

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(14)

OA 3086/92.

New Delhi, this the 07th day of April, 1994.

SHRI J.P.SHARMA, MEMBER(J).
SHRI S.R. ADIGE, MEMBER(A).

Smt. Shobha Devi,
Wd/o Shri Manbar Singh,
Casual Worker in the office of the Principal,
Govt. Model Sr. Sec. School,
Ludlow Castle, Delhi-54, and
resident of Purani Chandrawal,
Shiv Mandir, Near: Khebar Pass,
DELHI-110007. ...Applicant

By advocate Shri D.R.Gupta.

VERSUS

1. Delhi Administration through
Chief Secretary,
Delhi Administration,
5, Sham Nath Marg, Delhi-110054.
2. The Director of Education,
Delhi Administration,
Old Sectt., DELHI-110054. ...Respondents

By advocate Ms. Ashoka Jain.

O R D E R (ORAL)

SHRI J.P.SHARMA :

The applicant was engaged in Sports Branch in February 1990 as a casual labour. She was given ~~threat~~^{break} in service thrice till May, 1991 and she was ceased from service w.e.f. 29-5-91. She filed original application no.1329/91 before the Principal Bench which was decided by the Order dated 24-12-91 with a direction to the respondents, "the applicant shall be re-engaged against one of the existing vacancies in Group 'D' within a period of 8 weeks from the date of communication of this order". The applicant had represented to the respondents and thereafter she was given

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engagement w.e.f.18-5-92. She was, however, kept as a daily rated casual labour being paid the wages as calculated on daily basis. The respondents issued an Office Order on 18.6.92 by which 21 casual labours on directions from the Tribunal were given appointment on temporary basis in the Sports Branch and some of them in the various districts of Directorate of Education. The name of the applicant did not figure among these 21 persons. Aggrieved by the same, she filed this application in November, 1992, and she prayed for grant of a number of reliefs. The Bench has considered the matter and by the Order dated 12.4.93 the application was only confined to relief at serial no.1 of para 8 of the original application. The other reliefs which were claimed by the applicant of quashing of the order dated 18-6-92 (Annexure A-I) inasmuch as the name of the applicant was omitted from the said list of temporary employees. She has also prayed for her regularisation according to the established policy against one of the existing Group 'D' posts. She also prays for getting the pay scale as is admissible to Group 'D' employees.

2. The respondents in their reply opposed the grant of the reliefs and denied various averments parawise in the counter.

3. The applicant has also filed the rejoinder further supplementing the averments made in the

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O.A. She has also given a further list of 11 persons who are junior to the applicant as regards the length of working days put in with the respondents and have since been given temporary appointment in preference to the applicant.

4. We heard the learned counsel for the parties at length. In spite of the earlier direction by the Tribunal to the respondents that the representation of the applicant be disposed of, the learned counsel for the respondents Ms. Ashoka Jain has pointed out that the said representation could not be traced out in spite of communication and correspondence between the department. The learned counsel for the respondents only places before us a letter dated 1-12-92 which has been taken on record. This is a letter addressed to Joint Director of Education written by Additional Director of Education for regularisation of the applicant Smt. Shobha Devi. In any case, there is nothing with the respondents to show that her representation has been either rejected or favourably considered in spite of the letter sent by Additional Director of Education (Sports), by the letter referred to above.

5. The basic issue in this case is whether the applicant is entitled to be appointed as a temporary appointee in a same and similar manner as some of the juniors to the applicant have been given appointment by the memo dated 18-6-92.

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The learned counsel for the applicant stressed that inspite of the direction of the Tribunal in the earlier judgment of 24-12-91 in OA 1329/91, the respondents have not given engagement to the applicant on a Group 'D' post but only engaged her on a casual vacancy as a daily rated casual labour. It was open to the applicant to ^{move} for for contempt for non-compliance of the above directions. We cannot take notice of the fact whether the order has not been complied with or it has been complied with ^{to} ~~with~~ certain modifications. The fact, however, remains that the applicant should be given an appointment as has been given to some of the juniors of the applicant listed by the applicant in the original application, in para 4.9. The names of these persons are shown that two of these persons at serial number 9 and 10 were given appointment in August, 1990 while the applicant has been serving with the respondents since February, 1990. In the counter filed by the respondents, in para 4.9, this fact is not denied. The name at serial no.9 and 10 is of that Smt. Surinder Kumari and that of Shri Raj Kumar. The name of Smt. Surinder Kumari and Shri Raj Kumar existing in the letter dated 18-6-92 exist at serial number 20 and 21. It may be that the services of the applicant were terminated w.e.f.29-5-91 and these two persons may have continued or discontinued like the applicant, but when there was a clear direction by the Tribunal passed after hearing the parties in the earlier

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O.A. by the order dated 24-12-91, the applicant should also be given the same treatment as has been meted out to other similarly situated casual labours. This is discriminatory, arbitrary and violative of equitable justice protected under the Constitution of India.

6. While arguing the matter on behalf of the respondents, Ms. Ashoka Jain duly instructed by the Head Clerk Shri S.C.Sharma gave a statement that the services of the applicant shall not be dispensed with and that she will also be regularised in the same and similar manner when the case of regularisation of 21 appointees will be considered and that she will also be given due seniority. She has given these statements on the basis of policy being adopted by the department in such matters. In view of this, the applicant should not have any apprehension that she can be ceased from service at the hand of the respondents so long as a post exists and juniors to her are allowed to work.

7. The next question that arises is whether the applicant should be paid salary as a monthly rated basis or as a daily rated casual labour. Since two of the juniors of the applicant Smt. Surinder Kumari and Shri Raj Kumar have already been given temporary appointments in the scale of the group 'D' employee, the applicant cannot be denied this benefit. The learned counsel for the respondents has nothing to say with regard

to this. The learned counsel for the respondents has nothing to say with regard to this.

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to this. The applicant, therefore, has a case to be granted the monthly wages as are being granted to similarly situated employees who are junior to the applicant. The present application, therefore is disposed of with the following directions to the respondents :

- (i) The applicant shall be continued in service so long as her juniors are continuing and if any of the juniors to the applicant is regularised in their appointment, the applicant shall also be regularised in preference to those juniors, given seniority, according to the strength of the days they have put in as casual labours with the respondents.
- (ii) The respondents shall adopt the policy and instructions in this regard as they have already adopted and also referred to by the learned counsel for the respondents during the course of the arguments.
- (iii) The applicant shall be paid the monthly wages in the same manner as is being paid to the juniors of the applicant particularly Smt. Surinder Kumari and Shri Raj Kumar within a period of one month from the date of receipt of a copy of this Order. This shall be subject to the availability of post in the Directorate of Education and the respondents to ^{locate} ~~arrange~~ a post for

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her.

Cost on parties.

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(S.R.ADIGE)
MEMBER(A)

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(J.P.SHARMA)
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