

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 14.9.1999

O.A. No. 463/1995

1. Resham Singh son of Shri Sukhdev Singh aged about 21 years
2. Sher Singh son of Shri Bansidhar aged about 24 years
3. Ashok Kumar son of Shri Narain Ram aged about 23 years.
4. Charan Singh son of Shri Sodan Singh Thakur aged about 24 years.
5. Rajender son of Shri Narayan Ram aged about 21 years.

All employed on group 'D' post (not being taken on duty) in the office of 494 Coy ASC (SUP) Type D, Suratgarh-
Address : C/o. Sher Singh, C/o. Postaman Hans Raj, Ward
No.8, Suratgarh, District Sri-Ganganagar.

... Applicants.

v e r s u s

1. Union of India through the Secretary to Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Directorate General of Supplies and Transport, Quartermaster General Branch, Army Headquarters, DHQ P.O. New Delhi.
3. The Commanding Officer, 464 Coy, ASC (Sup) Type D, Suratgarh.

... Respondents.

Mr. J.K. Kaushik, Counsel for the applicants.

Mr. K.S. Nahar, Counsel for the respondents.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

O R D E R

(Per Hon'ble Mr. Gopal Singh)

Gopal Singh

This application under Section 19 of the Administrative Tribunals Act, 1985, has been filed by the applicants praying for a direction to the respondents to take them on duty as also confer upon them the temporary status as admissible in accordance with the scheme circulated vide Government of India, Department of Personnel & Training, O.M. dated 10.9.93 (Annexure A/1).

2. Applicants' case is that they were appointed by the respondent-department as casual mazdoors on various dates during the years 1992 and 1993 and in terms of Department of Personnel & Training's Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, they are eligible for grant of temporary status. Instead, the respondent-department have not assigned them any duties from March-April, 1995, with a view to disentitle them ^{from}/grant of temporary status. Feeling aggrieved, the applicants have approached this Tribunal.

3. Notices were issued to the respondents and they have filed the reply. It has been contended by the respondents in the reply that in terms of Army Headquarters letter dated 24.8.93 governing grant of temporary status and regularisation of casual labourers, a casual labourer would be entitled for grant of temporary status only if he has worked for 240 days each in any two years and that the present applicants do not fulfil this requirement and, therefore, they are not eligible for grant of temporary status in terms of Army Headquarters letter dated 24.8.93 mentioned supra. They have also alleged that these applicants had absented themselves from duties and to this effect they have submitted a letter dated 27.2.96 (Annexure R/1) addressed to Shri J.K. Kaushik, Advocate and also a letter dated 12.6.96 (Annexure R/2) to the Registrar of this Tribunal. It may be mentioned that both these letters were issued by the respondents after the applicants' had approached this Tribunal on 18.10.1995, so as to cover their action in not assigning any duties to the applicants.

4. We have heard the learned counsel for the parties and perused the records of the case carefully.

5. Army Headquarters letter dated 24.8.93 prescribes working

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of 240 days each in 2 years for grant of temporary status to the casual labourers. The Government of India Scheme circulated vide Department of Personnel & Training's O.M. dated 10.9.93 prescribes that the temporary status would be conferred on all casual labourers who are in employment on the date of issue of this OM 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). Government of India's instructions mentioned above were circulated after the Army Headquarters letter dated 24.8.93 and these instructions do not exclude the Ministry of Defence from its purview. As such it can be safely presumed that the Government of India's instructions issued on 10.9.93 would prevail over Army Headquarters letter dated 24.8.93.

6. The instructions of the Government of India dated 10.9.93 came under the scrutiny before Ernakulam Bench of the Tribunal in OA No. 907/96, K.M. Badarudeen and 8 Ors. vs. Union of India & Ors., decided on 12.8.96. While disposing of the above mentioned O.A., it was observed as under:-

"Before we go into the merits of the matter, it will be useful to refer to the genesis of some of the schemes, A-7 which are of recent origin. Large numbers of work force remain as casual labourers, without any sense of security under the Government of India and different agencies under it. Realising the hardships and uncertainties under which they lived, the Supreme Court evolved various schemes, conferring security of tenure to the extent possible on these class of employees. The scheme formulated in Inderpal Yadav case [1985 (2) SCC 648] and the scheme formulated in the Daily Rated Casual Labourer case [AIR 1987 SC 2342] are instances in point. Taking inspiration from the new horizons shown by the highest Court of the land, imbuing the ethos in which the schemes were visualized, different departments formulated different schemes. A-7 is one of those.

The scheme lays down that "those casual workmen who have put in 240 days (206 days in the case of offices observing 5 days a week) as on 1.9.1993 will be granted temporary status". According to learned counsel for the respondents the scheme covers only those who have put in 240 days on 1.9.1993. There is no special sanctity about this date, except that it was the date on which the scheme came into force. The material condition for grant of temporary status is the putting of 240 days of service. That is the yardstick with which entitlement is measured subject of course to the primary consideration of work being available. Fixing a date arbitrarily has been found illegal by the Supreme Court in several cases, including the case of D.R. Nim [AIR 1967 SC 1301].

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We are not suggesting that every casual employee who has put in 240 days of work should be regularised, irrespective of requirements of work. But if there is continuing requirement, if the expected level of 240 days service is attained, there is no reason why a casual labour should not be granted temporary status, consistent with the schemes framed pursuant to orders of the Supreme Court, and consistent with the statutory eligibility envisioned by the I.D. Act. If the work in which applicants/those similarly situated are engaged is likely to continue, there is no reason why the benefit of temporary status should not be granted to employees engaged on this project. However, it is not for us to make schemes. R-3, i.e., Secretary, MPPG &P, Department of Personnel, New Delhi, will examine the matter in detail and pass appropriate orders regarding modifying or clarifying A-7 scheme and also regarding grant of temporary status to those engaged in the Desalination Plant, whose work is likely to be continuous, if not perennial."

7. It is also pointed out that the Government of India, Department of Posts, vide their letter dated 12.4.1991 had also formulated a Scheme for grant of temporary status and regularisation of casual labourers in compliance of the directions of Hon'ble Supreme Court and it was provided in the scheme as under :-

"In compliance with the directions of the Hon'ble Supreme Court a scheme was drawn up by this Department in consultation with the Ministries of Law, Finance and Personnel and the President has been pleased to approve the said scheme. The scheme is as follows:

1. 'Temporary Status' would be conferred on the casual labourers in employment as on 29.11.1989 and who continue to be currently employed and have rendered continuous service of at least one year; During the year they must have been engaged for a period of 240 days (206 days in the case of offices observing five days week)."

The benefit under the above scheme formulated by the Department of Posts was further extended to full time casual labourers recruited after 29.11.89 and upto 10.9.93 vide Department of Posts' letter dated 1.11.95.

8. A comparison of the scheme circulated vide Government of India's letter dated 10.9.93 and that of Department of Posts' letters dated 12.4.91 and 1.11.95 would reveal that in terms of Government of India Scheme dated 10.9.93, the casual labourers who were in employment on 10.9.93 and had rendered a continuous service of at least one year on that date would be eligible for

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grant of temporary status whereas the scheme made applicable in Department of Posts provides that temporary status would be conferred on the casual labourers in employment as on 29.11.89 and who continue to be currently employed and have rendered continuous service of at least one year. The scheme prevalent in the Department of Posts was also formulated in consultation with Personnel Department. The scheme in the Postal Department does not talk of any date on which a casual labourer should have completed 240 days of work. It only mentions that the casual labourer engaged prior to 28.11.99 and who continue to be currently employed and have rendered one year's continuous service would be conferred temporary status. Thus, there is a disparity in the instructions issued by the Government of India, Department of personnel and the Department of Posts in this regard. The question of sanctity of the date of 1.9.93 has already been discussed by the Ernakulam Bench of the Tribunal as mentioned above.

9. In the light of the above discussion, we are of the view that the casual labourers engaged in various departments of the Government of India cannot be treated differently. We see no reason why the guidelines issued by the Department of Posts in consultation with the Government of India, Department of Personnel, cannot be made applicable to the casual labourers working in other Central Government Departments. To have the uniformity in treatment of casual labourers for the purposes of grant of temporary status and other benefits, we leave it to the Government of India, Department of personnel & Training, to frame uniform rules / instructions in this regard.

10. The respondents have also filed a statement indicating number of days these applicants have worked with the respondent-department and it is seen that Shri Rajender Singh, applicant No.5, has even completed 240 days of working as on 1.9.93 and, therefore, deserves to be granted the temporary status in terms of Government of India, O.M. dated 10.9.93. Rest of the applicants who were in service of the respondent department on 1.9.93 had not completed 240 days of working in a year for grant of temporary status in terms of the instructions mentioned above. We have already suggested that the Government of India should come out with a uniform scheme in this regard for all departments of the Central Government.

Lipal Singh

11. In the light of the foregoing discussions, this O.A. is partly allowed with the following observations :-

- (i) Shri Rajender Singh, applicant No.5, should be considered for grant of temporary status under the Government of India Scheme circulated vide their letter dated 10.9.93 within three months from the date of receipt of a copy of this order.
- (ii) Government of India, Ministry of Personnel & Training, may consider evolving uniform guidelines for grant of temporary status to all the casual labourers working in different departments of the Central Government.
- (iii) Claims of applicants Nos. 1 to 4 for regularisation are rejected.

12. Parties are left to bear their own costs.

Gopal Singh

(GOPAL SINGH)
Adm. Member

A.K. Misra

(A.K. MISRA)
Judl. Member

cvr.