

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

OA No. 571 of 1999
WITH
OA No. 572 of 1999
OA No. 573 of 1999

This the 28th day of November, 2002

HON'BLE SHRI M.P. SINGH, MEMBER (A)

O.A. No. 571 of 1999

Lal Bahadur son of Shri Lurkhur,
Resident of C/o Rajesh Kumar Srivastava,
48-R, P.W.D. Sakhar Nagar, Post Rawatpur Goan,
Kanpur.

....Applicant

(By Advocate : Shri A.K. Jaiswal)

Versus

1. Union of India through the Chairman,
Central Board of Excise and Custom,
Ministry of Finance, New Delhi.
2. Commissioner, Central Excise,
Office of the Commissioner, Central Excise,
Sarvodaya Nagar, Kanpur.

....Respondents

(By Advocate : Shri A. Sthalkar)

O. A. No. 572 of 1999

Sabhajeet son of Shri Vishwanath,
Resident of C/o Rajesh Kumar Srivastava,
48-R.P.W.D., Sakhar Nagar, Post - Rawatpur Goan,
Kanpur.

....Applicant

(By Advocate : Shri A.K. Jaiswal)

Versus

1. Union of India through the Chairman,
Central Board of Excise and Custom,
Ministry of Finance, New Delhi.
2. Commissioner, Central Excise,
Office of the Commissioner, Central Excise,
Sarvodaya Nagar, Kanpur.

....Respondents

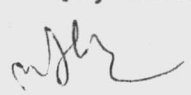
(By Advocate : Shri A. Sthalkar)

O.A. No. 573 of 1999

Chandra Bhan son of Shri Panna Lal
Resident of C/o Rajesh Kumar Srivastava,
48 - R.P.W.D. Sakhar Nagar, Post Rawatpur Goan,
Kanpur.

....Applicant

(By Advocate : Shri A.K. Jaiswal)

Versus

Union of India, through the Chairman
Central Board of Excise and Custom,
Ministry of Finance, New Delhi.

2. Commissioner, Central Excise,
Office of the Commissioner, Central Excise,
Sarvodaya Nagar, Kanpur.

....Respondents

(By Advocate : Shri A. Sthalkar)

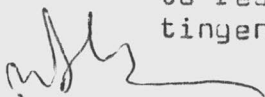
ORDER (ORAL)

BY Shri M.P. Singh, Member (A) :

As the facts, law and reliefs claimed by the applicants in all three OAs (OA 571/1999, OA572/1999 & OA 573/1999) are identical, therefore, I proceed to dispose of all these OAs by passing a common order.

2. The facts in brief are that the applicants were working as contingencies paid workers on the basis of day to day work for the last several years as Class IV employees under the Respondent No.2 i.e. Commissioner, Central Excise, Kanpur. The respondent No.2 had decided to remove all the contingencies ^{staff} and recruit fresh through the contractor. It is alleged by the applicants that they were forced to sign the declarations ^{to the effect} that they were willing to work in the respondent establishment through the contractor instead of contingencies paid staff. No document is available with the applicants in this regard. Thus the persons who were not willing to sign the said declaration were threatened that they would not be given work. According to the applicants, they were doing different kind of work as Class IV employees, which were of regular nature and the requirement of work has neither diminished nor reduced for any reason. Their grievance is that the respondents only intend to deprive the applicants from getting the regular pay scale and their claim for regularisation by handing over this work, which was done by the Class IV employees, to the contractor. Aggrieved by this, these applicants have filed the present OAs and are claiming the following reliefs :-

- "(i) That this Tribunal may graciously be pleased to issue a suitable order or direction directing and commanding the respondents to allow the petitioners to resume his duty and continue as class IV contingency paid staff and he may be paid his salary



in accordance with law.

(ii) That by issuing a suitable order or direction directing the respondents to absorb the petitioner against the sanctioned post as regular employee in Class IV cadre treating that petitioner has never been restrained from working or retrenched from his post in accordance with law.

(iii) To issue suitable order or direction, directing the respondents to treat the applicant to be continued and regular employee as Class IV in service in the office of the respondents and he may not be enforced to work of supply Class IV labour through the contractor."

3. Respondents in their reply have stated that the applicants are no longer engaged with them and their services were terminated. They were earlier engaged under contract on daily wage basis as and when their services were required by the office. The applicants did not work continuously as daily wagers for a period of 206 days, which is the pre-condition for grant of temporary status. It is further stated by the respondents that the claim of the applicants that they had been forced to sign the said declaration that they were willing to work with the respondents establishment through the contractor instead of ~~as~~² contingencies paid staff is absolutely vague, inasmuch as they have not completed 206 days of continuous service, hence, they could not be considered for grant of temporary status or for regularisation. In view of the above submissions, the present case is not maintainable and is liable to be dismissed.

4. Heard both the learned counsel for the rival contesting parties and perused the material placed on record.

5. During the course of the arguments, learned counsel for the applicants has submitted that the similar issue was involved in OA No.1226/1998, which was disposed of by this Tribunal vide order dated 30.5.2002 whereby this Tribunal has given the following directions :-

"5. In the present case, the applicants have worked for more than 7 to 8 years, whereas in the above cited case, the Hon'ble Supreme Court even considered working of 2 to 3 years as a fairly long period. Since in this case it has been brought on record that the services of the applicants were dispensed with without giving any opportunity to be heard. I cannot sustain this illegal action of the respondents. The correct procedure would be to draw up a seniority list of all such employees and regularised as many as there are vacant posts, if no regular posts are available they should be declared as,

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temporary employees awaiting their turn whenever a regular vacancy arises. The principle of 'last come first go' shall be followed i.e. seniormost should be retained and juniors should be removed, if there is no work. Therefore, the undated orders by which the services of the applicants were terminated w.e.f. 01.11.98, are quashed and it is directed that action to prepare a seniority list and to engage contingent paid staff in accordance with the seniority, should be completed within a period of 4 months from the date of filing of this order. Further although the learned counsel for the applicant has requested for payment of backwages since being on put off duty, I cannot agree to the payment of wages for the period in which the applicants acquiesced to oral orders of oral orders of disengagement, however, from 01.11.98 they shall certainly be entitled to full backwages. More so because the orders of termination of service have been passed by attaching a stigma and without giving a show-cause notice. The execution of this order shall be completed within 4 months. The O.A. stands disposed off accordingly. No order as to costs."

According to the learned counsel for the applicants, all these OAs are covered in ~~4~~ ^{all four} by the decision of the aforesaid judgement in OA No.1226/1998 of this Tribunal.

6. Learned counsel for the respondents has not disputed this fact and agreed that these OAs are fully covered with the decision of the aforesaid judgement.

7. In these circumstances, I am of the considered view that the directions be given to the respondents in terms of the directions given in the OA No.1226/1998 dated 30.5.2002, as the same is fully applicable in the present case. I do so accordingly. The respondents are directed to follow the aforesaid directions as passed in OA No.1226/1998 in these OAs (OA 571/1999, OA 572/1999 and OA 573/1999) accordingly.

8. All these OAs (OA No.571/1999, OA 572/1999 and OA 573/1999) are disposed of in the aforesaid terms. There shall be no order as to costs.

9. Copies of this order be also placed in other two OAs (OA No.572/1999 and OA No.573/1999).