

Reserved

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

Original Application No. 231 of 2003

Wednesday, this the, 17th, day of September, 2008

Hon'ble Mr. K.S. Menon, Member (A)

Smt. Bitti Devi, aged about 41 years, Widow of Late Shri Rameshwar Singh R/o Garhi Rami, P.O. Chalesar, Dist. AGRA.
(Died on 29th May 2005)

Original Applicant

- i. Chandra Shekhar, aged about 25 years Son of Bitti Devi.
 - ii. Deepak Singh aged about 17 years, Son of Bitti Devi.
 - iii. Smt. Archana Kumar aged about 16 years, Daughter of Bitti Devi
 - iv. Pankaj Singh, aged about __ years, Son of Bitti Devi.
- (Applicants, substituted by Order dated 23.08.2005)

By Advocate: Sri M.K. Upadhyay

Vs.

1. Union of India, through Secretary, Ministry of Agriculture, New Delhi.
2. The Indian Council of Agricultural Research, Krishi Bhawan, through the Director General, New Delhi-1.
3. The Executive Officer/Incharge, Central Soil and Water Conservation Research and Training Centre, Chalesar, AGRA.

Respondents

By Advocate: Sri B.B. Sirohi

ORDER

By K.S. Menon, Member (A)

This O.A. was originally filed by Smt. Bitti Devi (applicant) whose husband Shri Rameshwar Singh died in harness on 12.07.2002 while working under respondent No. 3. By this O.A. the applicant Smt. Bitti Devi sought compassionate appointment on the grounds that she and her three minor children (barring her eldest son whose whereabouts were not known) were dependent on the Late Rameshwar Singh and the family's general adverse financial condition. The applicant also sought release of terminal benefits due to her late husband for the period he worked with the respondents. Both these requests were rejected by the respondents under



impugned order dated 29.10.2002, hence she filed the present O.A. During the pendency of the O.A., the applicant Smt. Bitti Devi expired in May 2005. The substitution of the present applicants (children of Late Bitti Devi) was allowed vide this Court's Order dated 23.08.2005. The applicants have sought the following relief (s): -

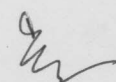
"i. To issue a writ order or direction whereby the scheme enforced w.e.f. 1.9.1993 which is annexure-A-VII be declared as illegal, unconstitutional and imperative in law and consequently the petitioner's husband late Sri Rameshwar Singh be treated as a permanent employee, entitled to all benefits as such.

ii. To issue an order or direction in the nature of mandamus directing the respondents to release the terminal benefits to the petitioner on account of the death of her husband who died in harness on 12.7.2002.

iii. To issue an order or direction to the respondents 2 and 3 directing them to give an appointment to the petitioner in relaxation of normal rules of recruitment irrespective of whether her husband is declared a permanent employee or not because he had died in harness and because a family member of even a temporary employee is also entitled to job as mentioned in above."

2. The facts of the case in brief are that Late Rameshwar Singh- father of the applicants (substituted by order dated 23.08.2005) while working as a casual labour at the Research Centre under respondent No. 3 died in harness on 12.07.2002. The deceased Rameshwar Singh had been in the employment of the respondents for more than four years and was ^{2nd} ~~not~~ not regularized in terms of respondent No. 2's ^{3rd} Circular dated 25.06.1985, which clearly stipulates that casual labour should not be employed for more than 200 days in a year.

3. In support of the above submission, the applicants have annexed a list of casual labourers 07.12.1987 (Annexure A-IV) which shows the applicants' father was employed in 1981 and the number of days worked in each year from 1981 to 1987 was more than hundred days, which is in violation of the Circular dated 25.06.1985. Despite respondent No. 2's ^{2nd} letter directing offices to forward cases of Casual Labour recruited between 21.03.1979 to 28.03.1984 for relaxation of age and regularization and repeated requests of the late Rameshwar Singh, the respondents took no action. The respondents



formulated a scheme in 1993 called "The Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993" w.e.f. 01.01.1993 (annexure 2 of C.A.) in pursuance of Central Administrative Tribunal, Principal Bench, New Delhi Order dated 16.02.1990 in ^{the case of} Raj Kamal and others vs. Union of India and others. In pursuance of the aforesaid scheme the respondents interviewed the Late Rameshwar Singh and granted him "Temporary Status" w.e.f. 01.01.1993 vide their letter dated 07.10.1995, in which the father of the applicants was shown as a 'Work Charged employee' despite the fact that he had been in service since 1981. The father of the applicants despite being granted Temporary Status and a pay scale was not given many of the service benefits to which a regular employee was entitled. Being aggrieved the late Rameshwar Singh made several representations, none of which were considered in his life time and he finally expired on 12.07.2002. The widow of Late Rameshwar Singh thereafter submitted representation, seeking grant of all terminal benefits due to her late husband and appointment on compassionate grounds. Both these requests were rejected by the respondents vide the impugned order dated 29.10.2002. Being aggrieved, Smt. Bitti Devi (the original applicant) filed this O.A.

4. The applicants' counsel has submitted Written Arguments and he also relied on the following citations: -

- "(i) CAT (Full Bench Calcutta) O.A. No. 1124 of 1992 and O.A. No. 524 of 1993 Gita Rani Santra vs. U.O.I. and Others and Rabani Jana vs. U.O.I. and others respectively;**
- (ii) Punjab And Haryana High Court (Division Bench) Writ Petition No. 4867 of 2000 (decided on 05.09.2002) Kewal Singh vs. State of Punjab;**
- (iii) Central Administrative Tribunal (Calcutta Bench) O.A. No. 721 of 2000 and M.A. No. 214 of 2001 (Smt. Jotsana Bala Manna vs. Union of India and ors.)"**

In Gita Rani Santra's case, it was held that a casual labour with temporary status who is to be considered for computation of qualifying service should have put in atleast 20 years service. In the case of Kewal Singh at sub para-(ii) above, the High Court taking cognizance of the fact that the petitioner had put in 15 years,

directed the case for regularisation be considered before the retirement of the applicant and thereafter his claim for pension shall be examined. Similarly in Smt. Jotsana Bala Manna's case (supra), the Tribunal held that the applicant was eligible for grant of family pension after treating the applicant's husband as regularized and grant all consequential benefits including family pension, but without any interest.

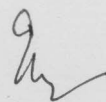
5. The respondents in their Counter Affidavit have taken the following preliminary objections: -

- "(I) Non joinder of Secretary ICAR instead of Director General ICAR;**
- (II) Director Soil & Water Conservation Research and Training Institute, Dehradun not impleaded as necessary party.**
- (III) Government of India Scheme dated 10.09.1993 for grant of temporary status and regularisation of casual workers is challenged but DOP & T has not been impleaded as a necessary party.**
- (IV) The O.A. is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985."**

6. On the question of merits, the respondents in their Counter Affidavit have merely stated that as per DOP & T Scheme framed on 10.09.1993 for grant of temporary status and regularisation of casual labourers in pursuance of Central Administrative Tribunal, Principal Bench, New Delhi in Raj Kamal's case^{2w}, the guidelines contained in DOP & T O.M. dated 09.10.1998 on the scheme for compassionate appointment and the CCS (Pension) Rules 1972 (copies of which are at Annexure CA-I, II and III) the applicant is not entitled to any relief as claimed. They further contend that the list in the office order dated 07.10.1995 which was prepared in accordance with the scheme dated 10.09.1993 was a typing mistake with the workers therein being incorrectly shown as Work Charged employees instead of casual workers and have incorrectly been granted temporary status w.e.f. ^{01 2w}10.09.1993.).

The respondents have relied on the following Judgments: -

- "(i). 2006 AIR SCW 6041 ICAR & Anr. Vs. Santosh;**



(ii) **2006 AIR SCW 1991 Secretary State of Karnataka and others vs. Uma Devi & Others.**

² (iii) **CAT Allahabad Bench O.A. No. 1355 of 1998 Manohar Lal vs. Union of India and Others.**

The two Judgments at sub para (i) and (ii) above have held that grant of temporary status would not bring such an employee on to the permanent establishment warranting grant of retiral benefits and doctrine of legitimate expectation cannot be invoked in such cases. In the order at sub para (iii) it has been held that even temporary status are not eligible for grant of compassionate appointment.

7. Heard Sri M.K. Upadhyay, learned counsel for the applicant and Sri B.B. Sirohi, learned counsel for the respondents and perused the pleadings on record and the Written Arguments (citations annexed) submitted later.

8. The preliminary objections filed by the respondents have been noted. The claim that the O.A. is time barred is without any basis as the father of the applicants died in July 2002 and the O.A. was filed in February 2003, which is within time. This stand of the respondents is therefore rejected. As far as the other objections are concerned ~~they~~^{2w} are considered purely procedural and given the nature of relief (s) claimed and in the interest of natural justice, the Court had decided to overrule these objections and ~~hear~~^{hear in} the case on merits.

9. The factum of the father of the applicant having worked from 1981 till his death in harness on 12.07.2002 as mentioned in the O.A. has neither been confirmed nor denied by the respondents, in their counter affidavit. In the ~~absence~~^{2w} of the respondents denial or any submission to the contrary, ~~that~~ the period the father of applicant worked under the respondents as mentioned above, has to be taken as correct. The counter affidavit filed by the respondents is sketchy and does not indicate clearly how the applicant does not fulfill the provisions contained in the DOP & T Office Memorandum dated 10.09.1993.

2w

10. During the hearing, the applicants' counsel Shri M.K. Upadhyay at the outset submitted that he is not pressing relief No. 8 (i), which is quashing of DOP & T Office Memorandum dated 10.09.1993. This was allowed. Hence relief No. 8 (i) is not being dealt with in this order.

11. The main issue to be addressed in this case is whether the applicants' father has correctly been granted temporary status as per provisions of DOP & T Office Memorandum dated 10.09.1993, which contains the scheme for grant of temporary status and regularisation of casual labourers issued in pursuance of Central Administrative Tribunal, Principal Bench, New Delhi Order dated 16.02.1990 in Raj Kamal's case. Relevant portion of the said O.M. reads as under: -

3. This Scheme is applicable to casual labourers in employment of the Ministries/Departments of Government of India and their attached and subordinate offices, on the date of issue of these orders. But it shall not be applicable to casual workers in Railways, Department of Telecommunication and Department of Posts who already have their own schemes.

4. Temporary Status

- (i) Temporary status would be conferred on all casual labourers who are in employment on the date of issue this O.M. and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week).**
- (ii) Such conferment of temporary status would be without reference to the creation/availability of regular Group 'D' posts.**
- (iii) Conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on need basis. He may be deployed anywhere within the recruitment unit territorial circle on the basis of availability of work.**
- (iv) Such casual labourers who acquire temporary status will not however, be brought on to the permanent establishment unless they are selected through regular selection process for Group 'D' posts.**

5. Temporary status would entitle the casual labourers to the following benefits: -

- (i)**
- (ii)**
- (iii)**
- (iv)**

- (v) **50% of the service rendered under Temporary Status would be counted for the purpose of retirement benefits after their regularisation.**
- (vi) **After rendering three years' continuous service after conferment of temporary status, the casual labourers would be treated on par with temporary Group D employees for the purpose of contribution to the General Provident Fund, and would also further be eligible for the grant of Festival Advance/Flood Advance on the same conditions as are applicable to temporary Group 'D' employees, provided they furnish two sureties from permanent Govt. servants of their Department.**

From the above provisions of the scheme, it is clear that for grant of temporary status and ^{regularisation in} ~~regulations~~, a casual labour should have been in service on 10.09.1993; should have rendered at least 240/206 days, as the case may be, continuous service for at least one year. It has also been made clear that even if temporary status is granted they will not be brought on to the permanent establishment unless they are selected through regular selection process for group 'D' posts. The applicants' father appears to have been in service on 10.09.1993, in the absence of any averment to the contrary by the respondents. Both the applicants and the respondents have not been able to establish or deny that the applicants' father had worked continuously for 240 or 206 days as the case may be. It can therefore be inferred that the applicants' father did fulfill the above condition and he was therefore eligible to be granted temporary status.

12. In para-11 of their counter affidavit, the respondents have confirmed that temporary status was granted to the applicants' father on 07.10.1995 (Annexure A-VIII of the O.A.) but have hastened to add that the list so prepared according to the Scheme dated 10.09.1993 was a mistake as the workers have been shown as Work Charged labourers instead of casual workers. It is surprising that the respondents have not made any submission regarding the period the applicant worked under the respondents or the actual days he worked to bring out clearly how the applicant does not fulfill the criteria laid down for grant of temporary status. They have merely reiterated the fact that the applicants' father was granted temporary status which was a mistake and therefore he is not entitled to the benefits due to a temporary status employee. No mention has been

made whether the said order was subsequently cancelled and or whether a fresh list was ever issued depicting the correct position. It can therefore safely be inferred that the applicants' father was granted temporary status inadvertently or otherwise w.e.f. 01.09.1993 vide Order dated 07.10.1995.

13. The respondents claim that all that was due to the applicants' father as a temporary status employee has already been paid and the main thrust of the relief (s) prayed for are those which are due to regular employees which ~~are~~^{is} not admissible and hence the applicants claim on this account cannot be allowed.

14. The applicants have relied upon certain Judgments as referred to para-4 above. These Judgments would however have to be seen in the light of subsequent Judgments of the Apex Court in which the above Judgments referred to by the applicants, have been taken into consideration. These later Judgments will therefore stand. Relevant extracts of the aforesaid later Judgments are reproduced below: -

11. A bare reading of the provisions makes it clear that late Durga Lal was not entitled to any family pension. The direction given by CAT for regularization is contrary to what has been stated in Uma Devi's case (supra). At para 45 of the Judgment it was noted as follows:

45. While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain-not at arm's length-since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode or public appointment which is not permissible."

{2006 AIR SCW 6041}

47. These appointments or engagements were also made in the teeth of directions of the Government not to make such appointments and it is impermissible to recognize such appointments made in the teeth of directions issued by the Government in that regard. We have also held that they are not legally entitled to any such relief. Granting of the relief claimed would mean paying a premium for defiance and insubordination by those concerned who engaged these persons

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against the interdict in that behalf. Thus, on the whole the appellants in these appeals are found to be not entitled to any relief. These appeals have, therefore, to be dismissed."

{2006 AIR SCW 1991}

The applicants' father is therefore only entitled to the benefits of a temporary status employee and nothing more. Since these benefits have been given, as submitted by the respondents, the applicants have no ground to claim anything further least of all the benefits of a regular employee. This prayer of applicants is therefore rejected.

15. The applicants' second relief prayed for is grant of compassionate appointment on the grounds that dependent of temporary status employees are also eligible for grant of appointment on compassionate grounds, when the Government servant dies in harness. The respondents deny all the claims made by the applicants. It is relevant here to see the provisions of the scheme for compassionate appointments as contained in the DOP & T O.M. dated 09.10.1998. The provisions regarding the object, and applicability read as under: -

"1. OBJECT

The object of the Scheme is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency.

2. TO WHOM APPLICABLE

(A) To a dependent family member of a Government servant who -

(a) dies while in service (including death by suicide); or

(b)

(c).

(B)

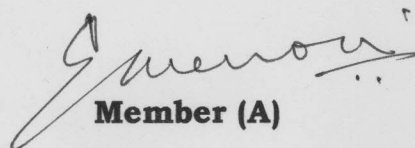
Note I

Note II "Government servant" for the purpose of these instructions means a Government servant appointed on regular basis and not one working on daily wage or casual or apprentice or ad hoc or contract or re-employment basis."

16. Given the above provisions and the fact that casual labourers granted temporary status are daily rate wage employees, it is clear that dependents or such employees are not eligible for grant of compassionate appointment on the ground that their father was granted temporary status. I also place reliance on Order dated 27.03.2003, passed by this Tribunal in O.A. No. 1355 of 1998 (Manohar Lal vs. Union of India and others). The operative para of the Order reads as under: -

***"3. From perusal of the aforesaid notes II to V, it is clear that a casual labourer with _____ temporary status is not treated as Government Servant for the purposes of the instruction under which the compassionate appointment is made. Para 6 of the Scheme of 1993 is very clear that the casual labourer with temporary status after serving for a period of 3 years shall be treated as temporary Government Group 'D' employee only for the purpose of Provident Fund Scheme etc. Para 4 (iv) further provides that such casual labourers who acquire temporary status will not however be brought on to the permanent establishment unless they are selected through regular selection process for Group 'D' posts. Thus, para 4 (iv) and 4 (vi) make it clear that the applicant cannot claim compassionate appointment on the ground that his father was granted temporary status. Thus he is not entitled for the relief. The O.A. has not merit and accordingly dismissed
No order as to costs."***

17. In view of the above analysis, the applicants have no ground to seek relief (s), as prayed for in this O.A. The O.A. being without merit is liable to be dismissed. The O.A. is accordingly dismissed with no order as to costs.


Member (A)

/M.M/