

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the ^{4th} day of July 1997.

CCRAM : Hon'ble Mr. T.L. Verma, Member (J)
Hon'ble Mr. D.S. Baweja, Member (A)

ORIGINAL APPLICATION NO. 503 OF 1994.

1. Ashok Kumar Khatri, S/o Kishan Chand Khatri,
R/o 932 Kamla Nagar, Agra.
2. Narmada Singh Khairiat,
B/o F-64 Judges Compound, Agra.
3. Dinesh Kumar Sharma,
R/o E-281 Sector 31, Noida,
District-Ghaziabad.

(By Advocate Shri Chandra prakash)..... Applicants.

Versus

1. Union of India through the Secretary,
Ministry of Defence, New Delhi.
2. The General Manager,
Ordnance Equipment Factor Hazratpur,
District-Firozabad.
3. The Director,
Ordnance Factory Gun, 6 Esplande East,
Calcutta.

4. Additional Director Gun Ordinance Factory,
Sarvodaya Nagar, Kanpur.

..... Respondents.

(By Advocate Km. Sadhana Srivastava)

ORDER (RESERVED)

(By Hon'ble Mr. T.L. Verma, Member (J))

1. This application Under Section 19 of the Administrative Tribunals Act, 1985, has been filed for quashing the order dated 8.12.1992 and 23.9.1993 and for issuing a direction to the respondents to absorb the applicants in service as Labour Division Clerk(L.D.C) in Ordnance Equipment Factory, Hazratpur or absorbed them by transferring to any other factory of the Defence Ministry and treat them as continuing in service from the date of their initial appointment with all consequential benefits including arrears of pay.
2. The case of the applicants in short is that they were appointed as L.D.C in A.F.D Factory Hazratpur in District-Agra on different dates in 1979 after following the due procedure prescribed for such appointment. They worked on the said post for about three years with artificial breaks after every 89 days of service. It is alleged that after the applicants completed more than 3 years service the respondents verbally stopped them from working in the department. The applicants challenged their disengagement by filing a Writ Petition in the High Court of Allahabad, which, after coming into force

fl

of the Administrative Tribunals Act, 1985, was transferred to this Tribunal for final disposal and was numbered as T.A. no. 198 / 87. The said Original Application was disposed of with the following directions :-

" Accordingly the respondents are directed to consider the cases of the applicants within three months for getting them alternate employment in the AFD Factory and side by side to consider their cases for absorption, if not from the back date with effect from the subsequent date, in case the similarly placed persons have already been absorbed. In case the applicants are absorbed elsewhere under the same Ministry they may be given continuity but not back wages. "

The respondents in compliance with the aforesaid direction informed the applicants that since they had worked in A.F.D as L.D.C on casual basis and as no such L.D.C has been absorbed, they cannot also be considered for regular appointment as mentioned in the judgment and order dated 22nd September 1992.

3. The contentions of the applicants is that that the Government of India, Ministry of Defence, have issued direction regarding the condition of service of Workman Employees in the casual capacity. The applicants contend that according to the instruction so issued that if appointment of casual Industrial Employee is continued beyond six months the individual will not be discharged and re-employed from the same date ~~instead~~ he will be allowed to

continue in service without any break and will be treated as regular Industrial Employee from the date of their original appointment as Casual Industrial Employee. The applicant's case is that they, having put in more than three years continuous service, were entitled to be regularised in terms of the ^{aforsaid} instruction issued by the Government of India, Ministry of Defence. The further case of the applicants is that persons namely S/o Devendra Thapa, Raj Kumar Agarwal, Ardesb Kumar, Rishi Pal and Ram Pratap who were appointed together with the petitioners have been retained even after closer of the factory and have been absorbed by transferring them to different Ordnance Factories. The action of the respondents in not giving similar benefit to the applicants, ~~this~~ is alleged, ^{is} to be arbitrary and contrary to the provisions of Article 14 and 16 of the Constitution of India. Hence, this application for the reliefs mentioned in para 1 of the judgment.

7H 4. The respondents have contested the claim of the applicants by filing counter affidavit. In the counter affidavit filed on behalf of the respondents, it has been stated that A.F.D Factory was closed w.e.f. 1.4.1977 under Government Order dated 3.6.1977. On the closer of the Factory the staff was declared surplus and ordered to be absorbed in various ~~different~~ establishments of the country under the surplus / deficiency scheme. However, in the year 1983 the Government of India, Ministry of Defence took the decision that the facilities of A.F.D Agra be used for ^{agumentation} of capacity of Textiles items of Ordnance Equipment

Group of Factory~~ies~~, Pursuant to the above decision of the Government of India, Ordnance Equipment Factory, Hazratpur, was established for production of equipment of armed forces. The Further case of the respondents is that in between 1.4.1977 and 23.5.1983 during the period the fate of the Factory is hanging in balance ~~skeleton~~ staff of casual / adhoc basis for the closed A.F.D Factory, Agra, was sanctioned by special ministerial orders from time to time and that the petitioners were appointed on the said post on casual basis for a period of 89 days. After the take over of the A.F.D Factory by Ordnance Equipment Factory, Hazratpur, the need of continued employment of adhoc employees ~~ceased~~ and accordingly the applicants were disengaged. It has also been contended that no L.D.C or for that matter any other adhoc employee appointed for ^{the} up-keep of A.F.D Factory has ~~neither~~ been re-engaged ~~nor~~ regularised.

JK

5. We have heard the learned counsel for both the parties and perused the record very carefully.

6. The respondents have filed letter dated 3.6.1977 issued by Government of India, Ministry of Defence. This letter would disclosed that the A.F.D Factory Hazratpur, Agra, was ~~closed~~ ^{closed} from 1.4.1977 ~~in~~ under orders of the Comptent Authority. The letter further indicates that the staff employed in the Factory was declared surplus and directions were issued to take action to absorb the surplus staff in the Director General of

Ordnance Factory Organisation (D.G.O.F.O) and other Defence Organisation under the surplus / deficiency scheme. The applicants, admittedly, were appointed in 1979 on different dates, after the closer of the A.F.D Factory, Hazratpur, Agra. They were thus not on the role of the Factory as a regular staff.

7. The respondent, in para 7 of the counter affidavit, have specifically averred that skaleton staff was appointed on adhoc basis for the closed A.F.D Factory by special ministrial orders. The applicants, in para 7 of the rejoinder affidavit, have not given any effective denial of the above averments. All that has been stated is that had the Factory been closed Union of the petitioners would **never** have been made the contesting respondents. These averments are neither here nor there, in view of the Presidential order contained in Annexure-C.A-1. The material on record ~~was~~ referred to above thus leaves no room for doubt that the applicants were appointed on adhoc basis for the up-keep of the closed A.F.D Factory.

8. In view of the above, the next question that arises for consideration is whether the respondents have discriminated the applicants by retaining and absorbing similarly situated adhoc employees and denied the similar benefits to the applicants. The applicants have mentioned the names of four persons in para 4(xvi) of the original application

as having been appointed alongwith the applicants and retained and subsequently absorbed ~~in ignoring~~ ^{on} the claim of the applicants. The respondents have replied the above averments in para 26 of the counter affidavit. According to the averments made in para 26 of the counter affidavit the individuals mentioned by the applicant in 4(xvi) of the original application were never on the strength of the A.F.D Factory, Hazratpur. The reply of the applicants to the above averments of the respondents may be seen in para 25 of the rejoinder affidavit. Except the bald denial that the contents of para 26 of the counter affidavit, there is nothing to ~~say~~ ^{Show} that the individuals named by the applicants ~~himself~~ in para 4(xvi) of the original application were actually appointed alongwith the applicants for the up ~~keep~~ of the closed A.F.D Factory. The applicants it would thus appear have failed to substantiate their contention that the respondents have discriminated them by denying the benefits given to similarly situated persons.

9. The bench which decided the earlier case filed by the applicants for similar reliefs did not issue directions as prayed for. All that has been done in the said original application is to issue a direction to the respondents to consider the case of the applicants for providing them alternate employment. The material on record clearly goes to show that the applicants have not been provided with an alternate employment either in the A.F.D Factory re-named as Ordnance Equipment Factory or in other Ordnance Factories.

10. The learned counsel for the applicants submitted that the applicants who have worked for more than three years continuously, have acquired permanent status as observed in para 5 of the judgement and order dated 2.9.1992 in T.A. no.198/87 rendered by a bench of this Tribunal. Therefore, the respondents could not have terminated their services without giving any opportunity to them. This issue was raised and considered in T.A. no.198/87. That being so, we do not propose to re-consider the said issue. It would suffice to say that even assuming for the sake of argument that the applicants have acquired a permanent status then also *their* continued employment on adhoc basis depended upon the availability of work. The applicants would have been within their right to challenge the appointment, if any, of new faces, after their dis-engagement, on adhoc basis. There is not even a word either in the O.A or in the rejoinder affidavit indicating that the respondents had recruited fresh faces to replace the applicants.

11. We have, no material before us to reject the contention of the learned counsel of the respondents that with the taking over of A.F.D Factory by Ordnance Equipment Factory, Kanpur, in

1984, the special sanction accorded for appointment of the applicants on adhoc basis for the up keep of plant and machinery automatically came to an end.

We have also no material before us not to accept the respondents case that at the time the services of the applicants was discontinued there was neither any vacancy available against which they could be absorbed nor recruitment was being made.

12. Coming to the argument of the learned counsel of the applicant that the respondents have discriminated the applicant by providing job to simiarly situated persons and denying the similar benefit to the applicants, *it* may be stated that the individuals named by the applicants in their O.A., according to the respondents, ^{were} ~~where~~ industrial workers. Therefore, they cannot equated with the applicants who were working as adhoc L.D.C.

14. In the facts and circumstances discussed above, we find no merit in this application and the same is accordingly dismissed. parties shall bear their own costs.

A. B. Rawat
Member (A)

S. Kumar
Member (J)

am/