

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 1429/03

Date of Decision 22/12/03

S.C. Yadav and Ors.

Applicant(s)

Shri P. Mathur/ Sri A.K. Dave Counsel for the  
Applicant(s)

V E R S U S

UOI and Ors. Respondents(s)

Shri V.V. Mishra Counsel for the  
Respondents(s)

**CORAM :**

Hon'ble Mr. K.B.S. Rajan Member (J)

Hon'ble Mr. \_\_\_\_\_ Member ( )

1. Whether Reporters of local News Papers may be allowed to seen the Judgment?
2. To be referred to the Reporters or not?
3. Whether their Lordship wish to see the fair copy of the judgment.
4. Whether to be circulated to all the Benches.

  
SIGNATURE

**RESERVED**

***CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD.***

ALLAHABAD this the 22<sup>nd</sup> day of Dec 2005.

**ORIGINAL APPLICATION NO. 1429 OF 2003.**

**HON'BLE MR. K.B.S. Rajan, Member-J.**

1. Subhash Chandra Yadav  
Son of Shri Vikrama Yadav.
2. Ram Bali Yadav  
Son of Shri Badri Yadav.
3. Ram Nagina Singh Yadav  
Son of Shri Rama Shanker Singh Yadav.
4. Gandharva Singh Yadav  
Son of Shri Ram Ugrah Singh Yadav.
5. Shyam Sunder Singh Yadav  
Son of Shri Hari Nath Singh Yadav.
6. Havalidar Yadav  
Son of Shri Manna Yadav.
7. Kashi Singh Yadav  
Son of Shri Bali Karan Singh Yadav.
8. Chandrajit Singh Yadav  
Son of Shri Ram Briksha Singh Yadav.
9. Jhingan Singh Yadav  
Son of Sri Baiju Singh Yadav.

All SEASONAL LABOURERS OF GOVERNMENT OPTIUM AND  
ALKALOID WORKS, GHAZIPUR (UP).

.....APPLICANTS.

Counsel for the applicant: - Sri P Mathur/ Shri A.K. Dave.

***VERSUS***

1. Union of India through Chief Controller of Factories, 27, Saraswati House, Nehru Place, New Delhi.



2. General Manager,  
Govt. Opium & Alkaloid Works
3. The Manager,  
Govt. Opium & Alkaloid Works,  
Ghazipur (UP).
4. Smt. Bhanmati Devi  
W/o Shri Parma Nand Tewari.
5. Pradeep Kumar Tewari  
Son of Shri Chandrika Tewari.
6. Baliram Singh Kushwaha  
Son of Shri Sarvejeet.
7. Ram Janam Ram  
Son of Shri Ram Sanehi Ram
8. Mohd. Javed Khan  
Son of Shri Mobiels Khan.
9. Kapil Deo Sharma  
Son of Shri Satya Narain Sharma.
10. Shiv Shanker Dwivedi  
Son of Shri Sri Niwas Dwivedi.
11. Nawal Kishore Singh  
Son of Shri Siya Ram Singh.
12. Rajesh Singh  
Son of Shri Surya Nath Singh.
13. Ram Binay Singh  
Son of Shri Ram Dhwaj Singh.
14. Rakesh Kumar Dwivedi  
Son of Shri Kamla Prasad Dwivedi
15. Ramayan Dutt  
Son of Shri Radhika Prasad.
16. Atul Kumar Tewari  
Son of Shri Gopal Dutt Tewari.
17. Krishna Katn Tewari  
Son of Shri Sri Katn Tewari.
18. Rajesh Kumar Tripathi  
Son of Shri Rama Kant Tewari.
19. Ajay Kumar Srivastava  
Son of Binod Kumar Srivastava.

20. Dharmendra Kumar Srivastava  
Son of Shri Shambhoo Nath Lal.

..... RESPONDENTS

Counsel for the respondents: - Sri V.V. Mishra

O R D E R

The case relates to appointment as skilled labourers from out of the seasonal labourers and as the respondents have issued on 05-11-2003 a panel, selecting a few seasonal labourers to the exclusion of the applicants, the following relief have been claimed through this O.A:-

- (A) to issue a writ, order or direction in the nature of certiorari for quashing the list dated 01.11.2003, the panel dated 05.11.2003 and the posting order dated 06.11.2003 with respect to respondents No.4 to 20 (Annexure A-1, A-II and A-III respectively to the compilation No.I) by this Tribunal.
- (B) To issue a writ, order or direction in the nature of mandamus commanding the respondents to hold the departmental selection as per the certified standing orders and on the basis of the list prepared and duly circulated on 14.10.2003 (Annexure A-VII to the Compilation No. II)
- (C) .....
- (D) ....."

2. The facts as contained in the OA are as under:

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- (i) The applicant had been appointed on compassionate grounds except Shri Jhingan Singh Yadav, the applicant NO.9, who has been appointed as his

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father was medically decategorised as Seasonal Labour under the effective control of the respondent Nos. 3 and 4.

(ii) They have been permitted to continue to serve the department as Seasonal Labourers against the sanctioned posts.

(iii) There are no Recruitment Rules and as such every appointments and promotions in the organization are made under the Industrial Employment Standing Orders Act, 1946 which has become a customary Rule for appointments and promotion in the organization.

(iv) There are two categories of labourers viz-.

- (a) Temporary which includes the casual and Seasonal Labourers
- (b) Permanent/Regular employees which includes skilled, unskilled and semi-skilled labourers.

(v) Seasonal Labourers are put to work only for 180 days in a year. The applicants right from their inception in the organization were permitted to work for 180 days only in a financial year.

(vi) The Competent Authority i.e. Deputy Chief Labour Commissioner (Control), the Appellate Authority under the



*Industrial Employment Standing Orders Act, 1946 had proposed the amendment of Clause-2 (e) of the Standing Orders by upholding such amendments in the following terms:-*

*"A casual worker is a workman, whose employment is purely casual nature. Whenever a vacancy arises in the seasonal category, the Senior most amongst the casual workmen of the corresponding skill shall be appointed to that category providing he fulfills the conditions laid down by the Government in this behalf and it is found fit by the Selection Committee and the Medical Authority. Provided further that if no casual worker remains for appointment in the seasons category, direct recruitment of the seasonal workman shall be made for the appointment adopting prescribed recruitment process".*

(vii) Government had imposed ban on recruitment of fresh casual/seasonal workers from 1991 as a result of which number of post of Seasonal workers became vacant. It is only for that reason, for the post, the workers were recruited as casual/seasonal workers in the first instance and then on the basis of their seniority and merit-cum-fitness, they are regularized to the respective post against the regular vacancy. By influx of time, the aforesaid procedure of the recruitment has become a customary rule and has a legal



sanctity just to eliminate the chance of any mal-practice in the matter of regularization.

(viii) The respondents prepared a seniority list of those casual/seasonal workers working in the organization year wise.

(ix) On availability of the vacancies the respondents have issued a consolidated list of seasonal workers requiring them to appear before the Departmental Selection Committee alongwith their requisites documents in original in support of their claim on 17.10.2003.

(x) The names of the applicants appear in the said list dated 14.10.2003 at Sl. Nos.14, 17, 5, 6, 13, 15, 16, 19 and 20.

(xi) However, the aforesaid list dated 14.10.2003 was replaced by notification-dated 1.11.2003 without any rhyme or reason by which the respondents have issued altogether a new list by including the names of those seasonal workers who had been appointed in 2000 and 2001.

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(xiii) In the list dated 01.11.2003, the names of the applicants which were very much in existence in the list dated 14.10.2003 were not mentioned and as such the applicants have been deprived of their valuable right for consideration of their candidature for regularization of their services in the organization.

(xiv) The applicants have approached the respondents by filing a detailed representation pointing out the grievances that they have been illegally deprived of their valuable rights as the applicants are the senior most seasonal workers in the factory and have a prior claim for regularization of their services than the private respondents. The respondents have refused to acknowledge such representation filed by the applicants and had proceeded with the selection by declaring the result dated 05.11.2003 and subsequently had issued the office order NO.36 dated 06.11.2003 by nominating the individuals to the concerned Sections for their further postings against the regular vacancies.

(xv) It is abundantly clear that the Department is not adhering to their own rules and regulations for the reasons, best known to them.



3. The respondents have contested the OA. Their version is as under: -

(a) A letter was issued by the management listing names of 21 General candidates and 14 S.C. candidates on 1.11.2003 for presence before Selection Committee. After reconsideration and scrutiny another letter was issued by the Management on 3.11.2003 and 4.11.2003 including names of some candidates in both the categories and also included the names of nine (9) workers who were appointed as Seasonal Workers as Unreserved candidates in Dec, 2001 as per Hon'ble Supreme Court's order in Civil Appeal NO.14804/05/06 dated 23.11.98.

(b) Since the labours (already appointed) are in excess of 27% fixed quota for O.B.C category, as per candidates in these categories could not be considered. On 4.11.2003 interviews were conducted for the direct recruitment only departmental candidates were called for selection process. On the basis of post based reservation without effecting existing appointment. 18 (Eighteen) candidates were



found fit/suitable in the unreserved category and 5 (five) in S.C. (category).

(c) The petitioners are Backward candidates and they are in excess in the factory. So their appointments were cancelled according to Rule and they were informed. They have no right for appointment. Now there is no vacancy of O.B.C in the factory. It is incorrect to say that there ~~are~~ <sup>is</sup> no recruitment rules and as such every appointments and promotion in the organization are made under the Industrial Employment Standing order Act 1946 which has become a customary rule for ~~a~~ appointment and promotion in the organization.

(d) In the present organization there are only two categories of workers viz.

(a) **Temporary:** which includes the Casual & Seasonal Labours, but at present there is no post of casual labours in this factory due to Ministry's ban on appointment of casual labours.

(b) **Permanent/Regular:** There are three categories (i) Unskilled (ii) Semiskilled (iii) Skilled.

(e) Due to ban on appointment of casual labourers by the

Ministry, the respondents are helpless for appointment in the factory. All the vacancies ~~that~~ arises time to time are being filled as per Rules and prescribed norms and also after obtaining proper approval from head of department by the appropriate authority.

(f) Action of the respondents are as per rules & regulations and norms as well as various instructions issued by the Ministry as well as the department from time to time in this regard.

4. Rejoinder to the counter was also filed by the applicants.

5. In view of the fact that the respondents have, even after the filing of the OA appointed some candidates, they were directed to produce the relevant records on the subject for analysis and perusal. Accordingly, the records have been produced and the same have been perused. At this stage it is relevant to mention that those who have been appointed in 2005 under compassionate appointment, such cases cannot be said to have been considered incorrectly as these stand in an entirely different footing. It is only the matter leading to



issue of initial list of candidates for selection (order dated 14-10-2003) and its replacement by order dated 01-11-2003 and its further orders as a sequel to the same i.e. order dated 05-11-2003 and 06-11-2003 that are subjected to scrutiny. Some of the noting(s) in the file are relevant and the same are as in the succeeding paragraphs.

6. On 19<sup>th</sup> /23<sup>rd</sup> Sep. 2003, the following note was recorded

"Above note may kindly be perused. In the above context kindly see our letter dated 15/16.5.2003 at page 167/c and CCP Office letter at page 176/c, we may, if appd. fill up vacant posts of U.S.W. amongst seasonal workers who are senior most and found fit by selection committee and medical authority by conducting a D.P.C for the same. These posts will be filled up as Direct Recrtt. By applying reservation 21% for S.C. and 1% to for S.T. candidates.

Thus a suitable date may kindly be fixed for D.P.C as well as names of the members of the D.P.C may also be nominated. The Chairman of the would be Manager. The Officers shown in the margin can be nominated as Members of the D.P.C.

Submitted for orders. Pl.

Discussed with G.M. As desired by G.M. Pl. also mention the ratio for O.B.C quota for direct recrtt. And work out the exact vacancy to be fill up category wise so that further action for conducting the D.P.C would be taken"

7. Referring to the order dated 02-07-1997 relating to maintenance of post based roster, at the time of working out the vacancy position, the

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respondents have specifically extracted the following two paras of the said order:

"Para 5: In making these adjustments, appointments of candidates belonging to S.Cs/S.Ts/O.B.C which were made on merit (and not due to reservation) are not to be counted towards reservation so far as direct recrtt. is concerned. In other words, they are to be treated as general category appointments".

"Para 6: Excess, if any, would be adjusted through future appointments and the existing appointments would not be disturbed".

8. After the papers prepared for the purpose of selection had been duly verified and found correct by the Accounts officer, the Manager had recorded the following note addressed to the G.M.:-

"Honorable Supreme Court had in its order in Civil Appeal NO.14804/05/96 dated 23<sup>rd</sup> Nov. 1998 directed that those workers who could not be selected the post of Laboratory Attendant and have put in considerable amount of service years be given option for the post of Seasonal workers. Nine workers (six O.B.C and 3 S.C. candidates) were appointed as Seasonal workers as unreserved candidates accordingly in December 2000.

Hence, it is felt that these nine candidates should also be considered and included in the list prepared for departmental selection process as "General Candidates" List prepared and certified by D.A. and A.O wold have to be amended accordingly for interview process. These candidates, if selected, would be treated as General candidates and they would not be entitled to claim any reservation benefits in future. Put up for approval and order Pl.

9. Interviews were held on 4<sup>th</sup> November, 2003 and on the basis of the vacancy position (after taking

*[Signature]*

into account the provisions of para 4 and 5 of the Order dated 02-07-1997), 18 candidates from General Category and 5 in the S.C. category were selected as unskilled workers. Since the number of OBC and ST were in excess of the requisite percentage this resulted in the issue of order dated 06-11-2003.

10. In addition, in respect of skilled workers, there were, in accordance with the post-based rosters, three vacancies in the General category (due to retirement in Oct 2003 to Jan 2004) and one already existing ST vacancy. Of course, the applicants cannot have any grievance over the same as it is for the post of skilled workers and the claim of the applicant is for unskilled workers.

11. It cannot be stated that the respondents have violated the provisions of clause 2(e) of the Standing order extracted in para 2 above. But the mistake committed by the respondents lies in another matter, as detailed below.

12. The applicants heavily relied upon the list of candidates called for test, vide order dated 14-10-2003 in which their names figured. And their grievance is that the respondents have replaced the same by publishing another list of 01-11-2003, which included subsequent seasonal labourers also. The

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reason for revising the list of candidates for selection, resulting in the replacement of the earlier list dated 14-10-2003 by list dated 01-11-2003 according to the respondents is that the former consisted of names of OBC candidates, while the later is without any such OBC. True, the quota for OBC in Unskilled workers would have been full. But, when it was decided to select from out of the seasonal workers for filling up the post of unskilled workers under the general category on the basis of seniority, the list for such selection cannot ignore the OBC candidates when they are sufficiently seniors. For, there is no bar in their competing against the general candidates. Even if it be assumed that all these were inducted as OBC in the category of seasonal labourers, yet, for the purpose of appointment by seniority cum fitness, they should have been called for, in accordance with their seniority position and of course, no concession as for OBC is available to them. A list of the candidates called for selection to the post of unskilled workers vide letter dated 01-11-2003 would reveal that candidates with serial numbers 1, 2, 4 to 17, 19, 20, 22, 23, 26-28, 30-34, 38, 39, 31, etc., who are much senior to other general candidates have all been omitted. This has resulted in the omission of the seniors and selection of the juniors who had been appointed as seasonal workers

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much later than the senior OBC candidates. This cannot be permitted as the same directly infringes against the provisions of Art. 16 of the Constitution of India. An OBC is entitled to compete both as a general candidate as also as OBC unless his initial appointment is on the basis of his being OBC. In this regard reference to the decision of the Apex Court in the case of **Parshotam Singh v. State of Punjab, (1995) 4 SCC 149** wherein the appellant belonging to a reserved category was enlisted in the PCS Cadre in which there was no reservation consequent to which he was not considered for that post. The Apex Court has held, "Having perused the records including the application, we agree with the learned counsel that the first preference of the appellant was PCS (Executive Branch) and it is also clear that his candidature was not considered for the PCS (Executive Branch) on the sole ground that his candidature could be limited only to the reserved post. This, in our view, is clearly wrong."

13. Again, in the case of **Post Graduate Institute of Medical Education & Research v. K.L. Narasimhan, (1997) 6 SCC 283**, the Apex Court has held, "It is settled law that if a Dalit or Tribe candidate gets selected for admission to a course or appointment to a post on the basis of merit as general candidate,



*he should not be treated as reserved candidate. Only one who does get admission or appointment by virtue of relaxation of eligibility criteria should be treated as reserved candidate."*

14. In view of the above, the respondents are thoroughly in error in not calling the applicants and other similarly situated OBC candidates for selection to the post of Unskilled Workers. These candidates should have been allowed to participate as general candidates along with other general candidates. The order dated 01-11-2003, followed by orders dated 05-11-2003 and 06-11-2003 are therefore, illegal and the same are quashed and set aside. Respondents are directed to conduct necessary selection calling those seniors from among the seasonal workers (irrespective of whether these belonged to general category or OBC) for selection under the general category of Unskilled Workers. The list dated 01-11-2003 fulfilling this requirement may be revalidated and necessary process of selection be made. It is made clear that till selection is made persons already appointed under the order dated 6-11-2003 shall not be displaced from their existing position. If any of these again get selected, their seniority would be based on the latest selection and not the earlier one. However, their pay would be protected and none of the persons



senior to such persons could claim any stepping up of pay.

15. The OA is allowed on the above terms and the respondents are directed to carry out the revised selection within a period of six months from the date of communication of this order.

No Cost.



**Member-J**

Manish/-