

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

O.A./T.A./CGA No. 1052 of 2008 with OA 1728 of 2012

Date of decision 2nd April 2013

Mohd. Salimuddin & Ors. Applicant(s)

Sri S. Narain Counsel for the applicant(s)

Versus.

U.O.I & Ors. Respondents(S)

Sri R.K. Rai counsel for the respondent(s)

CORAM

Hon'ble Ms. Jasmine Ahmed V.C./Member(J)

Hon'ble Mr. _____ Member ()

- ✓ 1. Whether Reporters of local papers may be allowed to see the judgment? Yes
- ✓ 2. To be referred to the Reporters or not? Yes
3. Whether their Lordship wish to see the fair copy of the judgment?
4. Whether to be circulated to all Benches?

Jasmine Ahmed

SIGNATURE

RESERVED ON 1.3.2013

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 2nd DAY OF APRIL, 2013)

Present

HON'BLE MS. JASMINE AHMED, MEMBER (J)

Original Application No.1052 OF 2008
(U/S 19, Administrative Tribunal Act, 1985)

1. Mohd. Salimuddin, Son of Late Sri Altaf Uddin, Resident of House No.E-109, Munna Colony, (Near Mumma Masjid), Gaus Nagar, Kareilly, Allahabad.
2. Ajit Kumar Sharma, Son of Sri Narendra Kumar, Resident of 175/51. Old Lashkar Lane, Bairahana, Allahabad.
3. Gaya Prasad, Son of Sri Banwari Lal, Resident of Village Manan Sai, Post Office-Athrampur, District-Allahabad.
4. Vivek Kumar Srivastava, Son of Sri V.K. Srivastava, Resident of 7, Lakhpat Rai Lane, Bahadurganj, Allahabad.
5. Anjani Kumar Dwivedi, Son of Sri Suresh Chandra Dwivedi, Resident of Village-Uthgi, Post-Balraj Nagar, Allahabad.
6. Ram Suresh, Son of Sri B.R. Maurya, Resident of 130-K/5, Teliarganj, Allahabad.
7. Praveen Kumar, Son of Sri P.L. Kanaujia, Resident of 175/109, Harwara, Dhumanganj, Allahabad.
8. Bihari Lal Pandey, Son of Sri Hari Lal Pandey, Resident of 80, Mohatshimganj, Allahabad.
9. Shiv Narain, Son of Sri Ram Ghasite, Resident of Village-Gangad Kakodha, District-Kaushambi.
10. Sudhir Kumar Shukla, Son of Sri Sri Ram Shukla, Resident of 131-Type-II, Kendranchal Colony, Allahabad.

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11. Bholu Shanker Pandey, Son of Late Sri Gaya Prasad Padney, Resident of 180/A, Sri Nag Basuki Mandir, Daraganj, Allahabad.
12. Dinesh Chand, Son of Sri Lalaji Prasad, Resident of Girsha, Bharwari, District-Kaushambi.
13. Brij Washi, Son of Sri Lal Bahadur, Resident of 2-E/1, Rajapur, Allahabad.

.....Applicants

V E R S U S

1. Union of India through the Secretary, Ministry of Finance, Government of India, New Delhi.
2. The Controller and Auditor General of India, Bahadur Shah Zafar Marg, New Delhi.
3. The Principal Accountant General, Accountant General's Office, Sarojani Naidu Marg, Allahabad.
4. Principal Director, Regional Training Institute (R.T.I.), Audit and Accounts Department, 20, Sarojani Naidu Marg, Allahabad.
5. Sri D.S. Nehra, Principal Director, Regional Training Institute (R.T.I.), Audit and Accounts Department, 20, Sarojani Naidu Marg, Allahabad.
6. Birendra Dayal, Son of Sri Mahendra Lal Dayal, Presently Posted as Sweeper (Personal No.3591), A.G. (A&E),II, 20, Sarojani Marg, Allahabad.
7. Suresh Chandra, Son of Sri Ram Roop, Presently posted as Peon (Personal No.3592) A.G. (A&E),II, 20, Sarojani Marg, Allahabad.
8. Avnish Kumar Pandey, Son of Sri Jagdish Kant Pandey, Presently posted (Personal No.3600), A.G. (A&E),II, 20, Sarojani Marg, Allahabad.
9. Mahendra Prasad, Son of Sri Shobh Nath Bind, Presently posted as Chaukidar (Personal No.3637), A.G. (A&E),II 20, Sarojani Marg, Allahabad.

.....Respondents

Advocates for the Applicant:-

Shri S. Narain.

Advocate for the Respondents:-

Shri R.K. Rai

Jasviree Shrivastava

ALONGWITH

Original Application No.1728 OF 2012
(U/S 19, Administrative Tribunal Act, 1985)

1. Sant Lal, aged about 40 years, Son of Sri Kedar Nath, Resident of village-Fatehpur Sahavpur, Post Officer-Kasenda, District-Kaushambi.
2. Suraj Prakash, aged about 34 years, Son of Sri Munni Lal, resident of 483, Rajroopur, Police station, Dhoomanganj, Allahabad.
3. Prabhakar Prasad, aged about 39 years, Son of late Ram Nagina Gupta, resident of 1096/1 Rajroopur, Allahabad.
4. Surendra Dayal, aged about 40 years, son of Late Mahendra Lal Dayal, Resident of 2/2G, Nihalpur, Khuldabad, Allahabad.
5. Vivekanand Bharti, aged about 40 years, son of Sri Nanhey Lal, Resident of 840/706, Purana Katra, Allahabad.
6. Rupesh Kumar, aged about 39 years, Son of Sri Vijay Shankar Jaiswal, Resident of L.I.G., 7/8, Double Storey, Pritam Nagar, Allahabad.

.....Applicants

VERSUS

1. The Union of India through the Secretary, Ministry of Finance, Government of India, New Delhi.
2. The Principal Accountant General, (General and Social Sector Audit), Uttar Pradesh, Allahabad.
3. The Principal Director, Regional Training Institute (R.T.I.), Indian Audit and Accounts Department, 20, Sarojani Naidu Marg, Allahabad.
4. The Accountant General, (A&E)-1, Uttar Pradesh, Allahabad.

.....Respondents

Advocates for the Applicant:- **Shri S. Narain.**

Advocate for the Respondents:- **Shri R.K. Rai**

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ORDER

1. These two OAs were taken up for hearing together as same question of law broadly based on same set of facts is involved therein.
2. The Original Application No. 1052 of 2008 U/S 19 of the Administrative Tribunal Act, 1985 has been filed by thirteen applicants seeking a direction to the respondents to accommodate them in the service of the respondents by virtue of the order of this Tribunal dated 6.01.2006 in O.A. No. 1191/2004 as upheld by the Hon'ble High Court of Allahabad vide its order dated 23.3.2006 in Civil Misc. W.P. No.15825/2006 specifically taking into consideration the fact that admitted juniors of the applicants have already been regularized in implementation of the aforesaid orders. Similar relief has been prayed by the six applicants in OA No.1728 of 2012.
3. The applicants were engaged on daily wage basis in various capacities as Electricians, Peon, Mali, Photostate Machine Operator, Daftari, Driver, and cook helper between the years 1993 to 2004 in the office of the Respondent No.4. All of them except applicant No.11 (Bhola Shankar Pandey) in OA No. 1052 of 2008 and applicant Nos. 1 and 2 in OA No.1728 of 2012 had previously filed O.A. No.1191/2004 before this Tribunal against the unfair labour practice adopted by the respondents. The said

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O.A. by a detailed order was disposed of by this Tribunal vide its Judgment/order dated 6.1.2006. In the said O.A. the Tribunal adopting a balancing process gave the following direction:

".....The possible solution, therefore, would be that the respondents carry out an exercise of preparing a seniority list in the descending order of the number of days these casual labourers worked as on 1.4.2005 (irrespective of whether the casual labourers were on duty of this day) and on the basis of the seniority, they shall work out the possibility of regularising the services of such casual labourers against any vacant post of group 'D' post or any new post are created in near future. In so far as day to day work is concerned, the respondents shall accommodate the first 20 and in case of their non-availability for any span of time, according to the seniority they may engage other casual labourers on need basis. Those who are tail-enders maybe suitably informed of their bleak prospects of being engaged in view of the fact that there are adequate number of casual labourers to be engaged for day to day work who are senior to such persons. Out of the seniors as on date, if any of them are not being engaged, the respondents shall accommodate them as well."

4. Not satisfied with the said order of the Tribunal, the respondents filed Civil Misc. W.P. No.15825/06 before the High court of judicature at Allahabad. The said W.P. was disposed of in the following terms:

".....It is not disputed by Sri A.K. Srivastava, learned counsel for the respondents that the Tribunal had not issued any positive direction for regularisation of service of such casual labourers but had merely observed that the petitioners should consider the possibility of regularising the services against any vacant group 'D' post or any new post that was likely to be created in near future. In this view of the matter, the contention advanced by Sri Amit

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Sthalekar, learned counsel for the petitioners that a positive direction for regularisation could not have been issued by the Tribunal, is misconceived.

We are also of the considered opinion that the direction by the Tribunal to accommodate the first 20 casual labourer from the list prepared on the basis of the seniority is also in consonance with the provisions of the Rule 77 of the Industrial Disputes(Central) Rules, 1957 and as such it calls for no interference from this court.

Sri Amit Asthalekar, learned counsel for the petitioners further submitted that it shall not be possible for the petitioners to suitably inform them of their bleak prospects of being engaged. Sri. A.K. Srivastava, learned counsel appearing for the respondents has fairly stated that it is neither feasible nor possible to carry out this direction given by the Tribunal. Therefore, this part of the judgment of the Tribunal is liable to be set aside and is, accordingly, set aside.

Subject to the observations made above, the Writ Petition is disposed of finally."

5. The import of the said judgement of the Tribunal as well as of the Hon'ble Allahabad High Court was that the respondents were obliged to prepare a seniority list of all daily wagers/casual labourers in the descending order of the number of days worked put in by them as on 01.04.2005 and on that basis the respondents were to consider the possibility of regularizing the services of such casual labourers against any vacant posts of Group D or against posts likely to be created in the near future. It may be specifically noted here that this part of the directions of this Tribunal has not been interfered with by the Hon'ble Allahabad High Court.

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6. Since the respondents even after the aforesaid judgements by the Tribunal as well as by the Hon'ble High Court did not prepare any seniority list as directed and engaged some casual labourers junior to the applicants, the applicants filed C.C.A. No.101/06 pleading contempt of the orders of the Tribunal. At the time of hearing of the said contempt petition on 10.10.2007, the learned counsel for the respondents stated in the Court that the applicants had not reported for duty inspite of communications sent by the respondents to the applicants offering them to join duty. The learned counsel for the applicant in the Contempt Petition had stated that though the respondents were asking the applicants to join duty by writing letters to the applicants, but when the applicants were reporting for duty they were not being allowed to join duty on one pretext or the other. On the date of hearing of the said Contempt Petition, the applicants were present in the Court. The learned Counsel for the respondents submitted in the Court, on instruction from the respondents, that if all the applicants report for duty, the respondents should accept them for joining the duty. The learned counsel for the respondents further assured the Tribunal that the applicants would be allowed to join duty in pursuance of the orders of this Tribunal. Thus on 10.10.2007, this Tribunal passed the following order in the said Contempt Petition:-

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".....Heard Shri A.K. Srivastava, learned counsel for the applicant and Shri. S.K. Pandey holding brief of Shri A. Sthalekar, learned counsel for the respondents.

Learned counsel for the respondents states that applicant is not reporting for duty inspite of communication sent by the respondents' department. Learned counsel for the applicant states that respondents even though stating that they are asking to join the duty but they are not allowing to join the duty for one reason or other and they are avoiding to comply with the order for taking the applicant in duty. The applicant is present in Court. On instruction, learned counsel for the respondents say so. Let the applicant go to report for duty and respondents will accept him for joining the duty. There is no occasion of any misunderstanding with regard to the statement made by the respondents. Having regard to the facts, we direct the applicant to approach the respondents' office tomorrow and respondents assured that they will allow to join duty to the applicant in pursuance of the Court's order. Accordingly, put up matter day after tomorrow.

List on 12.10.2007.

Copy of the order be given to respondents."

7. In the aforesaid manner the Contempt Petition was adjourned to 12.10.2007. On 12.10.2007, it was stated before the Tribunal that the applicants have been taken on duty and thus the respondents had complied with the directions. In view of the said position the Contempt Petition was dropped. But subsequently a Misc. Application was moved by the applicants for restoration of the Contempt Petition as the respondents had resiled from the assurance given by them to this Tribunal. At the time of the hearing of the said Misc. Application claim and Counter claim was made by the rival parties. While the applicants claimed that they

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were reporting for duty but the respondents were not taking them on duty, the respondents claimed that the applicants were not reporting for duty. In view of the said contradictory position taken by the rival parties, this Tribunal vide its order dated 15.07.2008 directed that the respondents alongwith the relevant office records would be present in the Tribunal on the next date of hearing to enable the applicants to submit their joining report if they so desire. Simultaneously this Tribunal directed the applicants also to be present in the Tribunal on the next date of hearing. The said Contempt Petition was adjourned to 18.07.2008. On the said date the officers of the respondents did not appear in the court and an affidavit was moved for their non-appearance. Further the counsel for the respondents produced certain documents to show that certain applicants had joined duty and others have not reported for duty. In the aforesaid circumstances, this Tribunal held that the grievance of the applicants, if any requires fresh adjudication, which can not be done in Contempt proceedings.

8. In view of the dropping of the said contempt proceedings the applicants have filed these O.A.s alleging that persons juniors to them have been regularized by the respondents whereas they have been denied the said benefit. Respondent Nos. 6-9 in OA No. 1052 of 2008 who are the private respondents and who were

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junior to the applicants have been stated to have been regularized by the respondents. The applicants have alleged that the respondents have adopted pick and choose policy in regularizing persons junior to them who were in good books of the respondents. The applicants have been denied the benefit of regularization as they were not in good books of the respondents. The applicants have made very serious allegation against respondent No.5, Sh. D.S. Nehra who was the Principal Director of the Regional Training Institute Allahabad. The applicants have been impleaded him by name also. The applicants have alleged that the Respondent No.5 had given oral instructions to the gate keeper not to allow the applicants to enter to the premises even if they report for duty. Thus, the applicants have stated that even though they were reporting for duty the gate keeper never allowed them to enter into the premises. On the other hand the respondents pretended as if they were implementing the orders of this Tribunal and kept on writing letters dt. 23.11.2006, 12.1.2007, 25.04.2007, 24.05.2007, 26.6.2007, 22.08.2007, 25.09.2007 and finally on 19.10.2007 calling upon the applicants to join and discharge their duties. But since the applicants were never allowed to join even though they were reporting for duty, the applicants wrote letters dated 16.5.2007, 18.09.2007 and 4.10.2007 through Regd. Post to respondents as well as their higher officers pointing out the aforesaid position. The applicants have filed the

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said letters to the respondents and higher authorities as Annexure A-14 and Annexure A-15 to this O.A. alongwith the photocopy of the receipt of the Regd. Post. It may be noted here that the respondents in their Counter Affidavit have not disputed the documents filed by the Applicants as annexure A-14 & A-15.

9. In the aforesaid background on 26.10.2007 the respondents published a notice in Hindi Dainik "Amar Ujala" stating therein that the applicants were not reporting for duty because of which the work of the office of the respondents was suffering and thus they were looking for other options. The said notice was repeated by the respondents on 30.11.2007 in the same News Paper. When the applicants came to see the said notice they sent a letter dated 12.12.2007 to the respondents clearly stating therein that they were all along reporting for duty but the gate keeper under the oral instruction by the respondent No.5 did not allow them to enter into the premises. This letter dated 12.12.2007 has been filed by the applicants as annexure A-17. It may also be noted here that the respondents in their Counter Affidavit have not disputed the said Annexure A-17 document.

10. In para 4.57 of the O.A. No. 1052 of 2008, the applicants have given the names of the persons junior to them (persons with lesser length in service) who have been regularized by the respondents in pursuance of the judgement by this Tribunal as

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upheld by the Hon'ble Allahabad High Court. The respondents in their Counter Affidavit have neither denied nor rebutted the said facts. In the aforesaid background the applicants have prayed for the regularization of their services in pursuance to the same judgment of the Tribunal as upheld by the Hon'ble High Court of Allahabad specifically as juniors have already been regularized.

11. The respondents have broadly admitted the fact situation as enumerated above, but have disputed that the gate keeper did not allow the applicants to enter into the premises to join their duties as alleged by the applicants. They have stated that after the judgement of the Hon'ble Allahabad High Court in Civil Misc. W.P. No.15825/06, the respondents accepted the same and prepared a seniority list in the descending order of number of days worked by the applicants. The names of the applicants were put at the appropriate places in the said seniority list. Thereafter the applicants have been given ample opportunities to join the duty in pursuance to the judgment of this Tribunal as upheld by the Hon'ble Allahabad High Court by writing a series of letters to them. But the applicants did not report for the same. Thus, the work in the office of the respondents was greatly suffering. Some of the applicants who reported for duty were not willing to do menial work like cleaning and demanded white collar jobs. Thus, finding no alternative, the respondents regularised those juniors of the applicants who were willing to do the required menial work.

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There is nothing wrong in the same. Further, it has been pleaded by the respondents that in the meanwhile the respondents have promulgated new Recruitment Rules titled **Indian Audit And Accounts Department Multi Tasking Staff Recruitment Rules 2011** and in pursuance to the same have issued the advertisement dated 10-16.11.2011 in Rozgar Samachar for filling up several posts of Multi Tasking Staff. It may be noted here that the designation of the Multi Tasking Staff is a new name given to the "tasks" which were already being performed by the applicants and similarly situated persons as daily wagers/casual labourers in the office of the respondents. The learned Counsel for the respondents has emphasized that in view of the changed circumstances of the new Recruitment Rules and Advertisements, the applicants have no case and the same should be dismissed.

12. I have heard Shri Shyamal Narain, Advocate for the applicants and Shri Rajnish Kumar Rai, Advocate for the official respondents at great length. None have appeared on behalf of the private respondents. With the help of the aforesaid Advocates, I have perused the pleadings and examined the documents and judgements filed with the pleadings and cited at the bar. Both the learned counsels have reiterated the aforestated facts at the time of hearing.

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13. In the aforesaid rival contentions, the facts which are glaring is that the applicants have admittedly put in more number of days as daily wagers/casual labourers than the private respondents 6-9 who have admittedly been regularized by the respondents. It has also been admitted that a seniority list as directed by this Tribunal in OA No.1191 of 2004 and upheld by Hon'ble Allahabad High Court was duly prepared by the respondents. Further it is an admitted position that the said private respondents have been regularized only in pursuance to the directions of this Tribunal in OA NO. 1191/04 as upheld by the Hon'ble Allahabad High Court in the Civil Misc. Writ Petition No.15825/2006. The further glaring fact is that the respondents have given a clear and categorical assurance to this Tribunal in C.C.A. No.101/06 on 10.10.2007 to accept all the applicants if they report for the duty. Further admittedly the respondents have written several letters dated 23.11.2006, 12.01.2007, 25.4.2007, 24.5.2007, 26.6.2007, 22.08.2007, 25.09.2007 and 19.10.2007 calling upon the applicants to join duty. It is also an admitted position that the applicants had by their communications as Annexed as annexure A-14 and A-15 had communicated to the higher authorities by Regd. Post that they were not being allowed to join duty in spite of the fact that they were reporting for the same.

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14. In view of the glaring facts as mentioned in the preceding paragraphs the issues that arise for consideration in the present case are identified as follows:-

(a) Whether the applicants can be denied the benefit of regularization in pursuance to the judgment by this tribunal in OA NO.1191/2004 as upheld by the Hon'ble Allahabad High Court in Civil Misc. Writ Petition No.15825/2006, particularly when the admitted juniors of the applicants have already been regularized in pursuance to the same very judgments?

(b) Whether the subsequent development of promulgation of the New Recruitment Rules of 2011, in the facts of the present case, can affect the rights of the applicants vis-a-vis their juniors in the matter of regularization?

15. As far as issue No.(a) is concerned it is an admitted position that the respondents have given the benefit of regularisation to the admitted juniors to the applicants in pursuance to the same very judgment of the Tribunal as upheld by the Hon'ble Allahabad High Court. It does not appear to either logic or common sense that the applicants can be denied the same benefit. The various communications sent by the Respondents clearly proves that they were in need of the services of the applicants and there were vacancies available for them. The only ground taken by the respondents is that the applicants did not report for joining duty. The various communications sent by the applicants to the

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respondents as well as the higher authorities by registered post clearly stating that they were not being allowed to join duty under the oral instructions of respondent No.5 clearly shows that the applicants from the very beginning have been complaining that they were not being allowed to join duty. It may be noted here that the official respondents have not denied receipt of such letters from the applicants. It may further be noted that the official respondents did not respond to the specific contents of the letters sent by the applicants. The fact that the applicants had filed O.A. No.1191/2004, had opposed the Civil Misc. Writ Petition No.15825/2007 before the Hon'ble High Court of Allahabad, had filed C.C.A. No.101/2006, had sent several communications to the respondents as well as to the higher authorities under registered cover and have filed and pursuing the present O.A. clearly proves that they have all along been interested in joining duty. On a balance of "preponderance of probability" it does not appear to common sense that the applicants would not have reported for joining duty. Except for making a bald averment or statement, the official respondents have not produced any material to support their stand in this regard. Thus, the stand of the respondents about non-reporting of the applicants for joining duty when their admitted juniors were regularised does not stand to reason, in view of the aforesaid admitted fact situation prevalent in this case. The respondents

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have admitted during the course of hearing that had the applicants joined in pursuance to their various letters to applicants to join duty, they would also have been regularised like the private respondents No.6-9. Thus it appears that whatever may be the misunderstanding or mismanagement at the relevant time, the non-joining of the applicants can not be attributed to their non-reporting for duty. Besides since the applicants have all along shown their interest in joining their duty they must be treated in the same scale as that of the respondent Nos. 6-9.

16. As regards issue No.(b), it may be seen that the entire intervening period between the date of regularisation of the private respondent Nos. 6-9 and the promulgation of the new Recruitment Rules in 2011 have been wasted in the misunderstanding and mismanagement of the joining of the applicants. In fact, when the new Recruitment Rules have been promulgated O.A. No.1052 of 2008 was already pending adjudication before this Tribunal. The applicants have made very serious allegations against the respondent No.5, who was occupying a very high position in the office of the respondents. In fact, they have alleged that the respondent No.5 manipulated the facts and the gate keeper in such a manner that it would appear as if the applicants were not joining their duties or not reporting for joining deliberately. It has been held above on the

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basis of "preponderance of probability" that the said position does not appear to be correct. Thus whether because of the manipulation or manoeuvring done by the officials of the respondents or for misunderstanding or mismanagement of the issue of joining of the applicant at the relevant time, can the applicants be denied the same benefits which had already been accorded to their admitted juniors? The answer appears to be an emphatic "No". As pointed out by the Hon'ble Supreme Court in *(2011) 2 SCC 575: Transport and Dock Workers Union & Ors. Vs. Mumbai Port Trust & Anr.*, it must be borne in mind that the judicial process is not a bucket of readymade answers, but a process, or technique, for easing an endless flux of changing social tensions. The law must be responsive to changing circumstances and changing needs.

17. Besides, the issue may be analysed from another perspective. The OA was filed way back in 2008. For one reason or the other, the OA is pending adjudication for the last over 4 years. Had the OA been decided in 2008 or 2009, the rights of the applicants vis-à-vis their juniors in the matter of regularisation would have long been adjudicated without any reference to 2011 Recruitment Rules. It is only because of the delay in disposal of the said case that during the intervening period the 2011 Recruitment Rules have been promulgated. Now the question is are the applicants responsible for delay in disposal of the OA? They are not. Can the applicants

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be allowed to suffer because the Tribunal could not dispose of the matter timely? To answer this question, it would be appropriate to take the aid of well established **Legal Maxim: *Actus Curie Neminem Gravabit*** – An act of the Court shall prejudice no man. It is an established law that delay on the part of the Court shall not prejudice anybody's case. The same principle would apply in this case also. Thus, the subsequent promulgation of 2011 Recruitment Rules cannot prejudice the legal rights of the applicants vis-à-vis their admitted juniors in the matter of regularisation.

18. The learned counsel for the official respondents Shri Rajneesh Kumar Rai has relied upon the judgement of the Hon'ble Supreme Court in *(2006) 4 SCC 1: State of Karnataka Vs. Uma Devi* to contend that the applicants cannot be regularised now as they were back door entries. Relying on the said judgement, Shri Rai has submitted to dismiss the present OA. As far as this submission of the official respondents is concerned, it may be noted that when the applicants had filed their earlier OA No. 1191 of 2004, the official respondents had not pleaded that the applicants were backdoor entries or they were appointed in an unauthorised manner. Even when the respondents filed Civil Misc. W.P. No.15825/06 before the High court of judicature at Allahabad, they had not pleaded the same in respect of the

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applicants. On the other hand, the official respondents had given assurance to this Tribunal in Contempt Proceedings in CCA No. 101 of 2006 that the applicants would be taken on duty, if they reported for the same. In fact, it is the positive case of the official respondents that they accepted the judgement of the Tribunal in OA No.1191 of 2004 as upheld by Hon'ble Allahabad High Court and prepared a seniority list as envisaged in the said order. In the said seniority list the names of the applicants appeared and thus they were issued several communications to join duty. It is the case of the official respondents that only because the applicants did not report for duty, they were not regularised while the admitted juniors of the applicants were regularised. In view of the aforesaid categorical stand of the official respondents, the reliance placed by them on the judgement of Uma Devi appears to be an after thought and an argument of convenience. Further, it may be noted that in Uma Devi's case, the Hon'ble Supreme Court was not dealing with a case where the admitted juniors had already been given the benefit of regularisation and the admitted seniors had been denied the same. Besides, it may be noted here that the applicants have put in upto 12 years as daily wagers/ casual labourers. Further, the reliance of official respondents on this judgement is clearly contrary to their own stand of having already offered the applicants to come and join duty. It is again an well established **Legal Maxim: *Allegans Contraria Non Est***

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Audiendus – He is not to be heard who alleges things contrary to each other. Thus, this submission of the official respondents cannot be countenanced.

19. Further, the facts in this case are glaring in as much as admitted juniors of the applicants have already been regularised years back. The applicants had also been called by the official respondents to join duty. It is only because of misunderstanding or mismanagement, even if the allegation against Respondent No. 5 is ignored, the applicants could not join at the relevant time and thus could not be regularised. For such a fact situation neither any statutory law nor any judicial precedent has been cited at the bar to aid the judicial decision in this case. The Hon'ble Supreme Court in *(2002) 6 SCC 16: Dhannalal Vs. Kalawatibai* laid down as follows: (SCC p.29, para 20)

“When the statute does not provide the path and the precedents abstain to lead, then sound logic, rational reasoning, common sense and urge for public good play as guides of those who decide.”

In the instant case a sound logic, common sense and rational reasoning dictates that the seniors should not be deprived of the benefits already admittedly granted to juniors.

20. Further, the Hon'ble Supreme Court in *(1996) 3 SCC 644: Narashimaha Murthy Vs. Susheelabai (Smt.)* laid down as follows:

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“20.....Even without resorting to it or having its aid for interpretation, by applying common sense, equity, justice and good conscience, injustice would be mitigated. After all, as said earlier, the purpose of law is to prevent brooding sense of injustice. It is not the words of the law but the spirit and internal sense of it that makes the law meaningful. The letter of the law is the body but the sense and reason of the law is the soul.....It would therefore, be just and proper for the Court to adopt common sense approach keeping at the back of its mind, justice, equity and good conscience and consider the facts and circumstances of the case on hand.....”

In the instant case where juniors have already been regularised, there is a brooding sense of injustice on the part of the applicants – the admitted seniors who have been denied regularisation. Thus, it shall be the endeavour of law to mitigate the said brooding sense of injustice by adopting common sense approach keeping at the back of its mind, justice, equity and good conscience. So doing, this Tribunal has no hesitation in holding that the benefit of regularisation having already been accorded to the admitted juniors of the applicants, the same benefit cannot be denied to the applicants who are admitted seniors to those who have already been regularised. Denial of regularisation to applicants while their juniors have been regularised is a legal wrong. This wrong cannot be allowed to go without a remedy. As the **Legal Maxim** goes *Ubi Jus Ibi Remedium* – There is no wrong without a remedy.

21. In view of the above discussion, it is directed that the respondents shall accord the same benefit of regularisation to the applicants as

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has been admittedly accorded to their juniors Respondent Nos. 6 to 9. While according the said benefit to the applicants, the respondents would follow the order of seniority in the seniority list admittedly prepared in pursuance to the orders of this Tribunal in OA No.1191 of 2004 as upheld by the Hon'ble Allahabad High Court in Civil Misc. W.P. No.15825/06. The said benefit shall be accorded to the applicants from the same date as that of their admitted juniors. The said regularisation would be accorded in the available vacancies in various categories like unreserved, SC, ST and OBC by maintaining the category of the respective applicants and subject to availability of vacancies in the respective categories. However, the applicants will not be entitled to any back wages for the period they have not actually worked but they will be entitled to notional fixation of pay and allowances from the date of joining of their admitted juniors and on that basis actual pay and allowances from their actual date of joining. The applicants will also be entitled to all other consequential benefits.

22. Both the O.A.s are allowed in above terms. The respondents shall fully comply with the aforesaid directions within a period of three months from the date of receipt of a copy of this order. No costs.

Jasmine Ahmed

[Jasmine Ahmed]
Member - J