

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 23rd day of November, 2004.

Original Application No. 531 of 2002.

Hon'ble Mr. D.R. Tiwari, Member- A.

1. Tulsi Das S/o Late Kallo,
R/o Military Farm, Bargarh, Chitrakoot.
2. Prem Shankar Bubey, S/o Sri Ram Prasad Bubey,
R/o Military Farm, Bargarh, Chitrakoot.

.....Applicants

Counsel for the applicants :- Sri K.P. Singh

V E R S U S

1. Union of India through Secretary,
M/o Defence, New Delhi.
2. Dy. Director General, Military Farm,
Army Hqs, Quarter Master General's Branch,
West Block III, R.K. Puram, New Delhi-110066.
3. The Director of Military Farm,
Headquarter, Central Command, Lucknow.
4. Officer-in-Charge, Military Farm,
Allahabad.

.....Respondents

Counsel for the respondents :- Sri Rajeev Sharma

O R D E R

By this O.A filed under section 19 of the Administrative Tribunals Act, 1985, the applicants have prayed for issuance of direction in the nature of certiorari quashing the verbal termination order dated 31.03.2001 passed by the Officer-in-Charge, Military Farm, Allahabad coupled with prayer to regularise the services of the applicants.

2. Breifly stated, the applicant No. 1 was initially

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appointed as casual labour in the month of October, 1990 by the Officer-in-Charge (OIC), Military Farm, Allahabad and was assigned the job of Chowkidar and was posted at Military Farm, Bargarh. The applicant No. 2 was initially appointed as casual labour in 1989 at Majhgawan Depot, Distt. Satna by the Officer-in-Charge, Military Farm, Allahabad and was assigned the job of Chowkidar. In November, 1992, the name of the applicants were sponsored by the Employment Exchange, Allahabad in compliance of the requisition made by the Officer-in-Charge, Military Farm, Allahabad and after due selection and due verification by the local police, the applicants were appointed and were paid salary on monthly basis w.e.f 1993. They were given temporary status w.e.f June 1996 and were given house rent allowance from the same month. In 1997, the applicants were given two equal installments of Rs. 500/- (totaling Rs. 1000/-) for arrears of pay in compliance to the declaration made by the Vth pay Commission. They were also given productivity linked bonus, increments and CCA etc. After completion of three years temporary status of service, the applicants submitted applications to the Officer-in-Charge, Military Farm, Allahabad requesting for regularisation of their services against the existing vacancies but no cognizance was taken by the respondent 4 (Annexure A3 and a-4). In their representation, the applicants have mentioned about the policy framed by the Government of India vide circular dated 10.09.1993 according to which they were given temporary status. They have also stated that the highest authority of Military Farm i.e. Dy. Director General of Military Farms, QMG's Branch, Army Head Quarter, New Delhi has also framed the policy on the similar lines of the policy dt. 10.09.1993. The policy contained in circular dated 15.12.1998 (Annexure A-8) clearly stipulates that a casual labour who has worked for 240 days in a calendar year in two previous years is entitled for regularisation and will be considered for issuing appointment letter. In spite of these representations their services were not regularised and on 13.03.2001 their services have been

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by oral orders without giving any opportunity of hearing and without issuing any show cause notice to them.

3. The oral order terminating their services have been assailed on various grounds namely that the oral termination of the service is against the principle on natural justice and the action of the respondents are exfacie bad in law and is liable to be set aside. It has been further submitted that the action of the respondents is clear violation of Article 311 of the Constitution of India. It has again been alleged that the action of the respondents is clearly against the policy framed by the M/o Post and Telegraph dt. 10.09.1993 and the policy letter issued by the Dy. Director General, Military Farms vide letter dated 15.12.1998. In view of this the applicants have pleaded that the O.A deserves to be allowed.

4. The respondents on the other hand have contested the O.A by filing a detailed CA wherein it has been submitted that the Military Farm is quasi commercial production oriented organization of the Army under the Ministry of Defence and the main objects of Military Farms are to rear cross bred and Frieswal Cows and thier milk/milk product are supplied to troops. In the year 1997 a new accounting system was introduced for Military Farms to check the vaibility of Military Farms. The supply rates of milk and milk product are based on the actual cost of production + 7.5% escalation. It means all expenses should not be increased more than 7.5% yearly to keep the Military Farms in profit. It has been submitted that when the Military Farms are doing agriculture/ seasonal jobs and producting green fodder for feeding to defence animals, there were some jobs which were carried out by the seasonal labourers. According to that some labourers were engaged as seasonal labour as and when required basis. They have further submitted that 5th Central Pay Commission recommended to streamline the manpower in the larger interest and wanted that some reduction should be done

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in the establishment to make the organization more effective. Accordingly the manpower of the farms have also been reduced and all casual labourers have been dis-engaged from September, 1998. Even some regular staff have also been declared surplus and they have been re-deployed to other department through A.G's branch Army Head Quarter within M/o Defence. They have submitted that earlier Military Farm, Allahabad was doing hay harvesting and baling operations by engaging labourers. These jobs were purely seasonal and it started from October/ November and ended by March/April every year. Now these process have been completely stopped and fresh guidelines have been issued on the subject vide letter dated 17.07.1999 (Annexure CA-II). It has also been submitted that due to modernization of the Military Farm and to improve cost effectiveness, manpower of Military Farms have been reduced. Accordingly all casual labourers were dis-engaged w.e.f September 1998 including the applicants. The averment given by the applicants that their verbal termination dated 31.03.2001 is incorrect without having any material facts. As such it has been submitted that the O.A is devoid of merits and is liable to be dismissed.

5. During the course of hearing, learned counsel for the applicants and learned counsel for the respondents have reiterated the facts and the legal plea mentioned in the pleading of the applicants and the CA of the respondents respectively. Counsel for the applicants relied on the case of Vindeshwari Prasad Vs. U.O.I & Ors. in O.A No. 918/99 whereas counsel for the respondents have relied on the case of Om Prakash and others Vs. U.O.I & Ors in O.A No. 1266/99 decided on 15.05.2001 by this Tribunal. In the case relied on by the respondents counsel, it has been laid-down that no establishment can be forced to engage or employ the persons over and above their recruitment and the sanctioned strength and, therefore, no direction is legally

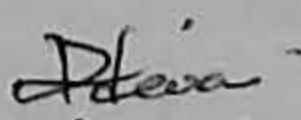
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permissible as sought for by the applicants, but it is provided that whenever occasion arises and the casual labourers are engaged, due priority be given to the applicants, keeping in view the days they have worked in the respondents establishment. In the case of Vindeshwari Prasad (Supra) , this Tribunal relying on the case of Chandan Singh & Ors. vs. U.O.I & Ors. in O.A 948/99 decided by this Tribunal on 21.11.2000 which was later on confirmed by the Hon'ble High Court of Allahabad has held as under:-

"The O.A is allowed. The impugned oral termination order dated 11.01.1999 is quashed. Respondents are directed to take back the applicant in Job. However, the applicant will not be entitled for the back wages. Applicant shall be deemed in continue service for the purpose of regularisation."

6. The only question which survives for adjudication is to validity of the oral termination of the applicants in the instant O.A. There is no doubt that they have worked in the respondents establishment and have acquired temporary status and to terminate the services of the applicants without any show cause notice is bad in law. I have given anxious consideration keeping in view the orders relied on by the counsel for parties and I think the pith and substance of the orders passed by the Tribunal in the case cited above is that the court cannot direct the respondents to re-engage the casual labourers who are not in job for a long time. It is also clear that oral termination is bad in law. Keeping in view the facts of this case, I think the O.A deserves to be allowed to the extent that they may be given priority when the respondents want to re-engage the casual labourers from the open market.

7. For the reasons stated above the O.A is disposed of with no costs.


Member- A.

/Anand/