

7

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1962/93

New Delhi this the 1st December, 1993

THE HON'BLE MR. J.P. SHARMA, MEMBER (J)
THE HON'BLE MR. B.K. SINGH, MEMBER (A)

Shri Ashwani Kumar,
Son of Shri Dukhit Sharma,

Shri Rishi Pal Singh,
Son of Shri Amar Singh,

Shri Rambir Singh,
Son of Shri Chotte Singh,

Shri Chaman Lal,
Son of Shri Bhura Ram,

Shri Dinesh Khansili,
Son of Shri Tek Chand,

Shri Arun Kumar,
Son of Shri Mohan Lal,

Shri Dina Nath Parshad,
Shri Ramnanda Parshad,

Shri Girish Chand,
Shri Dewarka Parshad,

Shri Amit Parkash Uparati,
Son of Shri Om Parkash,

Shri Debabrata Bhattacharyajee
Son of Shri D.D. Bhatterchyarya

Shri Ram Bhool,
Son of Har Pal Singh,

Shri Ashok Kumar
Son of Shri Jaimal

Shri Surinder Kumar,
Son of Shri Chotte Lal

All the applicants are working as Casual
labour in the office of Asstt.
Distribution Officer, DAVP, Min. of I&B
New Delhi.

... Petitioners

(By Advocate Shri V.P. Sharma)

Vs

Union of India through
The Secretary,
Ministry of Information & Broadcasting
Sanchar Bhawan,
New Delhi.

The Director General,
Room No. 18, 3rd Floor,
Ministry of Information & Broadcasting
Sansad Marg,
New Delhi.

The Assistant Distribution Officer,
D.A.V.P., Ministry of I&B,
PTI Building,
Sansad Marg, New Delhi.

The Assistant Distribution Officer,
D.A.V.P. Ministry of I&B,
Govt. of India,
"b" Block,
Kasturba Gandhi Marg,
New Delhi.

.... Respondents

(By Advocate Mrs. Raj Kumari Chopra)

O.A. No. 1929/93

Shri Bhola Paswan,
Son of Shri Baleshawan Paswan,
Resident of R/F-34 Indra Park Palam Colony,
New Delhi.

Shri Hari Ram,
Son of Shri Baij Nath Yada,
Resident of C-413, Albert Square,
Gole Market,
New Delhi.

... Petitioners

(By Advocate Shri V.P. Sharma)

Vs

Union of India through
The Secetary,
Ministry of Health,
Nirman Bhawan,
New Delhi.

The Director General of Health Services,
Nirman Bhawan,
New Delhi.

The Deputy Director Administration (G)
DGHS, Nirman Bhawan,
New Delhi.

Shri Rohtas working in
DGHS, Nirman Bhawan,

Shri Ram Bhadur working as
Casul labour in
DGHS, Nirman Bhawan,
New Delhi.

... Respondents

O.A. No. 2084/93

Shri Budh Ram
Son of Shri Rai Singh,
Office of Director, CGHS
Nirman Bhawan,
New Delhi.

... Petitioner

(By Advocate Shri V.P. Sharma)

Vs

Union of India through
The Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi.

The Director General Of Health Services,
Nirman Bhawan,
New Delhi.

The Director,
CGHS, Govt. of India,
Nirman Bhawan,
New Delhi.

.. Respondents

(By Advocate P.P. Khurana)

O R D E R (Oral)
Hon'ble Mr. J.P. Sharma, Member (J)

Since the common questions of facts and law are involved in the above three applications, they are disposed of by a common judgement. The arguments were advanced in the O.A. No. 1962/93 by the Counsel for the applicant Shri V.P. Sharma and he adopted those arguments also in the other two above mentioned applications. On behalf of the respondents Mrs. Raj Kumari Chopra and Shri P.P. Khurana argued on the basis of reply filed separately in the above mentioned applications.

The issue involved in these cases is of dis-engagement of casual labourers who had worked for sometime with the respondents as daily wagers. The contention of the learned

counsel for the applicant is that dis-engaging the casual labourers after every three months and asking for the fresh names from the employment exchange is violative of Article 14 of the Constitution of India as well as the Principle of "Last come first Go". The contention of the learned counsel is that if the work is available they are entitled to continue so long as they can be kept engaged on the work assigned to them.

In O.A No. 1962/93 the applicants were engaged for three months from 1.7.1993 and their services were terminated on 30.9.1993 but they filed the present application on 17.9.1993. The matter was placed before the Bench on 1.10.1993 where it is directed as an interim measure that if the respondents engaged freshers they shall give preference to the petitioners. The case of the applicant is that the respondents have issued a fresh requisition to the employment exchange on 27.9.1993 for selection and appointment of fresh candidates. When the services of the applicants were available, the respondents cannot resort to higher and fire policy.

The case of the respondent is that in D.A.V.P. there are already regular packers but when the work has increased certain fresh daily wager's engagement was required to cope up with the work and the present applicants were given a short term engagement as daily wage casual workers till 30.9.1993. Department of Personnel and Training vide their Circular dated 1.1.1993 has placed a van on engaging casual labourers on daily wages and if necessity arises they can be engaged only for a period of three months. The respondents therefore found that the work will almost complete by September, 1993 so the services of the applicants were required upto that period. Thus, the applicants have no case.

In O.A. No. 1929/93 both the applicants Shri Bhola Paswan and Shri Hari Ram were also engaged at the daily rated casual labourers in Nirman Bhawan in Dte. General of Health Services. The applicants have prayed for the relief in the present application filed on 10.9.1993 for a declaration to the effect that the applicants are entitled for the engagement as daily rated casual labourers in preference to Respondent Nos. 4 & 5 Shri Rohtas and Shri Ram Bahadur and the action of the respondents not placing them on the list of daily rated casual labourers in preference to Respondent Nos. 4 & 5 is illegal. It is therefore prayed that the respondents be directed to consider the applicants for regularisation on the basis of casual labourers scheme of 1991 (Annexure A1) and Government of India's instructions of June 1988 and October 1984. The respondents have contested the application and in the reply stated that the applicants were engaged as casual labourers for a period of three months and six days on daily wage basis for cleaning/dusting of the book shelves/racks etc. in the National Medical Library against a special sanction obtained from the competent authority. The applicants have been dis-engaged with effect from 18.4.1993 as the specific work for which they were engaged became non existence. The applicant's name is not included in the select list of candidates for engagement as waterman and casual labourers on daily wage basis. The applicants were adjusted as watermen from 3.5.1993 to 30.9.1993 during the summer season and that was accepted by them with demur. The applicants could not be selected by the selection committee for casual labourers on account of non availability of vacancies. Thus, the applicants have no case.

12

In O.A. No. 2084/93 Shri Budh Ram is the applicant whose services were dis-engaged with effect from 30.9.1993. The contention of the applicant is that he has been working since 5.9.1992 continuously without any break and thus acquired the status of temporary employee. The applicant has worked for different spells from April 1990 to October 1990 in the Directorate of Estate from April 1991 to September 1991 in the Ministry of Planning from November 1991 to February 1992 in Planning Commission and May 1992 to September 1993 in CGHS, Nirman Bhawan. It is the case of the applicant that he has fulfilled the conditions laid down in the Office Memorandum dated 1.9.1993 (Annexure AII). The applicant had not been given that benefit and hence this present application. The respondents in their reply stated that the services of the applicant was purely as a seasonal worker, his services were terminated with the expiry of the specific period. The applicant has also filed earlier OA No. 786/93 and the judgement delivered in the case on 28.7.1993 has already been implemented. The applicant has also been re-engaged with effect from 12.10.1992 and his services were extended for a period of three months. The extended period was to expire on 16.4.1993 but in view of the interim relief granted to the applicant in OA No. 786/93 his services could not be terminated and after the final decision of the case his services has been terminated. The total working days of Shri Budh Ram is only from 4.5.1992 to 16.4.1993. The employment of the applicant in other offices is not in the knowledge of the answering respondents. Thus, it is prayed that the applicant has no case.

The learned counsel has argued that an adhoc employee should not be placed by another adhoc employee as held by the Hon'ble Supreme Court in the case of State of Haryana Vs. Piyre Singh 1992 (5) J.T. P 179. The learned counsel has also

referred to the judgement in the case of Shri Raj Kamal & Ors. Vs. Union of India 1990 (2) CAT SLJ P 169. This is on the point that a casual labourer may be regularised in any Ministry where there may be any vacancy. In the case of Shri Raj Kamal and ors is that they have worked for several years in the office of the respondents and they were entitled to regularization of their services. The Bench placed reliance on the case of Inder Pal Yadav Vs. Union of India 1985 (2) SLR P 284, Surrinder Singh Vs. Union of India AIR 1986 SC P. 584 Dakshin Railway Employee Union Trivandrum Division Vs. General Manager, Southern Railway, AIR 1987 SC P 1153 and also the case of daily rated casual labourer employed under P&T Department through Bhartiya Dak Dar Mazdoor Manch Vs. Union of India AIR 1987 SC P 2342. The learned counsel has also referred to the instructions issued by the Dept. of Personnel & Training. We have gone through the law cited before us. The instructions issued by the Department of personnel applies only in the cases where the vacancies are available. In the present case the respondents have clearly stated that the engagement of applicants in all the above three named applications has been for a particular period to perform the job which was of transitory nature. For the casual labourers in DAVP, they had to discharge the work of packers and so they were engaged to help the regular packers till the work was available and after that they were discharged. It is not come on record that any person after the discharge of the applicants in OA No. 1962/93 have been engaged. A letter was sent to the Employment Exchange for certain more casual labourers but no person was appointed. In the other two cases i.e. O.A. No. 1929/93 and O.A. No. 2084/93 the applicants were casually engaged in the season as waterman and they were discharged when the work was over. Thus the instructions issued by the DOP&T does not benefit the case of the applicants.

The casual labourers does not hold a civil post. He is in the service of Union of India and there are no rules about their appointment or termination of services. Their services are absolutely temporary and they are not entitled to claim that the same should be regularised. The Government of India however issued OM in October 1984 that the services of casual worker may be regularised in a Group 'D' post provided he has put in two years as a casual labourers with 206/240 days or more of service as such during each year. The other O.M. of June 1988 refers to a policy of not recruiting persons on daily wages for work of regular nature. Thus the O.M. referred to by the learned counsel do not give them any help to continue in their engagement till regularisation. The circular issued by DOP&T and enforcing with effect from 1.9.1993 by the O.M. dated 10.9.1993 has to be complied with subject to the availability of vacancies and work. The case of Shri Raj Kamal as well as Piyre Singh Vs. Union of India are only on the ratio that regularisation can only be done when the persons are sponsored by the employment exchange and they have continued to work for a definite period continuously performing the work of a regular nature. This is not the case here. The learned counsel has also referred to the decision of the Principal Bench in a bunch of cases Shri Rameshwar and ors vs. Union of India decided by the Principal Bench on 26.4.1991 this authority lays down that casual labourers are not entitled to protection of Article 311 but they are entitled to protection under Articles 14 and 16 of the Constitution of India and cannot be arbitrarily treated. Now coming to the case in hand the applicants can be engaged only if the work is available and in preference to freshers or those who have put in lesser number of days. The work of casual nature also requires immediate engagement of the workers and in this process if the name is sent

to the employment exchange the persons may be readily available. Here the question arises that those who have already worked may also be called because they have already put in certain days of work with the respondents. In such a situation if the information is sent to the dis-engaged earlier employed casual labourers some of them may not be available and may have got other job elsewhere with the result the respondents cannot make to wait for sufficient time.

In view of these all the Original Applications are disposed of with the common direction which will apply to all the cases:

The respondents, if the work is available with them requiring additional hands would also consider the applicants who would apply for the job and the respondents will consider them in preference to any of the persons sponsored by the employment exchange if such a person is junior i.e. have worked for lesser days with the respondents.

a) The applicants need not be again sponsored by the employment exchange in their engagement as a casual worker.

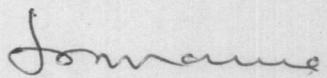
b) When the applicants have once being engaged they should continue till the work is available and in case where there is no work the policy of 'Last come first go" should be adhered to. and also be considered for regularisation on completion of required number of days service in a particular year subject to availability of Grade 'D' post and the applicants are eligible according to the Recruitment Rules.

The applications are accordingly disposed of with no
order as ~~the~~ costs. A copy of the order be placed in each file.



(B.K. Singh)

Member (A)



(J.P. Sharma)

Member (J)

Mittal