judgement of the Tribunal in OA 2453/89 - Puran Mal v. Union of India & Ors. decided on 23.10.1990 wherein we have held that the applicants shall be considered for grant of temporary status from the date he completed 240 days' service (206 in the case of offices observing 5 days' week) and shall accordingly be entitled to payment of salary at the minimum of the pay scale applicable to the post.

4. In view of the above facts and circumstances of the case we are of the opinion that the matter stands covered by the judgement of the Hon'ble Supreme Court in Ram Gopal & Ors. (supra) case. It also specifically stands concluded in terms of our judgement in OA-2453/89 (supra). Accordingly the petitioner herein is also entitled to similar reliefs. We, therefore, order and direct the respondents to consider the petitioner for reengagement and conferment of temporary status from the

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date he completed 240 days' service. The petitioner shall be considered for reengagement within a period of three months from the date of communication of this order. He will, however, be entitled to temporary status from the date he completed 240 days' continuous service after his initial appointment. He shall, however, be not entitled to any wages during the period he was out of employment but the benefit of drawal of increments on a notional basis shall be made available to him. The petitioner shall also be entitled to relaxation of age in case he has crossed the age limit for employment in Government service to the extent he had rendered service with the respondents. No costs.

5. The conclusion arrived at in OA-272/92 shall be equally applicable to Shri Kanhaiya Lal, petitioner in OA-273/92 and he shall also be entitled to the same reliefs as given to the petitioner in OA-272/92.

6. A copy of this order be placed in the case file of OA-273/92.


(B.S. HEGDE)
MEMBER(J)


(I.K. RASGOTRA)
MEMBER(A)

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